[Regulation Z; Docket No. R-1367
Truth in Lending
Proposed rule; request for public comment.; RULEMAKING RELEASES]

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Body

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The Federal Reserve Board on Thursday proposed significant changes to Regulation Z (Truth in Lending) intended to improve the disclosuresconsumers receive in connection with closed-endmortgages and home-equity lines of credit (HELOCs). These changes, offered for public comment, reflect the result of consumertesting conducted as part of the Board's comprehensive review of the rules for home-secured credit. The amendments would also provide new consumer protections for all home-secured credit.

"Consumers need the proper tools to determine whether a particular mortgage loan is appropriate for their circumstances," said Federal Reserve Chairman Ben S. Bernanke. "It is often said that a home is a family's most important asset, and it is the Federal Reserve's responsibility to see that borrowers receive the information they need to protect that asset."

To shop for and understand the cost of credit, consumers must be able to identify and understand the key terms of the mortgage. In formulating the proposed revisions to Regulation Z, the Board used consumertesting to ensure that the most essential information is provided at a suitable time using content and formats that are clear and conspicuous.

"Our goal is to ensure that consumers receive the information they need, whether they are applying for a fixed-ratemortgage with level payments for 30 years, or an adjustable-rate mortgage with low initial payments that can increase sharply," said Governor Elizabeth A. Duke. "With this in mind, the disclosures would be revised to highlight potentially risky features such as adjustable rates, prepayment penalties, and negative amortization."

Closed-endmortgagedisclosures would be revised to highlight potentially risky features such as adjustable rates, prepayment penalties, and negative amortization. The Board's proposal would:
. Improve the disclosure of the annual percentage rate (APR) so it captures most fees and settlement costs paid by consumers;
. Require lenders to ***show*** ***how*** the consumer's APR compares to the average rate offered to borrowers with excellent credit;
. Require lenders to provide final Truth in Lending Act (TILA) disclosures so that consumers receive them at least three business days before loan closing; and
. Require lenders to ***show*** consumers ***how*** much their monthly payments might increase, for adjustable-rate mortgages.The Board will also work with the Department of Housing and Urban Development to make the disclosures mandated by TILA, and HUD's disclosures, required by the Real Estate Settlement Procedures Act, complementary; potentially developing a single disclosure form that creditors could use to satisfy both laws.

In developing the proposed amendments, the Board recognized that disclosures alone may not always be sufficient to protect consumers from unfair practices. To prevent mortgage loan originators from "steering" consumers to more expensive loans, the Board's proposal would:
. Prohibit payments to a mortgage broker or a loan officer that are based on the loan's interest rate or other terms; and
. Prohibit a mortgage broker or loan officer from "steering" consumers to transactions that are not in their interest in

order to increase the mortgage broker's or loan officer's compensation.The rules for home-equity lines of credit would be revised to change the timing, content, and format of the disclosures that creditors provide to consumers at application and throughout the life of such accounts. Currently, consumers receive lengthy, generic disclosures at application. Under the proposal, consumers would receive a new one-page Board publication summarizing basic information and risks regarding HELOCs at application. Shortly after application, consumers would receive new disclosures that reflect the specific terms of their credit plans. In addition, the Board's proposal would:
. Prohibit creditors from terminating an account for payment-related reasons unless the consumer is more than 30 days late in making a payment.
. Provide additional protections related to account suspensions and credit-limit reductions, and reinstatement of accounts.The Federal Register notices are attached. The comment periods end 120 days after publication of the proposals in the Federal Register, which is expected shortly.

Highlights of Proposed Rules Regarding Home-Secured Credit (14 KB PDF)

Statement by Chairman Ben S. Bernanke

Statement by Governor Elizabeth A. Duke

Board Memorandum--Proposed Amendments to Regulation Z (Truth in Lending) (183 KB PDF)

Regulation Z--HELOC:

*Federal Register*notice, Regulation Z-HELOC: HTML / 15.35 MB PDF

Key Questions to ***Ask*** About Home Equity Lines of Credit (Attachment A) (68 KB PDF)

Summary of Findings: Design and Testing of Truth in Lending Disclosures for Home Equity Lines of Credit (1.06 MB PDF)

Model forms and samples:
1. G-14(A) (152 KB PDF) Early Disclosure Model Form (Home-equity Plans)
2. G-14(B) (165 KB PDF) Early Disclosure Model Form (Home-equity Plans)
3. G-14(C) (217 KB PDF) Early Disclosure Sample (Home-equity Plans)
4. G-14(D)(212 KB PDF) Early Disclosure Sample (Home-equity Plans)
5. G-14(E) (209 KB PDF) Early Disclosure Sample (Home-equity Plans)
6. G-15(A) (212 KB PDF) Account-Opening Disclosure Model Form (Home-equity Plans)
7. G-15(B) 1221 KB PDF) Account-Opening Disclosure Sample (Home-equity Plans)
8. G-15(C) (224 KB PDF) Account-Opening Disclosure Sample (Home-equity Plans)
9. G-15(D) (219 KB PDF) Account-Opening Disclosure Sample (Home-equity Plans)
10. G-24(A) (131 KB PDF) Periodic Statement Transactions; Interest Charges; Fees Sample (Home-equity Plans)
11. G-24(B) (188 KB PDF) Periodic Statement Sample (Home-equity Plans)
12. G-24(C) (158 KB PDF) Periodic Statement Sample (Home-equity Plans)
13. G-25 (10 KB PDF) Change-in-Terms Sample (Home-equity Plans)
14. G-26 (8 KB PDF) Rate Increase Sample (Home-equity Plans)**Regulation Z--Closed-end Mortgages**:

*Federal Register*notice, Regulation Z--Closed-endMortgages:HTML / 6.09 MB PDF

Key Questions to ***Ask*** About ***Your*** Mortgage (Attachment A) (68 KB PDF) Fixed vs. Adjustable Rate Mortgages Early Disclosure (Attachment B) (73 KB PDF)

Summary of Findings: Design and Testing of Truth in Lending Disclosures for Closed-end Mortgages (2.8 MB PDF)

Model forms and samples:

1. H-4(B) (91 KB PDF) Adjustable-Rate Loan Program Model Form
2. H-4(D) (86 KB PDF) Adjustable-Rate Loan Program Sample (Hybrid ARM)
3. H-4(E) (86 KB PDF) Adjustable-Rate Loan Program Sample (Interest Only ARM)
4. H-4(F) (87 KB PDF) Adjustable-Rate Loan Program Sample (Payment Option ARM)
5. H-4(G) (58 KB PDF) Adjustable-Rate Adjustment Notice Model Form
6. H-4(I) (99 KB PDF) Adjustable-Rate Adjustment Notice Sample (Interest Only ARM)
7. H-4(J) (99 KB PDF) Adjustable-Rate Adjustment Notice Sample (Hybrid ARM)
8. H-4(K) (49 KB PDF) Adjustable-Rate Annual Notice Model Form
9. H-4(L) (107 KB PDF) Negative Amortization Monthly Disclosure Model Form
10. H-19(A) (150 KB PDF) Fixed Rate Mortgage Model Form
11. H-19(B) (140 KB PDF) Adjustable-Rate Mortgage Model Form
12. H-19(C) (158 KB PDF)Mortgage with Negative Amortization Model Form
13. H-19(D) (169 KB PDF) Fixed Rate Mortgage with Balloon Payment Sample
14. H-19(E) (215 KB PDF) Fixed Rate Mortgage with Interest Only Sample
15. H-19(F) (164 KB PDF) Step-Payment Mortgage Sample
16. H-19(G) (218 KB PDF) Hybrid Adjustable-Rate Mortgage Sample
17. H-19(H) (204 KB PDF) Adjustable-Rate Mortgage with Interest Only Sample
18. H-19(I) (151 KB PDF) Adjustable-Rate Mortgage with Payment Option Sample**Highlights of Proposed Rules Regarding Home-Secured Credit**

The proposal would make the following changes to Regulation Z for closed-endmortgages and for home-equity lines of credit.

For closed-end mortgage loans:

. At application, lenders would have to provide consumers with a one-page list of key questions to ***ask*** about the loan being offered. The new Truth in Lending Act (TILA) disclosures are designed to answer those questions.

. The information consumers receive within three days after application would be streamlined to make it easier for consumers to use. By highlighting risky mortgage features (such as possible payment increases, or negative amortization) the disclosures would be more meaningful.

. For adjustable-rate mortgages, lenders would be required to ***show*** consumers ***how*** their payments might change, for example, by disclosing the highest monthly amount the consumer might pay during the life of the loan.

. The APR would be revised to make it a better measure of the total cost of the loan, by including most fees and settlement costs; many of these fees are currently excluded from the APR.

. The disclosures would ***show*** consumers in a simple graph ***how*** their loan's APR compares to the average rate offered to borrowers with excellent credit.

. In addition to the early cost disclosures provided at application, lenders would be required to provide final TILA disclosures that consumers must receive at least three days before the loan closing.

. For adjustable-rate mortgages, lenders would have to notify consumers 60 days in advance of a change in their monthly payment (currently notice may be given 25 days in advance).

. For loans where consumers have payment options that allow their loan balance to increase, consumers would have to receive monthly statements explaining this feature.**For all mortgage transactions the proposal would**:

. Prohibit payments to a mortgage broker or the creditor's loan officer based on the loan's interest rate or other terms.

. Prohibit a mortgage broker or loan officer from "steering" consumers to a lender offering less favorable terms in order to increase the broker's or loan officer's compensation.**For Home-Equity Lines of Credit (HELOCs)**:

. At application, lenders would provide improved information that would be more meaningful and easier for consumers to use. The lengthy, generic disclosure currently provided at application would be replaced with a new, one-page disclosure summarizing basic information and risks about HELOCs.

. Within three days after receiving the consumer's application, lenders would provide disclosures specifically tailored to the actual credit terms for which the consumer qualifies. These disclosures provide information about costs and risky mortgage features in a tabular format that consumers have found easier to use.

. At account opening, lenders would provide final disclosures in the same format, to facilitate comparison with the earlier disclosures.

. Throughout the life of the plan, lenders would provide enhanced periodic statements, ***showing*** the total amount of interest and fees charged for the statement period and the year to date.

. To the extent a lender can change any terms of the plan, lenders would have to notify consumers 45 days in advance of the change.

. Lenders would be prohibited from terminating an account for delinquency until the payment is more than 30 days late.

. Consumer protections that apply when a consumer's credit line has been suspended or reduced would be strengthened. Creditors would have to provide additional information about the reasons for the action and consumers' right to request reinstatement. The rules also would require lenders to promptly investigate and respond to consumers' request to have their lines reinstated.Board of Governors of the Federal Reserve System

Statement by Chairman Ben S. Bernanke
July 23, 2009

We are meeting today to consider two proposals that would significantly improve consumerdisclosures for all mortgage transactions. These proposals are the result of a comprehensive review conducted by the Board's staff, including extensive consumertesting. The proposals also include robust new consumer protections to prohibit unfair practices that allow mortgage brokers and other loan originators to increase consumers' loan costs unnecessarily.

In recent years, consumers have been presented with a wider choice of mortgage products. Although this has helped many consumers find a loan tailored to their specific needs, it has also added complexity. This complexity can make it difficult for consumers to understand and compare different loans. The regulatory proposals we are considering this morning would require consumerdisclosures that better reflect the complex features and the risks of today's mortgage products.

Both proposals would be issued under the Truth in Lending Act (TILA). The first proposal would make sweeping changes to the disclosures for home-purchase loans, refinance loans, and other fixed-term, closed-endmortgage loans. The second proposal would enhance the disclosures for open-end, home equity lines of credit (known as HELOCs).

Consumers need the proper tools to determine whether a particular mortgage loan is appropriate for their circumstances. The Truth in Lending disclosures provide consumers with key information they need to evaluate their options. It is often said that a home is a family's most important asset, and it is the Federal Reserve's responsibility to see that borrowers receive the information they need to protect that asset. Our consumertesting is designed to ensure this information will be presented in language consumers understand, in a format that is easy to use, and at a suitable time.

When disclosing the details of complex financial transactions, there is necessarily a trade-off While attempting to provide complete and accurate information, we must not overload consumers with excess information they cannot use Our consumertesting has aided us in striking a proper balance. But we have also learned that the one-page Truth in Lending disclosure that lenders currently use is not adequate to convey the features and risks of today's complex products. Because the proposed new disclosures are more risk-focused, in some cases they are lengthier. Our consumertesting ***shows***, however, that the length of these disclosures is not as important as their functionality and usability.

The Board will continue to test these model disclosure forms with actual consumers. In refining the model disclosures we will follow the same multi-disciplinary approach that was used to develop these proposals. To achieve the most effective results, we combine our consumertesting results with research on financial markets and industry operations, our experience in bank supervision and handling consumer complaints, and our expertise in consumer education. In addition, we conduct extensive outreach to other government agencies, consumer and community groups, academia, and industry to gain a broad range of perspectives that inform our policy decisions.

We will also work with the Department of Housing and Urban Development to make our disclosures, mandated by the Truth in Lending Act, and HUD's disclosures, required by the Real Estate Settlement Procedures Act, compatible and complementary; potentially developing a single disclosure form that creditors could use to satisfy both laws. This could help reduce information overload by eliminating some duplicative disclosures.

We realize that disclosures alone may not always sufficiently protect consumers from unfair practices. Last year, we issued rules prohibiting unfair practices in underwriting higher-priced subprime mortgages. In addition, the Board's rules addressed abuses by loan servicers and improper appraisal practices. The Board also committed to study ways to resolve concerns about lenders' payment of "yield spread premiums" to mortgage brokers and other loan originators. These payments by lenders increase loan originators' compensation when the originator arranges a loan that has a higher interest rate than the rate the consumer was qualified to obtain.

Consumers rely on the professional expertise of brokers and other loan originators and expect that they will act fairly. Consumers' expectations of fair treatment are not met, however, when they are steered by their loan originator to more expensive loans. Accordingly, the proposal we are considering today would go beyond disclosures and adopt new substantive protections. One aspect of the proposal would require the loan originator to receive the same compensation from a particular creditor regardless of the loan's rate or terms. Another provision would seek to prevent loan originators from steering consumers to lenders offering more expensive loans that are not in the consumer's interest so that the originator can increase its own compensation.

In closing, I want to thank the many members of the Board's staff from several divisions who contributed to these proposals, but particularly staff in the Board's Division of Consumer and Community Affairs who put forth tremendous effort in developing these important improvements in consumer protection.

I will now turn to Governor Duke, who chairs the Board's Committee on Consumer and Community Affairs, to discuss the proposals in greater detail.

Board of Governors of the Federal Reserve System

Statement by Governor Elizabeth A. Duke

July 23, 2009

Thank you, Mr. Chairman.

The Committee on Consumer and Community Affairs is pleased to bring these two proposals before the Board. At the outset, I want to recognize the contribution that Governor Tarullo, my fellow committee member, made to this effort. His testimony before the Senate Banking Committee prevents him from joining us this morning.

Before I turn to staff for the details, I would like to highlight elements of the proposals and the process for their development.

As part of the Federal Reserve's comprehensive review of all disclosures provided to consumers under Truth in Lending, substantial revisions to credit card disclosures were finalized in December, 2008. The proposals we will act on today are the next step in that process, covering closed-endmortgages and home-equity lines of credit. To ensure that new disclosures are useful to consumers, we have used consumertesting to explore ***how*** consumers process information and understand important features of financial products. This has been quite an informative exercise. Through testing, we were able to get a better understanding of the way consumers identify and evaluate key terms pertaining to the costs and risks of closed-endmortgages and home-equity lines of credit. The disclosure proposals that resulted from this process are quite risk focused.

Our goal is to ensure that consumers receive the information they need, whether they are applying for a fixed-ratemortgage with level payments for 30 years, or an adjustable-rate mortgage with low initial payments that can increase sharply. With this in mind, the disclosures would be revised to highlight potentially risky features such as adjustable rates, prepayment penalties, and negative amortization. Consumers also need reliable cost information. To this end, we propose revisions to both the form and timing of disclosures.

Some of the most dramatic changes to disclosures would be:
. At application, lenders would provide consumers with a one-page list of key questions to ***ask*** about the loan offered. The new disclosures are designed to answer those questions.
. Lenders would be required to ***show*** consumers in a simple graph, ***how*** the consumer's APR compares to the average rate offered to borrowers with excellent credit.

. For adjustable-rate mortgages, lenders would be required to ***show*** consumers ***how*** their payments might change, for example, by disclosing the highest monthly amount the consumer might pay during the life of the loan.
. In addition to receiving cost disclosures three days after application, under the proposed rules, consumers must receive an accurate final TILA disclosure at least three business days before the loan closing. This would give consumers the opportunity to review the disclosures outside of the pressured environment of the loan closing and eliminate last-minute surprises.The second proposal represents an entirely new disclosure regime for home-equity lines of credit (or HELOCs). The proposal addresses the timing, content, and format of the disclosures creditors provide throughout the life of these credit plans.

Currently, consumers receive a lengthy disclosure when they apply for a home-equity line of credit. This is a pre-printed, generic disclosure explaining ***how*** the creditor's program is structured. It is dense and legalistic, and difficult for consumers to use This disclosure would be replaced with a one-page list of key questions consumers should ***ask*** and is supplemented by a reference to a Federal Reserve website for additional information.

Within three days after receiving the consumer's application, creditors would provide disclosures specifically tailored to the actual credit terms for which the consumer qualifies. These disclosures would be in a format that consumers have found easier to use.

In the current economic environment, many consumers have seen their home equity lines suspended or reduced. Today's proposal would also strengthen the consumer protections that apply in such cases. Creditors would have to provide additional information to consumers so that consumers will understand the reasons for the action and their right to request reinstatement. The rules would also better define creditors' responsibilities in promptly investigating and responding to consumers who request reinstatement of their credit lines.

I believe these additional consumer protections and enhanced disclosures better reflect consumers' need to understand today's complex mortgage products and represent a significant step forward in consumer protection.

Before turning to Sandy Braunstein, who is the Director of our Division of Consumer and Community Affairs, I want to express my appreciation to her and her staff for their extraordinary effort and outstanding work over many months in developing these proposals.

Attachment A

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Key Questions to *Ask* About Home Equity Lines of Credit

When you are shopping for a home equity line of credit, consider the questions below. Lines of credit can have risky features that could make it difficult for you to repay ***your*** balance. As a result, you could lose ***your*** home. ***Ask*** ***your*** lender about other loan products, such as a traditional home equity loan. For more information, go to: *www.frb.gov*.

1 Can my interest rate increase?

Lines of credit usually have a variable interest rate, which means that the rate can increase or decrease from time to time. A lender may offer you a lower initial interest rate for a short time. However, after this period ends the rate will usually increase.

2 Can my minimum payment increase?

Yes, ***your*** minimum payment can increase based on several factors, such as when ***your*** variable interest rate increases or you borrow more money.

3 When can I borrow money?

You can borrow money only for a specified time, starting when you open ***your*** account. During this time, known as the "borrowing period," you can borrow money and you must make minimum payments. When the borrowing period ends, you will no longer be able to borrow money from ***your*** line of credit.

4 *How* soon do I have to pay off my balance?

After the borrowing period ends, under some plans you may be required to pay off ***your*** balance immediately in one payment. Under other plans you will have a certain amount of time to pay down ***your*** balance. During this time, known as the "repayment period," you will not be able to borrow additional amounts and will have to make larger minimum payments than during the borrowing period.

5 Will I owe a balloon payment?

Under some plans, if you make only the minimum payments you will not pay off ***your*** entire balance by the end of the term. At that point, you will have to pay the remaining balance as a single lump-sum, known as a "balloon payment." If you cannot get another loan to repay this amount, or pay it off using ***your*** savings, you could lose ***your*** home.

6 Do I have to pay any fees?

In addition to an application fee, you may be required to pay four (4) types of fees for ***your*** line of credit: (i) fees to open ***your*** account, such as loan origination or property appraisal fees; (ii) fees to maintain ***your*** account, such as an annual fee; (iii) fees to use ***your*** account, such as a cash advance fee; and (iv) penalty fees, such as late payment or over-the-credit limit fees.

7 Should I get a home equity loan instead of a line of credit?

With a home equity loan, you can borrow a fixed amount of money at a fixed interest rate. This means that ***your*** interest rate and minimum payment will stay the same over time. Consider a home equity loan if you plan to borrow a fixed amount of money at one time and want to know the exact amount of ***your*** minimum payment. Consider a home equity line of credit if you plan to borrow different amounts of money over time and can afford higher payments, even if the interest rate on ***your*** line of credit reaches its maximum.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DIVISION OF CONSUMER AND COMMUNITY AFFAIRS

DATE: July 17, 2009

TO: Board of Governors

FROM: Governor Duke

Committee on Consumer and Community Affairs

SUBJECT: Proposed Amendments to Regulation Z (Truth in Lending)

The attached item has been reviewed by members of the Consumer and Community Affairs Committee and is now ready for Board consideration.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DIVISION OF CONSUMER AND COMMUNITY AFFAIRS

DATE: July 17, 2009

TO: Board of Governors

FROM: Division of Consumer and Community Affairs [*]

SUBJECT: Proposed Amendments to Regulation Z (Truth in Lending)

ACTION REQUESTED: Approval to publish proposed amendments to Regulation Z (Truth in Lending) for public comment. For closed-endmortgage transactions, the amendments would revise the disclosure requirements and address other issues such as loan originators' compensation. For open-endmortgage transactions, the amendments would revise the disclosure requirements and address other issues such as account terminations, suspensions and credit limit reductions, and reinstatement of accounts.

Summary

The goal of the proposed amendments to Regulation Z is to improve the effectiveness of disclosures that creditors provide to consumers at application and throughout the life of a mortgage. The proposed changes are the result of staff's review of the provisions that apply to closed-end credit transactions secured by real property or a dwelling and open-end credit transactions secured by a consumer's dwelling (also known as home-equity lines of credit, or HELOCs). Staff recommends changes to the timing, format, and content of disclosure requirements for both closed-end mortgages and HELOCs.

Closed-End Mortgages

[*] S. Braustein, L. Chanin, J. Michael, J. Gell, K. Ryan, J. Wood, K. Ayoub, J. Goodson, J. McWilliams, P. Mondor, L. Neill, N. Pastor, M. Yap

For closed-end mortgages, staff recommends changes to the four main types of credit disclosures governed by Regulation Z: (1) disclosures at application; (2) disclosures within three days after application; (3) disclosures three days before consummation; and (4) disclosures after consummation. In addition, staff recommends additional protections related to limits on loan originator compensation.

Disclosures at Application. The proposal contains new requirements and changes to the format and content of disclosures given at application, to make them more meaningful and easier for consumers to use. The proposed changes (which are discussed in detail on pages 18 to 21) include:

. Providing a new one-page Board publication, entitled "Key Questions to ***Ask*** about ***Your*** Mortgage," which would explain the potentially risky features of a loan.

. Providing a new one-page Board publication, entitled "Fixed vs. Adjustable Rate Mortgages," which would explain the basic differences between such loans and would replace the lengthy Consumer Handbook on Adjustable-Rate Mortgages (CHARM booklet) currently required.

. Revising the format and content of the current adjustable-rate mortgage (ARM) loan program disclosure, including: a requirement that the disclosure be in a tabular question and answer format, a streamlined plain-language disclosure of interest rate and payment information, and a new disclosure of potentially risky features, such as prepayment penalties.

Disclosures within Three Days after Application. The proposal also contains revisions to the TILA disclosures provided within three days after application to make the information clearer and more conspicuous. The proposed changes (which are discussed in detail on pages 21 to 25) include:

. Revising the calculation of the finance charge and annual percentage rate (APR) so that they better capture most fees and costs paid by consumers in connection with the credit transaction.

. Providing a graph that would ***show*** consumers ***how*** their APR compares to the APRs for borrowers with excellent credit and for borrowers with impaired credit.

. Requiring disclosure of potential changes to the interest rate and monthly payment.

. Disclosing total settlement charges, as is currently required for the Good Faith Estimate (GFE) under the Real Estate Settlement Procedures Act (RESPA) and Regulation X.

. Summarizing key loan features, including the loan term, amount, and type.

. Adopting new format requirements, including rules regarding: type size and use of boldface for certain terms, placement of information, and highlighting certain information in a tabular format.

Disclosures Three Days before Consummation. The proposal would now require creditors to provide a "final" TILA disclosure that the consumer must receive at least three business days before consummation. In addition, two proposed alternatives (which are discussed in detail on pages 25 to 28) include:

. Alternative 1: If any terms change after the "final" TILA disclosures are provided, then another final TILA disclosure would need to be provided that the consumer must receive at least three business days before consummation.

. Alternative 2: If the APR exceeds a certain tolerance or an adjustable-rate feature is added after the "final" TILA disclosures are provided, then another final TILA disclosure would be provided that the consumer must receive at least three business days before consummation. All other changes could be disclosed at consummation.

Disclosures after Consummation. The proposal would change the timing, content and types of notices provided after consummation. The proposed changes (which are discussed in detail on pages 28 to 30) include:

. For ARMs, increasing advance notice of a payment change from 25 to 60 days, and revising the format and content of the ARM interest rate adjustment notice.

. For loans with negative amortization, requiring a monthly statement to provide information about payment options that include the costs and effects of negatively-amortizing payments.

. For creditor-placed property insurance, requiring notice of the cost and coverage of such insurance at least 45 days before imposing a charge for the insurance.

Loan Originator Compensation. The proposal contains new limits on originator compensation. The proposed changes (which are discussed in detail on pages 30 to 33) include:

. Prohibiting certain payments to a mortgage broker or a loan officer that are based on the loan's terms and conditions.

. Prohibiting a mortgage broker or loan officer from "steering" consumers to transactions that are not in their interest in order to increase the mortgage broker's or loan officer's compensation.

Home-Equity Lines of Credit

For HELOCs, staff recommends amendments related to the five main types of HELOC disclosures that would be governed by Regulation Z: (1) disclosures at application; (2) disclosures within three days after application; (3) disclosures at account opening; (4) periodic statements; and (5) change-in-terms notices. Also, the proposal provides additional guidance and protections, including certain changes to disclosure requirements, related to account terminations, suspensions and credit limit reductions, and reinstatement of accounts.

Disclosures at Application. The proposal contains several changes to the disclosures currently required at the time that a consumer applies for a HELOC. The proposed changes (which are discussed in detail on pages 34 to 35) include:

. Eliminating the requirement to provide a dense, multiple-page disclosure of generic rates and terms of the creditor's HELOC products, as well as the requirement to provide a Board-published, lengthy brochure explaining HELOC products and risks.

. Requiring the creditor to provide at application a new one-page Board publication summarizing basic information and risks regarding HELOCs, entitled "Key Questions to ***Ask*** about Home Equity Lines of Credit."

Disclosure within Three Days after Application. The proposal also replaces the disclosure of generic rates and terms with a new transaction-specific disclosure that must be given within three days after application. The proposed changes (which are discussed in detail on pages 35 to 37) include:

. Providing information about rates and fees, payments, and risks in a tabular format.

. Highlighting whether the consumer will be responsible for a balloon payment.

. Presenting payment examples based on both the current rate available and the maximum possible rate for the HELOC.

Disclosures at Account Opening. The proposal would retain the existing requirement to provide consumers with transaction-specific information about rates, terms, payments, and risks at the time of account opening. To facilitate comparison, the proposal would prescribe formatting for this information similar to that of the proposed disclosure provided within three business days after application. The proposed changes are discussed in detail on pages 38 to 40.

Periodic Statements. The proposal contains changes to the format and content of the periodic statement for HELOCs, largely conforming to the periodic statement provisions finalized in the December 2008 final rule for credit cards (December 2008 Open-End Final Rule). The proposed changes (which are discussed in detail on pages 40 to 43) include:

. Eliminating the disclosure of the effective annual percentage rate.

. Grouping interest charges and fees separately and requiring disclosure of separate totals of interest and fees for both the period and the year to date.

Change-in-Terms Notices. The proposal contains changes to the format and content of the change-in-terms notice, largely conforming to the change-in-terms provisions finalized in the December 2008 Open-End Final Rule. In addition, the proposal would increase advance notice of a change in a HELOC term from 15 to 45 days in advance of the effective date of the change. The proposed changes are discussed in detail on pages 44 to 46.

Account Terminations. The proposal would prohibit creditors from terminating an account for payment-related reasons until the consumer has failed to make a required minimum periodic payment for more than 30 days after the due date for that payment. Staff is recommending that the Board request comment on whether a delinquency threshold of more than 30 days or some other time period is appropriate. The proposed changes are discussed in detail on page 47.

Suspensions and Credit Limit Reductions. The proposal contains a number of additional protections related to temporary suspensions of advances and credit limit reductions. The proposed changes (which are discussed in detail on pages 47 to 50) include:

. Establishing a new safe harbor for suspending or reducing a line of credit based on a "significant" decline in property value. For HELOCs with a combined loan-to-value ratio at origination of 90 percent or higher, a five percent decline in the property value would be "significant."

. Providing additional guidance regarding the information on which a creditor may rely to take action based on a material change in the consumer's financial circumstances, such as the type of credit report information that would be appropriate to consider.

Reinstatement of Accounts. The proposal contains additional requirements regarding reinstating accounts that have been temporarily suspended or reduced. The proposed changes (which are discussed in detail on page 50) include:

. Requiring additional information in notices of suspension or reduction about consumers' ongoing right to request reinstatement and creditors' obligation to investigate this request

. Requiring creditors to complete an investigation of a request within 30 days of receiving a request for reinstatement and to give a notice of the investigation results to consumers whose lines will not be reinstated.

Background

The Truth in Lending Act

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and ***avoid*** the uninformed use of credit.

TILA's disclosures differ depending on whether consumer credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, or administrative sanctions.

The Board's Rulemaking Authority

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA specifically authorizes the Board, among other things, to do the following:

. Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion.

. Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment.

. Require additional disclosures for HELOC plans.

In addition, TILA authorizes the Board to prohibit acts or practices in connection with:

. Mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of the Home Ownership and Equity Protection Act (HOEPA) of 1994; and

. Refinancing of mortgage loans that the Board finds to be associated with abusive lending practices or that are otherwise not in the interest of the borrower.

The Board's Review of Regulation Z

The Board has amended Regulation Z numerous times since TILA simplification in 1980. In 1987, the Board revised Regulation Z to require special disclosures for closed-end adjustable-rate mortgages secured by the borrower's principal dwelling. In 1989, the Board revised Regulation Z to implement the Home Equity Loan Consumer Protection Act of 1988. The 1989 revisions required creditors to disclose extensive information about HELOCs to consumers, and imposed substantive limitations on HELOC creditors -- principally, by prohibiting changes in terms except under very limited circumstances. In 1995, the Board revised Regulation Z to implement HOEPA's changes to TILA. HOEPA requires special disclosures and substantive protections for home-equity loans and refinancing with APRs or points and fees above certain statutory thresholds. Numerous other amendments have been made over the years to address new mortgage products and other matters, such as abusive lending practices in the mortgage and home equity markets.

The Board's current review of Regulation Z was initiated in December 2004 with an advance notice of proposed rulemaking. [1] At that time, the Board announced its intent to conduct its review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit card plans. In December 2008, the Board approved final rules for open-end credit that is not home-secured.

Beginning in 2007, the Board proposed revisions to the rules for closed-end credit in several phases.

. HOEPA. In 2007, the Board proposed rules under HOEPA for high-cost mortgage loans (2007 HOEPA Proposed Rule). The final rules, approved in July 2008 (2008 HOEPA Final Rule), prohibited certain unfair or deceptive lending and servicing practices in connection with closed-end mortgages. The Board also approved revisions to advertising rules for both closed-end and open-end home-secured loans to ensure that advertisements contain accurate and balanced information and do not contain misleading or deceptive representations. The final rules also required creditors to provide consumers with transaction-specific disclosures early enough to use while shopping for a mortgage.

. Timing of Disclosures for Closed-End Mortgages. On May 7, 2009, the Board approved final rules implementing the Mortgage Disclosure Improvement Act of 2008 (the MDIA). The MDIA adds to the requirements of the 2008 HOEPA Final Rule regarding transaction-specific disclosures. Among other things, the MDIA and the final rules require early, transaction-specific disclosures for mortgage loans secured by dwellings even when the dwelling is not the consumer's principal dwelling, and require waiting periods between the time when disclosures are given and consummation of the transaction.

This proposal would revise the rules for disclosures for closed-end credit secured by real property or a consumer's dwelling and open-end credit secured by a consumer's dwelling. Staff anticipates reviewing the rules for rescission and reverse mortgages in a subsequent phase of the Regulation Z review.

Coordination with Disclosures Required under the Real Estate Settlement Procedures Act

Staff recommends that the Board work with the Department of Housing and Urban Development (HUD) to ensure that TILA and the Real Estate Settlement Procedures Act of 1974 (RESPA) disclosures are compatible and complementary, including potentially developing a single disclosure form that creditors could use to combine the initial disclosures required under TILA and RESPA. The two statutes have different purposes but have considerable overlap. Harmonizing the two disclosure schemes would ensure that consumers receive consistent information under both laws. It may also help reduce information overload by eliminating some duplicative disclosures. Consumer testing would be used to ensure that consumers could understand and use the combined disclosures. In the meantime, however, staff recommends that the Board include a revised model TILA form in its proposal, so that commenters can see ***how*** the Board's proposed revisions to Regulation Z might be applied in practice.

RESPA, which is implemented by HUD's Regulation X, seeks to ensure that consumers are provided with timely information about the nature and costs of the settlement process and are protected from unnecessarily high real estate settlement charges. To this end, RESPA mandates that consumers receive information about the costs

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[1] The review was initiated pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1980, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. An advancenotice of proposed rulemaking is published to obtain preliminary information prior to issuing a proposed rule or, in some cases, deciding whether to issue a proposed rule.

associated with a mortgage loan transaction, and prohibits certain business practices. Under RESPA, creditors must provide a good faith estimate (GFE) of settlement costs within three business days after a consumer submits a written application for a mortgage loan, which is the same time creditors must provide the early TILA disclosure. RESPA also requires a statement of the actual costs imposed at loan settlement (HUD-1 settlement statement). In November 2008, HUD published revised RESPA rules, including new GFE and HUD-1 settlement statement forms, which lenders, mortgage brokers, and settlement agents must use beginning on January 1, 2010. In addition to revised disclosures of settlement costs, the revised GFE now includes loan terms, some of which would also appear on a TILA disclosure, such as whether there is a prepayment penalty and the borrower's interest rate and monthly payment. The revised GFE form was developed through HUD's consumer testing.

TILA, which is implemented by the Board's Regulation Z, governs the disclosure of the APR and certain loan terms. This proposal contains a revised model TILA form that was developed through consumer testing. In addition to a revised disclosure of the APR and loan terms, the revised TILA disclosure would include the total settlement charges that appear on the GFE required under RESPA. Total settlement charges would be added to the TILA form because consumer testing conducted by the Board found consumers wanted to have settlement charges disclosed on the TILA form.

Staff believes the proposed revised TILA form and HUD's revised GFE represent significant improvements, but overlap between the two forms could be eliminated to reduce information overload and consistency issues. There have been previous efforts to develop a combined TILA and RESPA disclosure form, which were fueled by the amount, complexity, and overlap of information in the disclosures. Under a 1996 congressional directive, the Board and HUD studied ways to simplify and improve the disclosures. In July 1998, the Board and HUD submitted a joint report to Congress that sketched a broad outline intended to be a starting point for consideration of legislative reform of the mortgage disclosure requirements (1998 Joint Report). [2] The 1998 Joint Report included a recommendation for combining and simplifying the RESPA and TILA disclosure forms to satisfy the requirements of both laws. In addition, the 1998 Joint Report recommended that the timing of the TILA and RESPA disclosures be coordinated. Recent regulatory changes addressed the timing issues so that the initial disclosures required under TILA and RESPA would be delivered at the same time.

Consumer Testing

A principal goal for the Regulation Z review is to produce revised and improved mortgage disclosures that consumers will be more likely to understand and use in their decisions, while at the same time not creating undue burdens for creditors. For closed-end mortgages, Regulation Z currently requires creditors to provide at application a generic ARM loan program disclosure and the CHARM booklet. A transaction-specific TILA disclosure is required within three business days of application and at least seven business days before consummation. For FIELOCs, creditors must provide generic disclosures regarding various terms and features of the creditor's HELOC plans at application, along with a lengthy, Board-published brochure explaining HELOC products. The creditor does not have to provide a transaction-specific disclosure for HELOCs (i.e., including terms such as the consumer's APR and credit line limit) until the consumer opens the account.

In 2007, the Board retained a research and consulting firm (ICF Macro) that specializes in designing and testing documents to conduct consumer testing to help the Board's review of Regulation Z. Working closely with staff, ICF Macro conducted several tests in different cities throughout the United States. The closed-end testing consisted of four focus groups and twelve rounds of one-on-one cognitive interviews. The HELOC testing consisted of five rounds of one-on-one cognitive interviews. The goals of these focus groups and interviews were to learn more

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[2] Bd. of Governors of the Fed. Reserve Sys. and U.S. Dep't of Hous. and Urban Dev.,*Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act* (1998), *available at*[*http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf*](http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf).

about ***how*** consumers shop for mortgages and HELOCs, what information consumers read when they receive mortgage and HELOC disclosures, and assess their understanding of such disclosures.

The consumer testing groups contained participants with a range of ethnicities, ages, educational levels, and mortgage behaviors, including first-time closed-end mortgage and HELOC shoppers, prime and subprime borrowers, and consumers who had obtained one or more closed-end mortgages or HELOCs. For each round of testing, ICF Macro developed a set of model disclosure forms to be tested. Interview participants were ***asked*** to review model forms and provide their reactions, and were then ***asked*** a series of questions designed to test their understanding of the content. Data were collected on which elements and features of each form were most successful in providing information clearly and effectively. The findings from each round of interviews were incorporated in revisions to the model forms for the following round of testing.

Development and testing of Regulation Z disclosures. Staff worked with ICF Macro to develop and test several types of disclosures, including:

For closed-end mortgages:

. Two Board publications to be provided at application, entitled "Key Questions to ***Ask*** about ***Your*** Mortgage" and "Fixed vs. Adjustable Rate Mortgages";

. An ARM loan program disclosure to be provided at application;

. A transaction-specific TILA disclosure that must be provided within three business days of application and at least seven business days before consummation, and that the consumer must receive again within three business days of consummation;

. An ARM interest rate adjustment notice to be provided after consummation; and

. A payment option monthly statement to be provided after consummation.

For HELOCs:

. A Board publication to be provided at application, entitled "Key Questions to ***Ask*** about Home Equity Lines of Credit";

. A transaction-specific TILA disclosure to be provided within three business days of application, but no later than at account-opening; and

. A transaction-specific TILA disclosure to be provided at the time the consumer opens the account.

Staff revised two additional HELOC disclosures to be provided after account opening: a periodic statement and a change-in-terms notice that must be provided as applicable. Staff intends to test these two disclosures during the comment period. In addition, staff developed model clauses for proposed notices required in connection with terminating, suspending or reducing accounts, and reinstating accounts, and may test these clauses during the comment period.

Some of the key findings of the consumer testing are summarized below, and in the *Federal Register* notices containing the proposals for closed-end mortgages and HELOCs. ICF Macro will also issue two reports summarizing the results of the testing for closed-end mortgages and HELOCs, respectively, and these reports will be available on the Board's public Web site along with the Regulation Z proposal.

Results of closed-end testing. Consumer testing ***showed*** that consumers seldom contact more than one loan originator when looking for a mortgage loan. For consumers who do shop for a mortgage, most end their shopping process at the time of application. Therefore, the proposal requires creditors to provide key information about evaluating loan terms at the time an application form is provided.

Consumer testing also indicated that consumers were most likely to select a loan based on interest rate, monthly payment, loan type (such as fixed-rate or adjustable-rate), and settlement costs. Thus, under the proposal, the revised TILA disclosure would prominently display these features in a tabular format. In addition, the APR would be disclosed in large font and explained in the context of the APR for prime and higher-priced loans. Setting apart the most important terms in this way will better ensure that consumers are apprised of these terms.

Many consumers indicated that they learned at loan closing that their loan terms had changed or their settlement charges had increased. Thus, the proposal would require creditors to provide a final TILA disclosure that the consumer must receive at least three business days before consummation.

Consumer comprehension of the costs and effects of potential rate and payment increases and negatively-amortizing payment options significantly increased when consumers reviewed model forms developed by the Board and ICF Macro. Thus, the proposal would require creditors to provide a revised ARM interest rate adjustment notice, and a payment option monthly statement in a format substantially similar to the model forms.

Results of HELOC testing. Consumer testing ***showed*** that consumers seldom contact more than one loan originator when looking for a HELOC and generally go to their current mortgage provider, a prior lender, or a bank with which they have an existing banking relationship. Currently, Regulation Z requires that consumers receive generic HELOC program disclosures and a HELOC brochure at application, but does not require that consumers receive any other disclosures until account opening. Consumer testing indicated that consumers had difficulty understanding and using the information in these dense, lengthy disclosures.

The proposal therefore would require creditors to provide at application a Board publication entitled, "Key Questions to ***Ask*** about Home Equity Lines of Credit," which would replace the HELOC brochure with a concise summary of HELOC product characteristics and risks. The proposal also would change the current timing, content, and format of generic HELOC plan disclosures currently required at application. Specifically, the proposal would require creditors to provide a transaction-specific TILA disclosure within three business days of application, but no later than at account opening. To facilitate comparison, a similarly-formatted disclosure would be required to be provided at account opening.

Consumer testing also indicated that most consumers do not fully comprehend ***how*** HELOCs work, especially the draw and repayment periods. Thus, under the proposal, the revised TILA disclosure would explain more complicated terms in plain language and present them in a tabular format.

Consumer comprehension of the costs and effects of various terms significantly increased when consumers reviewed model forms developed by the Board and ICF Macro. Thus, the proposal would require creditors to provide a revised periodic statement and change-in-terms notice incorporating formatting -- such as the presentation of key information in a table - found effective with other HELOC model disclosures tested, as well as periodic statements and change-in-terms notices tested for the December 2008 Open-End Final Rule.

Additional testing during and after the comment period. During the comment period, staff will work with ICF Macro to conduct additional testing of model disclosures. After receiving comments from the public on the proposal and the proposed disclosure forms, staff will work with ICF Macro to further revise model disclosures based on comments received, and to conduct additional rounds of cognitive interviews to test the revised disclosures. After the cognitive interviews, quantitative testing will be conducted. The goal of the quantitative testing is to measure consumers' comprehension of the newly-developed disclosures relative to existing disclosures with a larger and more statistically representative group of consumers.

Other Outreach and Research Efforts

Staff also solicited input from members of the Board's Consumer Advisory Council on various issues presented by the review of Regulation Z. During 2009, for example, the Council discussed ways to improve disclosures for home-secured credit. In addition, staff met or conducted conference calls with various industry and consumer group representatives throughout the review process leading to this proposal. Staff also reviewed disclosures currently provided by creditors, the Federal Trade Commission's report on consumer testing of mortgage disclosures, [3] HUD's report on consumer testing of the GFE, [4] and other information. In addition, staff reviewed research on home equity lending, and surveys on HELOC usage and trends. [5]

Discussion

The goal of the proposed revisions is to improve the effectiveness of the Regulation Z disclosures that must be provided to consumers for closed-end credit transactions secured by real property or a dwelling and open-end credit transactions secured by a consumer's dwelling. To shop for and understand the cost, of credit, consumers must be able to identify and understand the key terms of the mortgage. But the terms and conditions for mortgage transactions can be very complex. The proposed revisions to Regulation Z are intended to provide the most essential information to consumers when the information would be most useful to them, with content and formats that are clear and conspicuous. The proposed revisions are expected to improve consumers' ability to make informed credit decisions and enhance competition among mortgage loan originators. Many of the changes are based on the consumer testing that was conducted in connection with the review of Regulation Z.

En considering the proposed revisions, staff sought to ensure that the proposal would not reduce access to credit, and sought to balance the potential benefits for consumers with the compliance burdens imposed on creditors. For example, the proposed revisions seek to provide greater certainty to creditors in identifying what costs must be disclosed for mortgages, and ***how*** those costs must be disclosed. More effective disclosures may also reduce confusion and misunderstanding, which may also ease creditors' costs relating to consumer complaints and inquiries.

I. Closed-End Credit Secured by Real Property or a Dwelling

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[3] James M. Lacko and Janis K. Pappalardo, Fed. Trade Comm'n,*Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Protoype Disclosure Forms* (2007), *available at*http://www.ftc.gov/os/2007/06P025505MortgageDisclosureReport.pdf.

[4] U.S. Dep't of Hous. and Urban Dev.,*Summary Report: Consumer Testing of the Good Faith Estimate Form (GFE)* (2008), *available at*http://www.huduser.org/publications/pdf/Summary_Report_GFE.pdf.

[5] Surveys reviewed include: Brian Bucks et al.,*Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances*, FEDERAL RESERVE BULLETIN (Feb. 2009); Alan Greenspan and James Kennedy, *Sources and Uses of Equity Extracted from Homes* (March 2007); Consumer Bankers Ass'n, *Home Equity Loan Study* (2005, 2007); Am. Bankers Ass'n, *ABA Home Equity Lending Survey Report* (2005); Glenn Canner et al., *Recent Developments in Home Equity Lending*, FEDERAL RESERVE BULLETIN (April 1998).

A. <u>Disclosures at Application</u>

Currently, Regulation Z requires pre-application disclosures only for adjustable-rate transactions. For these transactions, creditors are required to provide the CHARM booklet and a disclosure of twelve items of information at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

<u>Summary of Proposed Revisions</u>

The proposal contains a number of revisions to the format and content of disclosures provided at application, to make the disclosures more meaningful and easier to understand. To address concerns about other risky features in addition to adjustable rates, creditors would be required to provide a new one-page Board publication, entitled "Key Questions to ***<u>Ask</u>*** about ***<u>Your</u>*** Mortgage." In addition, creditors would be required to provide a one-page Board publication, entitled "Fixed vs. Adjustable Rate Mortgages," to explain the basic differences between fixed-rate and adjustable-rate mortgages. These publications would be provided regardless of whether the consumer is seeking a fixed-rate or adjustable-rate mortgage. Finally, for consumers who express interest in an ARM, creditors would be required to provide a revised ARM loan program disclosure that focuses on interest rate and payment features and key questions about risks.

<u>"Key Questions to ***Ask*** about ***Your*** Mortgage" publication</u>. Currently, Regulation Z requires pre-application disclosures only for adjustable-rate transactions. Over time, consumers have been provided with more loan choices in addition to adjustable-rate features, but also more potential risks. The proposal would require creditors to provide to consumers a one-page Board publication, entitled "Key Questions to ***<u>Ask</u>*** about ***<u>Your</u>*** Mortgage." Creditors would be required to provide this publication for all closed-end mortgages, not just adjustable-rate mortgages, before the consumer applies for a loan or pays a nonrefundable fee, whichever is earlier. The publication would inform consumers about the following risky features: interest rate increases, monthly payment increases, interest-only features, negative amortization features, prepayment penalties, balloon payments, and no-documentation or low-documentation loans. To enable consumers to track the presence or absence of potentially risky features throughout the mortgage process, these key questions and answers would also be included in the ARM loan program disclosure and in the transaction-specific TILA disclosure.

<u>"Fixed vs. Adjustable Rate Mortgages" publication</u>. Currently, creditors must provide the CHARM booklet at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier. Consumer testing indicated, however, that consumers find the CHARM booklet too lengthy to be useful. Thus, instead of the CHARM booklet, the proposal would require creditors to provide a one-page Board publication, entitled "Fixed vs. Adjustable Rate Mortgages." The publication would contain a plain-language explanation of the basic differences between fixed-rate and adjustable-rate mortgages.

<u>ARM loan program disclosure</u>. Currently, for each adjustable-rate loan program in which a consumer expresses an interest, creditors must provide a disclosure of twelve items of information, including the index and margin to be used to calculate interest rates and payments, and either a 15-year historical example of rates and payments for a $ 10,000 loan, or the maximum interest rate and payment for a $ 10,000 loan originated at the interest rate in effect for the disclosure's identified month and year. Consumer testing indicated that consumers overwhelmingly find the current ARM loan program disclosure unclear and not useful. Consumer testing also ***<u>showed</u>*** that consumers do not understand the historical example; they would prefer more information specific to their potential loan. Thus, the proposal would simplify the ARM loan program disclosure to focus on the interest rate and payment and the key questions about risk for the particular loan program. The disclosure would be provided in a tabular question and answer format to enable consumers to easily locate the most important information.

B. <u>Disclosures within Three Days after Application</u>

TILA and Regulation Z currently require creditors to provide an early TILA disclosure within three business days after application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining a credit history. [6] If subsequent events make the early TILA disclosure inaccurate, the creditor must provide corrected disclosures before consummation. However, if subsequent events cause the APR to exceed certain tolerances, the creditor must provide a corrected disclosure that the consumer must receive at least three business days before consummation.

The early TILA disclosure and any corrected disclosure (collectively, the "TILA disclosure") must include certain loan information, including the amount financed, the finance charge, the APR, the total of payments, and the amount and timing of payments. The finance charge is the sum of all credit-related charges, but excludes a variety of fees and charges. TILA requires that the finance charge and the APR be disclosed more conspicuously than other information. The APR is calculated based on the finance charge and is meant to be a single, unified number to help consumers understand the total cost of credit.

Summary of Proposed Revisions

The proposal contains a number of revisions to the format and content of TILA disclosures to make them clearer and more conspicuous. Special formatting requirements, consistent terminology, and a minimum 10-point font would ensure that consumers are able to identify and review key loan terms. To better represent the cost of credit, the proposal would eliminate exclusions from the finance charge and require a simpler, more inclusive approach. The finance charge would no longer be disclosed more conspicuously than other credit terms, but the disclosure of the APR would be enhanced to improve consumers comprehension of the cost of credit. To further assist consumers in determining whether the proposed loan is affordable for them, creditors would be required to disclose the interest rate together with the corresponding monthly payment, the loan amount, settlement costs, and the key questions about risk.

Calculation of the finance charge. The proposal contains a number of revisions to the calculation of the finance charge and the disclosure of the finance charge and the APR to improve consumers' understanding of the cost of credit. Under TILA, the "finance charge" is the sum of all charges payable by the consumer that are imposed by the creditor in connection with the credit transaction, but does not include any charges that would be payable in a comparable cash transaction. The finance charge is meant to represent the cost of credit expressed as a dollar amount, and is also used to calculate the APR, which is meant to represent the cost of credit expressed as a yearly percentage rate. Currently, TILA and Regulation Z permit creditors to exclude several fees or charges from the finance charge, including certain fees or charges imposed by third party closing agents; certain premiums for credit or property insurance or fees for debt cancellation or debt suspension coverage, if the creditor meets certain conditions; security interest charges; and real-estate related fees, such as title examination or document preparation fees.

Consumer groups, creditors, and government agencies have long been dissatisfied with the some fees in, some fees out" approach to the finance charge. Consumer groups and others believe that the current approach obscures the true cost of credit. They contend that this approach creates incentives for creditors to shift the cost of credit from the interest rate to ancillary fees excluded from the finance charge. They further contend that this approach undermines the purpose of the APR, which is to express in a single figure the total cost of credit. Creditors maintain that consumers are confused by the APR, and, thus, believe that the current approach creates significant regulatory burdens. They contend that determining which fees are or are not included in the finance charge is overly complex and creates litigation risk.

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[6] To ease discussion, the description of theclosed-end mortgage disclosure scheme includes the MDIA's recent amendments to TILA and the requirements of the 2008 HOEPA Final Rule that will be effective July 30, 2009.

For these reasons, staff recommends the Board use its exception and exemption authority to override exclusions to the finance charge for closed-end mortgages, including HOEPA loans. [7] The proposal would maintain TILA's definition of a finance charge as a fee or charge that is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the extension of credit. However, the proposal would now require the finance charge to include charges by third parties if the creditor requires the use of a third party as a condition of or incident to the extension of credit (even if the consumer chooses the third party), or if the creditor retains a portion of the third-party charge (to the extent of the portion retained). Charges that would be incurred in a comparable cash transaction, such as transfer taxes, would continue to be excluded from the finance charge. Under this approach, consumers would benefit from having a finance charge and APR disclosure that better represent the cost of credit, undiluted by myriad exclusions for various fees and charges. This approach would cause more loans to be subject to the special protections of the Board's 2008 HOEPA Final Rule, special disclosures and restrictions for HOEPA loans, and certain state anti-predatory lending laws. However, the proposal would also reduce compliance burdens, regulatory uncertainty, and litigation risks for creditors.

Disclosure of the finance charge and the APR. Currently, creditors are required to disclose the loan's "finance charge" and "annual percentage rate," using those terms, more conspicuously than the other required disclosures. Consumer testing indicated that consumers do not understand the term "finance charge." Most consumers believe the term refers to the total of all interest they would pay if they keep the loan to maturity, but do not realize that it includes the fees and costs associated with the loan. For these reasons, the proposal replaces the term "finance charge" with "interest and settlement charges" to make clear it is more than interest, and the disclosure would no longer be more conspicuous than the other required disclosures.

In addition, the disclosure of the APR would be enhanced to improve consumer comprehension of the cost of credit. Under the proposal, creditors would be required to disclose the APR in 16-point font in close proximity to a graph that compares the consumer's APR to the HOEPA average prime offer rate for borrowers with excellent credit and the HOEPA threshold for higher-priced loans. [8] This disclosure would put the APR in context and help consumers understand whether they are being offered a loan that comports with their creditworthiness.

Interest rate and payment summary. Currently, creditors are required to disclose the number, amount, and timing of payments scheduled to repay the loan. Under the MDIA's amendments to TILA, creditors will be required to provide examples of adjustments to the regular required payment based on the change in interest rates specified in the contract. Consumer testing consistently indicated that consumers shop for and evaluate a mortgage based on the contract interest rate and the monthly payment, but consumers have difficulty understanding such terms using the current TILA disclosure. Under the proposal, creditors would be required to disclose in a tabular format the contract interest rate together with the corresponding monthly payment, including escrows for taxes and property and/or mortgage insurance. Special disclosure requirements would be imposed for adjustable-rate or step-rate loans to

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[7] HOEPA loans areclosed-end, non-purchase money mortgages secured by the consumer's principal dwelling, that have APRs or points and fees that exceed certain statutory triggers.

[8] The "average prime offer rate" is a survey-based estimate of rates currently offered on low-risk primemortgages. A "higher-priced loan" is a first-lien mortgage with an APR that is 1.5 percentage points or more above the average prime offer rate, or a subordinate-lien loan that is 3.5 percentage points or more above the average prime offer rate.

show the interest rate and payment at consummation, the maximum interest rate and payment at first adjustment, and the highest possible maximum interest rate and payment. Additional special disclosures would be required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments, and balloon payments.

Disclosure of other terms. In addition to the interest rate and monthly payment, consumer testing indicated that consumers benefit from the disclosure of other key terms in a clear format. Thus, the proposal would require creditors to provide in a tabular format information about the loan amount, the loan term, the loan type (such as fixed-rate), the total settlement charges, and the maximum amount of any prepayment penalty. In addition, creditors would be required to disclose in a tabular question and answer format the "Key Questions about Risk," which would include a disclosure of information about interest rate increases, payment increases, and prepayment penalties, and, as applicable, interest-only payments, negative amortization, balloon payments, demand features, no-documentation or low-documentation loans, or shared-equity or shared-appreciation features.

C. Disclosures Three Days before Consummation

Under the MDIA's amendments to TILA, the creditor will be required to provide the TILA disclosure to the consumer within three days after receiving the consumer's written application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining a credit history (early TILA disclosure). If the APR on the early TILA disclosure exceeds a certain tolerance before consummation, the creditor must provide a corrected disclosure that the consumer must receive at least three days before consummation. If any term other than the APR becomes inaccurate, the creditor must give the corrected disclosure no later than at consummation.

Summary of Proposed Revisions

The proposal offers for comment two alternative approaches to address concerns about consumers facing settlement costs or loan terms at closing that differ from those that were disclosed in the early TILA disclosure. Both proposals would require the creditor to provide a final TILA disclosure that the consumer must receive at least three business days before consummation, even if subsequent events do not make the early TILA disclosure inaccurate. Under the first approach, if any terms change during this three-business-day waiting period, the creditor would be required to provide another final TILA disclosure and three-business-day waiting period. Under the second approach, the creditor would be required to provide another final TILA disclosure and three-business-day waiting period only if the APR exceeds a certain tolerance or the creditor adds an adjustable-rate feature.

Timing of disclosure. Currently, creditors are required to provide the early TILA disclosure within three days of receiving the consumer's written application or before consummation, whichever is earlier. If any term of the TILA disclosure becomes inaccurate, the creditor must provide a corrected disclosure before consummation, which is, in effect, at closing. Under the MDIA's amendments to TILA, effective July 30, 2009, the creditor will be required to provide the early TILA disclosure to the consumer within three days after receiving the consumer's written application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining a credit history. If the APR on the early TILA disclosure exceeds a certain tolerance before consummation, the creditor must provide a corrected disclosure that the consumer must receive at least three days before consummation. If any term other than the APR becomes inaccurate, the creditor must give the corrected disclosure no later than at consummation. The consumer may waive the seven- and three-day waiting periods for a bona fide personal financial emergency.

There are, however, long-standing concerns about consumers facing different loan terms or increased settlement costs at closing. Members of the Board's Consumer Advisory Council, participants in public hearings, and commenters on prior Board rulemakings have expressed concern about consumers not learning of changes to credit terms or settlement charges until consummation. In addition, consumer testing indicated that consumers are often surprised at closing by changes in important loan terms, such as the addition of an adjustable-rate feature. Despite these changes, consumers report that they have proceeded with closing because they lacked alternatives (especially in the case of a home purchase loan), or were told that they could easily refinance with better terms in the near future.

For these reasons, the proposal would require the creditor to provide a "final" TILA disclosure that the consumer must receive at least three business days before consummation, even if nothing has changed since the early TILA disclosure was provided. In addition, staff recommends two alternative approaches to address changes to loan terms and settlement charges during the three-business-day waiting period. Under the first approach, if any terms change during the three-business-day waiting period, the creditor would be required to provide another final TILA disclosure and wait an additional three-business-days before consummation could occur. This proposal would enable consumers to know their loan terms and total settlement charges with certainty three days before consummation and have a meaningful opportunity to make an informed credit decision. If the terms or costs did not match the previous TILA disclosures, the consumer could contact the creditor and seek clarification or take other action. This proposal would delay closing, which would inconvenience some consumers for potentially minor changes. It appears, however, that the cost would be outweighed by the benefit to consumers of knowing the final cost of credit in advance of consummation.

Staff also recommends seeking comments on an alternative proposal. Under the second approach, creditors would be required to provide another final TILA disclosure, but would have to wait an additional three-business-days before consummation only if the APR exceeds tolerance or the creditor adds an adjustable-rate feature. Otherwise, the creditor would be permitted to provide another final TILA disclosure at consummation. This proposal would ***avoid*** inconveniencing consumers and increasing costs unless changes were made to key terms of the loan.

D. Disclosures after Consummation

Regulation Z requires certain notices to be provided after consummation. Currently, for adjustable-rate transactions, creditors are required to provide a notice of an interest rate adjustment at least 25, but no more than 120, calendar days before a payment at a new level is due. There are no disclosure requirements for other post-consummation events.

Summary of Proposed Revisions

The proposal seeks to address concerns that consumers may not have enough time to evaluate the effects and costs of post-consummation events that impact their payments. Thus, under the proposal, creditors would be required to provide the ARM interest rate adjustment notice in a revised format at least 60 days before payment at a new level is due. To address concerns about the impact of negatively-amortizing payments, creditors would be required to provide a statement not later than 15 days before a periodic payment is due for a negatively-amortizing payment option loan. Finally, to address concerns about the cost of creditor-placed property insurance, creditors would be required to provide notice of the cost and coverage of such insurance at least 45 days before a charge is imposed for the insurance.

ARM interest rate adjustment notice. Currently, for adjustable-rate transactions, creditors are required to provide a notice of interest rate adjustment at least 25, but no more than 120, calendar days before a payment at a new level is due. In addition, creditors must provide an adjustment notice at least once each year during which an interest rate adjustment is implemented without an accompanying payment change. These disclosures must include certain information, including the current and prior interest rates and the index values upon which the current and prior interest rates are based.

Staff recommends that creditors be required to provide the ARM interest rate adjustment notice at least 60 days before payment at a new level is due. This proposal seeks to address concerns that consumers need more than 25 days to seek out a refinancing in the event of a payment adjustment. This notice is particularly critical for subprime borrowers who may be more vulnerable to payment shock and may have a more difficult time refinancing a loan. To improve consumer comprehension, the proposal would require creditors to use a revised notice that would contain a table with a comparison of current and new interest rate and payment information, along with the due date for the new payment.

Payment option statement. Currently, creditors are not required to provide disclosures after consummation for negatively-amortizing loans, such as payment option loans. To ensure consumers receive information about the risks associated with payment option loans, (e.g., payment shock), the proposal would require creditors to disclose a periodic statement for negatively-amortizing loans. The disclosure would contain a table with a comparison of the amount and impact on the loan balance and property equity of a fully-amortizing payment, an interest-only payment, and a minimum negatively-amortizing payment. This disclosure would be provided not later than 15 days before a periodic payment is due.

Creditor-placed property insurance notice. Creditors are not currently required under Regulation Z to provide notice before charging for creditor-placed property insurance. Industry reports indicate that the volume of creditor-placed property insurance has increased significantly. Consumers struggling financially may fail to pay required property insurance premiums unaware that creditors have the right to obtain such insurance on their behalf and add the premiums to their outstanding loan balance. Such premiums are often considerably more expensive than premiums for insurance obtained by the consumer. Thus, under the proposal, creditors would be required to provide notice to consumers of the cost and coverage of creditor-placed property insurance at least 45 days before a charge is imposed for such insurance. In addition, creditors would be required to provide consumers with evidence of such insurance within 15 days of imposing a charge for the insurance.

E. Prohibitions on Payments to Loan Originators and Steering

Currently, creditors pay commissions to loan originators in the form of "yield spread premiums." A yield spread premium is the present dollar value of the difference between the lowest interest rate a wholesale lender would have accepted on a particular transaction and the interest rate a mortgage broker actually obtained for the lender. Some or all of this dollar value is usually paid to the mortgage broker by the creditor as a form of compensation, though it may also be applied to other closing costs.

Yield spread premiums can create financial incentives to steer consumers to riskier loans for which the loan originators will receive greater compensation. Consumers generally are not aware of the loan originators' conflict of interest and cannot reasonably protect themselves against it Yield spread premiums may provide some benefit to consumers because consumers do not have to pay loan originators' compensation in cash or through financing. However, this benefit may be outweighed by costs to consumers, such as when consumers pay a higher interest rate or obtain a loan with terms the consumer may not have chosen otherwise, such as a prepayment penalty or an adjustable rate.

In response to these concerns, the 2007 HOEPA Proposed Rule attempted to address the potential unfairness through disclosure. The proposal would have prohibited a creditor from paying a mortgage broker more than the consumer had previously agreed in writing that the mortgage broker would receive. A mortgage broker would have had to enter into the written agreement with the consumer before accepting the consumer's loan application and before the consumer paid any fee in connection with the transaction (other than a fee for obtaining a credit report). The broker also would have disclosed (1) that the consumer ultimately would bear the cost of the entire compensation even if the creditor paid part of it directly; and (2) that a creditor's payment to a broker could influence the broker to offer the consumer loan terms or products that would not be in the consumer's interest or the most favorable the consumer could obtain.

Based on analysis of comments received on the 2007 HOEPA Proposed Rule, the results of consumer testing, and other information, the Board withdrew the proposed provisions relating to broker compensation in the 2008 HOEPA Final Rule. In particular, the Board's consumer testing raised concerns that the proposed agreement and disclosures would confuse consumers and undermine their decision-making rather than improve it Consumers often concluded, erroneously, that brokers are more expensive than creditors. Many also believed that brokers would serve their best interests notwithstanding the conflict resulting from the relationship between interest rates and brokers' compensation. [9] The proposed disclosures presented a significant risk of misleading consumers regarding both the relative costs of brokers and lenders and the role of brokers in their transactions. In withdrawing the broker compensation provisions of the 2007 HOEPA Proposed Rule, the Board stated it would continue to explore available options to address potential unfairness associated with loan originator compensation arrangements.

To address the concerns related to loan originator compensation, staff recommends the Board prohibit payments to mortgage brokers and to creditors' employees who originate loans (collectively, "loan originators") that are based on the loan's terms and conditions. Staff also recommends the Board prohibit loan originators from "steering" consumers to transactions that are not in consumers' interest in order to increase the loan originators' compensation. These rules would be proposed under the Board's HOEPA authority to prohibit unfair or deceptive acts or practices in connection with mortgage loans.

To address the potential unfairness that can arise with loan originator compensation, the proposal would prohibit loan originators from receiving compensation based on the credit transaction's terms or conditions. This prohibition would not apply to payments that consumers make directly to loan originators. Staff recommends the Board solicit comment on an alternative that would allow loan originators to receive payments that are based on the principal loan amount, which is a common practice today. If a consumer directly pays the loan originator, the proposal would prohibit the loan originator from also receiving compensation from any other party in connection with that transaction.

Under the proposal, a "loan originator" would include both mortgage brokers and employees of creditors who perform loan origination functions. The 2007 HOEPA Proposed Rule covered only mortgage brokers. However, a creditor's loan officers frequently have the same discretion as mortgage brokers over loan pricing that enables them to modify the loan's terms to increase their compensation, and there is evidence that creditors' loan officers engage in such practices. For this reason, staff recommends the Board apply the prohibition to both mortgage brokers and loan officers.

The proposal would also prohibit loan originators from directing or "steering" consumers to a particular creditor's loan products based on the fact that the loan originator will receive additional compensation even when that loan may not be in the consumer's best interest. Staff recommends the Board solicit comment on whether the proposed rule would be effective in achieving the stated purpose. In addition, staff recommends the Board solicit comment on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have.

F. <u>Additional Protections</u>

<u>Credit insurance or debt cancellation or debt suspension coverage eligibility for all loan transactions</u>. Currently, creditors may exclude from the finance charge a premium or charge for credit insurance or debt cancellation or debt suspension coverage if the creditor discloses the voluntary nature and cost of the product, and the consumer signs or initials an affirmative request for the product. Concerns have been raised about creditors who sometimes offer products that contain eligibility restrictions, specifically age or employment restrictions, but do not evaluate whether applicants for the products actually meet the eligibility restrictions at the time of enrollment. Subsequently, consumers' claims for benefits may be denied because they did not meet the eligibility restrictions at the time of enrollment. Consumers are presumably unaware that they are paying for a product for which they will derive no

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[9] *See* Macro International, Inc., *Consumer Testing of Mortgage Broker Disclosures* (July 10, 2008), *available at*[*http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf*](http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf).

benefit. Under the proposal, creditors would be required to determine whether the consumer meets the age and/or employment eligibility criteria at the time of enrollment in the product and provide a disclosure that such a determination has been made. The proposal is not limited to mortgage transactions and would apply to all closed-end and open-end transactions.

II. Home-Equity Lines of Credit

A. Disclosures at Application

TILA and Regulation Z require creditors to provide to the consumer two types of disclosures at the time of application: a set of disclosures describing various features of a creditor's HELOC plans (the "application disclosures") and a home-equity brochure published by the Board (the "HELOC brochure"), which provides information about ***how*** HELOCs work. Neither contains transaction-specific information about the terms of the HELOC, such as the consumer's credit limit or APR.

Summary of Proposed Revisions

Staff recommends that the Board use its adjustment and exception authority to make the changes described below. Specifically, staff recommends replacing the application disclosures with transaction-specific HELOC disclosures ("early HELOC disclosures") that must be given within three business days after application (but no later than account opening). In addition, staff recommends eliminating the requirement for creditors to provide to consumers the HELOC brochure. Instead, the proposal would require a creditor to provide to consumers at application a new one-page document published by the Board entitled, "Key Questions to ***Ask*** about Home Equity Lines of Credit" (the "Key Questions" document).

"Key Questions to ***Ask*** about Home Equity Lines of Credit" publication. Currently, a creditor is required to provide to a consumer the HELOC brochure or a suitable substitute at the time an application for a HELOC is provided to the consumer. The HELOC brochure is 20 pages long and provides general information about HELOCs and ***how*** they work, as well as a glossary of relevant terms and a description of various features that can apply to HELOCs.

The proposal would eliminate the requirement for creditors to provide to consumers the HELOC brochure with applications. The Board's consumer testing on HELOC disclosures has ***shown*** that consumers are unlikely to read the HELOC brochure because of its length. Instead, the proposal would require a creditor to provide the new "Key Questions" document that would be published by the Board. This one-page document is intended to be a simple, straightforward and concise disclosure informing consumers about HELOC terms and risks that are important to consider when selecting a home-equity product, including potentially risky features such as adjustable rates and balloon payments. The "Key Questions" document was designed based on consumers' preference for a question-and-answer tabular format, and refined in several rounds of consumer testing.

B. Disclosures within Three Days after Application

Regulation Z currently requires the disclosures that must be provided on or with an application to contain information about the creditor's HELOC plans, including the length of the draw and repayment periods, ***how*** the minimum required payment is calculated, whether a balloon payment will be owed if a consumer only makes minimum required payments, payment examples, and what fees are charged by the creditor to open, use, or maintain the plan. These disclosures do not include information dependent on a specific borrower's creditworthiness or the value of the dwelling, such as a credit limit or the APRs offered to the consumer, because the application disclosures are provided before underwriting takes place.

Summary of Proposed Revisions

The Board's consumer testing on HELOC disclosures has ***shown*** that, because the current application disclosures do not contain transaction-specific information applicable to the consumer, these disclosures may not provide meaningful information to consumers to enable them to compare different HELOC products and to make informed decisions about whether to open an HELOC plan. Thus, the proposal would replace the application disclosures with transaction-specific "early HELOC disclosures" that must be given within three business days after application (but no later than account opening), and revise the format and content of the disclosures to make them more clear and conspicuous.

Content of proposed early HELOC disclosures. The proposal would require creditors to include several additional disclosures in the early HELOC disclosures not currently required to be disclosed as part of the application disclosures, such as (1) the APRs and credit limit being offered; (2) a statement that the consumer has no obligation to accept the terms disclosed in the early HELOC disclosures; and (3) if the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement. Based on consumer testing conducted by the Board on HELOC disclosures, the Board believes that these new disclosures would provide meaningful information to consumers in deciding whether to open a HELOC plan.

The proposal would not require creditors to provide certain disclosures currently required to be disclosed as part of the application disclosures. For example, currently TILA and Regulation Z require the creditor to disclose a 15-year historical payment example table, a statement that the APR does not include costs other than interest, and a statement of the earliest time the maximum rate could be reached. Based on consumer testing, the Board believes that these disclosures do not provide meaningful information to consumers in deciding whether to open a HELOC plan. However, other information that consumer testing demonstrated would be helpful to consumer would be required to be disclosed.

Moreover, the proposal would revise certain information that TILA and Regulation Z currently require be disclosed in the application disclosures and included in the proposed early HELOC disclosures. For example, the application disclosures currently must include several payment examples based on a $ 10,000 outstanding balance. Staff recommends that the Board require payment examples in the early HELOC disclosures based on the full credit line. Based on consumer testing, staff believes that this revision to the payment examples, and other revisions to the existing application disclosures, would effectively provide meaningful information to consumers in deciding whether to open a HELOC plan.

Format requirements for the proposed early HELOC disclosures. The proposal would impose stricter format requirements for the proposed early HELOC disclosures than currently are required for the application disclosures. The application disclosures may be provided in a narrative form; under the proposal, the early HELOC disclosures must be provided in the form of a table with headings, content, and format developed through multiple rounds of consumer testing. In consumer testing, participants found information in a tabular format easier to understand and had more success answering comprehension questions than when these participants reviewed application disclosures in a narrative form.

C. Disclosures at Account Opening

TILA and Regulation Z require creditors to disclose costs and terms at the time that a HELOC plan is opened. The disclosures must specify the circumstances under which a "finance charge" may be imposed and ***how*** it will be determined, including charges such as interest, transaction charges, minimum charges, each periodic rate of interest that may be applied to an outstanding balance (e.g., for purchases or cash advances) as well as the corresponding APR. In addition, creditors must disclose the amount of any charge other than a finance charge, such as a late-payment charge. Currently, few format requirements apply to account-opening disclosures; typically they are interspersed among other contractual terms in the creditor's account agreement.

Summary of Proposed Revisions

Staff recommends that the Board use its authority to require additional disclosures for HELOC plans and to make exceptions and adjustments to revise the account-opening disclosure requirements in two significant ways. First, the proposal would require a tabular summary of key terms. Second, the proposal would reform ***how*** and when cost disclosures must be made.

Account-opening summary table. The proposal seeks to make the cost disclosures provided at account opening more conspicuous and easier to read. Accordingly, the proposal identifies specific costs and terms that creditors would be required to summarize in a table. This account opening table would be substantially similar to the early HELOC disclosure table that would be provided within three business days after application, with two major exceptions. First, the account-opening table would ***show*** only the payment plan chosen by the consumer, rather than a maximum of two plans required in the early HELOC disclosures. Second, the account-opening table would contain transaction fees and penalty fees not required to be disclosed in the early HELOC disclosure table. Despite these differences between the two tables, the Board believes that consumers could use the new table provided at account opening to compare the terms of their accounts to the early HELOC disclosure table. Consumers would no longer be required to search for the information in the credit agreement.

How charges are disclosed. Under the current rules, a creditor must disclose any "finance charge" or "other charge" in the written account-opening disclosures. In addition, the regulation identifies fees that are not considered to be either "finance charges" or "other charges" and, therefore, need not be included in the account-opening disclosures. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. Examples of included or excluded charges are in the regulation and commentary, but these examples cannot provide definitive guidance in all cases. This uncertainty can pose legal risks for creditors that act in good faith to comply with the law. Creditors are subject to civil liability and administrative enforcement for under-disclosing the finance charge or otherwise making erroneous disclosures, so the consequences of an error can be significant. Furthermore, over-disclosure of rates and finance charges is not permitted by Regulation Z for open-end credit.

The fee disclosure rules also have been criticized as being outdated and impractical. These rules require creditors to provide fee disclosures at account opening, which may be months, and possibly years, before a particular disclosure is relevant to the consumer, such as when the consumer calls the creditor to request a service for which a fee is imposed. In addition, an account-related transaction may occur by telephone, when a written disclosure is not feasible.

The proposed rule is intended to respond to these criticisms while still giving full effect to TILA's requirement to disclose credit charges before they are imposed. Accordingly, under the proposal, the revised rules would (1) specify precisely the charges that creditors must disclose in writing at account opening (e.g., interest, account-opening fees, transaction fees, annual fees, and penalty fees such as for paying late), which would be listed in the summary table, and; (2) permit creditors to disclose certain optional charges orally or in writing before the consumer agrees to or becomes obligated to pay the charge. These proposals reflect amendments finalized in the December 2008 Open-End Final Rule for open-end (not home-secured) credit; however, they would not change current substantive restrictions on permissible changes in HELOC terms.

D. Periodic Statements

Currently, TILA and Regulation Z require creditors to provide periodic statements reflecting the account activity for the billing cycle (typically, one month). In addition to identifying each transaction on the account, TILA and Regulation Z require creditors to identify "finance charges" assessed against the account during the statement period. Regulation Z requires "finance charges" to be identified as such, as well as disclosure of each "other charge" assessed against the account during the statement period. TILA and Regulation Z require creditors to disclose the periodic rate that applies to an outstanding balance and its corresponding APR, as well as an "effective" or "historical" APR for the billing cycle, which includes not just interest but also finance charges imposed in the form of fees.

Summary of Proposed Revisions

The proposal contains a number of significant revisions to periodic statement disclosures. First, staff recommends that the Board use its adjustment and exception authority to eliminate the requirement to disclose the effective APR for HELOCs. Second, creditors would no longer be required to characterize particular costs on the periodic statement as "finance charges." Instead, costs would be described either as "interest" or as a "fee." Third, interest charges and fees imposed as part of the plan must be grouped together and totals disclosed for the statement period and year to date. To facilitate compliance, the proposal would include sample forms illustrating the revisions.

The effective APR. Under TILA, the "effective" APR disclosed on periodic statements reflects the cost of interest and certain other finance charges imposed during the statement period. For example, for a cash advance, the effective APR reflects both interest and any flat or proportional fee assessed for the advance. For the reasons discussed below, staff recommends eliminating the requirement to disclose the effective APR.

Creditors believe that the effective APR should be eliminated. They believe that consumers do not understand the effective APR, including ***how*** it differs from the corresponding (interest rate) APR, why it is often "high," and which fees the effective APR reflects. Creditors say they find it difficult, if not impossible, to explain the effective APR to consumers who call them with questions or concerns. They note that callers sometimes believe, erroneously, that the effective APR signals a prospective increase in their interest rate, and they may make uninformed decisions as a result And, creditors say, even if the consumer does understand the effective APR, the disclosure does not provide any more information than a disclosure of the total dollar costs for the billing cycle. Moreover, creditors say that the effective APR is arbitrary and inherently inaccurate, principally because it amortizes the cost for credit over only one month (billing cycle) even though the consumer may take several months (or longer) to repay the debt.

Consumer groups acknowledge that the effective APR is not well understood by consumers, but argue that it nonetheless serves a useful purpose by ***showing*** the higher cost of some credit transactions. They contend the effective APR helps consumers decide each month whether to continue using the account, to shop for another credit product, or to use an alternative means of payment such as a debit card. Consumer groups also contend that reflecting costs, such as cash advance fees and balance transfer fees, in the effective APR creates a "sticker shock" and alerts consumers that the overall cost of a transaction for the cycle is high and exceeds the advertised corresponding APR. This shock, they say, may persuade some consumers not to use certain features on the account, such as cash advances, in the future. In their view, the utility of the effective APR would be maximized if it reflected all costs imposed during the cycle (rather than only some costs as is currently the case).

As part of consumer testing conducted by the Board on credit cards in relation to the December 2008 Open-End Final Rule, consumer awareness and understanding of the effective APR was evaluated, as well as whether changes to the presentation of the disclosure could increase awareness and understanding. The overall results of this testing demonstrated that most consumers do not understand the effective APR.

Based on this consumer testing and other factors, staff recommends that the Board propose to eliminate the requirement to disclose the effective APR. Under this proposal, creditors offering HELOCs would be required to disclose interest and fees in a manner that is more readily understandable and comparable across institutions. The Board eliminated the effective APR disclosure for open-end (not home-secured) credit in the December 2008 Open-End Final Rule. Staff believes that this approach can more effectively further the goals of consumer protection and the informed use of credit for HELOCs as well.

Fees and interest costs. Currently, creditors must identify on periodic statements any "finance charges" that have been added to the account during the billing cycle; creditors typically list these charges with other transactions, such as purchases or cash advances, chronologically on the statement. The finance charges must be itemized by type. Thus, interest charges might be described as "finance charges due to periodic rates." Charges such as late-payment fees, which are not "finance charges," are typically disclosed individually and interspersed among other transactions.

Staff drew on consumer testing for open-end (not home-secured) credit, the results of which staff believes apply equally to HELOCs, to recommend a number of changes to the required HELOC disclosures related to finance charges. Under the proposal, creditors would be required to group all charges together and describe them in a manner consistent with consumers' general understanding of costs ("interest charge" or "fee"), without regard to whether the charges would be considered "finance charges," "other charges," or neither. If different periodic rates apply to different types of transactions, creditors would be required to itemize interest charges for the statement period by type of transaction (for example, interest on cash advances) or group of transactions subject to different periodic rates.

In addition, the proposal would require creditors to disclose the total fees and total interest imposed for the cycle, as well as year-to-date totals for interest charges and fees, an amendment finalized for open-end (not home-secured) credit in the December 2008 Open-End Final Rule. The year-to-date figures are intended to help consumers understand annualized costs and the overall cost of their HELOC better than does the effective APR. Staff intends to conduct consumer testing of periodic statement notices for HELOCs during the comment period for this proposal.

E. Change-in-Terms Notices

Currently, Regulation Z requires creditors to send, in most cases, notices 15 days before the effective date of certain changes in the account terms. Advance notice is not required in all cases; for example, if an interest rate increases due to a consumer's default or delinquency, notice has been required, but not in advance of the rate increase. In addition, no notice (either advance or contemporaneous) has been required if the specific change is set forth in the account agreement.

Summary of Proposed Revisions

Staff recommends that the Board propose to revise the change-in-terms rules for HELOCs to parallel in most respects the revisions adopted for open-end (not home-secured) credit in the December 2008 Open-End Final Rule, including the content, timing, and format of such notices. The recommended revisions to change-in-terms notice requirements for HELOCs are intended to improve consumers' awareness about changes to their account terms or increased rates due to delinquency, default, or other reason disclosed in the agreement, and to enhance consumers' ability to make alternative financial choices if necessary.

There are three major components of the proposal regarding change-in-terms notices. First, the proposal would expand the circumstances in which consumers receive advance notice of changed terms, including increased rates. Second, the proposal would provide consumers with earlier notice -- 45 days in advance of the effective date of the change rather than 15 days. Third, the proposal would introduce format requirements to make the disclosures about changes in terms, including increased rates, more effective.

Rate increases. Currently, a change-in-terms notice is not required if the agreement between the consumer and the creditor specifically sets forth the change and the specific triggering event. In the December 2008 Open-End Final Rule, the Board expressed concern that the imposition of penalty rates might come as a costly surprise to consumers who are not aware of, or do not understand, what behavior constitutes a default under the credit agreement. The Board also stated that it believed that consumers would be the most likely to notice and be motivated to act to ***avoid*** the imposition of the penalty rate if they receive a specific notice alerting them of an imminent rate increase, rather than a general disclosure stating the circumstances when a rate might increase.

Staff believes that the same reasoning applies in the case of HELOCs, although the circumstances under which a penalty rate may be imposed on a HELOC are more restricted than for credit cards. The HELOC proposal would also require advance notice of any increased rates due to a triggering event specified in the agreement, such as loss of an employee preferred rate because the consumer leaves the creditor's employ.

Timing. Staff recommends that the requirement for notice 15 days in advance of the effective date of a change be changed to require notice 45 days in advance, for the same reasons the Board adopted this requirement for open-end (not home-secured) credit. As discussed in the December 2008 Open-End Final Rule, shorter notice periods, such as 30 days or one billing cycle, may not provide consumers with sufficient time to shop for and possibly obtain alternative financing, or to make other financial adjustments. The 45-day advance notice requirement refers to when the change-in-terms notice must be sent, but it may take several days for the consumer to receive the notice. As a result, staff believes that the 45-day advance notice requirement would give consumers, in most cases, at least one calendar month after receiving a change-in-terms notice to seek alternative financing or otherwise to mitigate the impact of an unexpected change in terms.

Staff also recommends that the Board solicit comment on whether it may be more difficult to seek alternative financing or otherwise mitigate the impact of a change in terms for HELOCs than for credit cards. Staff further recommends the Board solicit comment on whether, because changes in terms are more narrowly restricted for HELOCs than for credit card accounts, the impact on consumers of term changes for HELOCs is likely to be less severe than for credit cards and thus whether the proposed time period is likely adequate.

Format. Few format requirements apply to change-in-terms disclosures. As with account-opening disclosures, creditors commonly intersperse change-in-terms notices with other amendments to the account agreement, and both are provided in pamphlets in small print and dense prose. Consumer testing conducted for the December 2008 Open-End Final Rule suggests that consumers tend to set aside change-in-terms notices when they are presented as a separate pamphlet inserted in the periodic statement. Testing also revealed that consumers are more likely to identify the changes to their account correctly if the changes in terms are summarized in a tabular format.

Staff therefore recommends that the Board propose that if a changed term is one that must be provided in the account-opening summary table, creditors must also provide that change in a summary table to enhance the effectiveness of the change-in-terms notice. Further, if a notice enclosed with a periodic statement discusses a change to a term that must be disclosed in the account-opening summary table, or announces that a default rate will be imposed on the account, a table summarizing the impending change would have to appear on the periodic statement, directly above the transaction list. Staff intends to conduct consumer testing of HELOC change-in-terms notices with a tabular format during the comment period on this proposal.

F. Additional Protections

Account Terminations. TILA and Regulation Z currently permit a creditor to terminate a HELOC for several reasons, including when the consumer has "fail[ed] to meet the repayment terms of the agreement for any outstanding balance." The proposal would interpret this provision to mean that a creditor may not terminate a HELOC plan for payment-related reasons unless the consumer has failed to make a required minimum periodic payment for more than 30 days after the due date for that payment. Staff recommends requesting comment on whether a delinquency threshold of more than 30 days is appropriate or whether some other time period would better achieve the purposes of TILA.

The proposal is principally intended to protect consumers from so-called "hair-trigger" terminations based on minor payment infractions. Overall, the proposal is intended to strike a more equitable balance between creditors' authority to protect themselves against risk (and, for depositories, to ensure their safety and soundness) and effective protection of HELOC consumers from constraints on their credit privileges that do not correspond with reasonable expectations.

Suspensions and credit limit reductions based on a significant decline in the property value. TILA and Regulation Z permit a creditor temporarily to suspend advances or reduce a credit line on a HELOC when "the value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan." The commentary provides a "safe harbor" standard for determining whether a decline is significant: specifically, a decline in value is significant if it results in the initial difference between the credit limit and the available equity (the "equity cushion") diminishing by 50 percent.

Concerns have been expressed to staff that the existing safe harbor may not be a viable standard for the higher combined loan-to-value (CLTV) HELOCs made in recent years. For loans nearing or exceeding 100 percent CLTV when originated, for example, a decline in value of a few dollars could result in more than a 50 percent decline in the creditor's equity cushion, because the equity cushion was zero or close to zero at origination. For these higher CLTV loans in particular, creditors have indicated uncertainty about ***how*** to determine whether a decline in value is "significant." For their part, consumer advocates have expressed concerns that the lack of guidance on the proper application of the safe harbor allows creditors to take action based on nominal declines in value.

To address these concerns, staff recommends that the Board propose to revise the staff commentary to delineate two "safe harbors" on which creditors could rely to determine whether a decline in property value is "significant":

. First, for plans with a CLTV at origination of 90 percent or higher, a five (5) percent reduction in the property value on which the HELOC terms were based would constitute a significant decline in value.

. Second, for plans with a CLTV at origination of under 90 percent, the existing safe harbor would apply, under which a decline in the value of the property securing the plan is significant if, as a result of the decline, the creditor's equity cushion is reduced by 50 percent.

<u>Suspensions and credit limit reductions based on a material change in the consumer's financial circumstances</u>. TILA and Regulation Z permit a creditor to suspend advances or reduce the credit limit of a HELOC when the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations of the plan because of a material change in the consumer's financial circumstances." Some creditors appear uncertain about when action is permissible under this provision, and many have requested more detailed guidance. Consumer advocates have expressed dissatisfaction with the guidance on this provision as well, voicing concerns that the lack of clear guidance may enable some creditors to take action when consumers are fully capable of meeting their repayment obligations.

The proposal is intended to protect consumers by ensuring that creditors exercise prudent judgment in relying on this provision. Revised commentary would clarify that evidence of a material change in financial circumstances may include credit report information ***<u>showing</u>*** late payments or nonpayments on the part of the consumer, such as delinquencies, defaults, or derogatory collections or public records related to the consumer's failure to pay other obligations. The proposed commentary would clarify that any payment failures relied on to ***<u>show</u>*** a material change in the consumer's financial circumstances would need to have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance. A six-month safe harbor for this "reasonable time" would be proposed.

The proposed commentary would retain the existing commentary's guidance stating that evidence supporting a creditor's reasonable belief that a consumer is "unable" to meet the repayment terms may include the consumer's nonpayment of debts other than the HELOC. Under the proposal, these payment failures would have to have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance, with a proposed six-month safe harbor. Staff recommends requesting comment on whether late payments of 30 days or fewer would be adequate evidence of a failure to pay a debt for purposes of this provision, and whether and under what circumstances credit score declines alone might satisfy the requirements of this provision.

<u>Reinstatement of accounts</u>. Regulation Z requires creditors to reinstate credit privileges once no circumstances permitting a freeze or credit limit reduction under the statute or regulation exist. Recently, due to declining property values and for other reasons, consumers' HELOCs have been suspended and their credit limits reduced more often than in the past. Consumer groups and other federal agencies have raised concerns about whether consumers are properly informed about the creditor's obligation to reinstate credit lines and consumers' rights to request reinstatement, and staff independently researched the reinstatement practices of several HELOC creditors. As a result, staff believes that additional guidance is appropriate. The proposed changes are intended to ensure that consumers have a meaningful opportunity to request reinstatement and to have this request investigated. Major proposed revisions include the following:

. Requiring additional information in notices of suspension or reduction about consumers' ongoing right to request reinstatement and creditors' obligation to investigate this request.

. Requiring creditors to complete an investigation of a request within 30 days of receiving the request and to provide notice of the results to consumers whose credit privileges will not be restored.

. Requiring creditors to cover the costs associated with investigating the first reinstatement request made by the consumer after the line is suspended or reduced.

Conclusion

Staff recommends that the Board publish for public comment the draft proposed amendments to Regulation Z's rules for closed-end credit transactions secured by real property or a dwelling and open-end credit transactions secured by a consumer's dwelling. Staff requests the authority to make minor technical corrections to the *Federal Register* notice as necessary prior to publication to comply with the Paperwork Reduction Act, the Regulatory Flexibility Act, or the Congressional Review Act, or to conform to the requirements of the Office of the Federal Register.

Wednesday,

August 26, 2009

Part III

Federal Reserve

12 CFR Part 226

Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1367]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the Official Staff Commentary to the regulation, following a comprehensive review of TILA's rules for open-end home-secured credit, or home-equity lines of credit (HELOCs).

The Board proposes changes to the format, timing, and content requirements for the four main types of HELOC disclosures required by Regulation Z: disclosures at application; disclosures at account opening; periodic statements; and change-in-terms notices. The Board proposes to replace disclosures required at the time that a

consumer applies for a HELOC with a one-page, Board-published summary of basic information and risks regarding HELOCs. The Board also proposes to move the timing of disclosures regarding a creditor's HELOC plan from the time of application to within three business days after application, and to require the disclosures to include significant transaction-specific rates and terms.

The Board also proposes to provide additional guidance on when a creditor may temporarily suspend advances on a HELOC or reduce the credit limit, and what a creditor's obligations are concerning reinstating such accounts. In addition, the proposal would limit the ability of a creditor to terminate a HELOC for payment-related reasons; a creditor could do so only if the consumer failed to make a required minimum payment more than 30 days after the due date for that payment. Changes to disclosure requirements related to suspension of HELOC advances, reduction of the credit limit, and account terminations are also proposed.

DATES: Comments must be received on or before December 24, 2009.

ADDRESSES: You may submit comments, identified by Docket No. R-1367, by any of the following methods:

. *Agency Web Site: http:// www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/ generalinfo/foia/ProposedRegs.cfm*.

. *Federal eRulemaking Portal: http:// www.regulations.gov*. Follow the instructions for submitting comments.

. *E-mail: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.

. *FAX*: (202) 452-3819 or (202) 452-3102.

. *Mail*: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http:// www.federalreserve.gov/generalinfo/ foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, ***your*** comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in ***paper*** in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Lorna M. Neill, Attorney; John Wood or Krista Ayoub, Counsel; or Jelena McWilliams, Attorney, 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: The Board proposes changes to the format, timing, and content requirements for the four main types of home equity line of credit (HELOC) disclosures required by Regulation Z: (1) Disclosures at application; (2) disclosures at account opening; (3) periodic statements; and (4) change-in-terms notices. The Board proposes to replace disclosures required at the time that a consumer applies for a HELOC with a one-page, Board-published summary of basic information and risks regarding HELOCs. The Board also proposes to move the timing of disclosures regarding a creditor's HELOC plan from the time of application to within three business days after application, and to require the disclosures to include significant transaction-specific rates and terms. At the time of account opening, the creditor would be required to provide a disclosure with formatting similar to that provided within three business days after application, but with certain changes such as additional information regarding fees. Formatting and other changes are proposed for the periodic statement, such as elimination of the requirement to disclose the effective annual percentage rate (APR) and a requirement to disclose the total of interest and fees for both the period and the year to date. HELOC creditors would be required to give consumers notice of a change in a HELOC term at least 45 days in advance of the effective date of the change.

The Board also proposes to provide additional guidance on when a creditor may temporarily suspend advances on a HELOC or reduce the credit limit, and what a creditor's obligations are concerning reinstating such accounts. In addition, the proposal would limit the ability of a creditor to terminate a HELOC for payment-related reasons; a creditor could do so only if the consumer failed to make a required minimum payment more than 30 days after the due date for that payment. Changes to disclosure requirements related to suspension of HELOC advances, reduction of the credit limit, and account terminations are also proposed.

I. Background

A. TILA and Regulation Z

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. The purposes of TILA are (1) to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and ***avoid*** the uninformed use of credit; and (2) to protect consumers against inaccurate and unfair credit billing.

TILA's disclosures differ depending on whether consumer credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, or administrative sanction.

B. TILA and Regulation Z Provisions on Open-end Credit Secured by a Consumer's Dwelling

In 1989, the Board revised Regulation Z to implement the Home Equity Loan Consumer Protection Act of 1988 (Home Equity Loan Act) (Pub. L. 100-709, enacted on Nov. 23, 1988). See 15 U.S.C. 1637a, 1647, implemented by 54 FR 24670 (June 9, 1989) (1989 HELOC Final Rule). The 1989 revisions required creditors to disclose extensive information about HELOCs to consumers at the time of application and again when consumers open a HELOC plan. They also imposed substantive limitations on HELOC creditors--principally by prohibiting changing the interest rate and other terms except under very limited circumstances. Since 1989, the Board has revised the HELOC provisions in the regulation and staff commentary from time to time as necessary, although the disclosure requirements and substantive limitations have remained substantially the same. *See, e.g*., 56 FR 13751 (April 4, 1991); 60 FR 15463 (March 24, 1995); 63 FR 16669 (April 6, 1998); 66 FR 17329 (March 30, 2001); 72 FR 63462 (November 9, 2007).

In January 2009, the Board published final rules regarding open-end (not home-secured) credit (74 FR 5244 (January 29, 2009)) (January 2009 Regulation Z Rule), which were the result of the Board's comprehensive review of Regulation Z's open-end (not home-secured) credit rules. At that time, the Board indicated that it was also reviewing open-end home-secured credit rules. This proposal reflects the Board's review of all aspects of Regulation Z and accompanying Official Staff Commentary related to open-end home-secured credit, or HELOCs. The Board is not at this time, however, specifically addressing issues related to rescinding HELOCs, and requests comment in the proposal on any needed changes to Regulation Z provisions and commentary regarding reverse mortgages.

C. HELOC Market Trends

Board and other research has tracked a number of changes in the HELOC market since 1989. One important trend is that HELOCs have become much more popular with consumers: in 1988, 5.6% of homeowners had HELOCs; [1] in 1998, 10.6% of homeowners had HELOCs; and by 2007, the percentage of homeowners with HELOCs had jumped to 18.4%. [2] A number of factors may have contributed to this trend, such as low interest rates compared with other forms of consumer credit, appreciation in home values, the deductibility of interest payments on mortgage debt, and changes in mortgage practices. [3] The uses of HELOCs have remained relatively constant, with the highest uses in the areas of home improvement and debt consolidation. [4] Beginning in the late 1990s, consumers increased their use of HELOCs for expenses such as vehicle purchases, education, and vacations. [5] Many HELOC consumers today, as in the past, use their lines as an emergency source of funds. [6]

As home prices rose in the past decade, more creditors entered the HELOC market and creditors became more willing to extend HELOCs to consumers with little equity in their homes. [7] When the Board published the 1989 HELOC Final Rule, it was commonly expected that most HELOC borrowers would, at their maximum credit line limit, retain around 20 percent of their home equity. *See* comment 5b(f)(3)(vi)-6. By the mid-2000s, more creditors were willing to lend HELOCs at a combined loan-to-value ratio of 100 percent or more, and, despite home value appreciation, the overall percentage of equity remaining in homes was appreciably lower than in earlier years. [8] The Board's Survey of Consumer Finances indicates that the average outstanding dollar amount of a HELOC grew from $ 24,000 in 1998 to $ 39,000 in 2007. [9]

The recent economic downturn, a central component of which has been declining property values, has dampened the availability of HELOCs and reversed some of the overall trends in the HELOC market. The Board believes,

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[1] Glenn Canner, Charles Luckett, and Thomas Durken, "Home Equity Lending," Federal Reserve Bulletin (May 1989).

[2] Brian Bucks, Arthur Kennickell, Traci Mach, Kevin Moore, "Changes in U.S. FamilyFinances from 2004 to 2007: Evidence from the Survey of Consumer Finances," Federal Reserve Bulletin (Feb. 2009) and accompanying tables at *http://www.federalreserve.gov/Pubs/OSS/oss2/2007/ scf2007home.html*.

[3] *Id*.

[4] Glenn Canner, Charles Luckett, and Thomas Durken, "Recent Developments in Home Equity Lending," Federal Reserve Bulletin (April 1998); see also Brian Bucks, Arthur Kennickell, Traci Mach, Kevin Moore, "Changes in U.S. FamilyFinances from 2004 to 2007: Evidence from the Survey of Consumer Finances," Federal Reserve Bulletin (Feb. 2009) and accompanying tables at *http://www.federalreserve.gov/Pubs/OSS/oss2/ 2007/scf2007home.html*.

[5] *Id*.

[6] *Supra* note 2.

[7] *Id*.

[8] *Id*.

[9] *Id*.

however, that a resurgence of these trends may occur once property values stabilize. The Board expects that factors such as the flexibility HELOC borrowers have to draw on a line as needed and the tax deductibility of interest on home-secured debt should continue to make HELOCs appealing to consumers over the long term.

Finally, in response to the economic challenges of the last few years, creditors have relied more than in the past on provisions in Regulation Z that allow them to terminate HELOC plans, suspend advances on lines, and reduce the credit limit. As a result, many questions regarding the requirements and limitations of these provisions have been raised with the Board.

II. Summary of Major Proposed Changes

The Board proposes content, format, and timing changes to the four main types of HELOC disclosures governed by Regulation Z: (1) Disclosures at application; (2) disclosures at account opening; (3) periodic statements; and (4) change-in-terms notices. The proposal also provides additional guidance and protections, as well as revised disclosure requirements, related to account terminations, line suspensions and credit limit reductions, and reinstatement of accounts.

Disclosures at Application. Format, timing, and content changes are proposed to make the disclosures currently required at application more meaningful and easy for consumers to use. The proposed changes include:

. Eliminating the requirement to provide a multiple-page disclosure of generic rates and terms of the creditor's HELOC products, as well as the requirement to provide the Board-published brochure explaining HELOC products and risks entitled, "What You Should Know about Home Equity Lines of Credit." (HELOC brochure)

. Requiring creditors to provide a new one-page Board publication summarizing basic information and risks regarding HELOCs entitled, "Key Questions to ***Ask*** about Home Equity Lines of Credit."

. Replacing the application disclosure of generic rates and terms with a transaction-specific disclosure that must be given *within three days after application*. This disclosure would:

. Provide information about rates and fees, payments, and risks in a tabular format.

. Highlight whether the consumer will be responsible for a balloon payment.

. Present payment examples based on both the current rate available and the maximum possible rate for the HELOC.

Disclosures at Account Opening. The proposal would retain the existing requirement to provide consumers with transaction-specific information about rates, terms, payments, and risks at the time of account opening. To facilitate comparison between terms provided within three business days after application and terms available at account-opening, the proposal would prescribe formatting for this information similar to that of the proposed disclosure to be provided within three business days after application.

Periodic Statements. To make disclosures on periodic statements more understandable, the proposal would revise the format and content of the periodic statement for HELOCs, largely conforming to the periodic statement provisions finalized in the January 2009 Regulation Z Rule for credit cards. The proposed changes include:

. Eliminating the disclosure of the effective APR.

. Grouping fees and interest charges separately, and requiring disclosure of separate totals of interest and fees for both the period and the year to date.

Change-in-Terms Notices. The proposal would revise the format and content of the change-in-terms notice, largely conforming to the change-in-terms provisions finalized in the January 2009 Regulation Z Rule. To improve consumer protection, proposed changes include:

. Expanding the circumstances under which advance written notice of a rate change is required.

. Increasing advance notice of a change in a HELOC term from 15 to 45 days in advance of the effective date of the change.

Account Terminations. The proposal would prohibit creditors from terminating an account for payment-related reasons until the consumer has failed to make a required minimum periodic payment more than 30 days after the due date for that payment. The Board is requesting comment on whether a delinquency threshold of more than 30 days or some other time period is appropriate.

Suspensions and Credit Limit Reductions. The proposal contains a number of additional consumer protections related to temporary suspensions of advances and credit limit reductions. The proposed changes include:

. Establishing a new safe harbor for suspending or reducing a line of credit based on a "significant" decline in property value. For HELOCs with a combined loan-to-value ratio at origination of 90 percent or higher, a five percent decline in the property value would be "significant."

. Providing additional guidance regarding the information on which a creditor may rely to take action based on a material change in the consumer's financial circumstances, such as the type of credit report information that would be appropriate to consider.

Reinstatement of Accounts. The proposal contains additional requirements regarding reinstating accounts that have been temporarily suspended or reduced. The proposed changes include:

. Requiring additional information in notices of suspension or reduction about consumers' ongoing right to request reinstatement and creditors' obligation to investigate this request.

. Requiring creditors to complete an investigation of a request for reinstatement within 30 days of receiving a request for reinstatement and to give a notice of the investigation results to consumers whose lines will not be reinstated.

III. The Board's Review of Open-End Credit Rules

A. Advance Notices of Proposed Rulemakings

December 2004 ANPR. The Board's current review of Regulation Z's open-end credit rules was initiated in December 2004 with an advance notice of proposed rulemaking. [10] 69 FR 70925 (December 8, 2004). At that time, the Board announced its intent to conduct its review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit

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[10] The review was initiated pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1980, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. An announcednotice of proposed rulemaking is published to Obtain preliminary information prior to issuing a proposed rule or, in some cases, deciding whether to issue a proposed rule.

card plans. The December 2004 ANPR sought public comment on a variety of specific issues relating to three broad categories: the format of open-end credit disclosures, the content of those disclosures, and the substantive protections provided for open-end credit under the regulation. The December 2004 ANPR solicited comment on the scope of the Board's review, and also requested commenters to identify other issues that the Board should address in the review.

October 2005 ANPR. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law 109-8, enacted on April 20, 2005 (the Bankruptcy Act) primarily amended the federal bankruptcy code, but also contained several provisions amending TILA. The Bankruptcy Act's TILA amendments principally deal with open-end credit accounts and require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements.

In October 2005, the Board published a second ANPR to solicit comment on implementing the Bankruptcy Act amendments (October 2005 ANPR). 70 FR 60235, October 17, 2005. In the October 2005 ANPR, the Board stated its intent to implement the Bankruptcy Act amendments as part of the Board's ongoing review of Regulation Z's open-end credit rules.

B. Notices of Proposed Rulemakings

June 2007 Proposal. The Board published proposed amendments to Regulation Z's rules for open-end plans that are not home-secured in June 2007. 72 FR 32948 (June 14, 2007). The goal of the proposed amendments was to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. In developing the proposal, the Board conducted consumer research, in addition to considering comments received on the two ANPRs. Specifically, the Board retained a research and consulting firm (ICF Macro) to assist the Board in using consumer testing to develop proposed model forms. The proposal would have made changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

May 2008 Proposal. In May 2008, the Board published revisions to several disclosures in the June 2007 Proposal (May 2008 Proposal). 73 FR 28866 (May 19, 2008). In developing these revisions the Board conducted additional consumer testing in consultation with ICF Macro. In addition, the May 2008 Proposal contained proposed amendments to Regulation Z that complemented a proposal published by the Board, along with the Office of Thrift Supervision and the National Credit Union Administration, to adopt rules prohibiting specific unfair acts or practices regarding credit card accounts under their authority under the Federal Trade Commission Act. *See* 15 U.S.C. 57a(f)(1). 73 FR 28904 (May 19, 2008).

May 2009 Proposal. In May 2009, the Board issued proposals to clarity provisions of the January 2009 Final Rule (see below). 74 FR 20784 (May 5, 2009). Along with other federal banking agencies, the Board also issued proposals to clarify provisions of the January 2009 UDAP Final Rule (see below). 74 FR 20804 (May 5, 2009).

C. Final Rulemakings

January 2009 Final Rule. In January 2009, the Board issued final rules for open-end credit that is not home-secured (*i.e*., the January 2009 Regulation Z Rule). The goal of the amendments to Regulation Z was to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. The Board adopted changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions. Certain additional protections for consumers were adopted as well.

January 2009 UDAP Final Rule. In January 2009, the Board and other federal banking agencies jointly issued rules to prohibit institutions from engaging in certain acts or practices regarding consumer credit card accounts. 74 FR 5498 (January 29, 2009).

D. Consumer Testing

A principal goal for the Regulation Z review is to produce revised and improved disclosures that consumers will be more likely to understand and use in their decisions, while at the same time not creating undue burdens for creditors. Currently, Regulation Z requires HELOC creditors to provide generic disclosures regarding various terms and features of the creditor's HELOC plans at application, along with a lengthy, Board-published brochure explaining HELOC products. The creditor does not have to provide a transaction-specific disclosure for HELOCs until the consumer opens the account. During the life of the plan, the creditor is required to provide periodic statements and change-in-terms notices as applicable.

In 2007, the Board retained ICF Macro, a research and consulting firm that specializes in designing and testing documents to conduct consumer testing to help the Board's review of Regulation Z's disclosures. Beginning in the fall of 2008, ICF Macro worked closely with the Board to conduct several tests on HELOC disclosures in different cities throughout the United States. The HELOC testing consisted of five rounds of one-on-one cognitive interviews. The goals of these interviews were to learn more about what information consumers read when they receive HELOC disclosures, to research ***how*** easily consumers can find various pieces of information in these disclosures, and to test consumers' understanding of certain HELOC-related words and phrases.

Some of the key methods and findings of the consumer testing are summarized below. ICF Macro also issued a report of the results of the testing for HELOCs, which is available on the Board's public Web site: *http://www.federalreserve.gov*.

Development and testing of Regulation Z disclosures. The Board worked with ICF Macro to develop and test several types of disclosures, including:

. A Board publication to be provided at application, entitled "Key Questions to ***Ask*** about Home Equity Lines of Credit";

. A transaction-specific TILA disclosure to be provided within three business days of application, but no later than at account-opening; and

. A transaction-specific TILA disclosure to be provided at the time the consumer opens the account.

The Board revised two additional HELOC disclosures: a periodic statement and a change-in-terms notice that must be provided after account opening as applicable. The Board intends to test these two disclosures during the comment period. In addition, the Board developed model clauses for proposed notices required in connection with terminating, suspending or reducing a HELOC, as well as reinstating suspended or reduced HELOCS, and may test these clauses during the comment period.

Testing. The primary goal of the Board's consumer testing was to develop clear and conspicuous model HELOC disclosure forms that would enable borrowers easily to identify material terms of the plan and to compare such terms among various plans in order to make informed decisions about HELOCs. The Board also wanted to gain a better understanding of what information consumers need to receive early in the process when shopping for HELOCs, when such information should be provided, what form it should take, and ***how*** it can be integrated into the overall shopping process to facilitate informed consumer decision-making regarding HELOCs.

Beginning in the fall of 2008, five rounds of one-on-one cognitive interviews with a total of 50 participants were conducted in different cities throughout the United States. The consumer testing groups comprised participants representing a range of ethnicities, ages, educational levels, and levels of experience with home equity borrowing. Each round of testing involved testing a set of model disclosure forms, including currently required disclosures described above. Interview participants were ***asked*** to review model forms and provide their reactions, and were then ***asked*** a series of questions designed to test their understanding of the content. Data were collected on which elements and features of each form were most successful in providing information clearly and effectively. The findings from each round of interviews were incorporated in revisions to the model forms for the following round of testing.

Cognitive interviews on existing disclosures. Participants in the first two rounds of testing were ***shown*** an application disclosure based on a sample disclosure conforming to the existing HELOC application disclosure samples in Appendix G of Regulation Z and currently used by a financial institution. This form provided required information in a mostly narrative format. The goals of these interviews were to learn more about what information consumers read when they receive current disclosures; to research ***how*** easily consumers can find various pieces of information in these disclosures; and to test consumers' understanding of certain HELOC-related words and phrases.

Participants found this form difficult to read and understand, and their responses to follow-up questions ***showed*** that it was also difficult for them to identify information in the text. For example, several participants in the first two rounds of testing became confused when reviewing the application disclosure because they could not find their interest rate, and were surprised when told that the rate was not on the form. Other participants incorrectly assumed that one of the rates ***shown*** in a payment example on the application disclosure was being offered to them, when in fact that rate was used for illustrative purposes. When the same information was presented in a tabular format, participants commented that the information was easier to understand and had more success answering comprehension questions. As a result, after the second round of testing, the decision was made to use a tabular format for all model disclosure forms.

1. *Initial design of disclosures for testing*. The results from the first two rounds of testing, and similar findings from testing of closed-end mortgage disclosures conducted by the Board at the same time, called into question the usefulness of the current generic application disclosures for consumers. As a result, three new types of disclosure were developed and tested:

(1) A one-page disclosure developed by the Board entitled, "Key Questions to ***Ask*** about Home Equity Lines of Credit" ("Key Questions" document) that summarized the most important information in the HELOC brochure in a shorter, question-and-answer format found effective with consumers;

(2) A disclosure to be provided not later than three business days after application that would include information about the terms and features of the creditor's HELOC plans currently required at application, but also transaction-specific information; and

(3) A similar form that would be provided when the consumer opens the account. The content of the new transaction-specific HELOC disclosure that would be provided three days after application would be similar to that of the current application disclosure, except that it would include information specific to the consumer based on initial underwriting--most notably, the specific APR and credit limit. The content of the account opening disclosure would be similar, except that it would provide additional information about fees.

2. *Additional cognitive interviews and revisions to disclosures*. The "Key Questions" document tested very well in subsequent rounds; all participants indicated that they would find it useful, and most found it very clear and easy-to-read. As a result, the Board is proposing to require lenders to provide the "Key Questions" document to prospective borrowers instead of the HELOC brochure.

Model forms for the transaction-specific HELOC disclosures to be provided three days after application were first tested in the third round and participants overwhelmingly indicated that they would prefer to receive a transaction-specific disclosure soon after application, even if it meant that they would not receive a disclosure of terms before they applied. The remaining two rounds of testing focused on developing, testing and refining the two transaction-specific disclosures (*i.e.*, that would be provided within three business days of application and at account opening), rather than variations of the generic application disclosure currently required.

Testing results. Specific findings from the consumer testing are discussed in detail throughout the **SUPPLEMENTARY INFORMATION** where relevant. [11] This section highlights certain key findings.

Consumer testing ***showed*** that consumers seldom contact more than one loan originator when looking for a HELOC and generally go to their current mortgage provider, a prior lender, or a bank with which they have an existing banking relationship. Consumer testing indicated that consumers generally do not comprehend ***how*** HELOCs work, especially the draw and repayment periods. Consumer comprehension of the costs and effects of various terms significantly increased when consumers reviewed model forms developed by the Board and ICF Macro. Most participants agreed that they would prefer to receive specific information about the HELOC terms that would apply to them shortly after application rather a generic disclosure currently provided to all borrowers on or with the application. Consumer testing also ***showed*** that consumers prefer to receive a detailed breakdown of fees required to open the account early in the application process to help them understand what costs to anticipate in obtaining a HELOC. Thus, the Board is proposing to replace the generic program disclosure required at application with disclosures that include key terms specific to the consumer, such as the APR and credit limit, within three business days after application.

Most consumers tested found the generic HELOC program disclosures and HELOC brochure required at application too dense and difficult to understand. When the same information was presented in plain language, segregated in a tabular format, participants found the information easier to understand and had more success answering comprehension questions. Thus, under the proposal, the revised TILA disclosure would explain more complicated terms in plain language and present them in a tabular format.

A large number of participants erroneously concluded that the rate and payment information ***shown*** in the currently required historical example table ***showed*** their exact monthly payments when in fact it ***showed*** ***how*** the interest rate and monthly payments fluctuated over the preceding 15 years based on a $ 10,000 example. Most participants identified the interest rate fluctuation as the most important information in the historical payment example. For these reasons, the proposed disclosures include a statement providing the high and low interest rates for the preceding 15 years but do not include the table ***showing*** the interest rate and corresponding monthly payments for each year.

Creditors typically incorporate disclosures required at the time a HELOC account is opened into the account agreement. Consumer testing indicated, however, that consumers commonly do not review their account agreements, which are often in small print and dense prose. When consumers were presented with a revised account-opening disclosure based on the tabular format of the revised early disclosure, their comprehension of complex terms significantly increased. Thus, the proposal would require creditors to provide a table summary of key terms applicable to the account at account opening, with similar formatting as the disclosure proposed to be provided within three days after application. Consumer testing ***showed*** that setting apart the most important terms in this way better ensures that consumers are apprised of those terms. Moreover, the similarity in presentation and structure of the early and account-opening disclosures enables consumers to focus on and compare key terms at both stages of the process.

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[11] The report by ICF Macro summarizing the findings from theconsumer testing is available on the Board's Web site at http://www.federalreserve.gov .

The Board did not test model periodic statement and change-in-terms notices for HELOCs, but intends to do so during the comment period for this proposal. The Board worked with ICF Macro, however, to develop model periodic statements and change-in-terms notices for HELOCs largely based on the results of consumer testing conducted for credit cards for the Board's January 2009 Regulation Z rule. Many consumers more easily noticed the number and amount of fees when the fees were itemized and grouped together with interest charges. Consumers also noticed fees and interest charges more readily when they were located near the disclosure of the transactions on the account. Thus, under the proposal, creditors would be required to group all charges together and describe them in a manner consistent with consumers' general understanding of costs ("interest charge" or "fee"), without regard to whether the charges would be considered "finance charges," "other charges" or neither under the regulation.

Regarding change-in-terms notices, consumer testing for the Board's January 2009 Regulation Z Rule on credit cards indicated that, much like the account-opening disclosures, consumers may not typically read such notices because they are often in small print and dense prose. To enhance the effectiveness of change-in-terms notices, the proposed rules would require the creditor to include a table summarizing any changed terms. Consumer testing indicates that consumers may not typically look at the notices if they are provided as separate inserts given with periodic statements. Thus, under the proposal, a table summarizing the change would have to appear on the periodic statement, where consumers are more likely to notice the changes.

Additional testing during and after comment period. During the comment period, the Board will work with ICF Macro to conduct additional testing of model disclosures. After receiving comments from the public on the proposal and the proposed disclosure forms, the Board will work with ICF Macro to further revise model disclosures based on comments received, and to conduct additional rounds of cognitive interviews to test the revised disclosures. After the cognitive interviews, quantitative testing will be conducted. The goal of the quantitative testing is to measure consumers' comprehension of the newly-developed disclosures relative to existing disclosures and formats.

E. Other Outreach and Research

Throughout the review process leading to this proposal, the Board met or conducted conference calls with industry and consumer group representatives, as well as consulted with other federal banking agencies. The Board also reviewed HELOC disclosures currently used by creditors, internal Board research on home equity lending, and surveys on HELOC usage and trends. [12]

F. Reviewing Regulation Z in Stages

Based on the comments received and its own analysis, the Board is proceeding with a review of Regulation Z in stages. In January 2009, the Board published final rules regarding open-end (not home-secured) credit (74 FR 5244 (January 29, 2009) (January 2009 Regulation Z Rule), which were the result of the Board's comprehensive review of Regulation Z's open-end (not home-secured) credit rules. At that time, the Board indicated that it was also reviewing open-end home-secured credit rules. This proposal reflects the Board's review of all aspects of

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[12] Surveys reviewed include: Brian Bucks, Arthur Kennickell, Traci Mach, Kevin Moore, "Changes in U.S. FamilyFinances from 2004 to 2007: Evidence from the Survey of Consumer Finances," Federal Reserve Bulletin (Feb. 2009); Alan Greenspan and fames Kennedy, "Sources and Uses of Equity Extracted from Homes," Finance and Economics Discussion Series, Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board (2007-20); Glenn Canner et al., "Recent Developments in Home Equity Lending," Federal Reserve Bulletin (April 1998); Consumer Bankers Ass'n, "Home Equity Loan Study" (2005,2007); and American Bankers Ass'n, "ABA Home Equity Lending Survey Report" (2005),

Regulation Z and accompanying Official Staff Commentary related to open-end home-secured credit. The Board is not at this time, however, specifically addressing issues related to rescinding HELOCs, and requests comment in the proposal on any needed changes to Regulation Z provisions and commentary regarding reverse mortgages.

G. Implementation Period

The Board contemplates providing creditors sufficient time to implement any revisions that may be adopted. The Board seeks comment on an appropriate implementation period.

IV. The Board's Rulemaking Authority

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also specifically authorizes the Board, among other things, to do the following:

. Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

. Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

. Require additional disclosures for HELOC plans. 15 U.S.C. 1637(a)(8), 1637a(a)(14).

In the course of developing the proposal, the Board has considered information gathered from industry and consumer representatives during outreach meetings and calls, consultations with other federal banking agencies, the Board's experience in implementing and enforcing Regulation Z, and the results obtained from testing various disclosure options in controlled consumer tests. For the reasons discussed in this proposal, the Board believes this proposal is appropriate pursuant to the authorities noted above.

V. Discussion of Major Proposed Revisions

The goal of the proposed revisions is to improve the effectiveness of the Regulation Z disclosures that must be provided to consumers for open-end credit transactions secured by the consumer's dwelling, and to strengthen substantive protections for HELOC consumers. To shop for and understand the cost of credit, consumers must be able to identify and understand the key terms of a HELOC, which can be very complex. The proposed revisions to Regulation Z are intended to provide the most essential information to consumers when the information would be most useful to them, as clearly and conspicuously as possible. The proposed revisions are expected to improve consumers' ability to make informed credit decisions and enhance competition among HELOC originators. Many of the changes are based on consumer testing for this proposal and the Board's overall review of Regulation Z.

In considering the proposed revisions, the Board sought to ensure that the proposal would not reduce access to credit, and sought to balance the potential benefits for consumers with the compliance burdens imposed on creditors. For example, the proposed revisions seek to provide greater certainty to creditors in identifying what costs must be disclosed for HELOCs, and ***how*** those costs must be disclosed. More effective disclosures may also reduce confusion and misunderstanding, which may ease creditors' costs relating to consumer complaints and inquiries.

A. Disclosures at Application

Regulation Z requires creditors to provide to the consumer two types of disclosures at the time of application: a set of disclosures describing various features of a creditor's HELOC plans (the "application disclosures") and a home-equity brochure published by the Board (the "HELOC brochure"), which provides information about ***how*** HELOCs work. Neither contains transaction-specific information about the terms of the HELOC dependent on underwriting, such as the APR or credit limit.

Summary of Proposed Revisions

The proposal would require a creditor to provide to consumers at application a new one-page document published by the Board entitled, "Key Questions to ***Ask*** about Home Equity Lines of Credit" (the "Key Questions" document). The Board proposes eliminating the requirement for creditors to provide the HELOC brochure at application. In addition, the proposal would replace the application disclosures with transaction-specific HELOC disclosures ("early HELOC disclosures") that must be given within three business days after application (but no later than account opening).

"Key Questions" document. Currently, a creditor is required to provide to a consumer the HELOC brochure or a suitable substitute at the time an application for a HELOC is provided to the consumer. The HELOC brochure is around 20 pages long and provides general information about HELOCs and ***how*** they work, as well as a glossary of relevant terms and a description of various features that can apply to HELOCs.

The proposal would eliminate the requirement for creditors to provide to consumers the HELOC brochure with applications. The Board's consumer testing on HELOC disclosures has ***shown*** that consumers are unlikely to read the HELOC brochure because of its length. Instead, the proposal would require a creditor to provide the new "Key Questions" document that would be published by the Board. This one-page document is intended to be a simple, straightforward and concise disclosure informing consumers about HELOC terms and risks that are important to consider when selecting a home-equity product, including potentially risky features such as variable rates and balloon payments. The "Key Questions" document was designed based on consumers' preference for a question-and-answer tabular format, and refined in several rounds of consumer testing.

B. Disclosures Within Three Days After Application

Regulation Z currently requires the disclosures that must be provided on or with an application to contain information about the creditor's HELOC plans, including the length of the draw and repayment periods, ***how*** the minimum required payment is calculated, whether a balloon payment will be owed if a consumer only makes minimum required payments, payment examples, and what fees are charged by the creditor to open, use, or maintain the plan. These disclosures do not include information dependent on a specific borrower's creditworthiness or the value of the dwelling, such as a credit limit or the APRs offered to the consumer, because the application disclosures are provided before underwriting takes place.

Summary of Proposed Revisions

The Board's consumer testing on HELOC disclosures has ***shown*** that, because the current application disclosures do not contain transaction-specific information applicable to the consumer, these disclosures may not provide meaningful information to consumers to enable them to compare different HELOC products and to make informed decisions about whether to open an HELOC plan. Thus, the proposal would replace the application disclosures with transaction-specific "early HELOC disclosures" that must be given within three business days after application (but no later than account opening), and revise the format and content of the disclosures to make them more clear and conspicuous.

Content of proposed early HELOC disclosures. The proposal would require creditors to include several additional disclosures in the early HELOC disclosures not currently required to be disclosed as part of the application disclosures, such as (1) the APRs and credit limit being offered; (2) a statement that the consumer has no obligation to accept the terms disclosed in the early HELOC disclosures; and (3) if the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement. Based on consumer testing conducted by the Board on HELOC disclosures, the Board believes that these new disclosures would provide meaningful information to consumers in deciding whether to open a HELOC plan.

The proposal would not require creditors to provide certain disclosures currently required to be disclosed as part of the application disclosures. For example, currently creditors must disclose a 15-year historical payment example table, a statement that the APR does not include costs other than interest, and a statement of the earliest time the maximum rate could be reached. Based on consumer testing, the Board believes that these disclosures do not provide meaningful information to consumers in deciding whether to open a HELOC plan. Other information that consumer testing demonstrated would be helpful to consumers, however, would be required to be disclosed.

Moreover, the proposal would revise certain information currently required to be disclosed in the application disclosures. For example, the application disclosures currently must include several payment examples based on a $ 10,000 outstanding balance. Under the proposal, the Board would require in the early HELOC disclosures payment examples based on the full credit line. Also, to prevent "information overload" for consumers, the proposal would allow a creditor to disclose information about only two payment plan options. Based on consumer testing, the Board believes that the above revisions to the payment examples, and other revisions to the existing application disclosures, would effectively provide meaningful information to consumers in deciding whether to open a HELOC plan.

Format requirements for the proposed early HELOC disclosures. The proposal would impose stricter format requirements for the proposed early HELOC disclosures than currently are required for the application disclosures. The application disclosures may be provided in a narrative form; under the proposal, the early HELOC disclosures must be provided in the form of a table with headings, content, and format developed through multiple rounds of consumer testing. In consumer testing, participants found information in a structured, tabular format easier to understand and had more success answering comprehension questions than when these participants reviewed application disclosures in a narrative form.

C. Disclosures at Account Opening

Regulation Z requires creditors to disclose costs and terms before the first transaction is made for a HELOC. The disclosures must specify the circumstances under which a "finance charge" may be imposed and ***how*** it will be determined, including charges such as interest, transaction charges, minimum charges, each periodic rate of interest that may be applied to an outstanding balance (e.g., for purchases or cash advances) as well as the corresponding APR. In addition, creditors must disclose the amount of certain charges other than finance charges, such as a late-payment charge. Currently, few format requirements apply to account-opening disclosures; typically they are interspersed among other contractual terms in the creditor's account agreement.

Summary of Proposed Revisions

The proposal would revise the account-opening disclosure requirements in two significant ways. First, the proposal would require a tabular summary of key terms. Second, the proposal would reform ***how*** and when cost disclosures must be made.

Account-opening summary table. The proposal seeks to make the cost disclosures provided at account opening more conspicuous and easier to read. Accordingly, the proposal identifies specific costs and terms that creditors would be required to summarize in a table. This account opening table would be substantially similar to the early

HELOC disclosure table that would be provided within three business days after application, with two major exceptions. First, the account-opening table would ***show*** only the payment plan chosen by the consumer, rather than a maximum of two plans required in the early HELOC disclosures. Second, the account-opening table would contain transaction fees and penalty fees not required to be disclosed in the early HELOC disclosure table. Despite these differences between the two tables, the Board believes that consumers could use the new table provided at account opening to compare the terms of their accounts to the early HELOC disclosure table. Consumers would no longer be required to search for the information in the credit agreement.

How *charges are disclosed*. Under the current rules, a creditor must disclose any "finance charge" or "other charge" in the written account-opening disclosures. In addition, the regulation identifies fees that are not considered to be either "finance charges" or "other charges" and, therefore, need not be included in the account-opening disclosures. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. Examples of included or excluded charges are in the regulation and commentary, but these examples cannot provide definitive guidance in all cases. This uncertainty can pose legal risks for creditors that act in good faith to comply with the law. Creditors are subject to civil liability and administrative enforcement for under-disclosing the finance charge or otherwise making erroneous disclosures, so the consequences of an error can be significant. Furthermore, over-disclosure of rates and finance charges is not permitted by Regulation Z for open-end credit.

The fee disclosure rules also have been criticized as being outdated and impractical. These rules require creditors to provide fee disclosures at account opening, which may be months, and possibly years, before a particular disclosure is relevant to the consumer, such as when the consumer calls the creditor to request a service for which a fee is imposed. In addition, an account-related transaction may occur by telephone, when a written disclosure is not feasible.

The proposed rule is intended to respond to these criticisms while still giving full effect to TILA's requirement to disclose credit charges before they are imposed. Accordingly, under the proposal, the revised rules would (1) specify precisely the charges that creditors must disclose in writing at account opening (e.g., interest, account-opening fees, transaction fees, annual fees, and penalty fees such as for paying late), which would be listed in the summary table, and; (2) permit creditors to disclose certain optional charges orally or in writing before the consumer agrees to or becomes obligated to pay the charge. These proposed changes correspond to amendments adopted in the January 2009 Regulation Z Rule applicable to open-end (not home-secured) credit, but would not change current substantive restrictions on permissible changes in HELOC terms.

D. Periodic Statements

Currently, Regulation Z requires creditors to provide periodic statements reflecting the account activity for the billing cycle (typically, one month). In addition to identifying each transaction on the account, creditors must identify each "finance charge" using that term, and each "other charge" assessed against the account during the statement period. Creditors must disclose the periodic rate that applies to an outstanding balance and its corresponding APR. Creditors also must disclose an "effective" or "historical" APR for the billing cycle, which includes not just interest but also finance charges imposed in the form of fees.

Summary of Proposed Revisions

The proposal contains a number of significant revisions to periodic statement disclosures. First, the Board recommends eliminating the requirement to disclose the effective APR for HELOCs. Second, creditors would no longer be required to characterize particular costs on the periodic statement as "finance charges." Instead, costs would be described either as "interest" or as a "fee." Third, interest charges and fees imposed as part of the plan must be grouped together and totals disclosed for the statement period and year to date. To facilitate compliance, the proposal would include sample forms illustrating the revisions.

The effective APR. The "effective" APR disclosed on periodic statements reflects the cost of interest and certain other finance charges imposed during the statement period. For example, for a cash advance, the effective APR reflects both interest and any flat or proportional fee assessed for the advance. For the reasons discussed below, the Board recommends eliminating the requirement to disclose the effective APR.

In general, creditors believe that the effective APR should be eliminated. They believe that consumers do not understand the effective APR, including ***how*** it differs from the corresponding (interest rate) APR, why it is often "high," and which fees the effective APR reflects. Creditors say that they find it difficult, if not impossible, to explain the effective APR to consumers who call them with questions or concerns. They note that callers sometimes believe, erroneously, that the effective APR signals a prospective increase in their interest rate, and they may make uninformed decisions as a result. And, creditors say, even if the consumer does understand the effective APR, the disclosure does not provide any more information than a disclosure of the total dollar costs for the billing cycle. Moreover, creditors say the effective APR is arbitrary and inherently inaccurate, principally because it amortizes the cost for credit over only one month (billing cycle) even though the consumer may take several months (or longer) to repay the debt.

Consumer groups acknowledge that the effective APR is not well understood, but argue that it nonetheless serves a useful purpose by ***showing*** the higher cost of some credit transactions. They contend the effective APR helps consumers decide each month whether to continue using the account, to shop for another credit product, or to use an alternative means of payment such as a debit card. Consumer groups also contend that reflecting costs, such as cash advance fees, in the effective APR creates a "sticker shock" and alerts consumers that the overall cost of a transaction for the cycle is high and exceeds the advertised corresponding APR. This shock, they say, may persuade some consumers not to use certain features on the account, such as cash advances, in the future. In their view, the utility of the effective APR would be maximized if it reflected all costs imposed during the cycle (rather than only some costs as is currently the case).

As part of consumer testing conducted by the Board on credit cards in relation to the January 2009 Regulation Z Rule, consumer awareness and understanding of the effective APR was evaluated, as well as whether changes to the presentation of the disclosure could increase awareness and understanding. The overall results of this testing demonstrated that most consumers do not correctly understand the effective APR.

Based on this consumer testing and other factors, the Board proposes to eliminate the requirement to disclose the effective APR. Under this proposal, creditors offering HELOCs would be required to disclose interest and fees in a manner that is more readily understandable and comparable across institutions. The Board believes that this approach can more effectively further the goals of consumer protection and the informed use of credit for HELOCs.

Fees and interest costs. Currently, creditors must identify on periodic statements any "finance charges" that have been added to the account during the billing cycle; creditors typically list these charges with other transactions, such as purchases or cash advances, chronologically on the statement. The finance charges must be itemized by type. Thus, interest charges might be described as "finance charges due to periodic rates." Charges such as late-payment fees, which are not "finance charges," are typically disclosed individually and interspersed among other transactions.

The Board drew on consumer testing for open-end (not home-secured) credit, the results of which the Board believes apply equally to HELOCs, to recommend a number of changes to the required HELOC disclosures related to finance charges. As under rules adopted in the January 2009 Regulation Z Rule for open-end (not home-secured) credit, this proposal would require HELOC creditors to group all charges together and describe them in a manner consistent with consumers' general understanding of costs ("interest charge" or "fee"), without regard to whether the charges would be considered "finance charges," "other charges," or neither. If different periodic rates apply to different types of transactions, creditors would be required to itemize interest charges for the statement period by type of transaction (for example, interest on cash advances) or group of transactions subject to different periodic rates.

In addition, the proposal would require creditors to disclose the (1) total fees and (2) total interest imposed for the cycle, as well as year-to-date totals for interest charges and fees. The year-to-date figures are intended to help consumers understand annualized costs and the overall cost of their HELOC better than does the effective APR. The Board intends to conduct consumer testing of periodic statement notices for HELOCs during the comment period for this proposal.

E. Change-in-Terms Notices

Currently, Regulation Z requires creditors to send, in most cases, notices 15 days before the effective date of certain changes in the account terms. Advance notice is not required in all cases; for example, if an interest rate increases due to a consumer's default or delinquency, notice has been required, but not in advance of the rate increase. In addition, no notice (either advance or contemporaneous) has been required if the specific change is set forth in the account agreement.

Summary of Proposed Revisions

The Board proposes to revise the change-in-terms rules for HELOCs to parallel in most respects the revisions adopted for open-end (not home-secured) credit in the January 2009 Regulation Z Rule, including the content, timing, and format of such notices. The Proposed revisions to change-in-terms notice requirements for HELOCs are intended to improve consumers' awareness about changes to their account terms or increased rates due to delinquency, default, or other reason disclosed in the agreement, and to enhance consumers' ability to make alternative financial choices if necessary.

There are three major components of the proposal regarding change-in-terms notices. First, the proposal would expand the circumstances in which consumers receive advance notice of changed terms, including increased rates. Second, the proposal would provide consumers with earlier notice-45 days in advance of the effective date of the change rather than 15 days. Third, the proposal would introduce format requirements to make the disclosures about changes in terms, including increased rates, more effective.

Rate increases. Currently, a change-in-terms notice is not required if the agreement between the consumer and the creditor specifically sets forth the change and the specific triggering event. In the January 2009 Regulation Z Rule, the Board expressed concern that the imposition of penalty rates might come as a costly surprise to consumers who are not aware of, or do not understand, what behavior constitutes a default under the credit agreement. The Board also stated that it believed that consumers would be the most likely to notice and be motivated to act to ***<u>avoid</u>*** the imposition of the penalty rate if they receive a specific notice alerting them of an imminent rate increase, rather than a general disclosure stating the circumstances when a rate might increase.

The Board believes that the same reasoning applies in the case of HELOCs, although the circumstances under which a penalty rate may be imposed on a HELOC are more restricted than for credit cards. The HELOC proposal would also require advance notice of any increased rates due to a triggering event specified in the agreement, such as loss of an employee preferred rate because the consumer leaves the creditor's employ.

Timing. The Board proposes that the requirement for notice 15 days in advance of the effective date of a change be changed to require notice 45 days in advance, for the same reasons the Board adopted this requirement for open-end (not home-secured) credit. As discussed in the January 2009 Regulation Z Rule, shorter notice periods, such as 30 days or one billing cycle, may not provide consumers with sufficient time to shop for and possibly obtain alternative financing, or to make other financial adjustments. The 45-day advance notice requirement refers to when the change-in-terms notice must be sent, but it may take several days for the consumer to receive the notice. As a result, the Board believes that the 45-day advance notice requirement would give consumers, in most cases, at least one calendar month after receiving a change-in-terms notice to seek alternative financing or otherwise to mitigate the impact of an unexpected change in terms.

The Board is soliciting comment on whether it may be more difficult to seek alternative financing or otherwise mitigate the impact of a change in terms for HELOCs than for credit cards. The Board is also soliciting comment on whether, because changes in terms are more narrowly restricted for HELOCs than for credit card accounts, the impact on consumers of term changes for HELOCs is likely to be less severe than for credit cards and thus whether the proposed time period is likely adequate.

Format. Few format requirements apply to change-in-terms disclosures. As with account-opening disclosures, creditors commonly intersperse change-in-terms notices with other amendments to the account agreement, and both are provided in pamphlets in small print and dense prose. Consumer testing conducted for the January 2009 Regulation Z Rule suggests that consumers tend to set aside change-in-terms notices when they are presented as a separate pamphlet inserted in the periodic statement. Testing also revealed that consumers are more likely to identify the changes to their account correctly if the changes in terms are summarized in a tabular format.

The Board therefore proposes that if a changed term is one that must be provided in the account-opening summary table, creditors must also provide that change in a summary table to enhance the effectiveness of the change-in-terms notice. Further, if a notice enclosed with a periodic statement discusses a change to a term that must be disclosed in the account-opening summary table, or announces that a default rate will be imposed on the account, a table summarizing the impending change would have to appear on the periodic statement. The Board intends to conduct consumer testing of change-in-terms notices with a tabular format during the comment period for this proposal.

F. Additional Protections

Account Terminations. Regulation Z currently permits a creditor to terminate a HELOC for several reasons, including when the consumer has "fail[ed] to meet the repayment terms of the agreement for any outstanding balance." The proposal would revise this provision to provide that a creditor may not terminate a HELOC plan for payment-related reasons unless the consumer has failed to make a required minimum periodic payment more than 30 days after the due date for that payment. The Board is requesting comment on whether a delinquency threshold of more than 30 days is appropriate, or whether some other time period would better achieve the purposes of TILA.

The proposal is principally intended to protect consumers from so-called "hair-trigger" terminations based on minor payment infractions. Overall, the proposal is intended to strike a more equitable balance between creditors' authority to protect themselves against risk (and, for depositories, to ensure their safety and soundness) and effective protection of HELOC consumers from constraints on their credit privileges that do not correspond with reasonable expectations.

Suspensions and credit limit reductions based on a significant decline in the property value. Regulation Z permits a creditor temporarily to suspend advances or reduce a credit line on a HELOC if "the value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan." The commentary provides a "safe harbor" standard for determining whether a decline is significant: specifically, a decline in value is significant if it results in the initial difference between the credit limit and the available equity (the "equity cushion") diminishing by 50 percent.

Concerns have been expressed to the Board that the existing safe harbor may not be a viable standard for the higher combined loan-to-value (CUTV) HELOCs made in recent years. For loans nearing or exceeding 100 percent CLTV when originated, for example, a decline in value of a few dollars could result in more than a 50 percent decline in the creditor's equity cushion, because the equity cushion was zero or close to zero at origination. For these higher CLTV loans in particular, creditors have indicated uncertainty about ***how*** to determine whether a decline in value is "significant." For their part, consumer advocates have expressed concerns that the lack of guidance on the proper application of the safe harbor allows creditors to take action based on nominal declines in value.

To address these concerns, the proposal would revise the staff commentary to delineate two "safe harbors" on which creditors could rely to determine whether a decline in property value is "significant":

. First, for plans with a CLTV at origination of 90 percent or higher, a five (5) percent reduction in the property value on which the HELOC terms were based would constitute a significant decline in value.

. Second, for plans with a CLTV at origination of under 90 percent, the existing safe harbor would be retained, under which a decline in the value of the property securing the plan is significant if, as a result of the decline, the creditor's equity cushion is reduced by 50 percent.

Suspensions and credit limit reductions based on a material change in the consumer's financial circumstances. Regulation Z permits a creditor to suspend advances or reduce the credit limit of a HELOC when "the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations of the plan because of a material change in the consumer's financial circumstances." Some creditors appear uncertain about when action is permissible under this provision, and many have requested more detailed guidance. Consumer advocates have expressed dissatisfaction with the guidance on this provision as well, voicing concerns that the lack of clear guidance may enable some creditors to take action when consumers are fully capable of meeting their repayment obligations.

The proposal is intended to protect consumers by ensuring that creditors exercise prudent judgment in relying on this provision. Revised commentary would clarify that evidence of a material change in financial circumstances may include credit report information ***showing*** late payments or nonpayments on the part of the consumer, such as delinquencies, defaults, or derogatory collections or public records related to the consumer's failure to pay other obligations. The proposed commentary would clarify that any payment failures relied on to ***show*** a material change in the consumer's financial circumstances would need to have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance. A six-month safe harbor for this "reasonable time" is proposed.

The proposed commentary would retain the existing commentary's guidance stating that evidence supporting a creditor's reasonable believe that a consumer is "unable" to meet the repayment terms may include the consumer's nonpayment of debts other than the HELOC. Under the proposal, these payment failures would have to have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance, with a proposed six-month safe harbor. The Board is requesting comment on whether late payments of 30 days or fewer would be adequate evidence of a failure to pay a debt for purposes of this provision, and whether and under what circumstances credit score declines alone might satisfy the requirements of this provision.

Reinstatement of accounts. Regulation Z requires creditors to reinstate credit privileges once no circumstances permitting a freeze or credit limit reduction under the statute or regulation exist. Recently, due to declining property values and for other reasons, HELOCs have been suspended and credit limits reduced more often than in the past. Consumer groups and other federal agencies have raised concerns about whether consumers are properly informed about the creditor's obligation to reinstate credit lines and consumers' rights to request reinstatement, and the Board independently researched the reinstatement practices of several creditors. As a result, the Board has determined that additional guidance is appropriate. The proposed changes are intended to ensure that consumers have a meaningful opportunity to request reinstatement and to have this request investigated. Major proposed revisions include the following:

. Requiring additional information in notices of suspension or reduction about consumers' ongoing right to request reinstatement and creditors' obligation to investigate this request.

. Requiring creditors to complete an investigation of a request within 30 days of receiving the request and to provide notice of the results to consumers whose credit privileges will not be restored.

. Requiring creditors to cover the costs associated with investigating the first reinstatement request by the consumer.

VI. Section-by-Section Analysis

Other than in the section-by-section analysis of § 226.5b, unless otherwise indicated, references to the "current" or "existing" regulation and staff commentary refer to the version of Regulation Z and staff commentary finalized in the January 2009 Regulation Z Rule. The regulation text and commentary in the January 2009 Regulation Z Rule will not go into effect until July 1, 2010, and certain changes to both the substance and effective date of these have been made by the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit Card Act), Public Law 111-24, enacted on May 22, 2009. The Board determined, however, that it is appropriate for this proposed rulemaking to refer to rules that have been finalized and will go into effect in the near future, rather than the version of Regulation Z and the commentary now in effect but that will soon be obsolete. The section-by-section analysis of § 226.5b and references to § 226.5b refer to the version of Regulation Z and accompanying staff commentary currently in effect.

Section 226.2 Definitions and Rules of Construction

2(a)(6) Definition of Business Day Currently, § 226.2(a)(6) contains two definitions of "business day." Under the general definition, a "business day" is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for some purposes a more precise definition applies; "business day" means all calendar days except Sundays and specified federal legal public holidays for purposes of determining when disclosures are received under §§ 226.15(e), 226.19(a)(1)(ii), 226.23(a), and 226.31(c)(1) and (2). The Board also recently adopted the more precise definition for purposes of the presumption in § 226.19(a)(2) that consumers receive corrected disclosures three business days after they are mailed and for other timing determinations. *See* 74 FR 23289 (May 19, 2009). As discussed more fully below in the section-by-section analysis under proposed §§ 226.5b(e) and 226.9(j)(2), the Board is proposing to use the more precise definition of business day in providing presumptions of when consumers receive mailed disclosures required under proposed §§ 226.5b(b) and 226.9(j)(1).

Section 226.4 Finance Charge

Various provisions of TILA and Regulation Z specify ***how*** and when the cost of consumer credit expressed as a dollar amount, the "finance charge," is to be disclosed. The rules for determining which charges make up the finance charge are set forth in TILA Section 106 and Regulation Z § 226.4. 15 U.S.C. 1605. In the January 2009 Regulation Z Rule, the Board made several revisions to § 226.4. Some of the revisions, such as those relating to transaction charges imposed by credit card issuers for obtaining cash advances from automated teller machines (ATMs) or making purchases in foreign currencies or foreign countries, affect all open-end credit, including HELOCs as well as open-end (not home-secured) credit. Other revisions made in the January 2009 rule affect only open-end (not home-secured) credit.

Charges for Credit Insurance or Debt Cancellation or Suspension Coverage

In the case of charges for credit insurance, debt cancellation coverage, and debt suspension coverage, some of the revisions affect all open-end credit, while others affect only open-end (not home-secured) credit. The Board is now proposing to revise § 226.4 as it applies to HELOCs in a manner generally paralleling the latter category of revisions, as discussed further below.

In addition to the proposed revisions to § 226.4 discussed in this HELOC proposal, the Board is separately proposing a number of other revisions to § 226.4 and other sections of Regulation Z, regarding finance charge, credit insurance, and debt cancellation or suspension coverage, in its proposal regarding closed-end mortgage lending under Regulation Z, published today elsewhere in this **Federal Register**. Some of these proposed revisions would affect HELOCs as well as closed-end mortgage loans. These other proposals are discussed below; for a detailed discussion, *see* the Board's separate **Federal Register** notice. The proposed regulatory text and proposed staff commentary for § 226.4, as well as other affected sections, appear in the Board's separate **Federal Register** notice.

Premiums or other charges for credit life, accident, health, or loss-of-income insurance are finance charges if the insurance or coverage is "written in connection with" a credit transaction. 15 U.S.C. 1605(b); § 226.4(b)(7). Creditors may exclude from the finance charge premiums for credit insurance if they disclose the cost of the insurance and the fact that the insurance is not required to obtain credit. In addition, the statute requires creditors to obtain an affirmative written indication of the consumer's desire to obtain the insurance, which, as implemented in § 226.4(d)(1)(iii), requires creditors to obtain the consumer's initials or signature. 15 U.S.C. 1605(b). In 1996, the Board expanded the scope of the rule to include plans involving charges or premiums for debt cancellation coverage. *See* § 226.4(b)(10) and (d)(3). 61 FR 49237 (September 19, 1996.)

The January 2009 Regulation Z Rule amended the regulation to treat debt suspension coverage in the same way as debt cancellation coverage. Debt suspension is the creditor's agreement to suspend, on the occurrence of a specified event, the consumer's obligation to make the minimum payment(s) that would otherwise be due. During the suspension period, interest may continue to accrue or it may be suspended as well, depending on the plan. Thus, under § 226.4(b)(10), charges for debt suspension coverage written in connection with a credit transaction are finance charges, unless excluded under § 226.4(d)(3). However, to exclude the cost of debt suspension coverage from the finance charge, creditors are also required to inform consumers, as applicable, that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. These revisions apply to all open-end plans (both HELOCs and open-end (not home-secured) credit), as well as to closed-end credit transactions.

Insurance or coverage sold after opening of an account. One of the revisions made in the January 2009 Regulation Z Rule affecting only open-end (not home-secured) credit involves the meaning of the phrase "written in connection with a credit transaction." Prior to the January 2009 rule, credit insurance or debt cancellation or suspension coverage sold after consummation of a closed-end credit transaction or after the opening of an open-end plan and upon a consumer's request was considered not to be "written in connection with the credit transaction," and, therefore, a charge for such insurance or coverage was not a finance charge. *See* comment 4(b)(7) and (8)-2. The Board stated in its 2007 proposal for open-end (not home-secured) credit (72 FR 32945 (June 14, 2007) (June 2007 Regulation Z Proposal) that it believed this approach remained sound for closed-end transactions, which typically consist of a single transaction with a single advance of funds. However, in an open-end plan, where consumers can engage in credit transactions after the opening of the plan, a creditor may have a greater opportunity to influence a consumer's decision whether or not to purchase credit insurance or debt cancellation or suspension coverage than in the case of closed-end credit. Accordingly, the disclosure and consent requirements are important in open-end plans, even after the opening of the plan, to ensure that the consumer is fully informed about the offer of insurance or coverage and that the decision to purchase it is voluntary. Therefore, the Board adopted in the January 2009 Regulation Z Rule amendments to comment 4(b)(7) and (8)-2, to state that insurance purchased after an open-end (not home-secured) plan is opened is considered to be written "in connection with a credit transaction." New comment 4(b)(10)-2 provides the same treatment to purchases of debt cancellation or suspension coverage. Therefore, purchases of voluntary insurance or debt cancellation or suspension coverage after account opening trigger disclosure and consent requirements. This amendment does not apply to HELOCs; the Board stated that it intended to consider this issue when the home-equity credit plan rules are reviewed in the future.

The Board proposes to apply the same rule to HELOCs. Thus, comments 4(b)(7) and (8)-2 and 4(b)(10)-2 would be amended to state that credit insurance or debt cancellation or suspension coverage purchase after any open-end plan is opened is considered to be written in connection with a credit transaction, and therefore charges for such insurance or coverage would be finance charges unless the disclosure and consent requirements under § 226.4(d)(1) and (3) are met. The Board believes that the same reasons for extending the "written in connection with" rule to insurance or coverage purchased after the opening of an open-end (not home-secured) plan exist with regard to insurance or coverage purchased after the opening of a HELOC. Although the creditors' ability to terminate or restrict HELOC accounts is more limited than in the case of open-end (not home-secured) accounts, consumers may not be aware of this difference and therefore consumers' decisions about whether to purchase insurance or coverage may be influenced by concern about their continued access to credit, or about possible adverse changes to the terms and conditions of the account.

Telephone sales of insurance or coverage. Another of the revisions made in the January 2009 Regulation Z Rule affecting only open-end (not home-secured) credit involves sales of credit insurance or debt cancellation or suspension coverage by telephone. Under § 226.4(d)(1) and (d)(3), creditors may exclude from the finance charge credit insurance premiums and debt cancellation or suspension charges if the consumer signs or initials an affirmative written request for the insurance or coverage, after disclosure of the fact that the insurance or coverage is optional and of the cost.

In the June 2007 Regulation Z Proposal the Board proposed, and in the January 2009 Regulation Z Rule adopted, an exception to the requirement to obtain a written signature or initials for telephone purchases of credit insurance or debt cancellation and debt suspension coverage on an open-end (not home-secured) plan. Under new § 226.4(d)(4), for telephone purchases, the creditor is permitted to make the disclosures orally and the consumer may affirmatively request the insurance or coverage orally, provided that the creditor (1) maintains evidence that demonstrates that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and (2) mailed the disclosures under § 226.4(d)(1) or (d)(3) within three business days after the telephone purchase. Comment 4(d)(4)-1 provides that a creditor does not satisfy the requirement to obtain an affirmative request if the creditor uses a script with leading questions or negative consent. This new rule is consistent with rules published by the federal banking agencies to implement Section 305 of the Gramm-Leach-Bliley Act regarding the sale of insurance products by depository institutions, as well as guidance published by the Office of the Comptroller of the Currency regarding the sale of debt cancellation and suspension products. *See* 12 CFR 208.81 *et seq*. regarding insurance sales; 12 CFR part 37 regarding debt cancellation and debt suspension products. HELOCs subject to § 226.5b were not affected by this revision.

The Board adopted this approach pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board stated in the January 2009 Regulation Z Rule that it considered each of these factors carefully, and based on that review, believed it is appropriate to exempt, for open-end (not home-secured) plans, telephone sales of credit insurance or debt cancellation or debt suspension plans from the requirement to obtain a written signature or initials from the consumer. Requiring a consumer's written signature or initials is intended to evidence that the consumer is purchasing the product voluntarily; the rule contains safeguards intended to insure that oral purchases are voluntary. Under the rule, creditors must maintain tapes or other evidence that the consumer received required disclosures orally and affirmatively requested the product. Comment 4(d)(4)-1 indicates that a creditor does not satisfy the requirement to obtain an affirmative request if the creditor uses a script with leading questions or negative consent. In addition to oral disclosures, under the proposal consumers will receive written disclosures shortly after the transaction.

The Board proposes to extend the telephone sales rule for credit insurance and debt cancellation or suspension coverage, as adopted in the January 2009 Regulation Z Rule, to HELOCs. Section 226.4(d)(4) would be amended to apply to all open-end credit, not only open-end (not home-secured) credit. The Board proposes this approach pursuant to its exception and exemption authorities under TILA Section 105, and has considered the factors specified in Section 105(1) as discussed above. The proposed rule contains safeguards to ensure that the purchase is voluntary. In addition, other proposed safeguards regarding eligibility restrictions and revised disclosures, discussed in the Board's separate proposal regarding closed-end mortgage lending provisions of Regulation Z and published today elsewhere in the **Federal Register**, would apply to HELOCs as well as closed-end mortgage loans.

The fee for the credit insurance or debt cancellation or debt suspension coverage would also appear on the first monthly periodic statement after the purchase, and, as applicable, thereafter. As discussed in the section-by-section analysis under § 226.7, under the proposal fees, including insurance and debt cancellation or suspension coverage charges, would be better highlighted on statements. Consumers who are billed for insurance or coverage they did not purchase may dispute the charge as a billing error. At the same time, the proposed amendments should facilitate the convenience to both consumers and creditors of conducting transactions by telephone. The proposed amendments, therefore, have the potential to better inform consumers and further the goals of consumer protection and the informed use of credit.

Proposals Regarding Finance Charge and Credit Insurance, Debt Cancellation Coverage, and Debt Suspension Coverage Published in Separate Federal Register Notice

As noted above, in addition to the proposed amendments discussed above, the Board is separately proposing a number of amendments to the rules in § 226.4 regarding finance charge, and to the rules in § 226.4 and other sections of Regulation Z regarding credit insurance and debt cancellation or suspension coverage. These other proposed amendments are discussed in detail in the Board's separate **Federal Register** notice, published today and appearing elsewhere in this **Federal Register**. Also, the regulatory and staff commentary text for these proposed amendments appears in the Board's separate **Federal Register** notice. A brief discussion of these other proposed amendments follows.

"All-in" finance charge. The Board is proposing to adopt, for closed-end mortgage lending under Regulation Z only, an "all-in" finance charge concept, under which all fees payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or condition of the extension of credit would be included in the finance charge. Thus, many of the exclusions from the finance charge under § 226.4(a), (c), (d), and (e) would no longer apply to closed-end mortgage loans. For example, for closed-end mortgage loans, charges for credit insurance and debt cancellation or suspension coverage would be considered finance charges, whether or not the insurance or coverage is optional and even though revised disclosures would be required.

The Board is not proposing this "all-in" finance charge approach for credit other than closed-end mortgage loans. Thus, the proposed approach would not apply, for example, to closed-end non-mortgage credit, or to HELOCs or other open-end credit. As discussed below in the section-by-section analysis under §§ 226.5 and 226.7, disclosures for HELOCs would no longer be required to use the term "finance charge," and would no longer be required to contain a disclosure of the effective APR (*i.e.*, an APR that includes not only interest but also other fees that constitute finance charges). In the January 2009 Regulation Z Rule, the Board adopted these changes for open-end (not home-secured) credit. Therefore, the Board believes that changing the definition of finance charge for HELOC accounts would not have a material effect on the HELOC disclosures and accordingly is unnecessary. However, the Board requests comment on whether there are reasons why consideration should be given to changing the definition of finance charge for HELOCs. For a detailed discussion of the Board's proposals regarding the "all-in" finance charge for closed-end mortgage loans, *see* the Board's separate **Federal Register** notice published today.

Age or employment eligibility criteria. The Board is proposing to add new § 226.4(d)(1)(iv) and (d)(3)(v) to permit creditors to exclude a credit insurance premium or debt cancellation or suspension charge from the finance charge only if the creditor determines at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for the insurance or coverage. These provisions would apply to all open-end credit, including

HELOCs, as well as to closed-end (non-real-property) credit. The Board is proposing these new provisions because some creditors offer credit insurance or debt cancellation or suspension products with eligibility restrictions, but may not evaluate whether applicants actually meet the criteria at the time the applicants request the product. As a result, many consumers may not discover until they file a claim that they were paying for a product for which they were not eligible. For a detailed discussion of this proposal, *see* the Board's separate **Federal Register** notice published today. Note that, for HELOCs and other open-end credit in which the telephone purchase rule under § 226.4(d)(4) could be used, the new conditions under proposed § 226.4(d)(1)(iv) and (d)(3)(v) would still apply.

Revised disclosures for insurance or coverage. The Board is proposing to add model clauses that would provide clearer information to consumers about the optional nature and costs of credit insurance or debt cancellation or suspension coverage. The model clauses would apply to open-end as well as closed-end credit transactions, and appear in Appendix G-16(C) for open-end credit and Appendix H-17(C) for closed-end credit. The disclosure language is based on consumer testing conducted by the Board to determine whether consumers understood the optional nature and costs of credit insurance or debt cancellation or suspension coverage. In addition, the disclosures would contain language about eligibility restrictions and a reference to the Board's Web site to learn more about the product. These model clauses would be in addition to the Debt Suspension Model Clause found at Appendix G-16(A) for open-end credit and Appendix H-17(A) for closed-end credit. For a detailed discussion of this proposal, see the Board's separate **Federal Register** notice published today.

Section 226.5 General Disclosure Requirements

Section 226.5 contains the general requirements for open-end credit disclosures under Regulation Z, both for credit cards and other open-end (not home-secured) credit and for HELOCs subject to § 226.5b. Section 226.5 addresses, among other requirements, that disclosures be clear and conspicuous, in writing, and in a form the consumer can keep, as well as requirements concerning terminology, formats for disclosures, and timing of disclosures. In the January 2009 Regulation Z Rule, the Board adopted a number of changes to the general disclosure requirements for open-end (not home-secured) credit, but did not change the requirements applicable to HELOCs. The Board is now proposing to revise the format and other disclosure requirements for HELOCs in a manner generally paralleling the revisions in the requirements for open-end (not home-secured) credit.

In addition to the proposed changes to the specific rules for disclosures, the Board proposes to adopt a new comment 5-1 that would provide guidance in situations where a creditor is uncertain whether an open-end credit plan is covered by the § 226.5b rules for HELOCs or the rules for open-end (not home-secured) credit. The Board understands that there is uncertainty for creditors that offer open-end credit secured by real property, where it is unclear whether that property is, or remains, the consumer's dwelling. Such creditors may be uncertain ***how*** they should comply with the January 2009 Regulation Z Rule. The Board solicited comment on this issue in the May 2009 proposal regarding technical revisions and other changes to open-end (not home-secured) credit rules. 74 FR 20784 (May 5, 2009) (May 2009 Regulation Z Proposal). The comment period ended on June 4, 2009. Financial institutions commenters suggested that creditors be permitted to treat all open-end credit secured by residential property as covered by § 226.5b, rather than the rules for open-end (not home-secured) credit, regardless of whether the property is the consumer's dwelling. Consumer group commenters did not address this issue.

Proposed comment 5-1 generally permits creditors to assume that the property securing the line of credit is the principal residence or a second or vacation home of the consumer and, therefore, that the line of credit is covered by the HELOC rules. (The HELOC rules cover not only credit secured by consumer's principal residence, but also credit secured by vacation and second homes, assuming the credit is for personal, family, or household purposes.) However, creditors are also permitted to investigate the actual use of the property. If the creditor ascertains that the property is not the consumer's principal residence or a second or vacation home, the creditor may comply with the rules applicable to open-end (not home-secured) credit under Regulation Z. In this case, if the credit plan is accessible by credit card, the creditor must comply with, in addition to the rules applicable to open-end credit generally, the rules for open-end (not home-secured) credit card plans under § 226.5a and associated sections in the regulation. The Board requests comment on whether the proposed comment provides useful and appropriate guidance.

5(a) Form of Disclosures

5(a)(1) General

Paragraph 5(a)(1)(i)

Section 226.5(a)(1)(i) requires that disclosures required under the regulation be clear and conspicuous. Comment 5(a)(1)-1 states that the "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. The comment further states that disclosures for credit card applications and solicitations under § 226.5a, and related disclosures such as those required to be in a tabular format under § 226.6(b)(1), must also be readily noticeable to the consumer. Comment 5(a)(1)-3 explains that the disclosures subject to the readily noticeable standard must be given in a minimum of 10-point font and cross-references the rule that the APR for purchases in an open-end (not home-secured) plan under §§ 226.5a(b)(1) and 226.6(b)(2)(i) must be in a minimum 16-point font.

The Board proposes to revise comments 5(a)(1)-1 and -3 to apply the same standards to home-equity plan disclosures as those applicable to the comparable disclosures for credit cards and other open-end (not home-secured) credit. Specifically, the Board proposes to revise comments 5(a)(1)-1 and -3 to require that the following home-equity disclosures be readily noticeable to the consumer, meaning that they must be provided in a minimum font size of 10-point: disclosures required to be given in a tabular format within three business days after application (§ 226.5b(b)); disclosures required to be given in a tabular format at account opening (§ 226.6(a)(1)); change-in-terms disclosures required to be given in a tabular format (§ 226.9(c)(1)(iii)(B)); and disclosures required to be given in a tabular format when a rate is increased due to delinquency or default under § 226.5b(f)(2) (§ 226.9(i)(4)). The proposal also adds a cross-reference to the 16-point minimum font size requirement for the APR in a home-equity plan under proposed §§ 226.5b(c)(10) and 226.6(a)(2)(vi).

The Board believes that the same reasoning underlying the minimum font size requirements for open-end (not home-secured) plan disclosures applies to the comparable home-equity plan disclosures. In the June 2007 Regulation Z Proposal, the Board stated its belief that special formatting requirements, such as a tabular format and font size requirements, are needed to highlight for consumers the importance and significance of certain disclosures required at application or solicitation for a credit card, and at the opening of a credit card account. Similarly, for disclosures that may appear on periodic statements, such as the change-in-terms disclosures under § 226.9(c)(2)(iii)(B) and disclosures when a rate is increased due to delinquency, default or as a penalty under § 226.9(g)(3)(ii), the Board stated that highlighting these disclosures by using a minimum 10-point font size is important because consumers do not expect to see these disclosures each billing cycle and because the changes may have a significant impact on the consumer.

Consumer comments on the June 2007 Regulation Z Proposal noted that credit card disclosures are in fine print and argued that disclosures should be given in a larger font. Many consumer and consumer group commenters suggested that the regulation require a minimum 12-point font for disclosures. In consumer testing conducted by the Board in the open-end (not home-secured) credit review demonstrated that participants were able to read and notice information in a 10-point font. Consumer testing conducted by the Board in the home-equity credit review ***showed*** the same result. Accordingly, the Board proposes to require that the HELOC disclosures discussed above must be provided in a minimum 10-point font size.

Paragraph 5(a)(1)(ii)

Paragraph 5(a)(1)(ii)(A)

Section 226.5(a)(1)(ii) requires that disclosures required by the regulation be given in writing and in a form that the consumer may keep. Section 226.5(a)(1)(ii)(A) specifies several exceptions to the requirement that disclosures be in writing, including account-opening disclosures of charges imposed as part of an open-end (not home-secured) plan that are not required to be disclosed in a tabular format under § 226.6(b)(2) and related change-in-terms disclosures under § 226.9(c)(2)(ii)(B), when such charges change. The Board proposes to add a parallel exception, applicable to home-equity plans, for disclosures of certain charges not required to be given in tabular format at the time of account opening and for related change-in-terms disclosures.

The Board believes that the same reasoning underlying the exception to the written disclosure requirement for certain open-end (not home-secured) plan disclosures applies to home-equity plan disclosures. As discussed in the January 2009 Regulation Z Rule, in permitting certain charges in open-end (not home-secured) credit to be disclosed either orally or in writing (and after account opening, as discussed further under § 226.5(b)(1)(ii) below), the Board's goal was to better ensure that consumers receive disclosures at a time and in a manner in which they would be likely to notice them. At account opening, both for open-end (not home-secured) plans and for HELOCs, written disclosure has obvious merit because account opening is a time when a consumer must assimilate information that may influence major decisions by the consumer about ***how***, or even whether, to use the account. During the life of an account, however, a consumer may sometimes need to decide whether to purchase a single service from the creditor that may not be central to the consumer's use of the account, such as an expedited telephone payment service. The consumer may have become accustomed to purchasing similar services by telephone for other financial products, such as credit cards, and expect to receive an oral disclosure of the charge for the service during the same telephone call. Permitting oral disclosure of charges that are not central to the consumer's use of the account would be consistent with consumer expectations and with the business practices of creditors.

Accordingly, the Board proposes to exempt from the written disclosure requirement the following HELOC disclosures: charges not required to be in given in tabular format at account opening under § 226.6(a)(2) (*i.e.*, charges that are not the most significant charges related to the plan) and related change-in-terms notices under § 226.9(c)(1)(ii)(B). A creditor would not be permitted to increase the APR (assuming a rate increase were permissible at all) without providing written notice, because the APR is a disclosure required to be given in tabular format. Of course, any change in terms in a HELOC subject to § 226.5b would have to be permissible under § 226.5b(f). For example, the charge for an expedited telephone payment service would not be permitted to be increased; however, the charge could be decreased, or a new optional telephone payment service, with its associated charge, could be introduced, because these would be beneficial changes permitted under § 226.5b(f).

The most significant charges would not be covered by the proposed exemption and would continue to have to be disclosed in writing at account opening, because these charges would be required to be ***shown*** in the tabular account-opening disclosures. For example, the annual fee, early termination fee, penalty fees such as late payment and over-the-credit-limit fees, and fees to use the account such as transaction fees would have to be disclosed in writing at account opening in the tabular disclosure. Further, any changes in these charges (assuming a change were permissible at all, which in most cases it would not be) would be required to be disclosed in a written change-in-terms notice under § 226.9(c). Paragraph 5(a)(1)(ii)(B)

Application disclosures. Section 226.5(a)(1)(ii)(B) lists several exceptions to the requirement that disclosures be in a form that the consumer may keep, including the disclosures required to be given at the time of application for a HELOC under § 226.5b(d) (to be redesignated § 226.5b(c) under the proposal). The Board proposes to eliminate this exception because, as discussed in greater detail below in this section-by-section analysis under §§ 226.5(b)(4) and 226.5b(b), the Board is proposing to change the timing and content of HELOC disclosures under § 226.5b(c). Under the proposal, these disclosures would be required to ***show*** the terms and conditions that would apply to the particular consumer, rather than only describing the creditor's plans in general terms. In addition, § 226.5b(c) disclosures would be given within three business days after application rather than at the time of application.

The purpose of the existing exception to the retainability requirement was to ***avoid*** requiring creditors to give consumers a separate disclosure document, in addition to the application form itself. When proposing and adopting in final form the amendments to Regulation Z implementing the 1988 Home Equity Loan Act (cited above), the Board noted that the exception from the retainability requirement would permit the creditor to place the disclosures on the application form that the consumer would return to the creditor to apply for the plan. 54 FR 3063 (January 23, 1989); 54 FR 24670 (June 9, 1989). This purpose for the exception from the retainability requirement would not apply under the proposal because the relevant disclosures would be not be provided at the time of application, but instead within three business days later.

Home-equity brochure. The current regulation does not exempt the home-equity brochure required under § 226.5b(e) from the retainability requirement under the current regulation, even though the brochure is required to be provided to a consumer at the time of application. One reason is that the brochure is not easily incorporated into the application form itself. As discussed under § 226.5b(a) below, the Board is proposing to replace the brochure with a shorter disclosure serving the same purpose of informing consumers generally about home-equity plan features and risks ("Key Questions to ***Ask*** about Home Equity Lines of Credit" or "Key Questions" document). The retainability requirement would continue to apply to this disclosure; it would be a form developed and specifically prescribed by the Board, and therefore would not necessarily be readily incorporated into the application form itself.

Paragraph 5(a)(1)(iii)

Under § 226.5(a)(1)(iii), a creditor may give a consumer open-end credit disclosures in electronic form, as long as the creditor complies with the consumer notice and consent procedures and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq*.). Under certain circumstances, however, the disclosures required at application for a home-equity plan under § 226.5b (as well as the application and solicitation disclosures for credit cards under § 226.5a and disclosures in open-end credit advertising under § 226.16) may be provided to a consumer in electronic form without regard to the requirements of the E-Sign Act. Section 226.5b(a)(3) (proposed to be redesignated § 226.5b(a)(2)), in turn, requires that for the § 226.5b disclosures to be provided in electronic form, the application must be accessed by the consumer in electronic form and the disclosures must be provided on or with the application. The Board proposes to continue to apply this exception from the E-Sign consumer notice and consent requirements to the disclosure that would be provided to a consumer at application under proposed § 226.5b(a) (*i.e*., "Key Questions" document).

The purpose of these exceptions from the E-Sign Act's notice and consent requirements is to facilitate credit shopping. When proposing these exceptions, the Board stated its belief that the exceptions would eliminate a potentially significant burden on electronic commerce without increasing the risk of harm to consumers: requiring consumers to follow the notice and consent procedures of the E-Sign Act to access an online application, solicitation, or advertisement is potentially burdensome and could discourage consumers from shopping for credit online; at the same time, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online when they are already able to view the application, solicitation, or advertisement online. 72 FR 63462 (November 9, 2007).

This exception would not be extended to the disclosures that would be provided within three business days after application under proposed § 226.5b(b). The credit shopping process takes place primarily when a consumer reviews applications and associated disclosures and decides whether to submit an application. Three business days after the consumer has submitted an application, the consumer may have completed the credit shopping process. Requiring compliance with the E-Sign Act's notice and consent procedures for disclosures at this point would not likely hinder credit shopping, and would ensure that the consumer is able and willing to receive disclosures in electronic form. In addition, compliance with the E-Sign Act for disclosures provided within three business days after application should not be unduly burdensome, because the time between application and three days later should be sufficient for the creditor to carry out the E-Sign Act notice and consent procedures.

5(a)(2) Terminology

Paragraph 5(a)(2)(ii)

"Finance charge" and "annual percentage rate." Section 226.5(a)(2) relates to terminology used in disclosures. Section 226.5(a)(2)(ii) requires that for HELOCs subject to § 226.5b, the terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate, must be more conspicuous than any other required disclosure, with some exceptions. This regulatory provision implements section 122(a) of TILA; 15 U.S.C. 1632(a).

In the January 2009 Regulation Z Rule, the Board eliminated the "more conspicuous" rule for open-end (not home-secured) credit, using the Board's authority under TILA Section 105(a) to make "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." 15 U.S.C. 1604(a). The Board concluded that requiring the terms "annual percentage rate" and "finance charge" to be more conspicuous than other disclosures was unnecessary, because creditors would be required to emphasize APRs and certain other finance charges by disclosing them in a tabular format with a minimum 10-point font size (or 16-point font size as required for the APR for purchases). Furthermore, the Board noted that the use of the term "finance charge" in disclosures for open-end (not home-secured) plans is no longer required; as a result, creditors would in many cases not use the term "finance charge" at all.

The Board believes that the same reasoning applies to the terms "finance charge" and "annual percentage rate" when disclosed for home-equity plans. As for open-end (not home-secured) credit, for HELOCs subject to § 226.5b the Board is proposing to require creditors to disclose the APR and certain other finance charges in a tabular format with a minimum 10-point font size (or 16-point font size for the APR the first time it appears in the table). The Board is also proposing to eliminate the requirement that creditors use the term "finance charge" in disclosures for HELOCs subject to § 226.5b (*see* discussion in this section-by-section analysis under § 226.7). Accordingly, under the Board's authority in TILA Section 105(a) discussed above, the Board proposes to revise § 226.5(a)(2)(ii) to eliminate the "more conspicuous" rule for the terms "finance charge" and "annual percentage rate" for home-equity plans. Comments 5(a)(2)-1, -2, and -3, providing guidance on the "more conspicuous" rule, would be deleted, and comment 5(a)(2)-4 would be renumbered as 5(a)(2)-1.

"Borrowing period," "repayment period," and "balloon payment." The Board also proposes to revise § 226.5(a)(2)(ii) to require the use of the terms "borrowing period," "repayment period," and "balloon payment" in disclosures required to be given in tabular format in HELOCs subject to § 226.5b, as applicable. In consumer testing conducted by the Board to develop the proposed revised home-equity plan disclosures, consumers understood these terms. In particular, consumers overall understood that the term "borrowing period" referred to the part of a HELOC term during which consumers could obtain funds, whereas they did not clearly understand the alternative term "draw period," which is used in the existing regulation's home-equity sample disclosures (Appendices G-14A and G-14B).

"Required" for required credit insurance or debt cancellation or suspension coverage. Section 226.5(a)(2)(ii) would also be revised to require that, if credit insurance or debt cancellation or suspension coverage is required as part of the plan, the term "required" must be used and the program must be identified by its name. This would he parallel to the requirement adopted in the January 2009 Regulation Z Rule for open-end (not home-secured) credit under § 226.5(a)(2)(iii) discussed below.

Paragraph 5(a)(2)(iii)

Section 226.5(a)(2)(iii) contains three terminology requirements adopted in the January 2009 Regulation Z Rule for open-end (not home-secured) credit. First, if credit insurance or debt cancellation or suspension coverage is required as part of the plan, the term "required" must be used and the program must be identified by its name. This requirement is proposed to apply to HELOCs subject to § 226.5b as well (under proposed § 226.5(a)(2)(ii), as discussed above).

Second, § 226.5(a)(2)(iii) requires a creditor to use the term "penalty APR" as applicable. Third, § 226.5(a)(2)(iii) prohibits a creditor from using the term "fixed" to describe a rate unless the creditor also specifies a time period during which the rate will be fixed and the rate will not increase during that period, or, if the creditor does not disclose a time period during which the rate will be fixed, the rate will not increase while the plan is open.

These latter two rules would not be applied to HELOCs subject to § 226.5b; accordingly, § 226.5(a)(2)(iii) would be revised to exclude home-equity plans from the terminology requirements relating to the terms "penalty APR" and "fixed." Regarding the "penalty APR" requirement, the Board's review of home-equity plans and HELOC creditor practices indicates that most HELOCs do not have penalty rates. Even if a penalty rate could apply, under § 226.5b(f) such a rate could apply to balances (both outstanding and future) only if an event permitting termination and acceleration of the plan, such as a significant payment default (more than 30 days late), has occurred. *See* proposed § 226.5b(f)(2)(ii) and comment 5b(f)(2)(ii)-1. In general, rate increases of any kind, including application of penalty rates, are much more restricted for HELOCs subject to § 226.5b than for credit card accounts, in which penalty rates can be applied even for minor defaults (although only on future transactions). For these reasons, the disclosures required for HELOCs, unlike those for credit card accounts, do not include penalty rates; see the discussion of this issue under §§ 226.5b and 226.6, below. Therefore, a terminology requirement relating to penalty rates is inapplicable.

Regarding using the term "fixed" to describe a rate, the Board believes that the reason for the prohibition applicable to credit card accounts does not exist for HELOCs. Credit card accounts have been marketed as having "fixed" rates even though rates could be increased at any time and for any reason. The rates of HELOCs subject to § 226.5b generally may only be changed in accordance with a publicly available index not under the control of the creditor or due to a circumstance permitting termination and acceleration. Thus, HELOC rates are generally variable, and would not be marketed as "fixed."

5(a)(3) Specific Formats

Section 226.5(a)(3) contains formatting requirements applicable to credit card and other open-end (not home-secured) credit, including tabular format requirements for applications and solicitations under § 226.5a, account-opening disclosures under § 226.6(b), disclosures accompanying checks that access a credit card account under § 226.9(b)(3), change-in-terms notices under § 226.9(c)(2), and notices of application of a penalty rate under § 226.9(g). Section 226.5(a)(3) also includes formatting requirements for periodic statements under § 226.7(b)(6) and (b)(13). In addition, this provision sets forth formatting requirements for HELOC disclosures at application under § 226.5b(b), but does not require use of a tabular format for these or any other HELOC disclosures.

The Board proposes to adopt tabular format requirements for HELOC disclosures, paralleling requirements adopted for credit card and other open-end (not home-secured) credit in the January 2009 Regulation Z Rule. Section 226.5(a)(3)(ii) would be revised to require a tabular format for HELOC disclosures currently required to be provided at the time of application. (The timing of these disclosures would be changed from at application to within three business days after application. *See* the discussion in this section-by-section analysis under §§ 226.5(b)(4) and 226.5b(b) below.) The tabular format requirement is discussed in detail under § 226.5b(b)(2)) below. The proposal would also revise § 226.5(a)(3) to eliminate the requirement that certain disclosures must precede other disclosures, as discussed below under § 226.5b(b)(2). Similarly, § 226.5(a)(3)(iii), (iv), (vi), and (vii) would be revised to impose formatting requirements comparable to those applicable to credit card and other open-end (not home-secured) credit for home-equity plan account-opening disclosures (§ 226.6(a)(1)), periodic statements (§ 226.7(a)(6)), change-in-terms notices (§ 226.9(c)(1)(iii)(B)), and notices of application of a penalty rate (§ 226.9(i)(4)), as discussed in this section-by-section analysis below under those disclosure provisions.

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

5(b)(1)(ii) Charges Imposed as Part of an Open-End Plan

In the January 2009 Regulation Z Rule, the Board adopted new § 226.5(b)(1)(ii) to provide, for open-end (not home-secured) credit, an exception to the requirement to provide account-opening disclosures before the first transaction under the plan. The exception applies to charges that are imposed as part of an open-end (not home-secured) credit plan but that are not required to be disclosed in a tabular format in the account-opening disclosures under § 226.6(b)(2). Under § 226.5(a)(1)(ii), these disclosures do not have to be provided in writing. Thus, a creditor may disclose these charges orally or in writing, after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, as long as the creditor discloses them at a time and in a manner such that a consumer would be likely to notice them.

As discussed above, the Board is proposing to revise § 226.5(a)(1)(ii) to apply the same exception to the written disclosure requirement to HELOCs subject to § 226.5b. For the reasons discussed above under § 226.5(a)(1)(ii), the Board also proposes to revise § 226.5(b)(1)(ii) to except the same charges from the general timing requirements. These are charges that are not required to be provided in a tabular format in the account-opening disclosures in a home-equity plan, and therefore would be expected to be less significant. Further, as discussed above, disclosure of these charges at the time a consumer agrees to pay the charge may be more useful to the consumer, because the disclosure would come at a time when the consumer would be more likely to notice the disclosure.

Comment 5(b)(1)(ii)-1, which provides guidance on compliance with the provisions of § 226.5(b)(1)(ii), would be revised to apply to HELOCs as well as open-end (not home-secured) plans. New comment 5(b)(1)(ii)-2 would be added to explain the relationship of the provisions of § 226.5(b)(1)(ii) to the restrictions on changes in terms of HELOCs under § 226.5b(f). The comment states that even if certain charges may be disclosed at a time later than account opening, the creditor would not be permitted to impose a charge for a feature or service previously available under the plan for no charge, or to increase a fee for a service previously available under the plan for a lower charge.

5(b)(1)(iv) Membership Fees

Section 226.5(b)(1)(iv)(A) provides that in general, a creditor may not collect any fee before account-opening disclosures are given. However, this provision allows creditors to collect a membership fee at an earlier time, as long as the consumer may, after receiving the disclosures, reject the plan and have the fee refunded. Section 226.5(b)(1)(iv)(B) provides that this provision does not apply to HELOCs, because separate rules about collection and refunds of fees apply under §§ 226.5b(g) and (h) and 226.15, which would cover membership fee reimbursements. Section 226.5b(g) requires that a creditor refund all fees paid if a term changes after application and the consumer decides not to open a HELOC account; § 226.5b(h) requires a refund of all fees upon the consumer's request within three business days after receipt of the application disclosures. (Under the proposal, § 226.5b(g) and (h) would be redesignated § 226.5b(d) and (e), respectively.) Section 226.5(b)(1)(iv)(B) would be revised by adding a cross-reference to §§ 226.5b(d) and (e) and 226.15, to ensure that users of the regulation are aware that even though the fee refundability rules of § 226.5(b)(1)(iv)(A) do not apply, home-equity plans are subject to other rules regarding refunds of fees.

5(b)(1)(v) Application Fees

Section 226.5(b)(1)(v) provides that application fees excludable from the finance charge under § 226.4(c)(1) are subject to the same rules regarding collection and refundability as other membership fees under § 226.5(b)(1)(iv). To clarify that HELOCs are not subject to these rules, but instead are subject to the separate rules about collection and refunds of fees under §§ 226.5b(d) and (e) and 226.15, § 226.5(b)(1)(v) would be redesignated § 226.5(b)(1)(v)(A), and a new § 226.5(b)(1)(v)(B) would be added, parallel to § 226.5(b)(1)(iv)(B).

5(b)(2) Periodic Statements

Paragraph 5(b)(2)(ii)

Section 226.5(b)(2)(ii) requires that the creditor mail or deliver a periodic statement at least 14 days before the end of any period allowing the consumer to pay to ***avoid*** the imposition of finance or other charges. Section 106(b) of the 2009 Credit Card Act (cited above), amends TILA Section 163 (15 U.S.C. 1666b) to require that the period between the mailing of the statement and the due date to ***avoid*** finance or other charges must be at least 21 days. On July 15, 2009, the Board published an interim final rule amending § 226.5(b)(2)(ii) to implement this provision of the Credit Card Act, which under the legislation becomes effective 90 days after enactment. Accordingly, no proposed amendments to § 226.5(b)(2)(ii) are in this proposal. When this proposal is adopted into a final rule, § 226.5(b)(2)(ii) will reflect the amendments made to implement the Credit Card Act.

5(b)(4) Home-Equity Plan Application and Three Days After Application Disclosures

Section 226.5(b)(4) states that the disclosures required at the time of an application for a home-equity plan must be provided in accordance with the timing requirements of § 226.5b. As discussed under § 226.5b below, the Board is proposing to change the timing requirements for home-equity plan disclosures; some disclosures would be required at the time of application, and additional disclosures would be required three business days after application. Accordingly, § 226.5(b)(4) would be revised to reflect the new timing requirements for the disclosures under § 226.5b, and to correct the cross-reference to the applicable paragraphs in that section. See the discussion of the proposed changes in the disclosure timing requirements under § 226.5b below.

Section 226.5b Requirements for Home-Equity Plans

Summary of Proposed Disclosure Requirements

Current § 226.5b, which implements TILA Section 127A, generally requires creditors to provide to the consumer two types of disclosures at the time an application for a HELOC is provided: "application disclosures" and a home-equity brochure published by the Board (the "HELOC brochure"). 15 U.S.C. 1637a. The application disclosures and HELOC brochure provide information about the creditor's HELOC plans and ***how*** HELOCs work; neither contains transaction-specific information about the terms of the HELOC offered by a creditor to a consumer, such as the credit limit or APR.

Application disclosures. The application disclosures that a creditor generally must provide to a consumer on or with an application for a HELOC plan must contain details about the creditor's HELOC plan, including the length of the draw and repayment periods, ***how*** the minimum required payment is calculated, whether a balloon payment will be owed if a consumer only makes minimum required payments, payment examples, and what fees are charged by the creditor to open, use, or maintain the plan. Again, they do not include information that is dependent on the value of the dwelling or a borrower's creditworthiness, such as a credit limit or the APRs offered to the consumer, because the application disclosures are provided before underwriting takes place.

The Board proposes to replace the application disclosures with transaction-specific HELOC disclosures ("early HELOC disclosures") that must be given within three business days after application (but no later than account opening). Under the proposal, the information required to be disclosed in the early HELOC disclosures would differ from the information required to be disclosed as part of the current application disclosures. For example, the Board proposes to require creditors to include several additional disclosures in the early HELOC disclosures that are not currently required to be disclosed as part of the application disclosures, such as the credit limit and the APRs being offered to the consumer. In addition, the Board proposes not to require creditors to provide certain disclosures in the early HELOC disclosures that are currently required to be disclosed as part of the application disclosures. For example, creditors generally would not be required to disclose as part of the early HELOC disclosures certain information related to variable rates currently required in the application disclosures under § 226.5b(d)(12), such as the historical payment example table.

Moreover, the Board proposes to revise the disclosure requirements for other information currently required to be disclosed in the application disclosures and included in the proposed early HELOC disclosures. For example, the application disclosures currently must include several payment examples based on a $ 10,000 outstanding balance. Under the proposal, the Board would require payment examples in the early HELOC disclosures, but would revise the payment examples to assume the consumer borrowed the full credit line offered to the consumer (as disclosed in the early HELOC disclosures) at the beginning of the draw period and drew no additional advances.

Moreover, the Board proposes stricter format requirements for the proposed early HELOC disclosures than currently are required for the application disclosures. Currently, the application disclosures may be provided in a narrative form, as ***shown*** in the current model forms for the application disclosures (see current Home-equity Samples G-14A and G-14B of Appendix G). Under the proposal, the early HELOC disclosures generally must be provided in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in proposed G-14 in Appendix G.

HELOC brochure. Currently, a creditor is required to provide to a consumer the HELOC brochure or a suitable substitute at the time an application for a HELOC is provided to the consumer. The HELOC brochure is around 20 pages long and provides general information about HELOCs and ***how*** they work, as well as a glossary of relevant terms and a description of various features that can apply to HELOCs. The Board proposes to eliminate the requirement for creditors to provide to consumers the HELOC brochure with applications for HELOCs. Instead, the Board proposes to require that a creditor must provide a new document published by the Board entitled, "Key Questions to ***Ask*** about Home Equity Lines of Credit" (the "Key Questions" document) to a consumer when a HELOC application is given to the consumer. This "Key Questions" document would be a one-page document that is designed to contain simple, straightforward and concise information about HELOCs, including potentially risky features.

Current Comments 5b-2 and 5b-3

Current comments 5b-2 and 5b-3 provide transaction rules that were included in the commentary when § 226.5b was added to Regulation Z in 1989. Specifically current 5b-2 provides that the notice rules of § 226.9(c) apply if, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a HELOC plan *entered into on or after November 7, 1989* at or before the plan's scheduled expiration (for example, by renewing the plan on different terms). A new plan results, however, if the plan is renewed (with or without changes to the terms) after the scheduled expiration. The new plan is subject to all open-end credit rules, including §§ 226.5b, 226.6, and 226.15.

The Board proposes a technical revision to this comment to delete the reference to November 7, 1989, as obsolete. Thus, this proposed comment provides that the notice rules of § 226.9(c) applies if, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a HELOC plan at or before its scheduled expiration (for example, by renewing the plan on different terms). A new plan would result, however, if the plan is renewed (with or without changes to the terms) after the scheduled expiration. The new plan would be subject to all open-end credit rules, including §§ 226.5b, 226.6, and 226.15.

Current comment 5b-3 provides that the requirements of § 226.5b do not apply to HELOC plans *entered into before November 7, 1989*. The requirements of § 226.5b also do not apply if the original consumer, on or after November 7, 1989, renews a plan entered into prior to that date (with or without changes to the terms). If, on or after November 7, 1989, a security interest in the consumer's dwelling is added to a line of credit entered into before that date, the substantive restrictions of § 226.5b apply for the remainder of the plan, but no new disclosures are required under § 226.5b. The Board proposes to delete this comment as obsolete.

5b(a) Home-Equity Document Provided on or With the Application

5b(a)(1) General

Current § 226.5b(b) and (e), which implement TILA Section 127A(b)(1)(A) and (e), require a creditor to provide the HELOC brochure published by the Board, or a suitable substitute, to a consumer when a HELOC application is given to the consumer. 15 U.S.C. 1637a(b)(1)(A) and (e). Pursuant to Section 4 of the Home Equity Loan Act cited earlier, the Board's HELOC brochure must contain (1) a general description of HELOC plans and the terms and conditions on which such plans are generally extended; and (2) a discussion of the potential advantages and disadvantages of such plans. As discussed above, the current HELOC brochure is around 20 pages long and provides general information about HELOCs and ***how*** they work, as well as a glossary of relevant terms, and a description of various features that can apply to HELOCs.

"Key Questions" document. The Board proposes to eliminate the requirement in current § 226.5b(b) and (e) for creditors to provide to consumers the HELOC brochure on or with applications for HELOCs. Instead, the Board proposes in new § 226.5b(a)(1) to require a creditor to provide a new document published by the Board entitled "Key Questions to ***Ask*** about Home Equity Lines of Credit" (the "Key Questions" document) to a consumer when a HELOC application is given to the consumer. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). TILA also gives the Board authority to require a brochure with content "substantially similar" to that required in Section 4 of the Home Equity Loan Act. 15 U.S.C. 1637(e)(2). In consumer testing conducted by the Board on HELOC disclosures, the Board ***asked*** participants to review the HELOC brochure, and indicate whether the brochure provides useful information and whether they would be likely to read the brochure if it were given to them with a HELOC application. In this consumer testing, some participants found the HELOC brochure useful, particularly if they had little experience with HELOCs or home-equity products in general. However, a significant number of participants indicated that the HELOC brochure is too long, and, as a result, they would be unlikely to read it. In the consumer testing, most participants had obtained a HELOC in the past, but none of the participants recalled reading the HELOC brochure when they applied for a HELOC. Some participants recommended that a shorter, more concise version of the HELOC brochure would be more useful and easier to read and comprehend.

In many respects, the "Key Questions" document (included in this **SUPPLEMENTARY INFORMATION** as Attachment A) satisfies the statutory requirements for the HELOC brochure, which, as noted, must include a general description of HELOC plans and the terms and conditions on which such plans are generally extended; and a discussion of the potential advantages and disadvantages of such plans. This one-page document would inform consumers about certain HELOC terms that are important for consumers to consider when selecting a home-equity product, including potentially risky features such as variable rates and balloon payments. As ***shown*** in Attachment A, the "Key Questions" document would contain answers to the following questions: "Can my interest rate increase?," "Can my minimum payment increase?," "When can I borrow money?," "***How*** soon do I have to pay off my balance?," "Will I owe a balloon payment?", "Do I have to pay any fees?," and "Should I get a home equity loan instead of a line of credit?" The "Key Questions" document also would provide a link to the Board's Web site for further information, which currently contains an electronic version of the HELOC brochure. The "Key Questions" document was designed based on consumers' preference for a question-and-answer tabular format, and refined in several rounds of consumer testing. In the consumer testing, the "Key Questions" document tested well with participants: all indicated that they would find it useful, most found it very clear and easy to read, and the majority indicated that they would read a one-page disclosure, such as the "Key Questions" document, when considering a HELOC.

As a result, proposed § 226.5b(a)(1) requires a creditor to provide the Board's "Key Questions" document to a consumer at the time an application is provided to the consumer. Proposed § 226.5b(a)(1) requires creditors to provide this document "as published." Proposed comment 5b(a)(1)-9 clarifies that a creditor may not revise the "Key Questions" document. The Board believes that requiring creditors to provide the "Key Questions" document without revision would benefit consumers. Consumers would receive consistent information about certain HELOC terms that are important to consider when selecting a home-equity product; this information would be provided in a question-and-answer format using language proven to be useful to consumers through consumer testing.

HELOC applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker. Under footnote 10a, which implements TILA Section 127A(b)(1)(A), the application disclosures and HELOC brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application that was in a magazine or other publication, or when the application is received by telephone or through an intermediary agent or broker. 15 U.S.C.

1637a(b)(1)(A). Current comment 5b(b)-6 provides a cross reference to comment 19(b)-3 for guidance on determining whether or not an application involves an "intermediary agent or broker." Current comment 19(b)-3 provides that an example of an "intermediary agent or broker" is a broker who (1) customarily within a brief time after receiving an application inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them; and (2) is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, the broker might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area). (In the proposal issued by the Board on closed-end mortgages published elsewhere in today's **Federal Register**, the Board proposes to move current comment 19(b)-3 to proposed comment 19(d)(3)-3.)

The Board proposes to revise and move the contents of footnote 10a related to telephone applications and applications received through intermediary agents and brokers to proposed § 226.5b(a)(1)(ii). Specifically, proposed § 226.5b(a)(1)(ii) provides that for telephone applications and applications received through an intermediary agent or broker, the "Key Questions" document must be delivered or mailed within three business days following receipt of a consumer's application by the creditor (but no later than account opening). In these cases, the "Key Questions" document must be provided along with the early HELOC disclosures (which are discussed in more detail in the section-by-section analysis to proposed § 226.5b(b)(1)). In addition, current comment 5b(b)-6 (that provides a cross reference to current comment 19(b)-3 for guidance on determining whether an application involves an "intermediary agent or broker") would be moved to proposed comment 5b(a)(1)-7 with technical revisions. The Board also proposes to add new comment 5b(a)(1)-8 to cross reference the definition of "business day" contained in § 226.2(a)(6).

The Board proposes, however, to delete the contents of footnote 10a related to applications contained in magazines or other publications. Specifically, current footnote 10a permits a creditor not to provide application disclosures and the HELOC brochure with applications that a creditor makes available to consumers in magazine or other publications. Instead, the creditor may provide these disclosures within three business days following receipt of a consumer's application. The rationale for this approach was that requiring a creditor to provide the application disclosures and HELOC brochure with applications available to consumers in magazines or other publications would overly burden creditors because these disclosures would take up many pages in a magazine or other publication.

Nonetheless, the Board proposes under new § 226.5b(a)(1) to require a creditor to provide the "Key Questions" document with applications that the creditor makes available to consumers in magazines or other publications, rather than providing the pamphlet within three days of application as required by TILA 127A(b)(1)(A). 15 U.S.C. 1637a(b)(1)(A). The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Unlike the application disclosures and the HELOC brochure that could take up multiple pages in a magazine or other publication, the "Key Questions" document would be one page. Thus, the Board believes that requiring the "Key Questions" document to be disclosed with applications in magazines or other publications would not place undue burdens on creditors. In addition, requiring the "Key Questions" document to be given with applications in magazines or other publications would benefit consumers by providing with the application, information about HELOC terms that are important for consumers to consider when selecting a home-equity product. The Board solicits comments on this approach.

Mail applications. Current comment 5b(b)-1 provides that if a creditor sends an application through the mail, the application disclosures and the HELOC brochure must accompany the application. In addition, as discussed above,

if an application is taken over the telephone, the application disclosures and HELOC brochure may be delivered or mailed within three business days of taking the application. If an application is mailed to the consumer following a telephone request, however, the creditor also must send the application disclosures and a HELOC brochure along with the application. The Board proposes to move this comment to proposed comment 5b(a)(1)-1 and to apply this comment to disclosure of the "Key Questions" document.
Specifically, proposed comment 5b(a)(1)-1 provides that if the creditor sends an application through the mail, the "Key Questions" document must accompany the application. In addition, proposed comment 5b(a)(1)-1 provides that if an application is taken over the telephone, the "Key Questions" document must be delivered or mailed within three business days of taking the application (but not later than account opening). If an application is mailed to the consumer following a telephone request, however, the creditor would be required to send the "Key Questions" document along with the application.

General purpose applications. Current comment 5b(b)-2 provides that the application disclosures and the HELOC brochure need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a HELOC plan, or (2) the application is provided in response to a consumer's specific inquiry about a HELOC plan. If a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a HELOC plan, the application disclosures and HELOC brochure need not be provided even if the application indicates it can be used for a HELOC plan, unless it is accompanied by promotional information about HELOC plans.

The Board proposes to move this comment to proposed comment 5b(a)(1)-2 and to apply this comment to disclosure of the "Key Questions" document. Specifically, proposed comment 5b(a)(1)-2 provides that the "Key Questions" document need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a HELOC plan or (2) the application is provided in response to a consumer's specific inquiry about a HELOC plan. Proposed comment 5b(a)(1)-2 also provides that if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a HELOC plan, the "Key Questions" document need not be provided even if the application indicates it can be used for a HELOC, unless it is accompanied by promotional information about HELOC plans.

Publicly-available applications. Current comment 5b(b)-3 addresses applications for HELOCs that are available without the need for a consumer to request them, such as so-called "take-one forms". This comment provides that these applications must be accompanied by the application disclosures and the HELOC brochure, such as by attaching the application disclosures and the HELOC brochure to the application form. The Board proposes to move this comment to proposed comment 5b(a)(1)-3 and to apply this comment to disclosure of the "Key Questions" document. Specifically, proposed comment 5b(a)(1)-3 provides that a creditor must include the "Key Questions" document with applications that are available without the need for a consumer to request them, such as take-ones, and that a creditor may provide this document by attaching it to the application.

Response cards. Current comment 5b(b)-4 states that sometimes a creditor may solicit consumers for its HELOC plan by mailing a response card which the consumer returns to the creditor to indicate interest in the plan. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the application disclosures and the HELOC brochure with the response card. The Board proposes to move this comment to proposed comment 5b(a)(1)-4 and to apply this comment to disclosure of the "Key Questions" document.
Specifically, proposed comment 5b(a)(1)-4 provides that a creditor is not required to send the "Key Questions" document with a response card if the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan. If the creditor sends the consumer an application form in response to receiving a response card, proposed comment 5b(a)(1)-1 provides that a creditor must provide the "Key Questions" document with the application form. In addition, if a creditor calls the consumer in response to receiving a response card and an application is taken over the phone, proposed comment 5b(a)(1)-1 provides that the "Key Questions" document must be delivered or mailed within three business days of taking the application (but not later than account opening).

Denial or withdrawal of application. Current comment 5b(b)-5 provides that in situations where current footnote 10a permits the creditor a three-day delay in providing application disclosures and the HELOC brochure, if the creditor determines within that period that an application will not be approved, the creditor need not provide the consumer with the application disclosures or HELOC brochure. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the application disclosures or the HELOC brochure. The Board proposes to move this comment to proposed comment 5b(a)(1)-5 and to apply this comment to the "Key Questions" document. Specifically, proposed comment 5b(a)(1)-5 provides that in situations where proposed § 226.5b(a)(1)(ii) allows a creditor to delay providing the "Key Questions" document until three business days following receipt of a consumer's application--namely, for telephone applications and applications received through an intermediary agent or broker--if the creditor determines within that three-day period that an application will not be approved, the creditor would not need to provide the "Key Questions" document. Similarly, under this proposed comment, if a consumer withdraws the application within this three-day period, the creditor would not need to provide the "Key Questions" document.

Prominent location. Current § 226.5b provides that the application disclosures and the HELOC brochure must be provided on or with the application. *See* current § 226.5b(a)(1), (b) and (e). Current comment 5b(a)(1)-5 contains guidance on providing the application disclosures and the HELOC brochure on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Current comment 5a(a)(1)-5 provides creditors with flexibility in satisfying the requirement to provide the application disclosures and the HELOC brochure on or with a blank application that is made available to the consumer in electronic form. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples. First, the application disclosures and HELOC brochure could automatically appear on the screen when the application appears. Second, the application disclosures and the HELOC brochure could be located on the same Web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the application disclosures and the HELOC brochure and indicates that the application disclosures contain rate, fee, and other cost information, as applicable. Third, creditors could provide a link to the electronic application disclosures and HELOC brochure on or with the application as long as consumers cannot bypass the application disclosures and HELOC brochure before submitting the application. The link would take the consumer to the application disclosures and HELOC brochure, but the consumer need not be required to scroll completely through the application disclosures or HELOC brochure. Fourth, the application disclosures and HELOC brochure could be located on the same Web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application. Whatever method is used, a creditor need not confirm that the consumer has read the application disclosures and HELOC brochure.

Under proposed § 226.5b(a)(1), creditors would be required to provide the "Key Questions" document in a prominent location on or with the application. Proposed comment 5b(a)(1)-6 provides guidance to creditors for ***how*** to comply with the prominent location requirement when the document is given in either ***paper*** or electronic form. Proposed comment 5b(a)(1)-6.i provides that when the "Key Questions" document is provided in ***paper*** form, the document is prominently located, for example, if the document is on the same page as an application. If the document appears elsewhere, it is deemed to be prominently located if the application contains a clear and conspicuous reference to the location of the document and indicates that the document provides information about HELOCs.

With respect to disclosure of the "Key Questions" document in electronic form, the Board proposes to move current comment 5b(a)(1)-5, which provides guidance on providing the application disclosures and the HELOC brochure on or with a blank application that is made available to the consumer in electronic form, to proposed comment 5b(a)(1)-6.ii and to apply this guidance to the "Key Questions" document. In particular, proposed comment 5b(a)(1)-6.ii provides that generally, creditors must provide the "Key Questions" document in a prominent location on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors would have flexibility in satisfying this requirement. Under proposed comment 5b(a)(1)-6, methods creditors could use to satisfy the requirement include, but are not limited to, the following examples. First, the "Key Questions" document could automatically appear on the screen when the application appears. Second, the "Key Questions" document could be located on the same Web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the document and indicates the document includes information about HELOCs. Third, creditors could provide a link to the electronic "Key Questions" document on or with the application as long as consumers cannot bypass the document before submitting the application. The link would take the consumer to the document, but the consumer need not be required to scroll completely through the document. Fourth, the "Key Questions" document could be located on the same Web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application. Whatever method is used, a creditor would not need to confirm that the consumer has read the "Key Questions" document.

5b(a)(2) Electronic Disclosures

Current § 226.5b(a)(3) provides that for an application accessed by the consumer in electronic form, the application disclosures and HELOC brochure may be provided to the consumer in electronic form on or with the application. Current comment 5b(a)(3)-1 provides guidance on when the application disclosures and HELOC brochure must be in electronic form. Specifically, current comment 5b(a)(3)-1 provides that if a consumer accesses a HELOC application electronically (other than as described below), such as online at a home computer, the creditor must provide the application disclosures and HELOC brochure in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed ***paper*** disclosures to the consumer, this requirement would not be met. In contrast, if a consumer is physically present in the creditor's office, and accesses a HELOC application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide the application disclosures and HELOC brochure in either electronic or ***paper*** form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

The Board proposes to move current § 226.5b(a)(3) and current comment 5b(a)(3)-1 to proposed § 226.5b(a)(2) and proposed comment 5b(a)(2)-1, respectively, and to apply these provisions to the "Key Questions" document. Specifically, proposed § 226.5b(a)(2) provides that for an application accessed by the consumer in electronic form, the "Key Questions" document may be provided to the consumer in electronic form on or with the application. In addition, proposed comment 5b(a)(2)-1 provides guidance on when the "Key Questions" document must be in electronic form. Specifically, proposed comment 5b(a)(2)-1 provides that if a consumer accesses a HELOC application electronically (other than as described below), such as online at a home computer, the creditor must provide the "Key Questions" document in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide the document in a timely manner on or with the application. If the creditor instead mailed the "Key Questions" document in ***paper*** form to the consumer, the requirement that the "Key Questions" document be provided on or with the application would not be met. In contrast, if a consumer is physically present in the creditor's office, and accesses a HELOC application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide the "Key Questions" document in either electronic or ***paper*** form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

5b(a)(3) Duties of Third Parties

Current § 226.5b(c), which implements TILA Section 127A(c), provides that persons other than the creditor who provide applications to consumers for HELOC plans generally must provide the HELOC brochure at the time an application is provided. 15 U.S.C. 1637a(c). If such persons have the application disclosures for a creditor's HELOC plan, they also must provide the disclosures at the time an application is provided. Current comment 5b(c)-1 clarifies that although third parties who give applications to consumers for HELOC plans must provide the HELOC brochure in all cases, such persons are required to provide the application disclosures only in certain instances. A third party has no duty to obtain application disclosures about a creditor's HELOC plan or to create a set of disclosures based on what it knows about a creditor's plan. If, however, a creditor provides the third party with application disclosures along with its application form, the third party must give the disclosures to the consumer with the application form. Current comment 5b(c)-1 also provides that the duties under current § 226.5b(c) are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations. Current comment 5b(c)-1 further provides that if an intermediary agent or broker takes an application over the telephone or receives an application contained in a magazine or other publication, current footnote 10a permits that person to mail the application disclosures and the HELOC brochure within three business days of receipt of the application. In addition, current comment 5b(e)-2 provides that if a creditor determines that third party has provided a consumer with the required HELOC brochure, the creditor need not give the consumer a second brochure.

The Board proposes to delete current § 226.5b(c) and current 5b(c)-1 as obsolete. As discussed above and in more detail in the section-by-section analysis to proposed § 226.5b(b)(1), the Board proposes to delete the requirement that the application disclosures and HELOC brochure be provided on or with an application for a HELOC plan. Regarding obligations on third parties to provide disclosures on or with HELOC applications, the Board proposes in new § 226.5b(a)(3) to require persons other than the creditor who provide applications to consumers for HELOC plans to, provide the "Key Questions" document on or with HELOC applications (except for telephone applications, discussed below). This proposed requirement on third parties generally to provide the "Key Questions" document on or with HELOC applications is consistent with the requirement in current § 226.5b(c) that third parties must provide the HELOC brochure on or with HELOC applications.

Nonetheless, unlike current § 226.5b(c), which does not require a third party to provide the HELOC brochure with applications the third party makes available in magazines and other publications, proposed § 226.5b(a)(3) requires third parties to provide the "Key Questions" document with these HELOC applications. As discussed above regarding a creditor's duty to provide the "Key Questions" document with HELOC applications in magazines or other publications, the Board believes that requiring the "Key Questions" document to be disclosed with applications in magazines or other publications would not place undue burdens on third parties because the "Key Questions-document is a single page. In addition, requiring the "Key Questions" document to be given with applications in magazines or other publications would benefit consumers by providing with the application information about HELOC terms that are important for consumers to consider when selecting a home-equity product. The Board solicits comments on this approach.

Under proposed § 226.5b(a)(3), third parties would not be required to provide the "Key Questions" document with respect to telephone applications. Proposed comment 5b(a)(3)-3 clarifies that for telephone applications taken by a third party, the creditor would have the duty to provide the "Key Questions" document within three days following receipt of the consumer's application by the creditor (but not later than account opening). The Board believes that imposing a separate duty on a third party to provide the "Key Questions" document for telephone applications is unnecessary, because the creditor would be required under proposed § 226.5b(a)(1) to provide the "Key Questions" document and the early HELOC disclosures (as discussed in more detail in the section-by-section analysis to proposed § 226.5b(b)(1)) within three days after the application has been received by the creditor (but not later than account opening).

Proposed comment 5b(a)(3)-1 provides that the duties to provide the "Key Questions" document under proposed § 226.5b(a)(3) are those of the third party; the creditor would not responsible for ensuring that a third party complies with those obligations. This proposed comment is consistent with current guidance in current comment 5b(c)-1. Proposed comment 5b(a)(3)-2 provides that if a creditor determines that a third party has provided a consumer with the "Key Questions" document, the creditor need not give the consumer a second copy of the document. This proposed comment is consistent with current guidance in comment 5b(e)-2 regarding disclosure of the HELOC brochure.

5b(b) Home-Equity Disclosures Provided No Later Than Account-Opening or Three Business Days After Application, Whichever Is Earlier

5b(b)(1) Timing

Current § 226.5b(b), which implements TILA Section 127A(b)(1)(A), generally requires creditors to provide to the consumer two types of disclosures at the time an application for a HELOC is provided: Application disclosures and the HELOC brochure. 15 U.S.C. 1637a(b)(1)(A). The Board proposes to delete current § 226.5b(b). As discussed in more detail above in the section-by-section analysis to proposed § 226.5b(a), the Board proposes no longer to require creditors to disclose the HELOC brochure to consumers on or with HELOC applications. In addition, as discussed below, the Board proposes to replace the application disclosures with transaction-specific HELOC disclosures (the "early HELOC disclosures") that must be given within three business days after application (but no later than account opening). *See* proposed § 226.5b(b)(1).

The application disclosures that a creditor generally must provide to a consumer on or with an application for a HELOC plan must contain details about the creditor's HELOC plan, including the length of the draw and repayment periods, ***how*** the minimum required payment is calculated, whether a balloon payment will be owed if a consumer only makes minimum required payments, payment examples, and what fees are charged by the creditor to open, use, or maintain the plan. The application disclosures do not include information dependent on the value of the dwelling or a borrower's creditworthiness, such as a credit limit or the APRs offered to the consumer, because the application disclosures are provided before underwriting takes place.

In the proposed rule implementing the Mortgage Disclosure Improvement Act of 2008 (contained in Sections 2501-2503 of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, enacted on July 30, 2008, as amended by the Emergency Economic Stabilization Act of 2008, Pub. L. 110-343, enacted on October 3, 2008) (MDIA), the Board solicited comment on the timing of HELOC disclosures. 73 FR 74989 (December 10, 2008). MDIA, which applies only to closed-end mortgage transactions, requires that early mortgage disclosures be provided no later than three business days after application and seven business days before consummation of the loan. The Board noted that the timing of HELOC application disclosures is not affected by MDIA, but solicited comment on whether it would be necessary or appropriate to change the timing of the HELOC application disclosures and, if so, what changes should be made. The Board ***asked*** whether transaction-specific disclosures (such as the APR, an itemization of fees, and potential payment amounts) should be required after application and earlier than account opening, at least in some circumstances. The Board noted that many consumers take a major draw on the account immediately upon opening it, to fund a home purchase, for example, or pay for an immediate large expense such as a college tuition bill. The Board ***asked*** commenters to address whether a requirement to disclose the final HELOC terms, including the APR and fees, three days before account opening would substantially benefit consumers who plan to take a draw immediately. The Board also requested comment on whether the potential costs of such a requirement would outweigh the potential benefits.

Financial institution commenters opposed requiring disclosures based on the amount of an initial draw on the line of credit to be given in advance of account opening. Commenters contended that it would be impracticable to provide disclosures based on the amount of an initial draw, because the creditor, at the time disclosures would be required, would have no way of knowing the amount of the draw, or even whether the consumer planned to take a draw immediately upon account opening. Commenters argued that it would be difficult for creditors to discern the consumer's intent prior to account opening. The consumer might not have plans at the time of the disclosures regarding the initial draw; thus, even if the creditor ***asked*** the consumer, the creditor might still be unable to obtain this information. Commenters also contended that consumers might need funds soon and that in such cases the enforced three-day waiting period would be more disadvantageous than beneficial to consumers.

Another commenter discussed the possibility of two separate timing requirements--one for cases in which the amount of the initial draw is known, and another in which this amount is not known--but argued that such a rule would be difficult for creditors to manage correctly. Other commenters argued generally that existing disclosures provide adequate information for consumers and that imposing the suggested timing requirement would impose undue burdens and costs on creditors.

Consumer group commenters argued that HELOCs are widely used by creditors in place of closed-end second mortgages, and that some creditors use HELOCs for first mortgages as well, to ***avoid*** having to provide closed-end TILA disclosures. Accordingly, these commenters argued that HELOC creditors should be required to disclose the expected total of payments, finance charge, and payment schedule. One consumer group commenter stated that the differences in content and timing between closed-end mortgage disclosures and HELOC disclosures makes it difficult for consumers effectively to comparison shop between these two types of credit, and thus difficult to make meaningful choices. The commenter also argued that since creditors must revise their systems to comply with MDIA for closed-end mortgage loans, complying with the same rules for HELOCs would cause little additional expense.

The Board believes that providing disclosures that would be transaction-specific, based on the amount of an initial draw, or on expected amounts of draws and payments over the life of the plan, would not be practicable. In addition, the Board believes that requiring the account-opening HELOC disclosures to be provided some period, such as three or seven business days, in advance of account opening could unnecessarily delay the process of opening a HELOC in some cases and thus could disadvantage some consumers. [13]

The Board nevertheless believes that consumers could benefit from receiving early HELOC disclosures that are more transaction-specific than the application disclosures provided under the current regulation. Therefore, the proposal provides for early HELOC disclosures to be given within three business days after application or no later than account opening, whichever is earlier. The Board anticipates that in most cases account opening will not occur prior to three business days after application, and the early HELOC disclosures will be given at least some days in advance of account opening. Further, as discussed in more detail in the section-by-section analysis to proposed § 226.5b(c), the proposal requires early HELOC disclosures to be based on (1) the actual APR for which the consumer qualifies (unlike the application disclosures, which do not include a consumer-specific APR) and (2) the amount of the credit limit for which the consumer likely qualifies (unlike the current application disclosures, which include disclosures based on a hypothetical draw of $ 10,000). The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board believes that to assure a meaningful disclosure of the credit terms of a HELOC, so that consumers can fully understand the terms offered on the HELOC, it is necessary and proper to adjust the timing of the HELOC disclosures from at-application to within three business days after application (but no later than account opening).

Consumer testing conducted by the Board on HELOC disclosures supports this proposed approach. In the first two rounds of testing, some participants reviewing a disclosure based on the current requirements for the application disclosures either tried to find an interest rate applicable to their plan and were surprised to learn that such a rate is not contained in the disclosure, or incorrectly assumed that one of the rates ***shown*** in the disclosure (which are hypothetical, not actual, rates) was the rate that was being offered to them. In subsequent testing of a disclosure form with more transaction-specific information (including the APR and credit limit for which the consumer qualified), participants indicated they would prefer to receive a transaction-specific disclosure, as opposed to a more generic disclosure at application (such as the one provided under the current regulation), even if this choice meant that the consumer would not receive any disclosure of HELOC plan terms at the time of application.

Participants indicated that the APR and the credit limit offered on a HELOC plan are two of the most important pieces of information that they want to know in deciding whether to open a HELOC. The participants said that they would still prefer to receive transaction-specific disclosures soon after application rather than generic disclosures at application even if they were required to pay an application fee before receiving the later, more transaction-specific

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[13] An American Bankers Association (ABA) survey reported that the average business days between application and closing for HELOCs and home equity loans ranged from 8 days for larger institutions to 10 days for smaller institutions. American Bankers Ass'n, "ABA Home Equity Lending Survey Report" (2005), pp. 18 and 71.

disclosure. [14] These findings are consistent with the findings in the Board's testing of closed-end mortgage disclosures, as discussed in the proposal issued by the Board on closed-end mortgages published elsewhere in today's **Federal Register**.

The proposal regarding the early HELOC disclosures is also supported by the legislative history of the Home Equity Loan Act. The chief sponsor of the Act, Representative David Price, explained that the disclosure provisions of the bill (H.R. 3011) were enacted to address concerns about the then-current law on HELOC disclosures, under which "a consumer may never be advised about the essential features of his or her home-equity loan until it's time to sign the full agreement." [15] It appears that the intent of the legislation was to provide the consumer information about the consumer's particular HELOC, based on the belief that transaction-specific information could be given at the time of application. Because transaction-specific information is not available until after application, the Board believes that the proposed approach of requiring disclosures to contain more transaction-specific information, and to be given within three business days after application, is in accord with the congressional intent.

The Board notes that delaying the early HELOC disclosures until three days after application would not result in added cost to a consumer, because as noted above, and as further discussed in the section-by-section analysis to proposed § 226.5b(d) and (e), the consumer has the right to a refund of any fees paid in connection with the HELOC for three business days after the consumer receives the disclosures. In addition, if the disclosed terms change after the early HELOC disclosures are provided but before the plan is opened, the consumer has the right to a refund of any fees at any time before account opening.

Substitution of account-opening disclosures for early HELOC disclosures. Proposed § 226.5b(b)(1) provides that the early HELOC disclosures must be provided within three business days after application, but no later than account opening. Account opening might be unlikely to occur sooner than three business days after application, but this situation could arise. In that event, under the proposal, a creditor would be required to provide both the early HELOC disclosures under proposed § 226.5b(b)(1) and account-opening disclosures under proposed § 226.6. As discussed in more detail in the section-by-section analysis to proposed § 226.6, the Board proposes that certain account-opening disclosures must be disclosed in a tabular format. Under the proposal, the account-opening summary table would not be identical to the table containing the early HELOC disclosures. For example, the table containing the early HELOC disclosures would ***show*** and compare two payment options offered on the HELOC (unless a creditor offers only one), while the account-opening summary table would ***show*** only the payment plan chosen by the consumer. In addition, the table containing the early HELOC disclosures contains a summary of fees, while the account-opening summary table ***shows*** fees in greater detail.

The Board solicits comment on whether, and if so in what circumstances, creditors should be permitted to substitute the account-opening summary table for the table containing the early HELOC disclosures in situations where the early HELOC disclosures are required to be given at the time the account is opened (because account opening occurs within three business days after application). For example, the regulation could provide that, because the account-opening summary table ***shows*** only one HELOC payment plan, the account-opening summary table would be permitted to be used in place of the early HELOC disclosures only if the creditor offers only one payment plan or the consumer had already chosen a plan before account opening. The Board also requests comment on ***how*** frequently account opening for HELOCs occurs within three business days after application.

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[14] The rules regarding refundability of fees, discussed in more detail in the section-by-section analysis to §§ 226.5b(d) and (e) below, would permitconsumers to obtain a refund of such fees in some cases; however, most participants were not aware of this fact when they expressed their preference for the more transaction-specific disclosure.

[15] Remarks of Rep. Price on H.R. 3011, the Home Equity LoanConsumer Protection Act of 1988, Pub. L., 100-709, enacted on Nov. 23, 1988, Congr. Rec., H4472 (June 20, 1988).

Denial or withdrawal of application. Current footnote 10a provides that the application disclosures and HELOC brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application for applications in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker. Current comment 5b(b)-5 provides that in situations where current footnote 10a permits the creditor a three-day delay in providing application disclosures and the HELOC brochure, if the creditor determines within that period that an application will not be approved, the creditor need not provide the consumer with the application disclosures or HELOC brochure. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the application disclosures or the HELOC brochure.

The Board proposes to move this comment to proposed comment 5b(b)(1)-1 and apply this comment to disclosure of the early HELOC disclosures. As discussed above, § 226.5b(b)(1) provides that creditors must deliver or mail the early HELOC disclosures to a consumer not later than account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier. The Board also proposes to add new comment 5b(b)(1)-2 to cross reference the definition of "business day" contained in § 226.2(a)(6). Proposed comment 5b(b)(1)-1 provides that if the creditor determines within this three-day period that an application will not be approved, the creditor would not need to provide the early HELOC disclosures. Similarly, under this proposed comment, if a consumer withdraws the application within this three-day period, the creditor would not need to provide the early HELOC disclosures.

5b(b)(2) Form of Disclosures; Tabular Format

Tabular format. Current § 226.5b(a)(1), which implements TILA Section 127A(b)(2)(B), provides that the application disclosures must be made clearly and conspicuously and generally must be grouped together and segregated from all unrelated information. 15 U.S.C. 1637a(b)(2)(B). Nonetheless, several application disclosures are not required to be grouped together with other application disclosures. Specifically, current § 226.5b(a)(1), which in part implements TILA Section 127A(b)(2)(D), provides that disclosures about variable rates offered on an HELOC plan that are required to be disclosed as part of the application disclosures may be grouped together with the other application disclosures, or may be provided separately from the other application disclosures. 15 U.S.C. 1637a(b)(2)(D). In addition, under current § 226.5b(a)(1), a disclosure of conditions under which a creditor can take certain actions under the plan, such as terminating the plan, described in current § 226.5b(d)(4)(iii), and an itemization of fees imposed by third parties to open the HELOC plan described in current § 226.5b(d)(8) also may be grouped together with the other application disclosures or may be disclosed separately.

Current comment 5b(a)(1)-3 provides that while most of the application disclosures must be grouped together and segregated from all unrelated information, a creditor is permitted to include with the application disclosures information that explains or expands on the required disclosures. This comment also provides guidance on what types of information explain or expand on the required disclosures.

Although the application disclosures generally must be grouped together and segregated from all unrelated information, current § 226.5b(a)(1) does not require the application disclosures to be disclosed in a tabular format. Currently, creditors generally provide the application disclosures in a narrative form, consistent with the current sample forms for the application disclosures set forth in current G-14A and G-14B of Appendix G.

Proposal. The Board proposes to delete current § 226.5b(a)(1) and current 5b(a)(1)-3. As described above, the Board proposes to delete the requirement that creditors must provide the application disclosures required under current § 226.5b. Instead, the Board proposes to require creditors to provide early HELOC disclosures within three business days following receipt of the consumer's application by the creditor (but not later than account opening). In addition, the Board proposes stricter format requirements for the proposed early HELOC disclosures than currently are required for the application disclosures. Specifically, proposed § 226.5b(b)(2)(i) requires that the early HELOC disclosures generally must be provided in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in proposed G-14 in Appendix G. Proposed comment 5b(b)(2)-1 clarifies that proposed § 226.5b(b)(2)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in proposed G-14 to Appendix G. Under the proposal, creditors would not be allowed to include in the table information that is not specifically required or permitted to be disclosed in the table, as set forth in proposed § 226.5b(c)(4)(ii) through (c)(19). Creditors would be required to place certain information, such as the name and address of the borrower, directly above the table, in a format substantially similar to any of the applicable tables found in proposed G-14 in Appendix G. *See* proposed § 226.5b(b)(2)(iii). Creditors would be required to place certain information, such as a statement that the consumer is not required to accept the disclosed terms, directly below the table, in a format substantially similar to any of the applicable tables found in proposed G-14 in Appendix G. *See* proposed § 226.5b(b)(2)(iv). Creditors could include other information outside the table. *See* proposed § 226.5b(b)(2)(v). The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The proposed requirements that the early HELOC disclosures must be provided in a table (or directly above or below the table) and no other information may be disclosed in the table is consistent with TILA Section 127A(b)(2)(B), which generally requires the application disclosures to be segregated from all unrelated information.

As discussed above, creditors typically provide the application disclosures in a narrative form, consistent with the model forms for the application disclosures set forth in current Home-equity Samples G-14A and G-14B of Appendix G. In the consumer testing conducted by the Board on HELOC disclosures, the Board tested application disclosures in a narrative form, designed to simulate those currently in use. Participants in consumer testing found this form difficult to read and understand, and their responses to follow-up questions ***showed*** that they also had difficulty identifying specific information in the text. Participants who saw forms that were structured in a tabular format, on the other hand, commented that the information was easier to understand and had more success answering comprehension questions. These results regarding the benefit of disclosing information in a tabular format are consistent with the results of research that the Board conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule. (*See* §§ 226.5a(a)(2), 226.6(b)(1), 226.9(b)(3), 226.9(c)(2)(iii)(B) and 226.9(g)(3)(iii) for certain disclosures applicable to open-end (not home-secured) credit that must be disclosed in a tabular format.) For these reasons, the Board proposes to require that the early HELOC disclosures generally must be provided in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in proposed G-14 in Appendix G.

Unlike with current § 226.5b(a)(1), under the proposal, creditors would not be allowed to disclose information about variable rates pursuant to proposed § 226.5b(c)(10) separately from the other early HELOC disclosures. See proposed § 226.5b(b)(2)(i) and (c)(10). The Board proposes to require the variable-rate information to be disclosed in the table with the other early HELOC disclosures. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). In the consumer testing conducted by the Board on HELOC disclosures, participants indicated that information about the current rate on the plan (based on the current value of the index and margin) was one of the most important pieces of information that the participants wanted to know as part of the early HELOC disclosures. Requiring creditors to disclose the current rate offered on the plan, along with other variable-rate information, in the table, as proposed, would better ensure that consumers are aware of and understand those terms. As discussed above, in the consumer testing on HELOC disclosures, participants were more likely to notice and understand information when it was presented in a tabular format, than when it was presented in a narrative form. In addition, as discussed in more detail below in the section-by-section analysis to proposed § 226.5b(c)(9)(iii), information about sample payments is required to be disclosed in the table, and these sample payments are calculated using the rates applicable to the HELOC plan. Requiring information about rates and certain other variable-rate information to be disclosed in the table would allow consumers to understand ***how*** the sample payments relate to the rates offered on the plan.

In addition, unlike current § 226.5b(a)(1), the Board proposes to require that information about one-time fees imposed by third parties to open the HELOC plan must be disclosed in the table provided as part of the early HELOC disclosures. See proposed § 226.5b(b)(2)(i) and (c)(11). Again, participants in the consumer testing conducted by the Board on HELOC disclosures indicated that information about fees to open the HELOC account was important information that they want to know as part of the early HELOC disclosures. Requiring creditors to disclose information about one-time fees imposed by third parties to open the HELOC plan in the table would better ensure that consumers are aware of these fees. In addition, as discussed in more detail below in the section-by-section analysis to proposed § 226.5b(c)(11), under the proposal, creditors would be required to disclose in the table one-time fees imposed by the creditor to open the HELOC plan. Requiring creditors to disclose all one-time fees to open the HELOC plan in the table, regardless of whether they are charged by the creditor or by a third party, would enable consumers to understand better the total fees that they would be required to pay to open the HELOC plan. In addition, the Board believes that highlighting all one-time fees to open the HELOC plan in the table may facilitate consumer shopping for HELOC plans, by helping consumers to compare easily these fees from one HELOC plan to another.

As discussed above, current § 226.5b(a)(1) provides that a disclosure of the conditions under which a creditor may take certain actions under the plan, such as terminating the plan, described in current § 226.5b(d)(4)(iii) may be disclosed with the application disclosures that must be segregated or disclosed separately from the segregated application disclosures. As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(7), under the proposal, a creditor would not be allowed to include in the table a disclosure of the conditions under which a creditor can take certain actions under the plan, such as terminating the plan, as described in proposed § 226.5b(c)(7) (although the fact that the creditor may take these actions under certain circumstances must be disclosed in the table under proposed § 226.5b(c)(7)). The Board believes that including a disclosure of the conditions in the table could lead to "information overload" for consumers and could distract from other information in the table. The conditions under which a creditor may take certain actions, such as terminating the HELOC plan, will likely not change from creditor to creditor, and thus this information may not be useful to consumers in comparing one HELOC plan to another. A creditor would be permitted to include this information with the early HELOC disclosures table, as long as it is outside the table. *See* proposed § 226.5b(b)(2)(v).

Precedence of certain disclosures. Current § 226.5b(a)(2), in implementing TILA Section 127A(b)(2)(C), provides that the following application disclosures must precede all other required application disclosures: (1) A statement that the consumer should make or otherwise retain a copy of the application disclosures; (2) a statement of the time by which the consumer must submit an application to obtain specific terms disclosed, an identification of any disclosed term that is subject to change prior to opening the plan, and an explanation of the right to refund of all fees paid in connection with the application if a disclosed term changes prior to opening the plan and the consumer therefore elects not to open the plan; (3) a statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default; and (4) a statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan, and a statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

The Board proposes no longer to require the above statutorily required disclosures to precede other information provided as part of the proposed early HELOC disclosures. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). As discussed below, based on consumer testing, the Board believes that this information is more effectively presented when grouped together with related information. As discussed in more detail below in the section-by-section analysis to proposed § 226.5b(c), the Board also proposes to delete the statement that the consumer should make or otherwise retain a copy of the disclosures because under the proposal, the early HELOC disclosures must be given in a retainable form. In addition, as discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(4), the statement of the time by which the consumer must submit an application to obtain specific terms disclosed also would be deleted as unnecessary because the early HELOC disclosures would be given after the application has been submitted.

1. *Disclosure of which terms in the table are subject to change prior to the consumer opening the plan*: Under the proposal, a creditor would be required to disclose which terms in the table, if any, are subject to change prior to the

consumer opening the plan. Under the proposal, this information must be provided directly below the table with other general information that a consumer may want to consider when deciding whether to open the HELOC plan being offered (in contrast to information in the table that provides specific information about the terms being offered on the HELOC plan). Specifically, this disclosure must be grouped with the following disclosures: (1) A disclosure informing the consumer that he or she is not required to accept the terms described in the table; (2) a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan, (3) a cross reference to the disclosure in the table of a consumer's right to a refund of fees paid by the consumer if the consumer decides not to open the HELOC plan for any reason within three business days of receiving the early HELOC disclosures, or any time before the plan is opened if any of the disclosed terms change (except for the APR), (4) a statement that if the consumer does not understand any disclosure ***shown*** in the table in the consumer should ***ask*** questions; and (5) a statement that the consumer may obtain additional information at the Web site of the Board, and a reference to the Board's Web site. To help ensure that the statement about which terms in the table may change prior to account opening is noticeable to consumers, the Board proposes to require that this statement be disclosed in bold text, as discussed in more detail below.

2. *Disclosure of right to a refund of fees if terms change before account opening*: Under the proposal, the explanation of the right to a refund of fees if terms change before account opening and the consumer decides not to open the plan would be grouped together with information about another right of a consumer to receive a refund of fees if the consumer notifies the creditor that he or she does not want to open the HELOC account within three business days of receiving the early HELOC disclosures. Under the proposal, these explanations about the two rights to a refund of fees would be placed in the "Fees" section of the table. In the consumer testing conducted by the Board on HELOC disclosures, the Board tested a version of the early HELOC disclosures where the explanations of the two rights to a refund of fees were located directly above the table near the top of the early HELOC disclosures. The Board also tested a version of the early HELOC disclosures where the explanation was disclosed in the table in the "Fees" section. Participants were more likely to notice and understand information about the refundability of fees when it was provided in the table in the "Fees" section, rather than directly above the table near the top of the early HELOC disclosures.

3. *Statement about risk of loss of home and statement about certain actions that a creditor may take with respect to the plan*: Under the proposal, the information about risk of loss of the home in case of default and the information about certain actions that a creditor may take with respect to the plan, such as terminating the plan, are identified as "risks" to the consumer and are grouped together under the heading "Risks," along with information about the deductibility of interest for tax purposes. In consumer testing conducted by the Board on HELOC disclosures, the Board tested versions of the application disclosures (in a narrative format) where the information about risk of loss of the home in case of default and the information about certain actions that a creditor may take with respect to the plan, such as terminating the plan, were placed near the top of the application disclosures, but were not grouped together under a common heading. The Board also tested versions of the application disclosures and the early HELOC disclosures (in a tabular format) where the information was grouped in the "Risks" section as discussed above. Grouping these disclosures in a single "Risks" section made them more noticeable to participants, and made it easier for participants to review the information quickly and efficiently.

Under the proposal, the "Risks" section would be placed at the bottom of the table on the second page of the early HELOC disclosures. In consumer testing by the Board on HELOC disclosures, the Board tested several different locations for the "Risks" section in the table, namely, (1) at the top of the table on the first page of the early HELOC disclosures, (2) in the middle of the table at the bottom of the first page of the early HELOC disclosures, and (3) at or near the bottom of the table on the second page of the early HELOC disclosures. In each round of the consumer testing, participants were ***asked*** questions to determine whether they noticed and understood the information about risk of the loss of the home if a consumer defaulted on the plan, and about the creditors' right to terminate the plan in certain circumstances. In several rounds of the consumer testing, participants also were ***asked*** their views on the placement of the "Risks" section in the table. While some participants indicated that they preferred to have the "Risks" section displayed at the top of the table on the first page because of the importance of the information, other participants preferred to have the "Risks" section lower down in the table or at the bottom of the table on the second page because they were more interested in the specific terms of their line of credit, such as the APRs and the credit limit offered on the plan. Regardless of the placement of the "Risks" section in the table, most participants noticed and understood the disclosure about the risk of loss of the home in case of default and the disclosure about a creditor's right to terminate the plan in certain circumstances.

The Board proposes to place the "Risks" section at the bottom of the table on page two of the early HELOC disclosures. The information contained in the "Risks" section may not be as useful to the consumers as other information contained in the table for comparing one HELOC to another, such as the APRs and credit limit offered on the plan, because the information about risks is likely to be the same among all creditors. The Board seeks comment on this aspect of the proposal.

Highlighting of certain disclosures. Proposed § 226.5b(b)(2)(vi) would require that certain early HELOC disclosures must be disclosed in bold text. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a).

Under the proposal, certain disclosures must be disclosed below the table because they provide general information that a consumer may want to consider when deciding whether to open the HELOC plan being offered (in contrast to information in the table that provides specific information about the terms being offered on the HELOC plan). To help consumers notice the statements that are below the table, the Board proposes that the following statements must be disclosed in bold text: (1) A statement that the consumer is not required to accept the terms disclosed in the table, as required under proposed § 226.5b(c)(2); (2) if the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement, as required under proposed § 226.5b(c)(2); (3) a statement identifying any disclosed term that is subject to change prior to opening the plan, as required under proposed § 226.5b(c)(4)(i); (4) a statement that if the consumer does not understand any disclosure required by this section the consumer should ***ask*** questions, as required under proposed § 226.5b(c)(20); (5) a statement that the consumer may obtain additional information at the Web site of the Board, and a reference to the Board's Web site, as required under proposed § 226.5b(c)(21); and (6) a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan, as required under proposed § 226.5b(c)(22)(i).

In addition, proposed § 226.5b(c) generally requires that certain information about rates, fees, the credit limit, and certain limitations or requirements on transactions, such as any minimum outstanding balance or minimum draw requirements, applicable to the HELOC plan must be disclosed to the consumer as part of the early HELOC disclosures. This information includes not only the percentage or dollar amounts that will apply, but also explanatory information that gives context to these figures. The Board seeks to enable consumers to identify easily the rates, fees, the credit limit and the dollar amounts related to any limitations or requirements on transactions disclosed in the table. Thus, the Board generally proposes to require the percentage or dollar amounts related to those disclosures to be disclosed in bold text.

Nonetheless, the Board proposes several exceptions to the general rule that fees disclosed in the early HELOC disclosures table must be disclosed in bold text. First, while the total amount of account-opening fees disclosed under proposed § 226.5b(c)(11) would be required to be disclosed in bold text, the itemization of those fees also required to be disclosed under proposed § 226.5b(c)(11) must not be disclosed in bold text. *See* proposed comment 5b(b)(2)-5 provides that a creditor would be deemed to provide the itemization of the account-opening fees clearly and conspicuously if the creditor provides this information in a bullet format as ***shown*** in proposed Samples G--14(C), G--14(D) and G--14(E) in Appendix G. The Board believes that the bullet format properly highlights the itemization of the account-opening fees, and that requiring these fees also to be disclosed in bold text would detract from the total amount of account-opening fees that is disclosed in bold text in the same row.

Second, under the proposal, periodic fees imposed by the creditor for availability of the plan pursuant to proposed § 226.5b(b)(12) that are not an annualized amount must not be disclosed in bold. Proposed comment 5b(b)(2)--3.ii provides guidance on this exception for periodic fees. For example, if a creditor imposes a $ 10 monthly maintenance fee for a HELOC plan, the creditor would be required to disclose in the table that there is a $ 10 monthly maintenance fee, and that the fee is $ 120 on an annual basis. In this example, under the proposal, the $ 10 fee disclosure must not be disclosed in bold, but the $ 120 annualized amount must be disclosed in bold. Under the proposal, the periodic fee would be disclosed in the same row as the annualized amount of the fee. The Board believes that requiring the periodic fee to be in bold text would detract from the annualized amount of the fee that is disclosed in bold text in the same row. The Board proposes to highlight in the table the annualized amount of a periodic fee (rather than the amount of the periodic fees) because the Board believes this annualized amount will be more useful to consumers in understanding the costs of the HELOC plan and deciding whether to open the HELOC plan offered by the creditor.

Proposed § 226.5b(b)(2)(vi)(E) provides that when a creditor is required to disclose certain payment terms under proposed § 226.5b(c)(9) in a format substantially similar to the format used in any of the applicable tables found in proposed Samples G--14(C), G--14(D) and G--14(E) in Appendix G, the creditor must provide in bold text any terms and phrases that are ***shown*** in bold text for that disclosure in the applicable tables. Proposed comment 5b(b)(2)--3.iii provides guidance on this requirement. For example, proposed § 226.5b(c)(9) provides that a creditor must distinguish payment terms applicable to the draw period and payment terms applicable to the repayment period by using the heading "Borrowing Period" for the draw period and "Repayment Period" for the repayment period in a format substantially similar to the format used in any of the applicable tables found in proposed Samples G--14(C) and G--14(E) in Appendix G. *See* the section-by-section analysis to proposed § 226.5b(c)(9). The tables found in proposed Samples G--14(C) and G--14(E) in Appendix G ***show*** the headings "Borrowing Period" and "Repayment Period" in bold text, thus, a creditor must disclose these headings in bold text in providing the table.

In addition, proposed § 226.5b(c)(9)(i) provides that when the length of the plan is definite, a creditor must disclose the length of the plan, the length of the draw period and the length of the repayment period, if any, in a format substantially similar to the format used in any of the applicable tables found in proposed Samples G--14(C) and G--14(D) in Appendix G. The length of the draw period and any repayment period are ***shown*** in bold text in the applicable tables; thus, a creditor would be required to provide these disclosures in bold text. Moreover, proposed § 226.5b(c)(9)(iii)(D) requires a creditor to provide the sample payments and related information required to be disclosed under proposed § 226.5b(c)(9)(iii) in a format substantially similar to the format used in any of the applicable tables found in proposed Samples G--14(C), G--14(D) and G--14(E) in Appendix G. Certain information related to these sample payments is ***shown*** in bold text in the applicable table; thus, a creditor would be required to disclose this same information in bold text in providing the table.

As discussed in more detail below in the section-by-section analysis to proposed § 226.5b(c)(9), in the consumer testing conducted by the Board on HELOC disclosures, the Board found that certain formats set forth in the tables in proposed Samples G--14(C), G--14(D) and G--14(E) to Appendix G, such as headings to distinguish payment terms applicable to the draw period and the repayment period, were effective in helping participants identify and understand the payment terms offered on the plan. Thus, the Board proposes to require the use of these formats, and to require the bold text that is used in the formats.

Terminology. As discussed in the section-by-section analysis to proposed § 226.5(a)(2), the Board proposes that creditors offering HELOCs subject to § 226.5b must use certain terminology when disclosing the draw period, any repayment period, and certain other terms in the early HELOC disclosures table. *See* proposed 226.5(a)(2)(ii). Proposed comment 5b(b)(2)-1 provides a cross reference to the terminology requirements set forth in proposed § 226.5(a)(2).

Clear and conspicuous standard. As discussed in the section-by-section analysis to proposed § 226.5(a)(1), the Board proposes a clear and conspicuous standard applicable to § 226.5b disclosures. Proposed comment 5b(b)(2)-4 provides a cross reference to the clear and conspicuous standard applicable to the disclosures in proposed § 226.5b(b), as set forth in proposed comment 5(a)(1)-1.

Other format requirements. Generally, the format requirements applicable to the early HELOC disclosures would be set forth in proposed § 226.5b(b)(2). Nonetheless, proposed § 226.5b(c)(9) contains formatting requirements applicable to certain payment terms that must be disclosed in the early HELOC disclosures table. *See* section-by-section analysis to proposed § 226.5b(c)(9). In addition, proposed § 226.5b(c)(10)(i)(A)(1) contains formatting requirements applicable to disclosure of variable rates in the early HELOC disclosures table. Proposed comment 5b(b)(2)-2 provides a cross reference to the formatting requirements set forth in proposed § 226.5b(c)(9) and (c)(10). In addition, this proposed comment cross references proposed formatting requirements that would be applicable to information that a creditor would be required to provide to a consumer upon his or her request prior to account opening, as described in more detail in the section-by-section analysis to proposed § 226.5b(c)(7), (c)(9), (c)(14), and (c)(18).

Electronic disclosures. Current § 226.5b(a)(3) provides that for an application accessed by the consumer in electronic form, the application disclosures and HELOC brochure may be provided to the consumer in electronic form on or with the application. Guidance on providing the required disclosures on or with an application accessed by the consumer in electronic form is found in current comments 5b(a)(1)-5 and 5b(a)(3)-1. As discussed in the section-by-section analysis to proposed § 226.5b(a)(2), the Board proposes to move the provisions in current § 226.5b(a)(3) and current comments 5b(a)(1)-5 and 5b(a)(3)-1 to proposed § 226.5b(a)(2) and proposed comments 5b(a)(1)-6.ii and 5b(a)(2)-1, respectively, and to make revisions to those provisions. Under the proposal, the provisions related to electronic disclosures would only apply to the disclosure of the "Key Questions" document published by the Board that a creditor generally is required to provide with an application under proposed § 226.5b(a). As discussed in more detail in the section-by-section analysis to proposed § 226.5(a)(1)(iii), the Board is not proposing specific provisions on providing the early HELOC disclosures required under proposed § 226.5b(b) in electronic form. Thus, creditors would be required to obtain the consumer's consent, in accordance with the E-Sign Act, to provide the early HELOC disclosures in electronic form, or else provide written disclosures. This proposal not to provide specific provisions for providing the early HELOC disclosures required under proposed § 226.5b(b) in electronic form is consistent with the Board's prior decisions on electronic disclosures of early mortgage disclosures that are given after application but before consummation of the loan under § 226.19(a). In particular, in its rulemaking on electronic disclosures issued in November 2007, the Board did not include specific provisions for providing these early mortgage disclosures in electronic form, and thus, creditors are required to obtain the consumer's consent, in accordance with the E-Sign Act, to provide the early mortgage disclosures in electronic form, or else provide written disclosures. 72 FR 63462 (November 9, 2007); 72 FR 71058 (December 14, 2007).

Retainable form. Current comment 5b(a)(1)-1 provides that the current application disclosures must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. As discussed in the section-by-section analysis to § 226.5(a)(1), the Board proposes to require that the early HELOC disclosures must be provided in a retainable form. See proposed § 226.5(a)(1)(ii)(B). Thus, the Board proposes to delete current comment 5b(a)(1)-1 as obsolete.

Disclosure of APR--more conspicuous requirement. Current comment 5b(a)(1)-2 provides a cross reference to current § 226.5(a)(2), which provides that when the term "annual percentage rate" is required to be disclosed with a number in the application disclosures, the term "annual percentage rate" must be more conspicuous than other required disclosures. As discussed in the section-by-section to proposed § 226.5(a)(2), the Board proposes to delete the requirement that the term "annual percentage rate" be more conspicuous than other required disclosures when disclosed with a number. Thus, the Board proposes to delete current comment 5b(a)(1)-2 as obsolete.

Method of providing disclosures. Current comment 5b(a)(1)-4 provides that in providing the application disclosures, a creditor may provide a single disclosure form for all of its HELOC plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all payment options must be disclosed. Alternatively, a creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a creditor that offers two payment options for the draw period may prepare separate disclosure forms for the two payment options.

The Board proposes to delete current comment 5b(a)(1)-4 as obsolete. As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(9), under the proposal, creditors would not be allowed to disclose all aspects of the plan in the table. For example, proposed § 226.5b(c) provides that in making the early HELOC disclosures, a creditor generally must not disclose terms applicable to a fixed-rate and -term payment feature offered during the draw period of the plan, unless that payment feature is the only payment plan offered during the draw period of the plan.

In addition, as discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(9)(ii), a creditor would not be allowed to provide separate early HELOC disclosures for each payment option offered on the HELOC. Specifically, if a creditor offers two or more payment plans on the HELOC plan (excluding the fixed-rate and -term payment plans described above unless those are the only payment plans offered during the draw period), a creditor may not provide separate early HELOC disclosures for each payment plan, but instead must disclose only two payment plans in the table, in accordance with the requirements in proposed § 226.5b(c)(9)(ii)(B). (Under the proposal, a creditor would be required to disclose to a consumer other payment plans offered by the creditor upon request of the consumer. *See* proposed comments 5b(c)(9)(ii)-5 and 5b(c)(18)-2.)

5b(b)(3) Disclosures Based on a Percentage

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(11), current § 226.5b(d)(7) requires a creditor to provide in the application disclosures an itemization of certain fees imposed by the creditor to open, use, or maintain the plan, and these fees may be stated as a dollar amount or percentage of another amount (such as disclosing the amount of a fee as "2% of the credit limit"). In addition, current § 226.5b(d)(10) requires a creditor to disclose in the application disclosures any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages. In contrast, current § 226.5b(d)(8) requires a creditor to disclose in the application disclosures a good-faith-estimate of a total amount of fees that may be imposed by third parties to open a plan and the creditor must disclose that total as either a single dollar amount or range.

Under the proposal, except for disclosing one-time fees imposed to open the plan, if the amount of any fee required to be disclosed in the table is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee. In addition, any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, required to be disclosed under proposed § 226.5b(c)(16) may be disclosed as dollar amounts or percentages. *See* proposed § 226.5b(b)(3).

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(11), a creditor would be required to disclose in the table as part of the early HELOC disclosures a total of one-time fees to open the account, and this total must include fees imposed by the creditor and any third party. In addition, a creditor would be required to disclose an itemization of all one-time fees to open the account, regardless of whether those fees are imposed by a creditor or a third party. Both the total of one-time fees to open the account and the itemization of the fees must be disclosed as a dollar amount (or a range of dollar amounts) and may not be disclosed as a percentage of another amount. *See* proposed § 226.5b(b)(3) and (c)(11). The Board believes that requiring the one-time fees that are imposed to open the account to be disclosed as dollar amounts, instead of a percentage of another amount, would aid consumers' understanding of the account-opening fees and may aid consumers in comparison shopping for HELOC plans. In consumer testing conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule, the Board found that consumers generally understand dollar amounts better than percentages. As a result, the Board believes that requiring account opening fees to be disclosed as dollar amounts instead of percentages of another amount would better enable consumers to understand the start up costs of opening the HELOC plan. In addition, consumers could more easily compare the dollar amount of one-time account-opening fees on different HELOC plans if all HELOC plans are required to disclose the dollar amount. Otherwise, consumers would need to calculate the dollar amount themselves for some HELOC plans if the account-opening fees were presented as a percentage of another amount.

Consistent with current § 226.5b(d)(7), however, under the proposal, if the amount of other fees that a creditor must disclose in the table--namely, fees imposed by the creditor for the availability of the plan, fees imposed by the creditor for early termination of the plan by the consumer and fees imposed for required insurance, debt cancellation or suspension coverage--are determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee. Similarly, consistent with current § 226.5b(d)(10), the proposal would permit a creditor to disclose the amount of any limitations on the number of extensions of credit, the amount of credit that may be obtained during any time period, any minimum outstanding balance and minimum draw requirements, required to be disclosed under proposed § 226.5b(c)(16) as either a dollar amount or percentage. The Board believes that allowing these fees and transaction requirements to be disclosed as a percentage of another amount is appropriate because these fees or transaction requirements generally would be imposed during the life of the plan, and thus, it may be difficult for a creditor to estimate a dollar amount for these fees or transaction requirements at the time that the early HELOC disclosures are made.

5b(c) Content of Disclosures

Currently, § 226.5b(d) sets forth the content for the application disclosures that a creditor must provide on or with the application. As explained above, other than the "Key Questions" document required under proposed § 226.5b(a), the Board proposes to delete the requirement that creditors provide disclosures to consumers on or with HELOC applications. Instead, the Board proposes that a creditor must provide the early HELOC disclosures (generally in the form of a table) to a consumer within three business days following receipt of the consumer's application by the creditor (but not later than at account opening). Under the proposal, proposed § 226.5b(c) sets forth the content for the early HELOC disclosures.

Fixed-rate and -term feature during draw period. HELOC plans typically offer the ability to obtain advances that must be repaid based on a variable interest rate that applies to all outstanding balances. Some HELOC plans, however, also offer a fixed-rate and -term payment feature, where a consumer is permitted to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. The Board understands that for most HELOC plans, consumers must take active steps to access the fixed-rate and -term payment feature; this feature is not automatically accessed when a consumer obtains advances from the HELOC plan.

Current comment 5b(d)(5)(ii)-2, which implements TILA Section 127A(a)(1), (a)(2), (a)(3), and (a)(8), provides that a creditor generally must disclose in the application disclosures terms that apply to the fixed-rate and -term payment feature, including the period during which the feature can be selected, the length of time over which repayment can occur, any fees imposed for the feature, and the specific rate or a description of the index and margin that will apply upon exercise of the feature. 15 U.S.C. 1637a(a)(1), (a)(2), (a)(3), and (a)(8).

The Board proposes to delete current comment 5b(d)(5)(ii)-2. The Board proposes that if a HELOC plan offers a variable-rate feature and a fixed-rate and -term feature during the draw period, a creditor generally must not disclose in the table the terms applicable to the fixed-rate and -term feature, except as discussed below. *See* proposed § 226.5b(c) and proposed comment 5b(c)--4. Instead, a creditor may disclose detailed information relating to the fixed-rate and -term feature outside of the table. *See* proposed § 226.5b(b)(2)(v). However, if a HELOC plan does not offer a variable-rate feature during the draw period, but only offers a fixed-rate and -term feature during that period, a creditor must disclose in the table information related to the fixed-rate and -term feature when making the disclosures required by proposed § 226.5b(c). The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a).

The Board believes that including information about the variable-rate feature and the fixed-rate and -term feature in the table would create "information overload" for consumers. The terms that apply to the fixed-rate and -term features often differ significantly from the terms that apply to the variable-rate feature. For example, different APRs, fees, length of repayment periods, limitations on the number of transactions, and minimum transactions amounts may apply to the fixed-rate and -term feature than the variable-rate feature. In addition, creditors often provide consumers with several options related to the fixed-rate and -term feature, such as providing several lengths of repayment period (e.g., 3, 5, or 7 years) from which a consumer may choose for a particular advance under the fixed-rate and -term feature. The Board believes that requiring a creditor to provide all of these details about the fixed-rate and -term feature in the table would add to the length and complexity of the table, and would create "information overload" for consumers.

Instead of requiring that all the details of the fixed-rate and -term feature be disclosed in the table, the Board proposes to require a creditor offering this payment feature (in addition to a variable-rate feature) to disclose in the table the following: (1) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate; (2) the amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term; and (3) as applicable, either a statement that the consumer may receive, upon request, further details about the fixed-rate and -term payment feature, or, if information about the fixed-rate and -term payment feature is provided with the table, a reference to the location of the information. *See* proposed § 226.5b(c)(18). Thus, under the proposal, a consumer would be notified in the table about the fixed-rate and -term payment feature, and could request additional information about this payment feature (if a creditor chose not to provide additional information about this feature outside of the table).

In responding to a consumer's request, prior to account opening, for additional information about the fixed-rate and -term feature, a creditor would be required to provide this additional information as soon as reasonably possible after the request. *See* proposed comment 5b(c)-2. Additional information disclosed about the fixed-rate and -term payment feature upon request (or outside the early HELOC disclosures table) would have to include in the form of a table, (1) information about the APRs and payment terms applicable to the fixed-rate and -term payment feature, and (2) any fees imposed related to the use of the fixed-rate and -term payment feature, such as fees to exercise the fixed-rate and -term payment option or to convert a balance under a fixed-rate and -term payment feature to a variable-rate feature under the plan. *See* proposed comment 5b(c)(18)-2. The Board believes that the above approach to providing information to consumers about the fixed-rate and -term feature enables consumers interested in this feature to obtain additional information about this optional feature easily and quickly, but does not contribute to "information overload" for consumers in general.

Duty to respond to requests for information. Current comment 5b(d)-2 provides that if the consumer, prior to opening a plan, requests information as described in the application disclosures, such as the current index value or margin, the creditor must provide this information as soon as reasonably possible after the request. The Board proposes to move this comment to proposed comment 5b(c)-2 and apply it to requests for additional information described in the early HELOC disclosures, namely requests for additional information about the following: (1) Fees applicable to the plan under proposed § 226.5b(c)(14); (2) the conditions under which a creditor may take certain actions under the plan, such as terminating the plan, under proposed § 226.5b(c)(7); (3) payment plans offered on the plan not described as part of the early HELOC disclosures (other than fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period) required under proposed § 226.5b(c)(9)(ii); and (4) fixed-rate and -term payment plans under proposed § 226.5b(c)(18). The Board proposes to revise this comment to update the examples of information that a consumer may receive upon request (such as additional information on fees applicable to the plan or the conditions under which the creditor may take certain actions on the plan) and to provide a cross reference to comments that specifically discuss a consumer's right to request the four types of additional information listed above.

Disclosure of repayment phase--applicability of requirements. Some HELOC plans provide in the initial agreement for a repayment period during which no further draws may be taken and repayment of the amount borrowed is required. Current comment 5b-4 provides that a creditor must disclose information relating to the repayment period, as well as the draw period, when providing the application disclosures. Thus, for example, a creditor must provide payment information about any repayment phase as well as about the draw period in the application disclosures, as required by current § 226.5b(d)(5). The Board proposes to move the relevant part of this comment to proposed 5b(c)-3, and to make technical revisions to the comment. Under the proposal, a creditor would be required to disclose in the table as part of the early HELOC disclosures information relating to any repayment period, as well as the draw period.

Disclosures given as applicable. Current comment 5b(d)-1 provides that a creditor may provide the application disclosures described in current § 226.5b(d) as applicable. For example, if negative amortization cannot occur in a HELOC plan, a reference to it need not be made under current § 226.5b(d)(9). The Board proposes to move this comment to proposed 5b(c)-1 and revise the comment to refer to the following proposed exceptions to the general rule that a creditor is only required to include a disclosure required under proposed § 226.5b(c) as applicable: specifically, proposed 5b(c)-1 cross references proposed § 226.5b(c)(9)(ii)(B)(3) and (c)(9)(iii)(C)(4), which provide that a creditor in certain circumstances must state that a balloon payment will not result for plans in which no balloon payment would occur; in addition, proposed comment 5b(c)-1 cross references proposed § 226.5b(c)(10)(i)(A)(5), which provides that if there are no annual or other periodic limitations on changes in the APR, a creditor must state that no annual limitation exists.

5b(c)(1) Identification Information

Currently, a creditor is not required to disclose identification information about the creditor and the borrower as part of the application disclosures. Pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes to require that a creditor disclose as part of the early HELOC disclosures the following identification information: (1) The consumer's name and address; (2) the identity of the creditor making the disclosure; (3) the date the disclosure was prepared; and (4) the loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act") Sections 1503(3) and (12), 12 U.S.C. 5102(3) and (12). 15 U.S.C. 1637a(a)(14). Under the proposal, these disclosures must be placed directly above the table provided as part of the early HELOC disclosures, in a format substantially similar to any of the applicable tables found in G--14(C), G--14(D) and G--14(E) in Appendix G. *See* proposed § 226.5b(b)(2)(iii). Proposed comment 5b(c)(1)-1 clarifies that in identifying the creditor making the disclosure, use of the creditor's name would be sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them would be allowed to make the disclosures; the one doing so must be identified in the early HELOC disclosures. The Board solicits comment on whether the creditor making the disclosures should be required to disclose its contact information, such as its address and/or telephone number.

The Board believes that this identification information would provide context for the disclosures provided in the table. For example, the date the disclosure was prepared would provide consumers information about the date on which the terms in the table were accurate. In addition, the Board believes it is important to disclose the creditor's identity so that consumers can easily identify the appropriate entity.

Loan originator's unique identifier. On July 30, 2008, the SAFE Act, 12 U.S.C. 5101-5116, was enacted to create a Nationwide Mortgage Licensing System and Registry of loan originators to increase uniformity, reduce fraud and regulatory burden, and enhance consumer protection. 12 U.S.C. 5102. Under the SAFE Act, a "loan originator" is defined as "an individual who (i) takes a residential mortgage loan application; and (ii) offers or negotiates terms of a residential mortgage loan for compensation or gain." 12 U.S.C. 5102(3)(A)(i). Each loan originator is required to obtain a unique identifier through the Nationwide Mortgage Licensing System and Registry. 12 U.S.C. 5103(a)(2). The term "unique identifier" is defined as "a number or other identifier that (i) permanently identifies a loan originator; (ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and (iii) shall not be used for purposes other than those set forth under this title." 15 U.S.C. 5102(12)(A). The system is intended to provide consumers with easily accessible information to research a loan originator's history of employment and any disciplinary or enforcement actions against him or her. 12 U.S.C. 5101(7).

To facilitate the use of the Nationwide Mortgage Licensing System and Registry and promote the informed use of credit, pursuant to the Board's authority under TILA Section 127A(a)(14) to require additional disclosures for

HELOC plans, the Board proposes in new § 226.5b(c)(1) to require that a loan originator to disclose as part of the early HELOC disclosures his or her unique identifier, as defined by the SAFE Act. 15 U.S.C. 1637a(a)(14). Proposed comment 5b(c)(1)-2 clarifies that in transactions with multiple loan originators, each loan originator's unique identifier must be listed on the early HELOC disclosures. For example, in a transaction where a mortgage broker meets the SAFE Act definition of loan originator, the identifiers for the broker and for its employee loan originator meeting that definition would need to be listed on the early HELOC disclosures.

The Board notes that the Board, FDIC, OCC, OTS, NCUA, and Farm Credit Administration have published a proposed rule to implement the SAFE Act. *See* 74 FR 27386 (June 9, 2009). In this proposed rule, the federal banking agencies have requested comment on whether there are mortgage loans for which there may be no mortgage loan originator. For example, the agencies query whether there are situations where a consumer applies for and is offered a loan through an automated process without contact with a mortgage loan originator. *See* id. at 27397. The Board solicits comments on the scope of this problem and its impact on the requirements of proposed § 226.5b(c)(1).

Statement About Retaining a Copy of the Disclosures

The Board proposes to delete current § 226.5b(d)(1), which implements TILA Section 127A(a)(6)(C), and current comment 5b(d)(1)-1 as obsolete. Current § 226.5b(d)(1) provides that a creditor must disclose as part of the application disclosures a statement that the consumer should make or otherwise retain a copy of the application disclosures. Current comment 5b(d)(1)-1 provides that a creditor need not disclose that the consumer should make or otherwise retain a copy of the disclosures if they are retainable--for example, if the disclosures are not part of an application that must be returned to the creditor to apply for the plan. As discussed in more detail in the section-by-section analysis to § 226.5(a)(1), however, the Board proposes to require a creditor to provide the early HELOC disclosures in a retainable form.

5b(c)(2) No Obligation Statement

Pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes in new § 226.5b(c)(2) to require a creditor to disclose as part of the early HELOC disclosures a statement that the consumer has no obligation to accept the terms disclosed in the table. 15 U.S.C. 1637a(a)(14). In addition, under proposed § 226.5b(c)(2), if a creditor provides space for the consumer to sign or initial the early HELOC disclosures, the creditor would be required to include a statement that a signature by the consumer only confirms receipt of the disclosure statement. A creditor would be required to provide these proposed disclosures directly below the table provided as part of the early HELOC disclosures, in, a format substantially similar to any of the applicable tables found in proposed Samples G--14(C), G--14(D) and G--15(E) in Appendix G. *See* proposed § 226.5b(b)(2)(iv).

As discussed in the proposal issued by the Board on closed-end mortgages published elsewhere in today's **Federal Register**, in consumer testing conducted by the Board on closed-end mortgage products, participants reviewed mock ups of mortgage disclosures that would be given within three business days after a consumer's application has been received by the creditor for a mortgage loan. These participants were ***asked*** whether they would be obligated to accept the loan terms described in the disclosures because they had submitted an application for a mortgage. Most participants initially understood in reviewing the tested mortgage disclosures that they would not be required to accept the loan terms described in the disclosures. However, some participants later believed they would be obligated to accept the loan upon signing or initialing the disclosure. Based on this consumer testing, the Board is concerned that although consumers may initially understand they are not obligated to accept the terms of the HELOC plan, this belief may be diminished if a creditor requires a consumer to sign or initial receipt of the early HELOC disclosures. This may further discourage negotiation and shopping among HELOC products and creditors. Thus, the Board proposes to require a creditor to disclose as part of the early HELOC disclosures a statement that the consumer has no obligation to accept the terms disclosed in the table. In addition, if a creditor provides space for the consumer to sign or initial the early HELOC disclosures, the creditor would be required to include a statement that a signature by the consumer only confirms receipt of the disclosure statement.

5b(c)(3) Identification of Plan as a Home-Equity Line of Credit

Pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures with respect to HELOC plans, the Board proposes in new § 226.5b(c)(3) to require that creditors as part of the early HELOC disclosures disclose above the table a statement that the consumer has applied for a home-equity line of credit. 15 U.S.C. 1637a(a)(14).

In consumer testing the Board conducted on HELOCs disclosures, most participants had obtained a HELOC in the past, but some participants were also recruited who had considered obtaining a HELOC but opted instead for a home-equity loan. A few participants had never obtained a home-equity loan or HELOC, but had considered opening a HELOC in the past five years. In the consumer testing, during the initial portion of the interview, several participants appeared not to understand the difference between a home-equity loan and a HELOC. For example, one person initially indicated that she had a home-equity loan, but after the difference was explained to her she realized that she actually had a HELOC.

Based on this consumer testing, the Board proposes to take several steps to address potential confusion by consumers about the differences between these two types of home-equity products. First, as discussed in the section-by-section analysis to § 226.5b(a), the "Key Questions" document that would be required to be given with applications for HELOCs (except for telephone applications where this document must be given with the early HELOC disclosures) includes information describing the relative advantages and disadvantages of a HELOC and a home-equity loan. Second, as noted, under proposed § 226.5b(c)(3) creditors would be required as part of the early HELOC disclosures to disclose above the table that the consumer has applied for a home-equity line of credit. This statement will identify clearly for the consumer that he or she has applied for a HELOC, and may help a consumer who mistakenly thought he or she was applying for a home-equity loan.

5b(c)(4) Conditions for Disclosed Terms

Current § 226.5b(d)(2)(i), which implements TILA Section 127A(a)(6)(A), provides that creditors must disclose as part of the application disclosures a statement of the time by which the consumer must submit an application to obtain specific terms disclosed in the application disclosures and an identification of any disclosed term that is subject to change prior to opening the plan. 15 U.S.C. 1637a(a)(6)(A). Current comment 5b(d)(2)(i)-1 provides that the requirement that a creditor disclose the time by which an application must be submitted to obtain the disclosed terms does not require the creditor to guarantee any terms. If a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor also is permitted to guarantee some terms and not others, but must indicate which terms are subject to change. Current comment 5b(d)(2)(i)-2 provides that if a creditor chooses to guarantee terms disclosed in the application disclosures, a creditor may disclose either a specific date or a time period for obtaining the guaranteed terms. If the creditor discloses a time period, the consumer must be able to determine from the disclosure the specific date by which an application must submitted to obtain any guaranteed terms.

Under current § 226.5b(d)(2)(ii), which implements TILA Section 127A(a)(6)(B), a creditor also must provide as part of the application disclosures a statement that if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan the consumer may receive a refund of all fees paid in connection with the application. 15 U.S.C. 1637a(a)(6)(B). Current comment 5b(d)(2)(ii)-1 provides that a creditor should consult the rules in current § 226.5b(g) regarding refund of fees when terms change.

Proposal. The Board proposes to move the provisions in current § 226.5b(d)(2) to proposed § 226.5b(c)(4) and to revise those provisions. Specifically, because the early HELOC disclosures would be given after the application has been submitted by the consumer, the Board proposes to delete as obsolete (1) the requirement in current §

226.5b(d)(2), which implements TILA Section 127A(a)(6)(A), that a creditor provide a statement of the time by which the consumer must submit an application to obtain specific terms disclosed in the application disclosures, and (2) guidance for providing that statement in current comment 5b(d)(2)(i)-2. 15 U.S.C. 1637a(a)(6)(A). The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a).

Consistent with current § 226.5b(d)(2)(i), the Board proposes in new § 226.5b(c)(4)(i) to require that a creditor disclose directly below the table as part of the early HELOC disclosures an identification of any disclosed term that is subject to change prior to opening the plan. The Board also proposes to move the provisions in current comment 5b(d)(2)(i)-1 that relate to this disclosure to proposed comment 5b(c)(4)(i)-1. Specifically, proposed comment 5b(c)(4)(i)-1 provides that if a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor also would be permitted to guarantee some terms and not others, but would be required to indicate which terms are subject to change.

The Board proposes in new § 226.5b(c)(4)(ii) to require that a creditor disclose in the table as part of the early HELOC disclosures a statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer elects not to open the plan, the consumer may receive a refund of all fees paid. The language in new § 226.5b(c)(4)(ii) differs from current § 226.5b(d)(2)(ii), to reflect proposed changes in proposed § 226.5b(d). Currently § 226.5b(g) contains the substantive right of a consumer to receive a refund if terms change and the consumer decides not to open the HELOC plan. As discussed in more detail in proposed § 226.5b(d), the Board proposes to move the substantive right to a refund of fees if terms change from current § 226.5b(g) to proposed § 226.5b(d) and to revise those provisions. The language in proposed § 226.5b(c)(4)(ii) reflects the proposed changes in § 226.5b(d).

In addition, the Board proposes to move guidance on disclosing the statement about refundability of fees if terms change from current comment 5b(d)(2)(ii)-1 to proposed comment 5b(c)(4)(ii)-1, and to make technical revisions to the proposed comment.

5b(c)(5) Statement Regarding Refund of Fees Under Proposed § 226.5b(e)

Current § 226.5b(h) provides that neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the application disclosures and the HELOC brochure. Current comment 5(h)-1 provides that if a creditor collects a fee after the consumer receives the application disclosures and the HELOC brochure and before the expiration of the three days, the creditor must notify the consumer that the fee is refundable for three days. The notice must be clear and conspicuous and in writing, and may be included with the application disclosures or as an attachment to them.

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(e), the Board proposes to move current § 226.5b(h) to proposed § 226.5b(e) and revise it. The Board proposes to add new § 226.5b(c)(5) to require a creditor to disclose in the table as part of the early HELOC disclosures a statement that the consumer may receive a refund of all fees paid, if the consumer notifies the creditor within three business days of receiving the early HELOC disclosures that the consumer does not want to open the plan. The proposed disclosure would be required if a creditor will impose fees on the HELOC plan prior to the expiration of the three-day period. Proposed comment 5(c)(5)-1 provides that creditors should consult the rules in § 226.5b(e) regarding refund of fees if the consumer rejects the plan within three business days of receiving the early HELOC disclosures.

5b(c)(6) Security Interest and Risk to Home

Current § 226.5b(d)(3), which implements TILA Section 127A(a)(5), provides that a creditor must disclose as part of the application disclosures a statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default. 15 U.S.C. 1637a(a)(5). The Board proposes to move this disclosure requirement from current § 226.5b(d)(3) to proposed § 226.5b(c)(6). Thus, under the proposal, a creditor would be required to disclose this statement in the table as part of the early HELOC disclosures.

5b(c)(7) Possible Actions by Creditor

Current § 226.5b(d)(4)(i), which implements TILA Section 127A(a)(7)(A), provides that a creditor must disclose as part of the application disclosures a statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan. [16]

The Board proposes to move the provisions in current § 226.5b(d)(4)(i) to proposed § 226.5b(c)(7)(i) and to revise those provisions. Specifically, proposed § 226.5b(c)(7)(i) provides that a creditor must disclose in the table as part of the early HELOC disclosures a statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and make other changes in the plan. Current comment 5b(d)(4)(i)-1 provides guidance on when a creditor must provide the statement that a creditor under certain conditions may impose fees upon termination of the plan. This comment would be moved to proposed comment 5b(c)(7)(i)-1.

The circumstances in which a creditor must provide the disclosure regarding implementing "changes in the plan" would be broader under proposed § 226.5b(c)(7)(i) than under current § 226.5b(d)(4)(i). As explained in current comment 5b(d)(4)(i)-2, a creditor must provide the disclosure regarding implementing changes in the plan under current § 226.5b(d)(4)(i) only if the initial agreement contains specific changes that may be made in the plan if specific events take place (see § 226.5b(f)(3)(i)), such as provisions in the initial agreement that the APR will increase a specified amount if the consumer leaves the creditor's employment. If no specific changes are set forth in the initial agreement pursuant to § 226.5b(f)(3)(i), but the creditor may make changes in the plan under § 226.5b(f)(3)(ii) through (v), such as making a change that will unequivocally benefit the consumer under § 226.5b(f)(3)(iv), a creditor is not required under current § 226.5b(d)(4)(i) to disclose that the creditor in certain circumstances may make certain changes in the plan.

As explained in proposed comment 5b(c)(7)(i)-2, under proposed § 226.5b(c)(7)(i), a creditor would be required to disclose in the table as part of the early HELOC disclosures a statement that the creditor under certain conditions may make changes in the plan, if the creditor may make any changes in the plan under § 226.5b(f)(3)(i)-(v), including making a change that will unequivocally benefit the consumer under § 226.5b(f)(3)(iv), even if the creditor does not set forth specific changes in the plan for specific events in the initial agreement under § 226.5b(f)(3)(i). The Board believes that if a creditor may make any changes to the plan, consumers should be informed generally of this fact.

Under current § 226.5b(d)(4)(ii), which implements TILA Section 127a(a)(7)(B), a creditor must disclose as part of the application disclosures a statement that the consumer may receive, upon request, information about the conditions under which a creditor may take certain actions, such as terminating the plan, as discussed above. 15

[16] TILA Section 127A(a)(7) does not specifically require that a creditordisclose as part of the application disclosures a statement that under certain conditions the creditor may impose fees upon termination or may implement certain changes in the plans as specified in the initial agreement. The Board included these disclosures in current § 226.5b(d)(4)(i) pursuant to its authority in TILA Section 127A(a)(14) to required additional disclosures for HELOC plans.

U.S.C. 1637a(a)(7)(B). Current § 226.5b(d)(4)(iii) provides a creditor may provide a disclosure of the conditions in lieu of the statement that a consumer may receive that information upon request. [17]

The Board proposes to move the provisions in current § 226.5b(d)(4)(ii) and (iii) to proposed § 226.5b(c)(7)(ii) and revise those provisions. In particular, under proposed § 226.5b(c)(7)(ii), a creditor may either provide a statement that the consumer may receive, upon request, information about the conditions under which a creditor may take certain actions such as terminating the plan or disclose those conditions with the early HELOC disclosures (outside the table). If a creditor chooses to provide as part of the early HELOC disclosures a statement that the consumer may receive, upon request, information about the conditions, this statement must be disclosed in the table. If a creditor chooses to provide a disclosure of the conditions with the early HELOC disclosures, the disclosure of the conditions must not be disclosed in the table. The disclosure of the conditions must be provided outside the table, and a creditor must disclose in the table a reference to the location of the disclosure.

Current comment 5b(d)(4)(iii)-2 provides if a creditor chooses to disclose the conditions in lieu of providing that information upon request, the creditor may provide the disclosure of the conditions with the other application disclosures or apart from them. If the creditor elects to provide the disclosure of the conditions with the application disclosures, this disclosure need not comply with the precedence rule in current § 226.5b(a)(2). Under the proposal, current comment 5b(d)(4)(iii)-2 would be deleted. As discussed above, under the proposal, a creditor would not be allowed to include the disclosure of conditions under which a creditor may take certain actions, as discussed above, in the table. *See* proposed § 226.5b(c)(7)(ii) and (b)(2)(v). The Board believes that including a disclosure of the conditions in the table could lead to "information overload" for consumers, distracting consumers from other important information in the table. The conditions under which a creditor may take certain actions, such as terminating the HELOC plan, will likely not change from creditor to creditor, and thus this information may not be useful to consumers in comparing one HELOC plan to another.

Current comment 5b(d)(4)(iii)-1 provides guidance on ***how*** a creditor may provide the disclosure of the conditions if a creditor is providing this information with the application disclosures. The Board proposes to move the provisions in current comment § 226.5b(d)(4)(iii)-1 to proposed comment § 226.5b(c)(7)(ii)-1 and make revisions to the provisions. In particular, proposed comment 5b(c)(7)(ii)-1 would provide guidance on ***how*** a creditor may provide the disclosures of the conditions, either upon the request of the consumer prior to account opening or with the early HELOC disclosures (outside the table).

5b(c)(8) Tax Implications

Current § 226.5b(d)(11), which implements TILA Section 127A(a)(13)(A), provides that a creditor must disclose as part of the application disclosures a statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan. 15 U.S.C. 1637a(a)(13)(A). The Board proposes to move current § 226.5b(d)(11) to proposed § 226.5b(c)(8) and make technical revisions. In addition, to implement Section 1302 of the Bankruptcy Act (cited above), which requires disclosure of the tax implications for home-secured credit that may exceed the dwelling's fair-market value, the Board proposes in new § 226.5b(c)(8) to require a creditor as part of the early HELOC disclosures to disclose a statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes

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[17] TILA Section 127A(a)(7) does not specifically allow a creditor todisclose a statement of the conditions in lieu of the statement that a consumer 111 ay receive that information upon request. The Board provided this alternative in current § 226.5b(d)(4) pursuant to the Board authority in TILA Section 105(a) to make adjustments to the requirements in TILA that are necessary to effectuate the purposes of TILA.

and that the consumer should consult a tax advisor for further information on tax deductibility. 15 U.S.C. 1637a(a)(13)(B).

The Board stated its intent to implement the Bankruptcy Act amendments in an ANPR published in October 2005 as part of the Board's ongoing review of Regulation Z (October 2005 ANPR). 70 FR 60235 (October 17, 2005). The Board received approximately 50 comment letters: forty-five letters were submitted by financial institutions and their trade groups, and five letters were submitted by consumer groups. In general, creditors ***asked*** for flexibility in providing the disclosure regarding the tax implications for home-secured credit that may exceed the dwelling's fair-market value, either by permitting the notice to be provided to all applicants, or to be provided later in the approval process after creditors have determined whether the disclosure is triggered. Creditor commenters ***asked*** for guidance on loan-to-value calculations and safe harbors for ***how*** creditors should determine property values. Consumer advocates favored triggering the disclosure when the possibility of negative amortization could occur. A number of commenters stated that in order for the disclosure to be effective and useful to the borrower, it should be given when the new extension of credit, combined with existing credit secured by the dwelling (if any), may exceed the fair market value of the dwelling. A few industry comments took the opposite view that the disclosure should be limited only to when a new extension of credit itself exceeds fair market value, citing the difficulty of determining ***how*** much debt is already secured by the dwelling at the time of application.

The Board implemented Section 1302 with regard to advertisements in its July 2008 HOEPA final rule. *See* 73 FR 44522 (July 30, 2008). In the Supplementary Information to that rule, the Board stated its intent to implement the application disclosure portion of the Bankruptcy Act during its forthcoming review of closed-end and HELOC disclosures under TILA.

Proposed § 226.5b(c)(8) would implement provisions of the Bankruptcy Act by requiring creditors to include in the table required under proposed § 226.5b(b) as part of the early HELOC disclosures (1) a statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes and (2) a statement that the consumer should consult a tax advisor for further information on tax deductibility.

The Board proposes to require creditors offering HELOCs to provide this disclosure to all HELOC applicants as part of the early HELOC disclosures, even if the particular HELOC plan offered to the consumer is not designed to allow the consumer to take extensions of credit that exceed the fair market value of the dwelling. The Board recognizes that HELOCs by their very nature carry a possibility that subsequent draws may exceed the fair market value of the dwelling. First, the market value of a dwelling may decline during the term of a HELOC plan, leaving less equity available. Second, quite often, consumers who apply for HELOCs already have first-lien mortgages; the amount of equity that a consumer may be able to utilize is limited, in part, by ***how*** much the consumer owes on the first mortgage. For these reasons, the likelihood is higher with HELOCs than closed-end home-equity loans that the consumer may exceed the fair market value of the dwelling with subsequent draws.

5b(c)(9) Payment Terms

Current § 226.5b(d)(5), which implements TILA Section 127A(a)(8), provides that a creditor must disclose as part of the application disclosures the payment terms applicable to the plan, and sets forth specific information that must be included in this disclosure. As discussed below, the Board proposes to move the provisions in current § 226.5b(d)(5) to proposed § 226.5b(c)(9) and to revise them.

Format for identifying payment terms applicable to the draw period and the repayment period. Current comment 5b-4 provides that a creditor must disclose information relating to the repayment period, as well as the draw period, when providing the application disclosures. Thus, for example, a creditor must provide payment information about any repayment phase as well as about the draw period in the application disclosures, as required by current § 226.5b(d)(5). The Board proposes to move the relevant part of this comment to proposed 5b(c)-3, and to make technical edits to the comment. Under the proposal, a creditor would be required to disclose in the table as part of the early HELOC disclosures information relating to any repayment period, as well as the draw period.

In addition, the Board proposes to require that when disclosing payment terms in the table, a creditor must distinguish payment terms applicable to the draw period from payment terms applicable to the repayment period, by using the heading "Borrowing Period" for the draw period and "Repayment Period" for the repayment period, in a format substantially similar to the format used in any of the applicable tables in proposed Samples G--14(C) and G--14(E) in Appendix G. 15 U.S.C. 1604(a); *see* proposed § 226.5b(c)(9). Thus, under the proposal, a creditor would be required to include the heading "Borrowing Period" each place payment information about the draw period is included in the table, and the heading "Repayment Period" each place payment information about the repayment period is included in the table, in a format substantially similar to the format used in any of the applicable tables found in G--14(C) and G--14(E) in Appendix G. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a).

In consumer testing conducted by the Board on HELOC disclosures, the Board tested application disclosures in a narrative form, designed to simulate those currently in use. When reviewing these application disclosures, many participants had difficulty understanding ***how*** the draw period differs from the repayment period, and what impact these distinctions have on required monthly payments. In the consumer testing, the Board tested versions of the early HELOC disclosures where the heading "Borrowing Period" was included each place payment information about the draw period was presented in the table and the heading "Repayment Period" was included each place payment information about the repayment period was presented in the table. In reviewing these versions of the early HELOC disclosures, participants were better able to understand the differences between the draw period and the repayment period, and the impact these differences have on required monthly payments. Thus, the Board proposes to require that a creditor use the headings "Borrowing Period" and "Repayment Period" in the table to distinguish payment terms applicable to the draw period from payment terms applicable to the repayment period, respectively, in a format substantially similar to the format used in any of the applicable tables in proposed Samples G--14(C) and 14(E) in Appendix G.

Paragraph 5b(c)(9)(i)

Current § 226.5b(d)(5)(i), which implements TILA Section 127A(a)(8)(B), requires a creditor to disclose as part of the application disclosures the length of the draw period and the length of any repayment period. 15 U.S.C. 1637a(a)(8)(B). Current comment 5b(d)(5)(i)-1 provides that the combined length of the draw period and any repayment period need not be disclosed in the application disclosures.

For the reasons described below, pursuant to its authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes in new § 226.5b(c)(9)(i) to require that a creditor disclose in the table as part of the early HELOC disclosures the length of the plan, as well as the length of the draw period and the length of any repayment period. 15 U.S.C. 1637a(a)(14). In addition, under the proposal, if there is no repayment period on the HELOC plan, a creditor would be required to disclose in the table as part of the early HELOC disclosures a statement that after the draw period ends, the consumer must repay the remaining balance in full.

Length of the HELOC plan is definite. Proposed § 226.5b(c)(9)(i) would require that when the length of the plan is definite, a creditor, when disclosing the length of the plan, the length of the draw period and the length of any repayment period in the table, must make those disclosures using a format substantially similar to the format used in any of the applicable tables found in proposed Samples G--14(C) and G--14(D) in Appendix G. Proposed comment 5b(c)(9)(i)-1.i would provide that if a maturity date is set forth for the HELOC plan, the length of the plan, the length of the draw period and the length of any repayment period are definite. This proposed comment also states that the length of the plan must be based on the maturity date of the plan, regardless of whether the outstanding balance may be paid off before or after the maturity date. For example, assume that a plan has a draw period of 10 years and a maturity date of 20 years. If the outstanding balance on the plan is not paid off by the maturity date, the creditor could extend the maturity date of the plan and require the consumer to make minimum payments until the outstanding balance is repaid. In this example, the proposed comment clarifies that the creditor must disclose the length of the HELOC plan as 20 years, the length of the draw period as 10 years and the length of the repayment period as 10 years.

In consumer testing conducted by the Board on HELOC disclosures, the Board tested application disclosures in a narrative form, designed to simulate application disclosures currently in use. In these versions of the application disclosures, the length of the draw period and the length of the repayment period were disclosed, but the total length of the plan was not disclosed. When reviewing these application disclosures, many participants had difficulty understanding the timing of the draw and repayment periods. For example, several participants incorrectly thought that the two periods ran concurrently, or that the repayment period began as soon as money was borrowed.

In the consumer testing, the Board also tested versions of the early HELOC disclosures developed by the Board where the length of the plan was 20 years, and the length of the draw and repayment periods was 10 years each. In these tested versions of the early HELOC disclosures, the length of the plan was disclosed as 20 years, along with a statement indicating that this period is divided into two periods. The length of the draw period was then disclosed as "Years (1-10)" and the length of the repayment period was disclosed as "Years (11-20)," to indicate that those periods would run consecutively and not concurrently. In addition, the length of the draw period and the length of the repayment period were included as part of the headings "Borrowing Period" (for the draw period) and "Repayment Period" (for the repayment period), respectively, each time those headings were used. In the consumer testing, the Board found that including the length of the plan in the table and using the above format for presenting the length of the plan, the length of the draw period and the length of the repayment period effectively helped participants understand the timing of the two periods.

Thus, the Board proposes to require creditors to disclose the length of the plan in the table, along with the length of the draw period and the length of any repayment period. In addition, as explained in proposed comment 5b(c)(9)(i)-3, the Board proposes to require that creditors use the above format in presenting the length of the plan, the length of the draw period and the length of the repayment period in the table for HELOC plans that have a definite length and have a draw period and a repayment period, as ***shown*** in proposed Sample G--14(C) in Appendix G. Proposed comment 5b(c)(9)(i)-3 also specifies that proposed Sample G--14(D) in Appendix G ***shows*** the format a creditor must use to disclose the length of the plan and the length of the draw period for HELOC plans that have a definite length and have a draw period but no repayment period.

Length of plan and length of repayment period cannot be determined at the time the early HELOC disclosures must be given. Current comment 5b(d)(5)(i)-1 provides that if the length of the repayment period cannot be determined because, for example, it depends on the balance outstanding at the beginning of the repayment period, the creditor must disclose in the application disclosures that the length of the repayment period is determined by the size of the balance. The Board proposes to move this provision in current comment 5b(d)(5)(i)-1 to proposed comment 5b(c)(9)(i)-1.ii, and to revise it.

Specifically, proposed comment 5b(c)(9)(i)-1.ii addresses HELOC plans that do not have a maturity date, and for which the length of the plan and the length of the repayment period cannot be determined at the time the early HELOC disclosures must be given because the repayment period depends on the balance outstanding at the beginning of the repayment period or the balance at the time of the last advance during the draw period. For these plans, the creditor would be required to state that the length of the plan and the length of the repayment period are determined by the size of the balance outstanding at the beginning of the repayment period or the balance at the time of the last advance during the draw period, as applicable.

Proposed comment 5b(c)(9)(i)-1.ii provides two illustrations of this rule. The first would assume that the plan has no maturity date, the draw period is 10 years, and the minimum payment during the repayment period is 1.5 percent of the outstanding balance at the time of the last advance during the draw period. Under proposed comment 5b(c)(9)(i)-1.ii.A, a creditor must disclose that the length of the plan and the length of the repayment period are determined by the size of the outstanding balance at the time of the last advance during the draw period.

The second illustration would assume that the length of the draw period is 10 years and the length of the repayment period will be 15 years if the balance at the beginning of the repayment period is less than $ 20,000, and 30 years if the balance is $ 20,000 or more. Under proposed comment 5b(c)(9)(i)-1.ii.B, a creditor must disclose that the length of the plan will be 25 or 40 years depending on the outstanding balance at the beginning of the repayment period. In addition, the creditor must disclose that the repayment period will be 15 years if the balance is less than $ 20,000, and 30 years if the balance is $ 20,000 or more. This proposed comment provides that a creditor must not simply disclose that the repayment period is determined by the size of the balance. Guidance on ***how*** to disclose the information in this illustration is found in proposed Sample G--14(E) in Appendix G.

The Board requests comment on whether additional guidance is needed on ***how*** to disclose the length of the HELOC plan and the length of the repayment period in the table where the plan does not have a maturity date and the length of the repayment period cannot be determined at the time the early HELOC disclosures must be given.

Length of draw period is indefinite. Current comment 5b(d)(5)(i)-1 provides that if the length of the plan is indefinite (for example, because there is no time limit on the period during which the consumer can take advances), the creditor must state that fact in the application disclosures when disclosing the length of the draw period. The Board proposes to move this provision from current comment 5b(d)(5)(i)-1 to proposed comment 5b(d)(9)(i)-1.iii. Thus, under the proposal, a creditor would be required to make this disclosure in the table as part of the early HELOC disclosures, to satisfy the requirement in proposed § 226.5b(c)(9)(i) to disclose the length of the plan and the length of the draw period. The Board requests comment on whether additional guidance is needed on ***how*** to disclose the length of the plan and the length of draw period in the table when the length of the draw period is indefinite.

Length of the plan and length of the draw period are the same. For some HELOC plans, the length of the plan and the length of the draw period are the same because the HELOC plan does not have a repayment period. For example, some HELOC plans offer a payment plan where a consumer would only be required to pay interest during the draw period. At the end of the draw period, the consumer would be required to pay the principal balance as a balloon payment. Proposed comment 5b(c)(9)(i)-4 provides that if the length of the plan and the length of the draw period are the same, a creditor will be deemed to satisfy the requirement to disclose the length of plan by disclosing the length of the draw period.

No repayment period on the HELOC plan. Under proposed § 226.5b(c)(9)(i), if there is no repayment period on the HELOC plan, a creditor would be required to include a statement in the table as part of the early HELOC disclosures that after the draw period ends, the consumer must repay the remaining balance in full. Pursuant to its authority under TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes to add this disclosure to make more clear to consumers that there is no repayment period on the HELOC being offered. 15 U.S.C. 1637a(a)(14).

Draw period renewal provisions. Current comment 5b(d)(5)(i)-2 provides that if, under the credit agreement, a creditor retains the right to review a line at the end of the draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension--regardless of its likelihood--should be ignored for the application disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. The Board proposes to move this comment to proposed comment 5b(c)(9)(i)-2, and apply it to the early HELOC disclosures.

Paragraphs 5b(c)(9)(ii) and (c)(9)(iii)

Current § 226.5b(d)(5)(ii), which implements TILA Section 127A(a)(8)(C) and (a)(10), provides that a creditor must disclose as part of the application disclosures an explanation of ***how*** the minimum periodic payments will be determined and the timing of the payments (such as whether the payments will be due monthly, quarterly or on some other periodic basis). 15 U.S.C. 1637a(a)(8)(C) and (a)(10). In addition, current § 226.5b(d)(5)(ii) provides that if paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, the creditor must disclose a statement of this fact, as well as a statement that a balloon payment may result. Footnote 10b explains that a balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at that time.

Under current § 226.5b(d)(5)(iii), which implements TILA Section 127A(a)(9), a creditor must disclose as part of the application disclosures an example, based on a $ 10,000 outstanding balance and a recent APR, of the minimum periodic payments, the amount of any balloon payment, and the time it would take to repay the $ 10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. 15 U.S.C. 1637a(a)(9). In addition, current § 226.5b(d)(12)(x), which implements TILA Section 127A(a)(2)(H), provides that for each payment option offered on a variable-rate HELOC plan, a creditor must disclose the minimum periodic payments that would be required if the maximum APR were in effect for a $ 10,000 outstanding balance. 15 U.S.C. 1637a(a)(2)(H).

As discussed in more detail below, the Board proposes to move the provisions in § 226.5b(d)(5)(ii) to proposed § 226.5b(c)(9)(ii) and to revise them. The Board also proposes to move the provisions in § 226.5b(d)(5)(iii) and (d)(12)(x) to proposed § 226.5b(c)(9)(iii) and to revise them. In addition, the Board proposes to move the contents of footnote 10b to proposed comment 5b(c)(9)-1.

Multiple payment plans. In some cases, creditors may offer more than one payment option on a HELOC plan. For example, a creditor may provide the following two payment options during the draw period: (1) minimum monthly payments during the draw period will cover only interest that accrues each month and will not pay down any of the principal balance; or (2) minimum monthly payments during the draw period will cover interest that accrues each month plus 1.5 percent of the principle balance each month. The Board understands that creditors typically do not require a consumer to choose the payment plan he or she wants when applying for a HELOC plan, but instead require the consumer to choose a payment plan either prior to or at account opening.

Under current comment 5b(a)(1)-4, a creditor may provide a single application disclosure form for all of its HELOC plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all such options generally must be disclosed, including fixed-rate and -term payment features, as discussed in more detail above in the section-by-section analysis to § 226.5b(c). *See also* current comment 5b(d)(5)(ii)-2. Alternatively, a creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a creditor that offers two payment options for the draw period may prepare separate disclosure forms for the two payment options. A creditor using this alternative, however, must include a statement on each application disclosure form that the consumer should ***ask*** about the creditor's other HELOC programs. A creditor that receives a request for information about other available programs prior to account opening must provide the additional disclosures as soon as reasonably possible.

As discussed in the section-by-section analysis to proposed § 226.5b(b)(2), the Board proposes to delete current comment 5b(a)(1)-4 as obsolete. Under the proposal, a creditor would not be allowed to disclose more than two payment options offered on the HELOC in the table. Specifically, under proposed § 226.5b(c)(9)(ii)(B), if a creditor only offers two payment plans (excluding fixed-rate and -term payment plans unless these are the only payment plans offered during the draw period), the creditor would be required to disclose both of those payment plans in the table. If a creditor offers more than two payment plans (excluding fixed-rate and -term payment plans unless these are the only payment plans offered during the draw period), the creditor would be allowed to disclose only two of the payment plans in the table. *See* proposed comment 5b(c)(9)(ii)-2. Proposed comment 5b(c)(9)(ii)-2 clarifies that the following would be considered two payment plans: The draw period is 10 years and the consumer has the choice between two repayment periods--10 and 20 years. The two payment plans would be (1) a 10 year draw period and a 10 year repayment period, and (2) a 10 year draw period and a 20 year repayment period.

The Board believes that the proposed approach of allowing only two payment plans to be disclosed in the table would benefit consumers by preventing "information overload" that might result if more than two payment options were disclosed in the table. In addition, the Board believes that requiring a creditor to disclose two payment plans in the table, instead of allowing the creditor to disclose each payment plan separately to the consumer, would benefit consumers by enabling consumers more easily to compare the two payment plans. As discussed in more detail below, under proposed § 226.5b(c)(9)(iii), a creditor would be required to disclose sample payments for each payment plan disclosed in the table based on the assumption that the consumer borrows the full credit line at account opening, and does not obtain any additional extensions of credit. Under the proposal, if a creditor is disclosing two payment plans in the table, the creditor would be required to disclose in the table which plan results in the least amount of interest, and which plan results in the most amount of interest, based on the assumptions used to calculate the sample payments. *See* proposed § 226.5b(c)(9)(iii)(C)(3). In addition, under the proposal, a creditor disclosing two payment plans in the table, one in which a balloon payment would occur and one in which it would not, must disclose that a balloon payment will result for the plan in which a balloon payment would occur and that a balloon payment will not result for the plan in which no balloon payment would occur. *See* proposed § 226.5b(c)(9)(iii)(C)(4). In consumer testing conducted by the Board on HELOC disclosures, the Board tested the above disclosures explicitly comparing two payment plans; most participants responding to questions about this information indicated that they found this information useful.

Proposed § 226.5b(c)(9)(ii)(B) also provides that if a creditor offers one or more payment plans (excluding fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period) where a consumer would repay all of the principal by the end of the plan if the consumer makes only the minimum payments due during that period, the creditor would be required to describe one of these payment plans in the table. For example, if a creditor offers two payment plans where a balloon payment will result and one payment plan (excluding fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period) where a balloon payment will not result, the creditor would be required to disclose in the table two payments plans, one of which must be the plan where a balloon payment will not result.

In consumer testing conducted by the Board on HELOC disclosures, the Board tested versions of early HELOC disclosures where two payment plans were ***shown*** in the table--one payment plan that would result in a balloon payment and one payment plan that would not result in a balloon payment. In this consumer testing, participants were ***asked*** which of these payment plans they would be likely to choose if they were opening the HELOC plan. Most of the participants indicated that they would choose the payment plan without the balloon payment because, in part, they did not want to owe a balloon payment at the end of the plan. Thus, the Board believes that requiring a creditor to disclose in the table a payment plan where a balloon will not result (if such a plan is offered by the creditor) would benefit consumers by informing them that the creditor offers such a payment plan.

Proposed § 226.5b(c)(9)(ii)(B) also requires a creditor to include a statement in the table indicating that the table ***shows*** ***how*** the creditor determines minimum required payments for two plans offered by the creditor. If the creditor offers more than the two payment plans described in the table (other than fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), the creditor would be required to disclose that other payment plans are available, and that the consumer should ***ask*** the creditor for additional details about these other payment plans. Proposed comment 5b(c)(9)(ii)-3 clarifies that this statement about additional payment plans would be required only if the creditor offers additional payment plans available to the consumer. If the only other payment plans available are employee preferred-rate plans, for example, the creditor would be required to provide this statement only if the consumer would qualify for the employee preferred-rate plan.

Proposed comment 5b(c)(9)(ii)-5 provides guidance on ***how*** a creditor must provide additional information on other payment plans to a consumer upon the consumer's request prior to account opening. This proposed comment provides that if a creditor offers a payment plan other than the two payment plans disclosed in the table as part of the early HELOC disclosures (except for fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), and a consumer requests additional information about the other plan, the creditor must disclose an additional table under § 226.5b(b) to the consumer with the terms of the other payment plan described in the table. See proposed comment 5(c)(18)-2 for disclosure of additional information about fixed-rate and -term payment plans upon a consumer's request. If the creditor offers multiple payment plans that were not disclosed in the table as part of the early HELOC disclosures, the creditor would be allowed to disclose only one payment plan on each additional table given to the consumer. Under the proposal, for example, if a creditor offers two payment plans (other than fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period) that were not disclosed in the table given as part of the early HELOC disclosures, the creditor would be required to provide the consumer, upon request, two additional tables--one table for each payment plan. A creditor that receives a request for information about other available payment plans prior to account opening would be required to provide the additional information as soon as reasonably possible after the request. *See* proposed comment 5b(c)-2.

The Board believes that this proposed approach of only allowing two payment plans to be disclosed in the table, and allowing the consumer easily and quickly to receive information about additional payment plans upon request, strikes the proper balance between ensuring that consumers are adequately informed about the payment plans that are offered on the HELOC plan and preventing "information overload" that might result if all payment plans were disclosed in the table. The Board solicits comment on the proposed approach.

Minimum payment requirements. As discussed above, current § 226.5b(d)(5)(ii) provides that a creditor must disclose as part of the application disclosures an explanation of ***how*** the minimum periodic payment will be determined and the timing of the payments (such as whether the payments will be due monthly, quarterly or on some other periodic basis). The Board proposes to move the provisions in § 226.5b(d)(5)(ii) to proposed § 226.5b(c)(9)(ii) and to revise them. Specifically, proposed § 226.5b(c)(9)(ii)(A) provides that if a creditor offers to the consumer only one payment plan (except for fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), the creditor must disclose in the table an explanation of ***how*** the minimum periodic payment will be determined and the timing of the payments. Proposed § 226.5b(c)(9)(ii)(B) provides that a creditor disclosing two payment plans in the table would be required to provide an explanation of ***how*** the minimum payment will be determined for both payment plans and the timing of the payments.

Current comment 5b(d)(5)(ii)-1 provides that the disclosure of ***how*** the minimum periodic payment is determined need describe only the principal and interest components of the payment. A creditor, at its option, may disclose other charges that may be a part of the payment, as well as the balance computation method. The Board proposes to move this comment to proposed comment 5b(c)(9)(ii)-1 and revise it. Specifically, proposed comment 5b(c)(9)(ii)-1 provides that the disclosure of ***how*** the minimum periodic payment is determined in the early HELOC disclosures table must describe only the principal and interest components of the payment.

Unlike current comment 5b(d)(5)(ii)-1, however, proposed comment 5b(c)(9)(ii)-1 would not allow a creditor to disclose in the table other charges that may be a part of the payment or the balance computation method. In addition, under proposed comment 5b(c)(9)(ii)-1, a creditor would not be allowed to disclose in the table a description of any floor payment amount, where the payment will not go below that amount. The Board believes that allowing charges that may be part of the payment (other than principal and interest components), the balance computation method, and any payment floor amount to be disclosed in the table might create "information overload" for consumers. The Board believes that the proposed approach to allow creditors to disclose information only about the principle and interest components of the payment in the table strikes the proper balance between informing consumers about ***how*** minimum periodic payments will be determined, and preventing the "information overload" that may result if other details were included. The concern about "information overload" here is that consumers will either not read the disclosure or not understand or retain the information they do read.

Payment examples. Current § 226.5b(d)(5)(iii) provides that a creditor must disclose as part of the application disclosures an example, based on a $ 10,000 outstanding balance and a recent APR, ***showing*** the minimum periodic payments, the amount of any balloon payment, and the time it would take to repay the $ 10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. 15 U.S.C. 1637a(a)(9). To fulfill this disclosure requirement, a creditor must disclose the number and amount of the minimum periodic payments and the amount of any balloon payment, assuming the consumer borrows $ 10,000 at the beginning of the draw period at a recent APR and the outstanding balance is reduced according to the terms of the plan. A creditor must assume no additional advances are taken at any time, including at the beginning of any repayment period. *See* current comment 5b(d)(5)(iii)-3.

A creditor must disclose separate hypothetical payments (or ranges of payments) for the draw period and the repayment period, if minimum periodic payments are calculated differently for the two periods. *See* current comment 5b(d)(5)(iii)-3. In this case, the highest payment in the range of payments for the draw period would be based on a $ 10,000 balance. The highest payment in the range of payment for the repayment period would be based on the outstanding balance at the beginning of the repayment period, which is calculated on the assumptions that the consumer borrows $ 10,000 at the beginning of the draw period, the consumer makes only minimum payments during the draw period, and the APR does not change during the draw period. Footnote 10c and comment 5b(d)(5)(iii)-1 provide guidance on selecting a recent APR to calculate the hypothetical payment schedule under current § 226.5b(d)(5)(iii). In disclosing the hypothetical payment schedule, if the amount of the hypothetical payments may vary within the draw period, or any repayment period, a creditor may disclose the hypothetical payments as a range of payments. *See* current Home Equity Samples G--14A and G--14B in Appendix G.

Under current comment 5b(d)(5)(iii)-2, a creditor may ***show*** a hypothetical payment schedule either for each payment plan disclosed in the application disclosures, or for representative payment plans. This comment also provides guidance ***how*** a creditor should choose representative payment plans. Current Home Equity Samples G--14A and G--14B, and Home Equity Model Clauses G--15 in Appendix G provide model language for ***how*** to disclose the hypothetical payment schedule required by current § 226.5b(d)(5)(iii).

Current § 226.5b(d)(12)(x) provides that for variable-rate HELOC plans, a creditor must disclose, as part of the application disclosures for each payment option offered on the HELOC, the minimum periodic payment that would be required if the maximum APR were in effect for a $ 10,000 outstanding balance. 15 U.S.C. Unlike the payment examples required under current § 226.5b(d)(5)(iii) for a recent rate, the payment examples required under current § 226.5b(d)(12)(x) for the maximum rate do not require the creditor to disclose a hypothetical payment schedule based on the maximum APR. Instead, under current § 226.5b(d)(12)(x), a creditor is required only to ***show*** the minimum required payments if the consumer had a $ 10,000 balance during the draw period at the maximum APR, and the minimum required payments if the consumer had a $ 10,000 balance at the beginning of the repayment period at the maximum APR, assuming the minimum required payments are calculated differently in the two periods. (If minimum required payments are calculated the same in the two periods, only one payment example need be ***shown***.) *See* comment 5b(d)(12)(x)-1. Even if a consumer might owe a balloon payment at the end of the HELOC, a creditor would not need to disclose the amount of the balloon payment based on the maximum APR. As with the payment examples required under current § 226.5b(d)(5)(iii) that are based on a recent APR, a creditor may provide the hypothetical payments based on the maximum APR either for each payment plan disclosed in the application disclosures, or for representative payment plans. *See* current comment 5b(d)(12)(x)-1. Current Home Equity Samples G--14A and G--14B and Home Equity Model Clauses G--15 in Appendix G provide model language for ***how*** to disclose the payment examples required by current § 226.5b(d)(12)(x).

The Board proposes to move the provisions on payment examples in § 226.5b(d)(5)(iii) and (d)(12)(x) to proposed § 226.5b(c)(9)(iii) and to revise them. The Board proposes to streamline the payment examples for the current APR and the maximum APR so they are calculated in a consistent manner. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Under proposed § 226.5b(c)(9)(iii)(B), a creditor would be required to provide payment examples for the current and maximum APR for each payment plan disclosed in the table. These payment examples would ***show*** the first minimum periodic payment for the draw period and the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period, based on the following assumptions: (1) The consumer borrows the maximum credit line available (as disclosed in the early HELOC disclosures) at account opening, and does not obtain any additional extensions of credit; (2) the consumer makes only minimum periodic payments during the draw period and any repayment period; and (3) the APRs used to calculate the sample payments remain the same during the draw period and any repayment period. Unlike the payment examples in current § 226.5b(d)(5)(iii), which must be based on a recent APR, proposed § 226.5b(c)(9)(iii) would require payment examples based on the maximum APR possible for the plan, as well as the current APR offered to the consumer on the HELOC plan. Under the proposal, if an introductory APR applies, a creditor would be required to use the APR that would otherwise apply to the plan after the introductory APR expires, as described in proposed § 226.5b(c)(10)(ii). Thus, the Board proposes to delete the contents of footnote 10c and guidance in current 5b(d)(5)(iii)-1 that relate to selecting a recent APR.

Proposed § 226.5b(c)(9)(iii) also requires additional disclosures as part of the proposed payment examples. Specifically, a creditor would be required to disclose the following information: (1) A statement that the payment examples ***show*** the first periodic payments at the current and maximum APRs if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money; (2) a statement that the payment examples are not the consumer's actual payments and that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period; (3) if a creditor is disclosing two payment plans in the table, the creditor must identify which plan results in the least amount of interest, and which plan results in the most amount of interest, based on the assumptions used to calculate the payment examples described above; and (4) if a consumer may pay a balloon payment under a payment plan disclosed in the table, the creditor must disclose that fact, and the amount of the balloon payment based on the assumptions used to calculate the payment examples described above. If a creditor is disclosing two payment plans in the table, one in which a balloon payment would occur and one in which it would not, a creditor must disclose that a balloon payment will not result for the plan in which no balloon payment would occur. The Board also proposes in new § 226.5b(c)(9)(iii)(D) to require a creditor to provide the new payment examples and the other related information in a tabular format substantially similar to the format used in any of the applicable tables found in Samples G--14(C), G--14(D) and G--14(E) in Appendix G.

As noted, the proposed payment examples for the current and the maximum APRs would be based on the assumption that the consumer borrows the maximum credit available (as disclosed in the early HELOC disclosures) at account opening, and does not obtain any additional extensions of credit. The Board proposes not to use $ 10,000 as the hypothetical balance for calculating the payment examples because of concerns that using that balance makes the sample payments unrealistically low for most consumers. 15 U.S.C. 1604(a). Consumers typically may borrow more than $ 10,000 on their HELOC plans. To illustrate, the Board's 2007 Survey of Consumer Finances data indicates that the median outstanding balance on HELOCs (for families that had a balance at the time of the interview) was $ 24,000. [18]

The Board believes that the proposed payment examples based on the maximum credit available for the current and maximum APRs will provide more useful information to consumers than the existing $ 10,000 example. Disclosing the first required minimum payment for the draw period if the consumer borrows the maximum credit available at the current APR would provide the consumer with an estimate of the actual current payment if the consumer borrows the maximum credit available at account opening. Disclosing the first required minimum payment for the draw period if the consumer borrowers the maximum credit available at the maximum APR would ***show*** the consumer a "worst case scenario" payment. In consumer testing conducted by the Board on HELOC disclosures, the Board tested versions of the early HELOC disclosures that based the payment examples on a $ 10,000 hypothetical balance, and other versions of the disclosures that based the payment examples on the maximum credit line. In this testing, a number of participants preferred payment examples based on the maximum credit line, indicating that they would like to know what would be the highest payment they would have to make if they borrowed the entire credit limit.

The proposed payment examples also would ***show*** the first minimum periodic payment during the repayment period for both the current and maximum APRs. These payment examples would be based on the balance

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[18] Brian Bucks,*et al*., Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 20091.

outstanding at the beginning of the repayment period, assuming that the consumer borrows the full credit line at the beginning of draw period, the consumer makes only minimum required payments during the draw period and borrows no additional money, and the APR does change during the draw period. Under the proposal, the amount of the balance used to calculate the first minimum periodic payment during the repayment period would be disclosed in the table. The Board recognizes that the first payments during the repayment period may be less useful to the consumer than the first payments during the draw period, given that the first payments during the repayment periods are based on the assumptions that the consumer will not take any additional advances during the draw period and the APR will not change during the draw period. Nonetheless, for some plans the required minimum periodic payments in the repayment period may be considerably larger than the required minimum periodic payments during the draw period. For example, some HELOCs offer a payment plan in which the minimum periodic payments during the draw period cover only interest and do not pay down any of the principal during the draw period, but during the repayment period, minimum periodic payments cover interest and at least some of the principal balance. In these plans, the required minimum periodic payments during the repayment period could be considerably larger than the minimum periodic payments during the draw period. The Board believes that ***showing*** the first required minimum periodic payment for the repayment period will better protect consumers by putting them on notice that their payments for the repayment period may be much larger than the minimum periodic payments for the draw period.

Unlike current § 226.5b(d)(5)(iii), proposed § 226.5b(c)(9)(iii) would not require a creditor to disclose a full hypothetical payment schedule in the early HELOC disclosures. Instead, proposed § 226.5b(c)(9)(iii) requires a creditor to disclose only the first minimum periodic payment during the draw period and the first minimum periodic payment during any repayment period. The Board proposes to delete the requirement to provide the number of hypothetical payments and the range of those payments during the draw period and any repayment period because of concerns that including that information in the table may confuse consumers and detract from other important information. In the consumer testing conducted by the Board on HELOC disclosures, the Board tested versions of the early HELOC disclosures that ***showed*** a range of payments for the draw period and the repayment period. In this testing, many participants did not understand why the payments during the draw period and the repayment period were ***shown*** as a range. In addition, participants spent considerable time attempting to understand the range of payments at the expense of not focusing on other pertinent information on the disclosure forms.

In addition, the Board believes that ***showing*** only the first payments for the draw period and the repayment period sufficiently informs consumers about ***how*** large the payments could be under the payment plans. If the range of payments were ***shown*** for the draw period, the first payment for the draw period would be the highest payment in that range. Likewise, if a range of payments were ***shown*** for the repayment period, the first payment for the repayment period would be the highest payment in the range.

Current § 226.5(d)(5)(iii) also requires that a creditor disclose the time it would take to repay a $ 10,000 advance that is taken at the beginning of the draw period at a recent rate and is reduced according to the terms of the plan. The Board proposes not to include the "time to repay" disclosure in the early HELOC disclosures. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). In consumer testing conducted by the Board on HELOC disclosures, the Board tested versions of the early HELOC disclosures that contained two payment options. In disclosing the payment examples for each payment option, the forms contained a disclosure of the time it would take to repay the hypothetical balance if the consumer only made minimum periodic payments. Although a few participants cited the "time to repay" as a reason to choose one payment plan over another, the Board is concerned that if a creditor discloses two payment options in the table, the time to repay each plan would not always be an accurate measure of which payment plan is better for consumers. The Board believes requiring the "time to repay" disclosure in the table may distract consumers from considering other information in the table that may be more useful in comparing the two payment plans--namely the disclosures of which payment plan results in the least amount of interest and whether a plan has a balloon payment.

In addition, the Board understands that most HELOCs have a maturity date and a definite length for the plan. For these HELOCs, the time to repay the balance will be the same as the length of the plan (which must be disclosed in the early HELOC disclosures, *see* proposed § 226.5b(c)(9)(i)), unless the HELOC plan has a floor payment amount (which may cause the principal to be paid off earlier than the maturity date). Even if the plan has a floor payment amount, the length of the plan will inform consumers of the "worst case scenario" of ***how*** long it will take to repay the debt if only minimum periodic payments are made.

Under current comments 5b(d)(5)(iii)-2 and 5b(d)(12)(x)-1, a creditor may ***show*** the hypothetical payment examples required to be disclosed under current § 226.5b(d)(5)(iii) and (d)(12)(x) either for each payment plan disclosed in the application disclosures, or for representative payment plans. The Board proposes to delete these comments. Under proposed § 226.5b(c)(9)(iii), a creditor would be required to disclose the proposed payment examples (as described above) for each payment plan disclosed in the table.

The current model clauses for disclosing the payment examples under current § 226.5b(d)(5)(iii) and (d)(12)(x) are contained in current G--15 in Appendix G. These model clauses provide this information in a narrative format. The Board proposes in new § 226.5b(c)(9)(iii)(D) to require a creditor to provide the proposed payment examples and the other related information in a tabular format that is substantially similar to the format used in any of the applicable tables found in proposed Samples G--14(C), G--14(D) and G--14(E) in Appendix G. In the consumer testing conducted by the Board on HELOC disclosures, the Board tested versions of the early HELOC disclosures where the proposed payment examples and related information were presented in the tabular format ***shown*** in proposed Samples G--14(C), G--14(D) and G--14(E) in Appendix G. This testing ***showed*** that presenting this information in a tabular format more effectively communicated payment information to participants than the current narrative format.

Current comment 5b(d)(5)(iii)-1 provides guidance to creditors on ***how*** to calculate the hypothetical payment schedule required to be disclosed under current § 226.5b(d)(5)(iii). Specifically, current comment 5b(d)(5)(iii)-1 provides that the creditor may assume that the credit limit as well as the outstanding balance is $ 10,000. (If the creditor only offers lines of credit for less than $ 10,000, however, the creditor may assume an outstanding balance of $ 5,000 instead of $ 10,000 in making this disclosure.) The example should reflect the payment comprised only of principal and interest. Creditors may provide an additional example reflecting other charges that may be included in the payment, such as credit insurance premiums. Creditors may assume that all months have an equal number of days, that payments are collected in whole cents, and that payments will fall on a business day even though they may be due on a non-business day. For variable-rate plans, the example must be based on the last rate in the historical example table required in current § 226.5b(d)(12)(xi), or a more recent rate. Where the last rate ***shown*** in the historical example table is different from the index value and margin (for example, due to a rate cap), creditors should calculate the rate by using the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

The Board proposes to move this comment to proposed comment 5b(c)(9)(iii)-1 and revise it Current guidance in comment 5b(d)(5)(iii)-1 related to the hypothetical $ 10,000 balance and selecting a recent APR would be deleted as obsolete. Unlike current comment 5b(d)(5)(iii)-1, proposed comment 5b(d)(9)(iii)-1 would not allow a creditor to provide additional payment examples reflecting other charges that may be included in the payment, such as credit insurance premiums, because of concerns that allowing these additional payment examples would be more information than many consumers can effectively process and may discourage consumers from reviewing the payment examples at all.

The Board also proposes to include in proposed comment 5b(c)(9)(iii)-1 additional guidance for calculating and disclosing the proposed payment examples in § 226.5b(c)(9)(iii). Specifically, proposed comment 5b(c)(9)(iii)-1 provides that in calculating the payment examples, a creditor must account for any significant terms related to each payment plan, such as payment caps or payment floor amounts. A creditor must take payment floor amounts into account when calculating the payment examples even though the creditor is not permitted to disclose that payment floor in the table when describing ***how*** minimum payments will be calculated. *See* proposed comment 5b(c)(9)(ii)-1. For example, assume that under a payment plan, the monthly payment for the draw period will be calculated as the interest accrued during that month, or $ 50, whichever is greater. In the early HELOC disclosures table, a creditor would be required to disclose that the minimum monthly payment during the draw period only covers interest. The creditor would not be allowed to disclose the payment floor of $ 50 in the table as part of the early HELOC disclosures. Nonetheless, the creditor would be required to take into account this $ 50 payment floor in calculating the disclosures ***shown*** as part of the payment examples.

In disclosing the payment examples, a creditor would be required to assume that the consumer borrows the full credit line (as disclosed in the early HELOC disclosures) at the beginning of the draw period and that this advance is reduced according to the terms of the plan. The proposed comment provides that a creditor must not assume that an additional advance is taken at any time, including at the beginning of any repayment period. The examples also would be required to reflect the payment comprised only of principal and interest. The proposed sample payments in the table ***showing*** the first minimum periodic payment for the draw period and any repayment period, as well as the balance outstanding at the beginning of any repayment period, must be rounded to the nearest whole dollar. The proposed comment provides that creditors may assume that all months have an equal number of days, that payments are collected in whole cents, and that payments will fall on a business day even though they may be due on a non-business day. A creditor would be required to assume that the APR used to calculate each payment example required by § 226.5b(c)(9)(iii) would remain the same during the draw period and any repayment period as specified in proposed § 226.5b(c)(9)(iii)(A)(3) even if that APR is a variable rate under the plan.

Balloon payments. Currently, if a balloon payment may be paid by the consumer under a payment plan, creditors are required to make two disclosures relating to the balloon payment.

First, current § 226.5b(d)(5)(ii), which implements TILA Section 127A(a)(10), provides that if paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, the creditor must disclose as part of the application disclosures a statement of this fact, as well as a statement that a balloon payment may result. 15 U.S.C. 1637a(a)(10). Footnote 10b explains that a balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time. Current comment 5b(d)(5)(ii)-3 provides guidance about disclosing balloon payments in the application disclosures. This comment provides that in programs where the occurrence of a balloon payment is possible, a creditor must disclose the possibility of a balloon payment even if such a payment is uncertain or unlikely. This comment also provides that in programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that a balloon payment will result. Current comment 5b(d)(5)(ii)-3 clarifies that in making the disclosure about a balloon payment as required by § 226.5b(d)(5)(ii), a creditor is not required to use the term "balloon payment" and is not required to disclose the amount of the balloon payment. In addition, this comment clarifies that the balloon payment disclosure as described in § 226.5b(d)(5)(ii) does not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration, or if the final payment could not be more than twice the amount of other minimum payments under the plan.

Second, as discussed above, current § 226.5b(d)(5)(iii) requires disclosure of a hypothetical payment schedule, based on a $ 10,000 outstanding balance and a recent APR, ***showing*** the minimum periodic payments, the amount of any balloon payment, and the time it would take to repay the $ 10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit.

1. *Disclosure of balloon payments when one payment plan is disclosed in the early HELOC disclosures*. Under the proposal, if a creditor is only disclosing one payment plan in the early HELOC disclosures and under that payment plan the consumer may pay a balloon payment, a creditor would be required to disclose information about the balloon payment twice in the table as part of the early HELOC disclosures: At the beginning of the information about payment terms, and as part of the payment examples. The Board proposes to move the provisions on disclosing a balloon payment in § 226.5b(d)(5)(ii) to proposed § 226.5b(c)(9)(ii)(A).

Specifically, proposed § 226.5b(c)(9)(ii)(A) provides that if a creditor offers to the consumer only one payment plan (except for fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period) and paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the HELOC plan, the creditor must disclose a statement of this fact, as well as a statement that a balloon payment may result. Proposed comment 5b(c)(9)-2 explains that the row "Balloon Payment" in the "Borrowing and Repayment Terms" section of proposed Sample G--14(D) in Appendix G provides guidance on ***how*** to comply with the requirements in proposed § 226.5b(c)(9)(ii)(A). Proposed § 226.5b(c)(9)(ii)(A) also specifies that if a balloon payment will not result under the payment plan, a creditor must not disclose in the early HELOC disclosures the fact that a balloon payment will not result for the plan. The Board believes that allowing a creditor to disclose in the early HELOC disclosures table that a balloon payment will not result for the plan might create "information overload" for consumers and distract consumers from more important information in the table because consumers are not likely to understand a statement that "a balloon payment will not apply" without additional language defining what a balloon payment is, which would add complexity to the table.

In addition, as discussed above, the Board proposes to move the payment examples in current § 226.5b(d)(5)(iii) to proposed § 226.5b(c)(9)(iii) and revise them. Regarding disclosure of the amount of the balloon payment in the proposed payment examples, proposed § 226.5b(c)(9)(iii)(C)(4) provides that if a consumer may pay a balloon payment under a payment plan disclosed in the table, a creditor would be required to disclose that fact when disclosing the proposed payment examples, as well as disclose the amount of the balloon payment based on the assumptions used the calculate the payment examples as described in proposed § 226.5b(c)(9)(iii). Proposed comment 5b(c)(9)-2 explains that the first paragraph of the "Sample Payments" section of proposed Sample G--14(D) in Appendix G provides guidance on ***how*** to comply with the requirements in § 226.5b(c)(9)(iii)(C)(4). Consistent with proposed § 226.5b(c)(9)(ii)(A), proposed § 226.5b(c)(9)(iii)(C)(4) also specifies that if a creditor is disclosing only one payment plan in early HELOC disclosures, and a balloon payment will not occur for that plan, the creditor must not disclose as part of the payment examples that a balloon payment will not result for the plan.

The Board proposes to move current comment 5b(d)(5)(ii)-3 and current footnote 10b, which provide guidance on disclosing balloon payments, to proposed comment 5b(c)(9)-1 and to revise these provisions. Like current footnote 10b, proposed comment 5b(c)(9)-1 specifies that a balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time. A creditor also would not need to make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan. Consistent with current comment 5b(d)(5)(ii)-3, proposed comment 5b(c)(9)-1 specifies that the balloon payment disclosures in proposed § 226.5b(c)(9)(ii) and (iii) do not apply where repayment of the entire outstanding balance would occur only as a result of termination and acceleration.

Finally, consistent with current comment 5b(d)(5)(ii)-3, proposed comment 5b(c)(9)-1 specifies that, in disclosing a balloon payment under § 226.5b(c)(9)(ii) and (iii), a creditor must disclose that a balloon payment "may" result if a balloon payment under a payment plan is possible, even if such a payment is uncertain or unlikely; a creditor must disclose a balloon payment "will" result if a balloon payment will occur under a payment plan, such as a payment plan with interest-only payments during the draw period and no repayment period.

2. Disclosure of balloon payments when two payment plans are disclosed in the early HELOC disclosures. Under the proposal, a creditor that discloses two payment plans in the table as part of the early HELOC disclosures and under at least one of the plans a consumer may pay a balloon payment, the creditor must disclose information about the balloon payment three times in the table: (1) At the beginning of information about the payment terms on the HELOC plan; (2) with a discussion of ***how*** the minimum periodic payments are determined for each plan; and (3) with the payment examples.

First, proposed § 226.5b(c)(9)(ii)(B)(*1*) provides that if a creditor is disclosing two payment options in the table and under at least one of the payment plans, paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a creditor must disclose in the table as part of the early HELOC disclosures a statement of this fact, as well as a statement that a balloon payment may result. If a balloon payment would result under one payment plan but not both payment plans, the creditor must disclose that a balloon payment may result depending on the terms of the payment plan. If a balloon payment would result under both payment plans, the creditor must disclose that a balloon payment will result. If a balloon payment would not result under both payment plans, a creditor must not disclose in the early HELOC disclosures the fact that a balloon payment will not result for both plans. As noted above with respect to proposed § 226.5b(c)(9)(ii)(A), the Board believes that allowing a creditor to disclose in the early HELOC disclosures table that a balloon payment will not result for the both payment plans might create "information overload" for consumers and distract consumers from more important information in the table. Proposed comment 5b(c)(9)-3 explains that the row "Balloon Payment" in the "Borrowing and Repayment Terms" section of proposed Sample G--14(C) in Appendix G provides guidance on ***how*** to comply with the requirements in § 226.5b(c)(9)(ii)(B)(*1*).

Second, under proposed § 226.5b(c)(9)(ii)(B)(*3*), for each payment plan described in the early HELOC disclosures for which a balloon payment may result (or will result as applicable), a creditor would be required to disclose that a balloon payment may result or will result, as applicable, for that plan. For example, assume a creditor describes two payment plans--Plan A and Plan B--in the early HELOC disclosures, and a balloon payment will result for both plans. Under the proposal, a creditor would be required to disclose that a balloon payment will result for Plan A and disclose that a balloon payment will result for Plan B. These two statements would be disclosed along with the information about ***how*** minimum payments would be calculated for each plan required under proposed § 226.5b(c)(9)(ii)(B)(*2*). *See* the rows "Plan A" and "Plan B" in the "Payment Plans" section of proposed Sample G--14(C) in Appendix G.

If one of the plans has a balloon payment and the other does not, proposed § 226.5b(c)(9)(ii)(B)(*3*) requires a creditor to disclose that a balloon payment will result for the plan in which a balloon payment will occur and that a balloon payment will not result for the plan in which no balloon payment would occur. If under Plan A, a consumer would pay a balloon payment while under Plan B a consumer would not pay a balloon payment, the creditor would be required to state that a balloon payment will result for Plan A and a statement that a balloon payment will not result for Plan B. Again, these two statements would be disclosed along with the information about ***how*** minimum payments would be calculated for each plan required under proposed § 226.5b(c)(9)(ii)(B)(*2*). Consistent with proposed § 226.5b(c)(9)(ii)(B)(*1*), proposed § 226.5b(c)(9)(ii)(B)(*3*) also specifies that if neither payment plan has a balloon payment, a creditor must not disclose the fact that a balloon payment will not result for the each plan.

Third, proposed § 226.5b(c)(9)(iii)(C)(*4*) provides that if a consumer may pay a balloon payment under a payment plan disclosed in the table, a creditor would be required to disclose that fact when disclosing the proposed payment examples, and disclose the amount of the balloon payment based on the assumptions used the calculate the payment examples as described in proposed § 226.5b(c)(9)(iii). If under both Plan A and Plan B a consumer would owe a balloon payment, proposed § 226.5b(c)(9)(ii)(B)(*4*) requires a creditor to disclose that a balloon payment will result for Plan A and disclose the amount of the balloon payment based on the assumptions used to calculate the payment examples described in proposed § 226.5b(c)(9)(iii). In addition, a creditor would be required to disclose a balloon payment will result for Plan B and the amount of the balloon payment. These two statements would be disclosed along with the payment examples in proposed § 226.5b(c)(9)(iii). *See* the "Plan A vs. Plan B" part of the "Plan Comparison" section of proposed Sample G--14(C) in Appendix G.

If one of the plans has a balloon payment and the other does not, proposed § 226.5b(c)(9)(iii)(C)(*4*) requires a creditor to disclose that a balloon payment will not result for the plan in which no balloon payment would occur. In other words, if under Plan A, a consumer would pay a balloon payment while under Plan B a consumer would not pay a balloon payment, the creditor would be required to disclose a statement that a balloon payment will result for Plan A and the amount of the balloon payment. In addition, a creditor would be required to disclose a statement that a balloon payment will not result for Plan B. These two statements would be disclosed along with the payment examples in proposed § 226.5b(c)(9)(iii). Consistent with proposed § 226.5b(c)(9)(ii)(B)(*1*), proposed § 226.5b(c)(9)(iii)(C)(*4*) also specifies that if neither payment plan has a balloon payment, a creditor must not disclose the fact that a balloon payment will not result for the each plan. Thus, if under both Plan A and Plan B a consumer would not owe a balloon payment, a creditor must not disclose in the early HELOC disclosures that a balloon payment would not be paid under either plan.

The Board believes that the above approach of disclosing information about balloon payments three places in the table as part of the early HELOC disclosures would help consumer better understand that a balloon payment may be owed by the consumer at the end of HELOC plan if the consumer only makes minimum required payments, and reinforces for the consumer which payments plans carry the possibility of a balloon payment.

Reverse mortgages. Current comment 5b(d)(5)(iii)-4 provides guidance on disclosing terms of reverse mortgages, also known as reverse annuity or home-equity conversion mortgages, as part of the application disclosures. The Board proposes to move current comment 5b(d)(5)(iii)-4 to proposed comment 5b(d)(9)(ii)-6, and to make technical revisions to conform this guidance to proposed revisions in proposed § 226.5b(c). The Board requests comment on whether additional guidance is needed by creditors offering reverse mortgages on ***how*** to meet the disclosure requirements in proposed § 226.5b(c).

Paragraph 5b(c)(9)(iv)

Pursuant to its authority under TILA Section 127A(a)(14) to require additional disclosures with respect to HELOC plans, the Board proposes in new § 226.5b(c)(9)(iv) to require a creditor to disclose in the table as part of the early HELOC disclosures a statement that the consumer can borrow money during the draw period. 15 U.S.C. 1637a(a)(14). In addition, if a repayment period is provided, the creditor would also be required to disclose in the table a statement that the consumer cannot borrow money during the repayment period. Although creditors are not specifically required to include the above information as part of the application disclosures, creditors typically include this information in the application disclosures. The Board believes that consumers should be informed about when during the HELOC plan they can make withdrawals and when they are no longer able to borrow money under the plan.

Paragraph 5b(c)(9)(v)

As discussed above, current § 226.5b(d)(5)(ii) provides that a creditor must disclose as part of the application disclosures an explanation of ***how*** the minimum periodic payments will be determined and the timing of the payments (such as whether the payments will be due monthly, quarterly or on some other periodic basis). As discussed above, the Board proposes to move current § 226.5b(d)(5)(ii) to proposed § 226.5b(c)(9)(ii) and make revisions. Nonetheless, consistent with current § 226.5b(d)(5)(ii), the Board proposes in new § 226.5b(c)(9)(ii) to require that a creditor disclose in the table as part of the early HELOC disclosures the timing of the payments (such as whether the payments will be due monthly, quarterly or on some other periodic basis.) In addition, the Board proposes in new § 226.5b(c)(9)(v) to require a creditor to disclose in the table as part of the early HELOC disclosures a statement indicating whether minimum payments are due in the draw period and any repayment period. In consumer testing conducted by the Board on HELOC disclosures, the Board tested application disclosures in a narrative form, designed to simulate those currently in use. When reviewing these application disclosures, many participants had difficulty understanding ***how*** the draw period differs from the repayment period, and what impact these distinctions have on required monthly payments. The Board believes that requiring a creditor to state explicitly whether minimum payments are due in the draw period and any repayment period will help consumers better understand when minimum payments will be due under the HELOC. 5b(c)(10) Annual Percentage Rate

TILA Section 127A(a)(1) provides that a creditor must disclose as part of the application disclosures each APR imposed in connection with the HELOC plan. 15 U.S.C. 1637a(a)(1). Regulation Z currently interprets TILA Section 127A(a)(1) to mean that for fixed-rate payment plans, a creditor must disclose as part of the application disclosures a recent APR imposed under the plan. *See* current § 226.5b(d)(6). Current footnote 10c provides that a recent APR for fixed-rate plans is a rate that has been in effect under the plan within the 12 months preceding the date that disclosures are provided to the consumer. For variable rate plans, current § 226.5b(d)(12), which implements TILA Section 127A(a)(2), requires a creditor to disclose the index that will be used to determine the variable rate. 15 U.S.C. 1637a(a)(2). In addition, current § 226.5b(d)(12) sets forth a number of other disclosures about variable rates that must be included as part of the application disclosures, such as a statement that the consumer should

ask about the current index value, margin, discount or premium, and APR. A creditor is not required to disclose in the application disclosures the current APRs that are offered to the consumer on the HELOC plan.

The Board proposes to require that a creditor disclose in the table as part of the early HELOC disclosures the current APRs that are offered to the consumer on the payment plans described in the early HELOC disclosures table. Specifically, proposed § 226.5b(c)(10) requires that a creditor must disclose in the table each APR applicable to any payment plan disclosed in the early HELOC disclosures. The proposal to require a creditor to disclose in the table the APRs applicable to the payment plans disclosed in the table is consistent with TILA Section 127A(a)(1), which provides that a creditor must disclose "each annual percentage rate imposed in connection with extensions of credit under the plan. * * *" 15 U.S.C. 127A(a)(1). In addition, as discussed in more detail above in the section-by-section analysis to proposed § 226.5b(b), consumer testing on HELOC disclosures ***shows*** that the current APRs on the HELOC plan are some of the most important pieces of information that consumers want to know in deciding whether to open a HELOC plan. Participants in the consumer testing overwhelmingly indicated that they would prefer to receive transaction-specific disclosures, including the current APRs offered to the consumer on the HELOC plan, soon after application even if it meant that they would not receive disclosure of general terms before they applied. The Board proposes to delete as obsolete current § 226.5b(d)(6) and the contents of footnote 10c, which require the consumer to disclose for fixed-rate plans a recent rate that has been in effect within the 12 months preceding the date that disclosures are provided to the consumer. In addition, the Board proposes to move the provisions in current § 226.5b(d)(12) relating to variable-rate plans to proposed § 226.5b(c)(10) and to make revisions to those provisions.

Rates applicable to payment plans disclosed. Proposed comment 5b(c)(10)-3 clarifies that under proposed § 226.5b(c)(10), a creditor would only be required to disclose in the table as part of the early HELOC disclosures the APRs applicable to the payment plans that are disclosed in the table under proposed § 226.5b(c)(9). As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c), for HELOC plans that are variable-rate plans but also offer fixed-rate and -term payment options during the draw period, a creditor may only disclose in the table information applicable to the variable-rate plan, including the applicable APRs. In this case, a creditor may not disclose in the table the APRs applicable to any fixed-rate and -term payment plans offered during the draw period. However, if a HELOC plan does not offer a variable-rate feature during the draw period, but only offers fixed-rate and -term features during that period, a creditor must disclose in the table information related to the fixed-rate and -term features when making the disclosures required by proposed § 226.5b(c), including the APRs applicable to these features. The Board believes that requiring disclosure of all the APRs applicable to the HELOC plan in the table, even those APRs that relate to payment plans that are not disclosed in the table, would be confusing to consumers.

Nonetheless, under the proposal, a creditor would be required to disclose the APRs applicable to other payment plans when disclosing those payment plans to a consumer upon request prior to account opening. In particular, proposed comment 5b(c)(9)(ii)-5 provides guidance on ***how*** a creditor must provide additional information on payment plans that are not disclosed in the table as part of the early HELOC disclosures (other than fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period) to a consumer upon the consumer's request. This proposed comment provides that if a creditor offers a payment plan other than the two payment plans disclosed in the table as part of the early HELOC disclosures (except for fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), and a consumer requests additional information about the other plan, the creditor must disclose an additional table under § 226.5b(b) to the consumer with the terms of the other payment plan described in the table. Proposed comment 5b(c)(10)-3 makes clear that this additional table must include the APRs applicable to that other payment plan.

In addition, as discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(18), proposed comment 5b(c)(18)-2 provides guidance on ***how*** a creditor must provide additional information about fixed-rate and -term payment plans to a consumer upon the consumer's request prior to account opening. This proposed comment provides that in disclosing additional information about the fixed-rate and -term payment plan upon a consumer's request, a creditor must disclose in the form of a table (1) the information described by proposed § 226.5b(c) applicable to the fixed-rate and -term payment plan (including the APRs applicable to the fixed-rate and -term payment plan) and (2) any fees imposed related to the use of the fixed-rate and -term payment plan, such as fees to exercise the fixed-rate and -term payment plan or to convert a balance under a fixed-rate and -term payment feature to a variable-rate feature under the plan.

Rates changes set forth in initial agreement. Current comments 5b(d)(6)-1 and 5b(d)(12)(viii)-1 provide that a creditor must disclose in the application disclosures a disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. The Board proposes to move these comments to proposed comment 5b(c)(10)-2 and revise them. Specifically, proposed comment 5b(c)(10)-2 clarifies that proposed § 226.5b(c)(10) requires disclosure of any rate changes set forth in the initial agreement (as discussed in § 226.5b(f)(3)(i)) applicable to the payment plans disclosed in the table pursuant to proposed § 226.5b(c)(9). For example, a creditor would be required to disclose under proposed § 226.5b(c)(10) preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. The creditor would be required to disclose the preferred rate that applies to the plan, and the rate that would apply if the event is triggered, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. Under this proposed comment, if the preferred rate and the rate that would apply if the event is triggered are variable rates, the creditor would be required to disclose those rates based on the applicable index or formula, and disclose other information required by proposed § 226.5b(c)(10)(i).

Penalty APRs. Although under the proposal creditors generally would be required to disclose in the table as part of the early HELOC disclosures the APRs applicable to the payment plans disclosed in the table, proposed § 226.5b(c)(10) provides that a creditor must not disclose in the table any penalty rate set forth in the initial agreement that may be imposed in lieu of termination of the plan. As discussed in more detail in the section-by-section analysis to § 226.5b(f), the Board proposes to restrict creditors offering HELOCs subject to § 226.5b from imposing a penalty rate or penalty fees (except for a contractual late-payment fee) on the account for a consumer's failure to pay the account when due, unless the consumer is more than 30 days late in paying the account. Based on Board outreach, the Board understands that HELOC creditors generally do not impose a penalty rate, regardless of ***how*** late the payment is. For this reason, as well as due to the very limited circumstances in which a penalty rate may be imposed under the proposal, the Board believes that information about the penalty rate would not be useful to consumers in deciding whether to open a HELOC plan and that including it in the table may distract consumers from noticing information that is more likely to impact them in choosing and using a HELOC.

Periodic rates. Proposed comment 5b(c)(10)-1 would clarify that a creditor would be allowed to disclose only APRs in the table as part of the early HELOC disclosures. Periodic rates would not be allowed to be disclosed in the table as part of the early HELOC disclosures. For example, assume a monthly periodic rate of 1.5 percent applies to transactions on a HELOC account. The corresponding APR to this periodic rate would be 18 percent. Under the proposal, creditors would be required to disclose the 18 percent corresponding APR in the early HELOC disclosures table, but may not disclose the 1.5 percent periodic rate in the table. The Board believes information about periodic rates that apply to the HELOC would not be useful to consumers in deciding whether to open a HELOC plan, and including this information in the table may distract consumers from noticing more important information.

16-point font. Proposed § 226.5b(c)(10) requires that a creditor must provide the APRs disclosed in the table as part of the early HELOC disclosures in at least 16-point type, except for the following: any minimum or maximum APRs that may apply; and any disclosure of rate changes set forth in the initial agreement, except for rates that would apply after the expiration of an introductory rate. As discussed above, in consumer testing conducted by the Board on HELOC disclosures, participants indicated that the APRs offered to the consumer on the HELOC plans were some of the most important pieces of information in deciding whether to open a HELOC plan. Thus, the Board proposes generally to highlight the APRs in the table. Given that the Board proposes to require a minimum of 10-point font for the disclosures of other terms in the table, the Board believes that a 16-point font size for the APRs would be effective in highlighting the APRs in the table.

Proposed § 226.5b(c)(10) requires that the current APR that will apply to the account be disclosed in 16-point font. If an introductory rate is offered, a creditor would be required to disclose the introductory rate and the rate that would otherwise apply after the introductory rate expires in 16-point font. Under the proposal, the 16-point font requirement would not apply to any minimum or maximum APRs disclosed in the table. In addition, the 16-point font requirement would not apply to any disclosure of rate changes set forth in the initial agreement except for rates that would apply after the expiration of an introductory rate. For example, the 16-point font requirement would not apply to any disclosure of the rate that would apply if any preferred rate is terminated. The Board believes that limiting the 16-point font requirement generally to the current APRs on the account (or an introductory rate and the rate that would otherwise apply after the introductory rate expires) would highlight for consumers the rates that will be most relevant for them at account opening. The Board believes that requiring all of the APRs disclosed in the table to be in 16-point font could create "information overload" for consumers.

5b(c)(10)(i) Disclosures for Variable-Rate Plans

Current § 226.5b(d)(12), which implements TILA Section 127A(a)(2), provides that if a variable-rate feature is offered on a HELOC plan, the creditor must disclose as part of the application disclosures the following information about the variable-rate feature: (1) The fact that the APRs, payment, or other terms may change due to the variable-rate feature; (2) the index used in making rate adjustments and a source of information about the index; (3) an explanation of ***how*** the APR will be determined, including an explanation of ***how*** the index is adjusted, such as by the addition of the margin; (4) the frequency of changes in the APR: (5) any rules relating to changes in the index value and the APR and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover; (6) a statement of any annual or more frequent periodic limitations on changes in the APR (or a statement that no annual limitation exists), as well as a statement of the maximum APR that may be imposed under each payment option; (7) an historical example, based on a $ 10,000 extension of credit, illustrating ***how*** APRs and payments would have been affected by index value changes implemented according to the terms of the plan ("historical example table"). The historical example table must be based on the most recent 15 years of index values (selected for the same time period each year) and must reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period; (8) the minimum periodic payment required when the maximum APR for each payment option is in effect for a $ 10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed; (9) a statement that the APR does not include costs other than interest; (10) a statement that the consumer should ***ask*** about the current index value, margin, discount or premium, and APR; (11) a statement that rate information will be provided on or with each periodic statement; and (12) as applicable, a statement that the initial APR is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect. As discussed in more detail below, the Board proposes to move current § 226.5b(d)(12) to proposed § 226.5b(c)(10) and revise it.

Current comment 5b(d)(12)-1 provides that sample forms in current Appendix G--14 provide illustrative guidance on the variable-rate rules. The Board proposes to move this comment to proposed comment 5b(c)(10)(i)-6 and to make technical revisions. Current comment 5b-4 provides that if a creditor uses an index to determine the rate that will apply at the time of conversion to the repayment phase--even if the rate will thereafter be fixed--the creditor must provide the variable-rate information in current § 226.5b(d)(12), as applicable. The Board proposes to move this provision in current comment 5b-4 to proposed comment 5b(c)(10)(i)-3 and to make technical revisions.

In addition, the Board proposes to add new comment 5b(c)(10)(i)-1, which would clarify that a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. This proposed comment also provides a cross reference to comment 6(a)(4)(ii)-1 for examples of variable-rate plans.

Disclosure that APR may change due to the variable-rate feature. Current § 226.5b(d)(12)(i) provides that a creditor must include as part of the application disclosures a statement that the APRs, payment, or other terms may change due to the variable-rate feature. Consistent with current § 226.5b(d)(12)(i), proposed § 226.5b(c)(9)(i)(A)(*1*) provides that a creditor must disclose in the table as part of the early HELOC disclosures the fact that the APR may change due to the variable-rate feature. The Board believes that it is important to highlight for consumers that the APR is a variable rate. Thus, under the proposal, the Board would require a creditor in disclosing the variable-rate APR to use the term "variable rate" in underlined text as ***shown*** in any of the applicable tables found in proposed Samples G--14(C), G--14(D) and G--14(E) in Appendix G. Unlike current § 226.5b(d)(12)(i), under the proposal, a creditor would not be required to disclose explicitly the fact that the payment or other terms may change due to the variable-rate feature. The Board believes that the proposed payment examples that would be included in the early HELOC disclosures communicate effectively to consumers that the payments would change when the APR changes. In consumer testing conducted by the Board on HELOC disclosures, participants were ***asked*** whether the payments on the HELOC plan could vary. Most participants understood from the payment examples contained in the tested forms that the payments on the HELOC plan would increase if the APR increased.

*Explanation of **how** APR will be determined*. Current § 226.5b(d)(12)(iii), which implements TILA Section 127A(a)(2)(B), provides that a creditor must include as part of the application disclosures the index used in making rate adjustments to the variable APR and a source of information about the index. 15 U.S.C. 1637a(a)(2)(B). Current § 226.5b(d)(12)(iv) provides that a creditor also must include as part of the application disclosures an explanation of ***how*** the variable APR will be determined, including an explanation of ***how*** the index is adjusted, such as by the addition of a margin. Current comment 5b(d)(12)(iv)-1 provides that if a creditor adjusts its index through the addition of a margin, the disclosure might read, "***Your*** annual percentage rate is based on the index plus a margin." The creditor is not required to disclose a specific value for the margin.

Consistent with current § 226.5b(d)(12)(iii) and (iv), proposed § 226.5b(c)(9)(i)(A)(*2*) requires a creditor to disclose in the table as part of the early HELOC disclosures an explanation of ***how*** the APR will be determined.

Consistent with current § 226.5b(d)(12)(iii), under the proposal, a creditor would be required to disclose in the table the type of index used in making rate adjustments to the variable APR, such as indicating the current APR is based on the "prime rate." Unlike current § 226.5b(d)(12)(iv), under the proposal, a creditor also would be required to disclose in the table the value of the margin. In consumer testing conducted on HELOC disclosures, the Board tested some versions of the early HELOC disclosures that did not contain the current value of the margin, but instead included only a statement that the APR "would vary monthly with the Prime Rate." The Board also tested other versions of the early HELOC disclosures that included the value of the margin, such as by stating that the APR will be "a variable rate that will change monthly based on the Prime Rate plus 1.00%." Participants in consumer testing consistently indicated that they preferred to be ***shown*** the value of the margin, so that they would have detailed information about ***how*** their APR would be determined over time. Thus, under proposed § 226.5b(10)(i)(A)(2), a creditor would be required to disclose in the table the type of index used in making rate adjustments (such as the prime rate) and the value of the margin. Current comment 5b(d)(12)(iv)-1 would be deleted as obsolete. Under the proposal, Samples C-14(C), G-14(D) and G-14(E) would provide guidance to creditors on ***how*** to disclose the fact that the applicable rate varies and ***how*** it is determined. *See* proposed comment 5b(c)(10)(i)-2.

Under the proposal, in providing an explanation of ***how*** the APR will be determined, a creditor would not be allowed to disclose in the table as part of the early HELOC disclosures the current value of the index, such that the prime rate is currently 4 percent. *See* proposed comment 5b(c)(10)(i)-2. The Board has concerns that requiring the current value of the index in the table could create "information overload" for consumers and could distract consumers from noticing more important information. As described above, the current APR (*i.e*., the current value of the index plus the margin) and the value of the margin would be disclosed in the table, so a consumer who is interested in knowing the current value of the index could calculate the current value of the index from those figures. At the creditor's option, the creditor would be allowed under the proposal to disclose the current value of the index outside the table. *See* proposed § 226.5b(b)(2)(v).

Unlike current § 226.5b(d)(12)(iii), which implements TILA Section 127A(a)(2)(B), under the proposal, a creditor would not be allowed to disclose in the table as part of the early HELOC disclosures a source of information about the index used in the making rate adjustments, such as indicating that the prime rate is published in the Wall Street Journal. 15 U.S.C. 1637(a)(2)(B); *see* proposed comment 5b(c)(10)(i)-2. The Board proposes no longer to require a creditor to provide the source of information about the index, pursuant to the Board's exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. *See* 15 U.S.C. 1604(f)(1). The Board must make this determination in light of specific factors. *See* 15 U.S.C. 1604(f)(2).

These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes that the proposed exemption is appropriate. The Board proposes not to require a creditor to include information about the source of the index because of concerns of "information overload" to consumers. In consumer testing conducted by the Board on HELOC disclosures, the Board ***asked*** participants whether information about the source of the index was important information for them to know in deciding whether to open a HELOC plan. Most participants indicated that this information was not useful information and would not affect their decision about whether to open a HELOC plan. At a creditor's option, the creditor would be allowed under the proposal to disclose information about the source of the index outside of the table. *See* proposed § 226.5b(b)(2)(v).

Frequency of changes in the APR. Current § 226.5b(d)(12)(vii), which implements TILA Section 127A(a)(2)(B), requires a creditor to disclose as part of the application disclosures the frequency of changes in the variable-rate APR, such as disclosing that the variable rate may change on a monthly basis. Consistent with current § 226.5b(d)(12)(vii), under proposed § 226.5b(c)(10)(i)(A)(3), a creditor would be required to disclose in the table as part of the early HELOC disclosures the frequency of changes in, the variable-rate APR.

Rules relating to changes in the index value and the APR and resulting changes in the payment amount. Current § 226.5b(d)(12)(viii), which implements TILA Section 127(a)(2)(B), provides that a creditor must disclose as part of the application disclosures any rules relating to changes in the index value and the APR and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover. 15 U.S.C. 127(a)(2)(B). Current comment 5b(d)(12)(viii)-1 clarifies that current § 226.5b(d)(12)(viii) requires a creditor to disclose as part of the application disclosures any preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. Current comment 5b(d)(12)(viii)-2 provides a cross reference to current comment 5b(d)(5)(ii)-2, which discusses the disclosure requirement for options permitting the consumer to convert from a variable rate to a fixed rate.

Consistent with current § 226.5b(d)(12)(viii), proposed § 226.5b(c)(10)(i)(A)(4) requires a creditor to disclose in the table as part of the early HELOC disclosures any rules relating to changes in the index value and the APR and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover. As discussed above, current comment 5b(d)(12)(viii)-1 dealing with preferred-rate provisions would be moved to proposed comment 5b(c)(10)-2.

The Board proposes to delete as obsolete current comment 5b(d)(12)(viii)-2, which deals with disclosure of options permitting the consumer to convert from a variable rate to a fixed rate. As discussed in the section-by-section analysis to proposed § 226.5b(c) and (c)(18), under the proposal, a creditor generally would not be permitted to disclose in the table as part of the early HELOC disclosures information related to fixed-rate and -term payment features, including information about ***how*** the rates that apply to those features are determined.

Limitations on changes in rates. Current § 226.5b(d)(12)(ix), which implements TILA Section 127A(a)(2)(E) and (F), provides that a creditor must disclose as part of the application disclosures a statement of any annual or more frequent periodic limitations on changes in the APR (or a statement that no annual limitation exists), as well as a statement of the maximum APR that may be imposed under each payment option. 15 U.S.C. 1637a(a)(2)(E) and (F). Under current § 226.5b(d)(12)(ix), a creditor is not required to disclose any periodic limitations on changes in the APR that are longer than a year--such as rate caps that would apply every two years.

Proposed § 226.5b(c)(10)(i)(A)(5) requires a creditor to disclose in the table as part of the early HELOC disclosures a statement of any limitations on changes in the APR, including the minimum and maximum APRs that may be imposed under each payment option disclosed in the table. In addition, under the proposal, if no annual or other periodic limitations apply to changes in the APR, a creditor would be required in the table to include a statement that no annual limitation exists. Thus, consistent with current § 226.5b(d)(12)(ix), under the proposal, a creditor would be required to disclose in the table any annual or more frequent periodic limitations on changes in the APR and to disclose the maximum APR that may be imposed under each payment option disclosed in the table.

Unlike current § 226.5b(d)(12)(ix), however, under the proposal, a creditor must disclose in the table any periodic limitations on changes in the APR that are longer than a year--such as rate caps that would apply every two years. In addition, unlike current § 226.5b(d)(12)(ix), a creditor also would be required to disclose in the table any minimum rate that would apply to the payment plans disclosed in the table, such as a rate floor. The Board proposes to add these disclosures pursuant to its authority under TILA Section 127A(a)(14) to require additional disclosures with respect to HELOC plans. 15 U.S.C. 1637a(a)(14). The Board believes that consumers should be informed of all rate caps, and rate floors, as consumer testing has ***shown*** that rate information is among the most important information to a consumer in deciding whether to open a HELOC plan.

Current comment 5b(d)(12)(ix)-1 clarifies that if a creditor bases its rate limitation on 12 monthly billing cycles, this limitation should be treated as an annual cap. Rate limitations imposed on less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a rate limitation for a six-month time period. If the creditor does not impose periodic limitations (annual or shorter) on rate increases, the fact that there are no annual rate limitations must be stated.

The Board proposes to move this comment to proposed comment 5b(c)(10)(i)-4 and to revise it. Specifically, proposed comment 5b(c)(10)(i)-4 clarifies that under proposed § 226.5b(c)(10)(i)(A)(5), a creditor would be required to disclose any rate limitations that occur, including rate limitations that occur in a time period of more than one year, annually or less than annually If the creditor bases its rate limitation on 12 monthly billing cycles, this limitation would be treated as an annual cap. A creditor would be required to state rate limitations imposed on more or less than an annual basis in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, a creditor would be required to express this limitation as a rate limitation for a six-month time period. If a creditor does not impose annual or other periodic limitations on rate increases, the creditor would be required to state this fact in the table as part of the early HELOC disclosures.

Regarding disclosure of the maximum APR that may be imposed over the term of the plan, current comment 5b(d)(12)(ix)-2 provides that a creditor may disclose this rate as a specific number (for example, 18 percent) or as a specific amount above the initial rate. If the creditor states the maximum rate as a specific amount above the initial rate, the creditor must include a statement that the consumer should inquire about the rate limitations that are currently available. If an initial discount is not taken into account in applying maximum rate limitations, that fact must be disclosed. If separate overall limitations apply to rate increases resulting from events such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitations also must be stated. The current comment provides that a creditor is not required to disclose in the application disclosures any legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

The Board proposes to move current comment 5b(d)(12)(ix)-2 to proposed comment 5b(c)(10)(i)-5 and revise it. Specifically, proposed comment 5b(c)(10)(i)-5 provides that the maximum APR that may be imposed under each payment option disclosed in the table over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided. If separate overall limitations apply to rate increases resulting from events such as leaving the creditor's employ, those limitations also must be stated. Limitations would not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

The Board would delete as obsolete the guidance in current 5b(d)(12)(ix)-2 related to disclosing the maximum APR as a specific amount above the initial rate. Under proposed § 226.5b(c)(10), a creditor must disclose the maximum APR as a specific number.

Current comment 5b(d)(12)(ix)-3 provides that a creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest periodic and maximum rate limitations that may apply to the creditor's HELOC plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available. The Board proposes to delete this comment as obsolete. Under proposed § 226.5b(c)(10), a creditor would be required to disclose the periodic limitations and maximum APRs that may be imposed under each payment option disclosed in the table as part of the early HELOC disclosures.

Disclosure of the lowest and highest value of the index in the past 15 years. Current § 226.5b(d)(12)(xi), which implements TILA Section 127A(a)(2)(G), requires a creditor to provide as part of the application disclosures a historical example, based on a $ 10,000 extension of credit, illustrating ***how*** APRs and payments would have been affected by index value changes implemented according to the terms of the plan. 15 U.S.C. 1637a(a)(2)(G). The historical example must be based on the most recent 15 years of index values (selected for the same time period each year) and must reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations that would have been affected by the index movement during the period. For ease of reference, this **SUPPLEMENTARY INFORMATION** will refer to this disclosure as the "historical example table." Current comments 5b(d)(12)(xi)-1 through -10 provide guidance to creditors on ***how*** to provide the historical example table.

For the reasons discussed below, the Board proposes not to require that a creditor disclose as part of the early HELOC disclosures the historical example table. Thus, the Board proposes to delete current § 226.5b(d)(12)(xi) and current comments 5b(d)(12)(xi)-1 through -10. Instead of requiring a creditor to disclose the historical example table, the Board proposes to require that a creditor disclose in the table as part of the early HELOC disclosures the lowest and highest values of the index used to determine the variable rate on the HELOC plan in the past 15 years.

The Board proposes no longer to require a creditor to provide the historical example table, pursuant to the Board's exception and exemption authorities under TILA Section 105(a) and 105(f), as discussed above. The Board's consumer testing of HELOC disclosures ***shows*** that this disclosure may be confusing to consumers, and may not provide meaningful information to consumers. In consumer testing conducted by the Board on HELOC disclosures, the Board tested versions of the application disclosures and the early HELOC disclosures that contained a historical example table. Many participants misunderstood the information provided in the historical example table. A large group of participants did not understand that the information in this table was based on the actual historical behavior of interest rates; they instead assumed that the data ***shown*** was a hypothetical example of ***how*** interest rates and payments might fluctuate in the future. More significantly, an even larger group of participants mistakenly thought that the rate and payment information ***shown*** in the historical example table would apply to the HELOC plan going forward, and that the table contained information on the exact monthly payments that the participant would be required to make in the future under the HELOC plan.

Even after the meaning of the table was explained to participants, many participants indicated that, because the rates and payment information in the table were based on what had happened to the interest rate in the past 15 years, the table did not contain valuable information that would inform their decision about the HELOC for which they were applying. These participants did not believe that knowing ***how*** the index had behaved in the past would provide them useful information to predict ***how*** the index might behave in the future. A few participants indicated that the table did not offer any new information that was not already communicated in the disclosure, namely that the APR and payments may vary.

Based on this consumer testing, the Board proposes not to require that creditors provide the historical example table as part of the early HELOC disclosures. However, pursuant to the Board's authority under TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes to require a creditor to provide in the table as part of the early HELOC disclosures the range of the value of the index over a 15-year historical period. 15 U.S.C. 1637a(a)(14). Although many participants in the consumer testing indicated that the historical example table did not provide useful information about ***how*** interest rates and payment may change in the future, some participants did indicate that they found it helpful to know ***how*** the index had behaved in the past, so that they would have some sense about ***how*** it might change in the future. In addition, some participants found the range of the index useful in determining the likelihood of the APR reaching the maximum APR allowed under the plan. The Board believes that the proposed disclosure providing the range of the value of the index over a 15-year historical period will provide the most important information from the historical example table in a simple and efficient way.

The Board solicits comment on the appropriateness of this proposal. The Board also solicits comment on whether the new proposed disclosure should ***show*** the range of the APR that would have applied to the HELOC plan over the past 15 years, calculated based on the range of the index value plus the margin that is currently offered to the consumer, or as proposed, simply ***show*** the index range. For example, assume the index on the HELOC account is the prime rate and the prime rate varied between 4.25 percent and 10 percent over the last 15 years. In addition, assume the APR offered to the consumer is calculated as the prime rate plus 1.00 percent. Under the new proposed disclosure in proposed § 226.5b(c)(10)(i)(A)(6), a creditor would be required to disclose that over the past 15 years, the prime rate had varied between 4.25 percent and 10 percent. The Board solicits comment on whether the Board should instead require that a creditor disclose, based on the example above, that over the past 15 years, the APR on the HELOC plan offered to the consumer would have varied between 5.25 percent and 11 percent.

Maximum rate payment example. Current § 226.5b(d)(12)(x), which implements TILA Section 127A(a)(2)(H), provides that a creditor must provide as part of the application disclosures the minimum periodic payment required when the maximum APR for each payment option is in effect for a $ 10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed. 15 U.S.C. 1637a(a)(2)(H). Current comment 5b(d)(12)(x)-1 provides guidance for creditors on ***how*** to provide the maximum rate payment example. Current comment 5b(d)(12)(x)-2 provides guidance on ***how*** a creditor should calculate the earliest date or time the maximum rate may be imposed. As discussed above in the section-by-section analysis to proposed § 226.5b(c)(9), the Board proposes to move current § 226.5b(d)(12)(x) to proposed § 226.5b(c)(9)(iii), and to delete comment 5b(d)(12)(x)-1 as obsolete.

In addition, the Board proposes not to require a creditor to disclose in the table as part of the early HELOC disclosures a statement of the earliest date or time the maximum rate may be imposed, pursuant to the Board's exception and exemption authorities under TILA Section 105(a) and 105(f), as discussed above. Based on consumer testing, the Board believes that this disclosure may not provide meaningful information to consumers, and that including it in the table as part of the early HELOC disclosures may distract consumers from more important information. The Board tested versions of the early HELOC disclosures which indicated that the maximum rate could be reached as early as the first month, based on the Board's understanding that this statement reflects the terms of most HELOC accounts regarding when the maximum rate could be reached. Participants were ***asked*** whether they found this information useful in deciding whether to open the HELOC plan being offered. Many participants did not find this statement useful because they believed it was extremely unlikely that the rate would actually increase that quickly. The Board also understands that while theoretically the maximum rate may be imposed during the first month of the HELOC plan, in practice this has rarely if ever occurred.

Statement that the APR does not include costs other than interest. Current § 226.5b(d)(12)(ii), which implements TILA Section 127A(a)(2)(A) and (C), provides that a creditor must disclose as part of the application disclosures that the variable APR does not include costs other than interest. 15 U.S.C. 1637a(a)(2)(A) and (C). (A creditor also must make this disclosure with respect to disclosure of any fixed-rate APR in the application disclosures. *See* current § 226.5b(d)(6).)

The Board proposes not to require a creditor to disclose in the table as part of the early HELOC disclosures a statement that the APRs applicable to the HELOC plan do not include costs other than interest, pursuant to the Board's exception and exemption authorities under TILA Section 105(a) and 105(f), as discussed above. Based on consumer testing, the Board believes that this disclosure may not provide meaningful information to consumers, and that including it in the table as part of the early HELOC disclosures may distract consumers from more important information. The Board tested versions of the early HELOC disclosures indicating that the APRs included in the table do not include costs other than interest. The purpose of this requirement is to make clear to consumers that an APR on a HELOC cannot be directly compared to an APR on a closed-end loan, which includes most fees. However, several participants misunderstood this sentence; for example, some incorrectly thought that they would not be charged any fees. Just as important, no participants understood the purpose of this statement, or ***how*** they could use the information when applying for a home-equity product. Different versions of this statement were tested in several rounds to give it proper context for maximum comprehension, but all attempts were unsuccessful in communicating to consumer the statement's intended purpose.

Statement that the consumer should ***ask*** *about the current index value, margin, discount or premium, and APR*. Current § 226.5b(d)(12)(v), which implements TILA Section 127A(a)(2)(D), provides that a creditor must disclose as part of the application disclosures a statement that the consumer should ***ask*** about the current index value, margin, discount or premium, and APR. 15 U.S.C. 127A(a)(2)(D). The Board proposes not to require a creditor to include this statement in the table as part of the early HELOC disclosures, pursuant to the Board's exception and exemption authorities under TILA Section 105(a) and 105(f), as discussed above. This statement is obsolete for the early HELOC disclosures. As discussed above, a creditor would be required to disclose in the table as part of the early HELOC disclosures the current APRs offered to the consumer (*i.e*., the current value of the index plus the margin) as well as the margin, including any introductory APR (as discussed below). A creditor would not be allowed to disclose in the table as part of the early HELOC disclosures the current value of the index, such that the prime rate is currently 4 percent.

Statement that rate information will be provided on or with each periodic statement. Current § 226.5b(d)(12)(xii), which implements TILA Section 127A(a)(2)(I), provides that a creditor must disclose as part of the application disclosures a statement that rate information will be provided on or with each periodic statement. 15 U.S.C. 1637a(a)(2)(I). The Board proposes not to require a creditor to include this statement in the table as part of the early HELOC disclosures, pursuant to the Board's exception and exemption authorities under TILA Section 105(a) and 105(f), as discussed above. Based on consumer testing, the Board believes that this disclosure may not provide meaningful information to consumers, and that including it in the table as part of the early HELOC disclosures may distract consumers from more important information. The Board tested versions of the early HELOC disclosures indicating that monthly statements for the HELOC plan would tell the consumer each time the rate changes on the plan. Participants were ***asked*** whether they found this information useful in deciding whether to open the HELOC plan offered. Many participants did not find this information useful because even in the absence of this statement they would assume that they would be notified of rate changes on their monthly statements.

Accuracy of variable rates. Proposed § 226.5b(c)(10)(i)(B) provides that a variable rate disclosed in the table as part of the early HELOC disclosures would be considered accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided. The Board believes 30 days would provide sufficient flexibility to creditors and reasonably current information to consumers.

5b(c)(10)(ii) Introductory Initial Rate

Current § 226.5b(d)(12)(vi), which implements TILA Section 127A(a)(2)(C), provides that if a creditor offers a variable rate on a HELOC account, a creditor must disclose as part of the application disclosures, as applicable, a statement that the initial APR is not based on the index and margin used to make later rate adjustments, and the period of time the initial rate will be in effect. 15 U.S.C. 1637a(a)(2)(C). The Board proposes to move § 226.5b(d)(12)(vi) to proposed § 226.5b(c)(10)(ii) and revise it.

Specifically, proposed § 226.5b(c)(10)(ii) provides that if the initial rate is an introductory rate, a creditor would be required to disclose in the table as part of the early HELOC disclosures the introductory rate, and would be required to use the term "introductory" or "intro" in immediate proximity to the introductory rate. The creditor also would be required to disclose in the table the time period during which the introductory rate will remain in effect. In addition, a creditor would be required to disclose in the table the rate that would otherwise apply to the plan. Where the rate that would otherwise apply is variable, the creditor would be required to disclose the rate based on the applicable index or formula, and disclose the other variable-rate disclosures required under proposed § 226.5b(c)(10)(i). *See* also proposed comment 5b(c)(10)(ii)-3. The Board believes that clearly labeling the introductory rate as such and disclosing when the introductory rate will expire will benefit consumers by helping them understand the temporary nature of this rate.

Proposed comment 5b(c)(10)(ii)-1 clarifies that if a creditor offers a preferred rate that will increase a specified amount upon the occurrence of a specified event other than the expiration of a specific time period, such as the borrower-employee leaving the creditor's employ, the preferred rate would not be an introductory rate under proposed § 226.5b(c)(10)(ii), but must be disclosed in accordance with proposed § 226.5b(c)(10).

Proposed comment 5b(c)(10)(ii)-2 provides guidance on providing the term "introductory" or "into" in immediate proximity to the introductory rate. Specifically, this proposed comment provides that if the term "introductory" is in the same phrase as the introductory rate, it will be deemed to be in immediate proximity of the listing. For example, a creditor that uses the phrase "introductory APR X percent" would be deemed to have used the word "introductory" within the same phrase as the rate. In addition, this proposed comment also provides that if more than one introductory rate may apply to a particular balance in succeeding periods, the term "introductory" need only be used to describe the first introductory rate. For example, if a creditor offers an introductory rate of 8.99 percent on the plan for six months, and an introductory rate of 10.99 percent for the following six months, the term "introductory" need only be used to describe the 8.99 percent rate. This proposed comment also provides a cross reference to proposed Samples G-14(C) and G-14(E) in Appendix G, which provides guidance on ***how*** to disclose clearly and conspicuously the expiration date of the introductory rate and the rate that will apply after the introductory rate expires, if an introductory rate is disclosed in the table.

5b(c)(11) Fees Imposed by the Creditor and Third Parties To Open the Plan

Current § 226.5b(d)(7), which implements TILA Section 127A(a)(3), provides that a creditor must disclose as part of the application disclosures an itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable. 15 U.S.C. 1637a(a)(3). Current § 226.5b(d)(8), which implements TILA Section 127A(a)(4), provides that a creditor must disclose as part of the application disclosures a good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. 15 U.S.C. 1637a(a)(4). In lieu of the statement, the itemization of such fees may be provided.

Fees imposed by a creditor to maintain and use the plan. As described above, current § 226.5b(d)(7) requires a creditor to disclose as part of the application disclosures any fees imposed by the creditor to maintain and use the HELOC plan. As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(13), the Board proposes to move this part of current § 226.5b(d)(7) to proposed § 226.5b(c)(13) and to revise it.

One-time account-opening fees. As discussed above, with respect to account-opening fees, current § 226.5b(d)(7) requires a creditor to disclose in the application disclosures an itemization of any fees imposed by the creditor to open the HELOC plan, stated as a dollar amount or percentage. Current § 226.5b(d)(7) does not require a creditor to disclose the total of one-time fees imposed by the creditor to open the HELOC plan. Under current § 226.5b(d)(8), however, a creditor must disclose in the application disclosures a good faith estimate of the total of fees imposed by third parties to open the HELOC plan. Under current § 226.5b(d)(8), at a creditor's option, the creditor may disclose an itemization of third party fees to open a HELOC plan. Current comment 5b(d)(8)-2 provides guidance to creditors on ***how*** to disclose the total of third party fees and an itemization of those fees. As discussed in more detail below, the Board proposes to move these provisions in current § 226.5b(d)(7) and (d)(8) to proposed § 226.5b(c)(11) and revise them. Current comment 5b(d)(8)-2 would be deleted as obsolete.

The Board proposes in new § 226.5b(c)(11) to require a creditor to disclose in the table as part of the early HELOC disclosures the total of all one-time fees imposed by the creditor and any third parties to open the plan, stated as a dollar amount. 15 U.S.C. 1604(a). In addition, under proposed § 226.5b(c)(11), a creditor would be required to itemize in the table all one-time fees imposed by the creditor and any third parties to open the plan, stated as a dollar amount, and when these fees are payable. Proposed comment 5b(c)(11)-5 provides that a creditor would be deemed to have itemized the account-opening fees clearly and conspicuously if the creditor provides this information in a bullet format as ***shown*** in proposed Samples G-14(C), G-14(D), and G-14(E) in Appendix G. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit, and pursuant to its authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans. *See* 15 U.S.C. 1601(a), 1604(a), and 1637a(a)(14).

The Board believes that requiring a creditor to disclose in the table the total dollar amount for all one-time fees imposed to open the HELOC plan and an itemization of those costs, regardless of whether those fees are charged by the creditor or a third party, will help consumers better understand the costs of opening a HELOC plan. In the consumer testing conducted by the Board on HELOC disclosures, all of the application and early HELOC disclosure forms that participants were ***shown*** included a range of the total of one-time fees that the borrower would be charged for opening the account. Some forms also provided an itemization of the one-time fees that would be charged for opening the account. (The one-time fees ***shown*** on the disclosure forms were a loan origination fee, a loan discount fee, an underwriting fee, and an appraisal fee). In this consumer testing, participants consistently said that they preferred to see both the total of one-time account-opening fees and the itemization of these fees to help them understand what fees they would be paying to open the HELOC plan.

Current comment 5b(d)(7)-2 provides that charges imposed by the creditor to open a HELOC plan may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. Current 5b(d)(8)-3 provides that a creditor in disclosing the total of account-opening fees imposed by third parties may provide, based on a typical or representative amount of credit, a range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis, for example, $ 5 per $ 1,000 of credit. The Board proposes to move these comments to § 226.5b(c)(11) and revise them.

Specifically, under proposed § 226.5b(c)(11), a creditor would be required to disclose the dollar amount of fees that will be imposed by the creditor or by third parties to open the plan. Concerning the requirement to itemize the one-time account-opening fees, proposed § 226.5b(c)(11) allows a creditor to provide a range of these fees, if the dollar amount of a fee is not known at the time the early HELOC disclosures are delivered or mailed. Proposed comment 5b(c)(11)-2 provides that if a range is ***shown***, a creditor would be required to assume, in calculating the highest amount of the fee that the consumer will borrow the full credit line at account opening. In disclosing the lowest amount of the fee in the range, a creditor would be required to disclose the lowest amount of the fee that may be imposed. Regarding disclosure of the total of one-time account-opening fees, proposed § 226.5b(c)(11) provides that if the exact total of one-time fees for account opening is not known at the time the early HELOC disclosures are delivered or mailed, a creditor must disclose in the table the highest total of one-time account opening fees possible for the plan terms with an indication that the one-time account opening costs may be "up to" that amount.

The Board believes that requiring the one-time fees that are imposed to open the account to be disclosed as a dollar amount, instead of a percentage of another amount, would aid consumers' understanding of the account-opening fees and may aid consumers in comparison shopping for HELOC plans. In consumer testing conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule, the Board found that consumers generally understand dollar amounts better than percentages. As a result, the Board believes that requiring account opening fees to be disclosed as dollar amounts instead of percentages of another amount would better enable consumers to understand the start up-costs of opening a HELOC plan. In addition, consumers could more easily compare the dollar amount of one-time account-opening fees on different HELOC plans if all HELOC plans are required to disclose the dollar amount. If the account-opening fees were presented as a percentage of another amount, consumers would need to calculate the dollar amount themselves.

Current comment 5b(d)(7)-1 provides guidance on what types of fees would be considered fees imposed by the creditor to open the plan required to be disclosed under current § 226.5b(d)(7). Current comment 5b(d)(8)-1 provides guidance on what types of fees would be considered account-opening fees imposed by third parties required to be disclosed under current § 226.5b(d)(8). The Board proposes to move these provisions in current comments 5b(d)(7)-1 and 5b(d)(8)-1 to proposed comment 5b(c)(11)-1 and revise them. Specifically, proposed comment 5b(c)(11)-1 clarifies that proposed § 226.5b(c)(11) only applies to one-time fees imposed by the creditor or third parties to open the plan. The fees referred to in proposed § 226.5b(c)(11) would include items such as application fees, points, appraisal or other property valuation fees, credit report fees, government agency fees, and attorneys' fees. This proposed comment makes clear that annual fees or other periodic fees that may be imposed for the availability of the plan would not be disclosed under proposed § 226.5b(c)(11), but would be disclosed under proposed § 226.5b(c)(12).

Current comments 5b(d)(7)-4 and 5b(d)(8)-4 provide that if closing costs are imposed by the creditor and third parties they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of any interest paid during the first year of the plan). The Board proposes to move these comments to proposed comment 5b(c)(11)-4 and to make technical revisions.

Current comment 5b(d)(8)-1 provides that in cases where property insurance is required by the creditor, the creditor may disclose as part of the application disclosures either the amount of the premium or a statement that property insurance is required. The Board proposes to delete this comment as obsolete. Under the proposal, proposed § 226.5b(c)(11) provides that a creditor must not disclose in the table as part of the early HELOC the amount of any property insurance premiums, even if the creditor requires property insurance. The Board believes that disclosure of the amount of any required property insurance premiums is not needed in the table as part of the early HELOC disclosures. Consumers are likely to have property insurance on the home prior to obtaining a HELOC account. For example, most consumers obtaining a HELOC will already have a first mortgage on their home and will be carrying property insurance on the home as required by the first mortgage. The Board solicits comment on this aspect of the proposal.

Current comment 5b(d)(7)-5 provides that a creditor need not use the terms "finance charge" or "other charge" in describing the fees imposed by the creditor under current § 226.5b(d)(7) or those imposed by third parties under current § 226.5b(d)(8). Under current § 226.7, a creditor is required to distinguish costs that are finance charges from other charges on the periodic statement by requiring finance charges to be labeled as such. Current comment 5b(d)(7)-5 makes clear that a creditor is not required to use these labels in describing fees disclosed under current § 226.5b(d)(7) and (d)(8). The Board proposes to delete this comment as obsolete, because under the proposal, a creditor would no longer be required to distinguish finance charges from other charges in disclosing costs on the periodic statement. *See* the section-by-section analysis to proposed § 226.7.

5b(c)(12) Fees Imposed by the Creditor for Availability of the Plan

As discussed above, current § 226.5b(d)(7) provides that a creditor must disclose as part of the application disclosures any fees imposed by the creditor to maintain or use the HELOC plans. Current comment 5b(d)(7)-1 provides that fees imposed by the creditor to maintain or use the HELOC plan include annual fees, transaction fees, fees to obtain checks to access the plan, and fees imposed for converting to a repayment phase that is provided for in the original agreement. Current comment 5b(d)(7)-3 provides that fees not imposed to use or maintain a plan, such as fees for researching an account, photocopying, paying late, stopping payment, having a check returned, exceeding the credit limit, or closing out an account, do not have to be disclosed under current § 226.5b(d)(7). In addition, credit report and appraisal fees imposed to investigate whether a condition permitting a freeze continues to exist--as discussed in the commentary to current § 226.5b(f)(3)(vi)--are not required to be disclosed under current § 226.5b(d)(7). The Board proposes to move the provisions in current § 226.5b(d)(7) relating to disclosing fees imposed by the creditor to maintain and use the HELOC plan to proposed § 226.5b(c)(12) and to revise them. Specifically, proposed § 226.5b(c)(12) requires a creditor to disclose in the early HELOC disclosures table any annual or other periodic fees that may be imposed by the creditor for the availability of the plan, including any fee based on account activity or inactivity; ***how*** frequently the fee will be imposed; and the annualized amount of the fee.

The Board proposes not to require a creditor to disclose in the table as part of the early HELOC disclosures fees imposed by the creditor to maintain and use the HELOC plan, except for fees for the availability of the plan. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board believes that requiring a creditor to disclose in the early HELOC disclosures all fees imposed by the creditor to maintain and use the HELOC plan, such as transaction fees, could contribute to "information overload" for consumers. In the consumer testing conducted by the Board on HELOC disclosures, participants were ***shown*** versions of a disclosure table that itemized account-opening fees, penalty fees and transaction fees. Participants were ***asked*** which of these fees was most important for them to know when deciding whether to open a HELOC plan. Most participants indicated that it was most important for them to be provided an itemization of the account-opening fees in the early HELOC disclosures, so that they could better understand the costs of opening the HELOC plan.

As noted, the Board also proposes in new § 226.5b(c)(12) to require a creditor to disclose in the table as part of the early HELOC disclosures any fees for the availability of the plan. The Board believes that it is important for consumers to be informed in the early HELOC disclosures of fees for the availability of the plan, so that consumers will be aware of these fees as they decide whether to open a HELOC plan. As discussed in the Background section to this **SUPPLEMENTARY INFORMATION**, board research indicates that many HELOC consumers do not plan to take advances at account opening, but instead plan to use that HELOC account in emergency cases. The on-going costs of maintaining the HELOC plan may be of particular importance to these consumers in deciding whether to open a HELOC plan for these purposes.

Other fees to maintain or use the plan that would currently be disclosed in the application disclosures under current § 226.5b(d)(7), such as transactions fees, would not be required to be disclosed in the table as part of the early HELOC disclosures under the proposal. Nonetheless, as discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(14), a creditor would be required to disclose in the table a statement that that other fees will apply and a reference to penalty fees and transaction fees as examples of those fees, as applicable. In addition, a creditor would be required to disclose in the table either (1) a statement that the consumer may receive, upon request, additional information about fees applicable to the plan, or (2) if the additional information about fees is provided with the table, a reference where that information is located outside the table. The Board believes that this approach of highlighting in the table the fees on the HELOC plan that would be most important to consumers in deciding whether to open a HELOC plan and allowing consumers to receive information about additional fees upon request appropriately informs consumers about important fees applicable to the HELOC plan in the early HELOC disclosures, without creating "information overload" that discourages consumers from reading disclosures at all, distract them from key information, or prevent retention and understanding of information.

Current comment 5b(d)(7)-1 provides that a creditor would be required to disclose in the application disclosures any fees imposed by the creditor to use or maintain the plan, whether the fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be specifically stated in the application disclosures. The Board proposes to move this comment to proposed comment 5b(c)(12)-2 and revise it. Specifically, proposed comment 5b(c)(12)-2 clarifies that a creditor would be required to disclose all fees imposed by the creditor for the availability of the plan in the table as part of the early HELOC disclosures, regardless of whether those fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be disclosed in the table under.

The Board also proposes to add new comment 5b(c)(12)-1, which would clarify that fees for the availability of credit required to be disclosed under proposed § 226.5b(c)(12) would include any fees to obtain access devices, such as fees to obtain checks or credit cards to access the plan. For example, a fee to obtain checks or a credit card on the account would be required to be disclosed in the table as a fee for issuance or availability under § 226.5b(c)(12). This fee would be required to be disclosed even if the fee is optional; that is, if the fee is charged only if the consumer requests checks or a credit card.

In addition, the Board proposes to add new comment 5b(c)(12)-3 to clarify that if fees required to be disclosed under proposed § 226.5b(c)(12) are waived or reduced for a limited time, a creditor would be allowed to disclose, in addition to the required fees, the introductory fees or the fact of fee waivers in the table as part of the early HELOC disclosures if the creditor also discloses ***how*** long the reduced fees or waivers will remain in effect.

5b(c)(13) Fees Imposed by the Creditor for Early Termination of the Plan by the Consumer

Currently, a creditor is not required to disclose in the application disclosures any fee imposed by the creditor for early termination of the plan by the consumer. *See* current comment 5b(d)(7)-3. Pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes to add new § 226.5b(c)(13) to required a creditor to disclose in the table as part of the early HELOC disclosures any fee that may be imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity. 15 U.S.C. 127a(a)(14). The Board believes that it is important for consumers to be informed as they decide whether to open a HELOC plan of early termination fees. This information may be especially important for consumers who may want to have the option of refinancing or cancelling the plan at any time. HELOC consumers may particularly value these options, as most HELOCs are subject to a variable interest rate.

The Board proposes to add new comment 5b(c)(13)-1 to clarify the types of fees that would be required to be disclosed under proposed § 226.5b(c)(13). This proposed comment clarifies that fees such as penalty or prepayment fees that the creditor imposes if the consumer terminates the plan prior to its scheduled maturity would be required to be disclosed under § 226.5b(c)(13). These fees also would include waived account-opening fees for the plan, if the creditor will impose those costs on the consumer if the consumer terminates the plan within a certain amount of time after account opening. In addition, the proposed comment clarifies that fees that the creditor may impose in lieu of termination under comment 5b(f)(2)-2 would not be required to be disclosed under proposed § 226.5b(c)(13). However, fees that are imposed when the plan expires in accordance with the agreement or that are associated with collection of the debt if the creditor terminates the plan, such as attorneys' fees and court costs, would not be required to be disclosed under proposed § 226.5b(c)(13).

5b(c)(14) Statement About Other Fees

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(11), and (c)(12), the Board proposes not to require a creditor to disclose in the early HELOC disclosures table all of the fees that may be imposed on the HELOC plan. Instead, a creditor would be required to disclose in the table only the following fees: (1) Fees imposed by the creditor and third parties to open the HELOC plan; (2) fees imposed by the creditor for availability of the plan; (3) fees imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity; and (4) fees imposed by the creditor for required insurance or debt cancellation or debt suspension coverage. *See* proposed § 226.5b(c)(11), (c)(12), (c)(13) and (c)(19). Nonetheless, pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes to require a creditor to disclose in the table a statement that other fees will apply and a reference to penalty fees and transaction fees as examples of those fees, as applicable. 15 U.S.C. 1637a(a)(14). In addition, a creditor would be required to disclose in the table either (1) a statement that the consumer may receive, upon request, additional information about fees applicable to the plan, or (ii) if the additional information about fees is provided with the table, a reference to where that information is located outside the table.

Not all fees applicable to a HELOC plan will be disclosed in the table as part of the early HELOC disclosures. Thus, to ensure consumer understanding of fees the Board believes that it is important to notify consumers that additional fees will apply to the plan, and that consumers may receive information about certain additional fees upon request prior to account opening. In consumer testing conducted by the Board on HELOC disclosures, the Board tested versions of the early HELOC disclosures that contained a statement notifying consumers of additional fees and versions of the disclosures forms that did not contain this statement. Many participants that saw the disclosure forms that did not contain the statement that other fees may apply incorrectly assumed that no other fees would be charged.

The Board proposes to add new comment 5b(c)(14)-1 to require a creditor in providing additional information about fees to a consumer upon the consumer's request prior to account opening (or along with the early HELOC disclosures) to disclose the penalty fees and transaction fees that are required to be disclosed in the account-opening summary table under proposed § 226.6(a)(2)(x) through (a)(2)(xiv) and a statement that other fees may apply. A creditor must use a tabular format to disclose the additional information about fees that is provided upon request or provided outside the early HELOC disclosures table. Under proposed comment 5b(c)-2, a creditor would be required to provide this additional information about fees as soon as reasonably possible after the request.

The Board believes that fees applicable to the HELOC plan that would be most important to consumers in deciding whether to open a HELOC plan should be emphasized by being placed in the table. In addition, under the proposal, consumers would be able to obtain quickly and easily additional information about other fees upon request. The Board believes that this proposed approach appropriately informs consumers about important fees applicable to the HELOC plan in the early HELOC disclosures, without creating "information overload" that can discourage consumers from reading disclosures at all, distract them from key information, or prevent retention and understanding of information.

5b(c)(15) Negative Amortization

Current § 226.5b(d)(9), which implements TILA Section 127A(a)(11), provides that if applicable, a creditor must provide as part of the application disclosures a statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling. 15 U.S.C. 1637a(a)(11). The Board proposes to move current § 226.5b(d)(9) to proposed § 226.5b(c)(15) and to make technical revisions.

Current comment 5b(d)(9)-1 provides that in transactions where the minimum payment will not or may not be sufficient to cover the interest that accrues on the outstanding balance, the creditor must disclose that negative amortization will or may occur. This disclosure is required whether or not the unpaid interest is added to the outstanding balance upon which interest is computed. A disclosure is not required merely because a loan calls for non-amortizing or partially amortizing payments. The Board proposes to move this comment to proposed comment 5b(c)(15)-1 and revise it. Specifically, proposed comment 5b(c)(15)-1 contains the guidance discussed above. In addition, proposed comment 5b(c)(15)-1 provides that a creditor would be deemed to meet the requirements of proposed § 226.5b(c)(15) if the creditor provides the following disclosure, as applicable: "***Your*** minimum payment may cover/covers only part of the interest you owe each month and none of the principal. The unpaid interest will be added to ***your*** loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in ***your*** home." This proposed language describing negative amortization was developed by the Board through its consumer testing on closed-end mortgage loans, as discussed in the proposal issued by the Board on closed-end mortgages published elsewhere in today's **Federal Register**. The Board believes that this proposed language effectively communicates the risks of negative amortization pursuant to the statutory requirements.

5b(c)(16) Transaction Requirements

Current § 226.5b(d)(10) provides that a creditor must disclose as part of the application disclosures any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages. The Board proposes to move current § 226.5b(d)(10) to proposed § 226.5b(c)(16) and revise it. Specifically, proposed § 226.5b(c)(16) provides that a creditor must disclose in the table as part of the early HELOC disclosures any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements. In addition, consistent with current § 226.5b(d)(10), proposed § 226.5b(b)(3) provides that the transaction requirements disclosed under proposed § 226.5b(c)(16) may be disclosed as dollar amounts or as percentages.

Current comment 5b(d)(10)-1 provides that a limitation on automated teller machine usage need not be disclosed in the application disclosures under current § 226.5b(d)(10) unless that is the only means by which the consumer can obtain funds. The Board proposes to move this comment to proposed comment 5b(c)(16)-1 without any revisions.

5b(c)(17) Credit Limit

Currently, a creditor is not required to disclose in the application disclosures the credit limit that is being offered to the consumer. Pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes in new § 226.5b(c)(17) to require a creditor to disclose in the table as part of the early HELOC disclosures the creditor limit applicable to the plan. 15 U.S.C. 1637a(a)(14). As discussed in more detail in the section-by-section analysis to proposed § 226.5b(b)(1), participants in consumer testing conducted by the Board on HELOC disclosures indicated that the credit limit was one of the most important pieces of information that they wanted to know in deciding whether to open a HELOC plan.

5b(c)(18) Statements About Fixed-Rate and -Term Payment Plans

Current comment 5b(d)(5)(ii)-2 provides that a creditor generally must disclose in the application disclosures terms that apply to the fixed-rate and -term payment feature, include the period during which the feature can be selected, the length of time over which repayment can occur, any fees imposed for the feature, and the specific rate or a description of the index and margin that will apply upon exercise of the feature.

For the reasons discussed in the section-by-section analysis to proposed § 226.5b(c), the Board proposes that if a HELOC plan offers both a variable-rate feature and a fixed-rate and -term feature during the draw period, a creditor generally must not disclose in the table all the terms applicable to the fixed-rate and -term feature. *See* proposed § 226.5b(c). Instead, the Board proposes to require a creditor offering this payment feature (in addition to a variable-rate feature) to disclose in the table the following: (1) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate; (2) the amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term; and (3) as applicable, either a statement that the consumer may receive, upon request, further details about the fixed-rate and -term payment feature, or, if information about the fixed-rate and -term payment feature is provided with the table, a reference to the location of the information. *See* proposed § 226.5b(c)(18). Thus, under the proposal, a consumer would be notified in the table about the fixed-rate and -term payment feature, and could request additional information about this payment feature (if a creditor chose not to provide additional information about this feature outside of the table).

In responding to a consumer's request prior to account opening for additional information about the fixed-rate and -term feature, a creditor would be required to provide this additional information as soon as reasonably possible after the request. *See* proposed comment 5b(c)-2. The following additional information disclosed about the fixed-rate and -term payment feature upon request (or outside the early HELOC disclosures table) would have to include in the form of a table: (1) information about the APRs and payment terms applicable to the fixed-rate and -term payment feature, and (2) any fees imposed related to the use of the fixed-rate and -term payment feature, such as fees to exercise the fixed-rate and -term payment option or to convert a balance under a fixed-rate and -term payment feature to a variable-rate feature under the plan. *See* proposed comment 5b(c)(18)-2. The Board believes that the above approach to providing information to consumers about the fixed-rate and -term feature enables consumers interested in this feature to obtain additional information about this optional feature easily and quickly, but does not contribute to "information overload" for consumers in general.

5b(c)(19) Required Insurance, Debt Cancellation or Debt Suspension Coverage

Currently, creditors are not required to provide any information about the insurance or debt cancellation or suspension coverage, whether optional or required, in the application disclosures. If a creditor requires insurance or debt cancellation or debt suspension coverage (to the extent permitted by state or other applicable law), the Board proposes new § 226.5b(c)(19) that would require a creditor to disclose in the table as part of the early HELOC disclosures any fee for this coverage. In addition, proposed § 226.5a(b)(19) requires that a creditor also disclose in the table a cross reference to where the consumer may find more information about the insurance or debt cancellation or debt suspension coverage, if additional information is included outside the early HELOC disclosures table. The Board proposes this rule pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plan. 15 U.S.C. 1637a(a)(14). Proposed Samples G-14(D) and G-14(E) provide guidance on ***how*** to provide the fee information and the cross reference in the table. If insurance or debt cancellation or suspension coverage is required to obtain a HELOC, the Board believes that any fees required for this coverage should be emphasized by being placed in the table; consumers need to be aware of these fees when deciding whether to open a HELOC plan, because they will be required to pay the fee for this coverage every month in order to have the plan.

5b(c)(20) Statement About ***Asking*** Questions

Pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes in new § 226.5b(c)(20) to require a creditor to disclose as part of the early HELOC disclosures a statement that if the consumer does not understand any disclosure in the table the consumer should ***ask*** questions. 15 U.S.C. 1637a(a)(14). Under the proposal, a creditor would be required to provide this disclosure directly below the table provided as part of the early HELOC disclosures, in a format substantially similar to any of the applicable tables found in proposed Samples G-14(C), G-14(D), and G-14(E) in Appendix G. *See* proposed § 226.5b(b)(2)(iv).

Consumer testing on HELOC and closed-end mortgage disclosures conducted by the Board ***showed*** that many participants educated themselves about the HELOC and mortgage process through informal networking with family, friends, and colleagues, while others relied on the Internet for information. To improve consumers' ability to make informed decisions about credit, the Board proposes to require a creditor to disclose that if the consumer does not understand the disclosures contained in the table as part of the early HELOC disclosures, the consumer should ***ask*** questions.

5b(c)(21) Statement About Board's Web Site

Pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes in new § 226.5b(c)(21) to require a creditor to provide as part of the early HELOC disclosures a statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board, and a reference to this Web site. Currently, an electronic copy of the HELOC brochure is available at the Board's Web site at *http://www.federalreserve.gov/pubs/equity/homeequity.pdf*. The Board plans to enhance its Web site to further assist consumers in shopping for a HELOC. Although it is hard to predict ***how*** many consumers might use the Board's Web site, and recognizing that not all consumers have access to the Internet, the Board believes that this Web site may be helpful to some consumers as they decide whether to open a HELOC plan. The Board seeks comment on the content for the Web site.

5b(c)(22) Statement About Refundability of Fees

Pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes in new § 226.5b(c)(22) to require a creditor to disclose as part of the early HELOC disclosures a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan and a cross reference to the "Fees" section in the table. Under the proposal, a creditor would be required to disclose these statements directly below the table, in a format substantially similar to any of the applicable tables found in proposed G-14(C), G-14(D) and G-14(E) in Appendix G. *See* proposed § 226.5b(b)(2)(iv).

As discussed in the section-by-section analysis to proposed § 226.5b(c)(4) and (c)(5), under the proposal, a creditor would be required to disclose in the early HELOC disclosures table circumstances in which a consumer could receive a refund of all fees paid if the consumer decides not open the HELOC plan offered to the consumer. In particular, a creditor must disclose in the table that a consumer has the right to receive a refund of all fees paid if the consumer notifies the creditor that the consumer does not want to open the HELOC plan (1) for any reasons within three business days after the consumer receives the early HELOC disclosures; and (2) any time before the HELOC account is opened if any terms disclosed in the early HELOC disclosures change (except for the APR). In addition, under the proposal, a creditor would be required to disclose an indication of which terms disclosed in the early HELOC disclosures table are subject to change prior to account opening.

As discussed in the section-by-section to proposed § 226.5b(b)(2), the Board tested with consumers versions of the early HELOC disclosures with the right to a refund of fees disclosures located near a statement that terms disclosed in the early HELOC disclosures are subject to change prior to account opening as one of the rights to a refund of fees relates to changes in terms offered on the HELOC prior to account opening. The Board also tested other versions of the early HELOC disclosures with these disclosures in the "Fees" section of the table. These tested disclosure forms also included next to the statement about which terms in the table may change prior to account opening, a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan and a cross reference to the "Fees" section in the table provided as part of the early HELOC disclosures.

The Board found through this testing that participants were more likely to notice and understand information about the refundability of fees when it was included in the "Fees" section of the table. Thus, under the proposal, the Board proposes to require that the information about the refundability of fees be disclosed in the "Fees" section of the table. In addition, the Board proposes in new § 226.5b(c)(22) to require a creditor to disclose as part of the early HELOC disclosures a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan and a cross reference to the "Fees" section in the table provided as part of the early HELOC disclosures. This statement and cross reference would be disclosed below the table, grouped together with other global statements that generally relate to the terms being disclosed in the table such as an indication of which terms disclosed in the table may change prior to account opening.

5b(d) Refund of Fees

The proposal would redesignate paragraph 5b(g) as paragraph 5b(d) and comments 5b(g)-1, -2, -3, -4 as comments 5b(d)-1, -2, -3, and -4, and revise these provisions. Current paragraph 5b(g), which implements TILA Section 137(d), requires a creditor to refund fees paid "in connection with an application" if any term required to be disclosed under current section 226.5b(d) changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result of the change, the consumer elects not to open the plan. *See* 15 U.S.C. 1647(d). Comment 5b(g)-1 explains that all fees paid must be refunded, including credit-report fees and appraisal fees, whether they are paid to the creditor or directly to third parties. Comment 5b(g)-3 specifies that when a term is changed that was disclosed as a range (as permitted under § 226.5b(d)) and the resulting term falls within the disclosed range, the consumer is not entitled to a refund of fees. Similarly, if the creditor discloses a third-party fee as an estimate (as permitted under § 226.5b(d)) and those fees change, the consumer is not entitled to a refund of fees.

Under the proposal, the phrase "in connection with the application" would be deleted from both new § 226.5b(d) and comment 5b(d)-1. The Board views this phrase as unnecessary to describe the fees that must be refunded under this paragraph. As indicated in current comment 5b(g)-1, the Board has long interpreted this phrase, when modifying the term "fees" in both the statute and regulation, to mean any fees that the consumer has paid to the creditor or a third party related in any way to obtaining a HELOC with the creditor.

The proposal also would eliminate from the provisions in new § 226.5b(d) and accompanying commentary any references to the consumer's being entitled to a refund of fees only if the consumer decides not to obtain a HELOC because of a change in terms. The proposal would instead provide that a refund is required if a disclosed term changes before account opening and the consumer decides not to enter into the plan. Pursuant to the Board's authority in TILA Section 105(a) to make adjustments to the requirements in TILA necessary to effectuate the purposes of TILA, the Board proposes to eliminate the requirement that the consumer's reason for deciding not to enter into the plan must be that a term has changed. The Board believes that requiring consumers to prove their intent for deciding not to enter a plan, the initially disclosed terms of which have changed, and requiring creditors to discern consumer intent, are not practicable. In addition, the Board believes that when terms change, most consumers who decide not to enter into the plan will decide not to do so because of the changed term.

Comment 5b(d)-3 would be revised to reflect that under the proposal, disclosing a range for the maximum rate would no longer be permitted in the early HELOC disclosure table, nor would disclosing an estimate for a third-party account-opening fee, in contrast to the current rule on third-party fees reflected in current comment 5b(g)-3. *See* proposed § 226.5b(c)(10). Disclosing an account-opening fee as a range, however, would be permitted if the dollar amount of the fee is not known at the time the disclosures under § 226.5b(b) are delivered or mailed. *See* proposed § 226.5b(c)(11).

The proposal also would make conforming changes to reflect renumbered provisions in the proposal.

5b(e) Imposition of Nonrefundable Fees

The proposal would redesignate paragraph 5b(h) as paragraph 5b(e) and comments 5b(h)-1, -2, and -3 as comments 5b(e)-1, -2, and -3, and would revise these provisions. Current paragraph 5b(h), which implements TILA Section 137(e), obligates a creditor to refund any fee imposed within three business days of the consumer receiving the application disclosures and brochure required under existing § 226.5b if, within that time period, the consumer decides not to enter into the HELOC agreement. *See* 15 U.S.C. 1647(e). Comment 5b(h)-1 provides that if the creditor collects a fee after the consumer receives the application disclosures and the HELOC brochure and before the expiration of three business days, the creditor must notify the consumer--clearly and conspicuously and in writing--that the fee is refundable for three business days. This comment also provides that if disclosures are mailed to the consumer, a nonrefundable fee may not be imposed until six business days after mailing, because footnote 10d to the regulation provides that if the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

Proposed comment 5b(e)-1 retains these requirements, but with technical changes, including changes to reflect that, under the proposal, notice of the consumer's right to receive a refund must be included in the early HELOC disclosure table required under proposed § 226.5b(b), and may not be provided as an attachment to the early HELOC disclosures. Further discussion of this requirement is in the section-by-section analysis of § 226.5b(c)(5). In addition, footnote 10d is moved into the main text of § 226.5b(e).

Proposed comment 5b(e)-4 provides that, for purposes of § 226.5b(e), the term "business day" has the more precise definition used for rescission and for other purposes, meaning all calendar days except Sundays and the federal holidays referred to in § 226.2(a)(6). For example, if the creditor were to place the disclosures in the mail on Thursday, June 4, the disclosures would be considered received on Monday, June 8. The Board proposes to use the more precise definition of "business day" for determining receipt of disclosures for purposes of § 226.5b(e) to conform to the Board's rules for determining receipt of disclosures for other dwelling-secured transactions under §§ 226.19(a)(1)(ii) and 226.31(c), as well as to the Board's recently adopted rules under § 226.19(a)(2). *See* 74 FR 23289 (May 19, 2009).

Under the proposal, the phrase "in connection with the application" would be deleted from new § 226.5b(e). The Board views this phrase as unnecessary to describe the fees that must be refunded under this paragraph. As indicated in current comment 5b(g)-1, the Board has long interpreted this phrase, when modifying the term "fees" in both the statute and regulation, to mean any fees that the consumer has paid to the creditor or a third party related in any way to obtaining a HELOC with the creditor.

The proposal also would make conforming changes to reflect proposed disclosure requirements and re-numbered provisions, and to indicate that "three days" means, as indicated in the corresponding regulation text, "three business days."

5b(f) Limitations on Home-Equity Plans

TILA Section 137, implemented in § 226.5b(f), limits the changes that creditors may make to HELOCs subject to § 226.5b. The proposal would amend and clarify these limitations by revising § 226.56 and accompanying Official Staff Commentary, and adding a new § 226.5b(g).

The proposal includes a number of significant changes to the rules restricting changes that creditors may make to HELOCs subject to § 226.5b. First, the proposal would amend § 226.5b(f)(2)(ii), which permits creditors to terminate and accelerate a HELOC if "the consumer fails to meet the repayment terms of the agreement," to prohibit creditors from terminating and accelerating an account or taking lesser action permitted under comment 5b(f)(2)-2, unless the consumer has failed to make a required minimum periodic payment within a specified time period after the due date for that payment. As discussed in more detail below, the Board is specifically proposing that account action under § 226.5b(f)(2)(ii) be prohibited unless the consumer has failed to make a required minimum periodic payment within 30 days of the due date. The Board is requesting comment on the appropriateness of this timeframe, or whether some other time period is more appropriate.

Second, the proposal would amend § 226.5b(f)(2)(iv) to permit creditors to terminate and accelerate a home-equity plan if a federal law requires the creditor to do so. Similarly, the proposal would add a new § 226.5b(f)(3)(vi)(G) to permit creditors to suspend advances or reduce the credit limit if a federal law requires the creditor to do so.

Third, in a new comment 5b(f)(3)-3, the proposal would clarify that Regulation Z's general limitation on changing terms does not prohibit a creditor from passing on to consumers bona fide and reasonable costs incurred by the creditor for collection activity after default, to protect the creditor's interest in the property securing the plan, or to foreclose on the securing property.

Fourth, the proposal would add to comment 5b(f)(3)(v)-2 an example of a change that would be considered insignificant under this provision: a creditor may eliminate a method of accessing a HELOC, such as by credit card, as long as at least one means of access that was available at account opening remains available to the consumer on the original terms.

Finally, the proposal would provide additional guidance and amend the rules in three major areas related to when a creditor may temporarily suspend advances on a home-equity plan or reduce the credit limit: (1) Rules regarding when a creditor may suspend or reduce an account based on a significant decline in the property value (§ 226.5b(f)(3)(vi)(A) and existing comment 5b(f)(3)(vi)-6); (2) rules regarding when a creditor may suspend or reduce an account based on a material change in the consumer's financial circumstances (§ 226.5b(f)(3)(vi)(B) and existing comment 5b(f)(3)(vi)-7); and (3) rules regarding reinstatement of accounts that have been suspended or reduced (proposed § 226.5b(g) and existing comments 5b(f)(3)(vi)-2, -3, and -4).

5b(f)(2)(ii) Limitations on Action Taken for Failure To Meet the Repayment Terms

Background

Section 226.5b(f)(2)(ii) permits a creditor to terminate a HELOC and accelerate the balance if the consumer has "fail[ed] to meet the repayment terms of the agreement for any outstanding balance." The corresponding statutory provision reads similarly: "A creditor may not unilaterally terminate any account * * * except in the case of * * * (2) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance." 15 U.S.C. 1647(b)(2). Comment 5b(f)(2)(ii)-1 clarifies that a creditor may terminate and accelerate a plan under this provision "only if the consumer actually fails to make payments." Thus, an account may not be terminated for a minor payment infraction, such as when a consumer sends a payment to the wrong address. Comment 5b(f)(2)-2 interprets this provision to allow creditors to take an action short of terminating the plan and accelerating the balance, such as temporarily or permanently suspending advances, reducing the credit limit, changing the payment terms, or requiring the consumer to pay a fee. A creditor may also provide in its agreement that a higher rate or fee will apply in circumstances under which it could otherwise terminate the plan and accelerate the balance.

Proposal

The proposal would interpret the statute to mean that creditors may not, for payment-related reasons, terminate the plan and accelerate the balance or take certain actions short of termination and acceleration permitted under comment 5b(f)(2)-2, unless the consumer has failed to make a required minimum periodic payment within 30 days after the due date for that payment. The Board is specifically proposing that account action under § 226.5b(f)(2)(ii) be prohibited unless the consumer has failed to make a required minimum periodic payment within 30 days of the due date, and requesting comment on whether this timeframe is appropriate, or whether some other time period is more appropriate. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to issue provisions and make adjustments to the requirements of TILA that are necessary or proper to effectuate the statute's purposes. *See* 15 U.S.C. 1604(a).

The Board believes that specifying the type of payment infraction required to take action under this provision is necessary to effectuate the purposes of TILA and Congress in enacting the Home Equity Loan Act (cited above). According to section-by-section clarifications in the Home Equity Loan Act, this provision specifically "deals with the failure of the borrower to actually make payments. *It does not encompass minor transgressions* such as inadvertently sending the payment to the wrong branch." [19] Creditors and consumer groups have expressed uncertainty about when an account may be terminated or other action taken under this provision, as well as concerns that creditor practices in this regard vary widely. In particular, concerns have been raised about "hair-trigger" terminations and other actions being taken on accounts due to minor late payments. [20] Some have pointed out that the plain language of this provision--the consumer "fails to meet the repayment terms of the agreement"--arguably allows creditors to take an action that seems disproportionate to the consumer's actions, such as account termination due to as little as a single-day delinquency.

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[19] Section-by-Section Clarifications to H.R. 3011, the Home Equity LoanConsumer Protection Act of 1988, Pub. L. 100-709, enacted on Nov. 23, 1988 (inserted by Rep. David Price), Congr. Rec., H4474 (June 20, 1988) (emphasis added).

[20] Board staff discussions with creditors revealed that creditors terminate HELOC accounts due to aconsumer's "fail[ure] to meet the repayment terms of the agreement" for payment delinquencies ranging from 16 to 90 days. In addition to creditor practices, Board staff have also considered court decisions such *Cunningham v. Nat'l City*, C.A. 1-08-CV-10936-RGS (Dist. Mass., Jan. 7, 2009), in which the court held that termination of an account was permitted based on a seven-day delinquency, even though the consumer paid within the contractual late fee courtesy period. Standard HELOC agreements reviewed by the Board typically incorporate the regulatory language allowing a creditor to terminate and accelerate an account or take certain lesser actions due to a consumer's "fail[ure] to meet the repayment terms of the agreement," without specifying the number of days late a consumer's payment may be before the account will be terminated or other action taken under § 226.5b(f)(2)(ii).

The Board believes that the proposed interpretation of the relevant statutory and regulatory provisions better carries out the legislative intent to protect consumers against (1) creditor practices that are unexpected and harmful, [21] and (2) actions based on "minor" payment infractions. [22] The Board believes, for example, that terminating a line based on a payment that was late but made within a contractual late fee "courtesy" period is arguably unexpected and harmful; a consumer may have a reasonable expectation that no penalty will be imposed for a payment made within a certain number of days after the due date where a late fee courtesy period has consistently been applied to an account. In addition, the proposal acknowledges that payments may be late for reasons out of the consumer's control, such as postal delays or automated funds disbursement errors. A delinquency threshold for taking action on the account of more than 30 days would give consumers time to discover and correct the error. Finally, a consumer who is more than 30 days delinquent will, in most cases, have missed at least two due dates--and thus will have wholly failed to make a payment. *See* existing comment 5b(f)(2)(ii)-1 (prohibiting termination and acceleration of an account unless the consumer "actually fails to make payments"), n23

Overall, the proposal is intended to strike a more equitable balance between creditors' need to protect themselves against risk (and, for depositories, to ensure their safety and soundness), and effective protection of HELOC consumers from constraints on their credit privileges that do not correspond with reasonable expectations. Consumer protection would be enhanced by eliminating the opportunity for hair-trigger terminations and certain lesser actions for nominal delinquencies. In addition, the Board believes that a consumer would be more likely to expect serious consequences for a delinquency of more than 30 days on a debt secured by the consumer's home than on an unsecured credit card account. These protections arguably offset the risk to consumers that creditors now terminating lines of credit based on delinquencies of 30 days or less (or that rarely terminate lines) will begin terminating accounts based on the proposed over-30-days delinquency rule.

At the same time, creditors would retain options to protect themselves from losses prior to a payment becoming more than 30 days delinquent. Specifically, a creditor could impose late payment fees specified in the HELOC agreement. Creditors also could temporarily suspend or reduce accounts for a "default of a material obligation" under § 226.5b(f)(3)(vi)(C), as payment obligations are commonly considered material obligations. In effect, whether a line can be terminated due to failure to meet a payment obligation as permitted under TILA depends on the extent of the default (*i.e*., is a payment late by more than 30 days?); whereas whether a line can be temporarily suspended or reduced depends on the nature of the obligation on which the consumer defaulted (*i.e*., is the obligation itself "material"?).

The Board requests comment on whether a failure to make a payment within 30 days is appropriate or whether some other time period is more appropriate for permitting action under this provision. In this regard, the Board notes that the 2009 Credit Card Act (cited above) has suggested considering a delinquency threshold of more than 60 days. Specifically, the Credit Card Act adds a new section 171 to TILA (15 U.S.C. 1666j) to prohibit increasing the APR on existing credit card balances unless the creditor has not received a minimum payment within 60 days after the due date for the payment. *See* Credit Card Act, § 101(b). However, the Credit Card Act does not require that a consumer must be 60 or even 30 days late before a creditor may terminate a credit card account; the Credit Card Act deals with when a credit card creditor may reprice balances on an account.

The Board also requests comment on whether the Board should consider any other payment infractions to be sufficient grounds for termination and acceleration (and permitted lesser actions).

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[21] *See, e.g*., Remarks of Rep. St. Germain, Chair, House Committee on Banking, Finance and Urban Affairs on H.R. 3011, the Home Equity Loan Consumer Protection Act of 1988, Public Law 100-709, enacted on Nov. 23, 1988, Congr. Rec., H4471 (June 20, 1988) (The Home-equity Loan Act was intended to ensure that creditors could impose "no hidden fees, no hidden terms * * * on unsuspecting homeowners"); Remarks of Rep. Schumer on H.R. 3011, Congr. Rec., H4475 (June 20, 1988) ("Home-equity loans have several potential pitfalls if a consumer is not completely aware * * *").

[22] Section-by-Section Clarifications to H.R. 3011, the Home Equity LoanConsumer Protection Act of 1988, Public Law 100-709, enacted on Nov. 23, 1988 (inserted by Rep. David Price), Congr. Rec., H4474 (June 20, 1988).

5b(f)(2)(iv) Terminations Required by Federal Law

Existing § 226.5b(f)(2)(iv) permits a depository institution to terminate and accelerate a HELOC plan if "compliance with federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand." The Board narrowly tailored this additional provision permitting termination in light of Section 22(g) of the Federal Reserve Act (implemented by Regulation O, 12 CFR Part 215) and Section 309 of the Federal Deposit Insurance Corporation Improvement Act. *See* 57 FR 34676 (August 6, 1992).

The proposal would amend § 226.5b(f)(2)(iv) to permit creditors to terminate and accelerate home-equity plans if a federal law requires the creditor to do so, expanding this provision to cover other federal laws that may require a creditor to terminate and accelerate a plan. "Federal law" under this provision is limited to any federal statute, its implementing regulation, and official interpretations issued by the regulatory agency with authority to implement such statute and regulation.

With this revision, the Board intends to prevent the need to issue separate revisions to Regulation Z to account for any new federal law requiring creditors to terminate and accelerate plans under particular circumstances. Further discussion of the reasons for this proposal and requests for comment are found in the explanation below of a similar proposal designated as new § 226.5b(3)(vi)(G).

Regarding this proposed provision, the Board requests comment on what additional examples of conflicts between Regulation Z's restrictions on account termination and other laws the Board should consider, if any. The Board also requests comment on whether the definition of "federal law" should be broadened to include, for example, an order or directive of a federal agency.

5b(f)(3) Limitations on Changes in Terms

Section 226.5b(f)(3) generally prohibits a creditor from changing the terms of a HELOC plan after it is opened. Comment 5b(f)(3)-1 states that, for example, a creditor may not increase any fee or impose a new fee once the plan has been opened, even if the fee is charged by a third party. This comment also provides that the change-in-terms prohibition applies to "all features of a plan," even if the features are not required to be disclosed under § 226.5b (*i.e.*, on the application disclosures). Comment 5b(f)(3)-2, however, lists three charges that may be changed: (1) Increases in taxes; (2) increases in premiums for property insurance (if excluded from the finance charge under § 226.4(d)(2)); and (3) increases in premiums for credit insurance (if excluded from the finance charge under § 226.4(d)(2)).

The proposal would first revise comment 5b(f)(3)-1 to remove the example of a charge that is not required to be disclosed--specifically, a late-payment fee. Under the proposal, a late-payment fee would not be required to be disclosed in the early HELOC disclosure table under § 226.5b(b) (*see* proposed § 226.5b(c)(11), (c)(12) and (c)(13)), but it would be required to be disclosed on the account-opening table under proposed § 226.6(a)(2)(x), along with several other types of fees. Further discussion of these proposed rules is included in the section-by-section analysis for proposed § 226.6(a)(2).

Second, proposed comment 5b(f)(3)-3 clarifies that creditors may pass on to consumers costs in the limited categories of debt collection, collateral protection and foreclosure under Regulation Z, but only if certain conditions are present. First, the costs must "bona fide and reasonable," meaning that the creditor may pass on to the consumer only costs that the creditor actually incurs in taking these actions on a particular plan, and that the amount of any costs passed on to the consumer must be reasonably related to any services related to debt collection, collateral protection or foreclosure incurred by the creditor. These costs might include attorneys' fees, court costs, property repairs, payment of overdue taxes, or paying sums secured by a lien with priority over the lien securing the HELOC. Second, the need for the creditor's actions must arise due to the consumer's default of an obligation under the agreement.

During outreach to prepare this proposal, the Board received requests to clarify whether creditors may pass on to consumers bona fide and reasonable costs incurred by the creditor for collection activity after default, to protect the creditor's interest in the property securing the plan, and to foreclose on the securing property. Creditors have expressed uncertainty about whether a creditor may pass these types of costs on to consumers under Regulation Z. As noted, § 226.5b(f)(3) prohibits creditors from changing the terms of a home-equity plan except in specified circumstances. Existing comment 5b(f)(3)-2 lists only three types of fees that are not covered by this section. Thus, it could be argued that creditors may not pass certain costs on to consumers unless they disclose in the agreement the specific fees and amounts associated with actions required for debt collection, collateral protection and foreclosure. The Board understands that the specific amount of costs required for a creditor to collect unpaid amounts, protect its collateral or execute foreclosure can rarely be known at the outset of a home-equity plan. Events giving rise to the need for a creditor to take action for debt collection, collateral protection or foreclosure may occur several years after the opening of a plan, and the specific actions required for collateral protection or foreclosure, for example, may vary widely depending on the circumstances, such as the nature of the consumer's action or inaction giving rise to the need for the creditor to take affirmative action protect its collateral, or the rules of the jurisdiction governing the foreclosure proceeding. The Board recognizes that for closed-end home-secured credit, creditors have more certainty than do HELOC creditors that these costs may be passed on to the consumer without specific upfront disclosure of their amounts, and that this uncertainty for HELOCs creates compliance challenges.

Also, other sections of the existing commentary reflect the Board's longstanding recognition that specific disclosure of these items and the amount of the charge for each may be difficult. For example, comment 5b(d)(4)-1 (redesignated in the proposal as comment 5b(c)(7)(i)-1) excludes from the requirement to disclose termination fees at application "fees associated with collection of the debt, such as attorneys' fees and court costs." In addition, longstanding comment 6(b)-2.ii (incorporated with changes into proposed § 226.6(a)(3)(ii)(B)) excludes from disclosure in the § 226.6 account-opening statement "[a]mounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; [and] post-judgment interest rates imposed by law," among others. As discussed in more detail in the section-by-section analysis under proposed § 226.6(a)(3), one category of "charges imposed as part of a home-equity plan" would be "charges resulting from the consumer's failure to use the plan as agreed, *except* amounts payable for collection activity after default; costs for protection of the creditor's interest in the collateral for the plan due to default; attorney's fees whether or not automatically imposed; foreclosure costs; and post-judgment interest rates imposed by law" (emphasis added). Proposed § 226.6(a)(3) generally parallels § 226.6(b)(3)(ii)(B) applicable to open-end (not home-secured) plans finalized in the January 2009 Regulation Z Rule and incorporates, as noted, longstanding comment 6(b)-2.ii.

The Board is mindful of concerns that consumers may be charged a wide array of fees upon default without adequate notice or explanation. For these reasons, the Board requests comment on the appropriateness of this proposed clarification. The Board also requests comment on whether, if the proposal is adopted, the Board should clarify requirements regarding disclosure of these costs in the initial agreement beyond stating that specific amounts need not be disclosed. For example, would it be sufficient for the creditor to disclose simply the possibility that costs under the three categories contemplated in the proposal--debt collection, collateral protection and foreclosure upon default--may be charged? Or should the creditor be required to itemize in whole or in part the types of costs under each category that could be charged?

5b(f)(3)(i) Changes Provided for in Agreement

Section 226.5b(f)(3)(i) provides exceptions from the general prohibition on changes in terms of home-equity plans. One of these "exceptions" is that a creditor may provide in the initial agreement that a specified change will take place if a specified event occurs. The section gives an example that the agreement may provide that the APR may increase by a specified amount if the consumer leaves the creditor's employment. Comment 5b(f)(3)(i)-1 clarifies that both the triggering event and the resulting change in terms must be stated in the agreement with specificity. The comment also restates the employee preferred-rate example, and gives other examples, including a stepped-rate provision in the agreement, under which specified changes in the rate may take place after specified periods of time. This section and accompanying comment are consistent with the general principle stated in comment 5b(f)(1)-3 that rate changes specifically set forth in the agreement are not prohibited.

The Board proposes to revise comment 5b(f)(3)(i)-1 to clarify that rate increases are also permissible upon the occurrence of special circumstances other than those set forth in the existing comment, as long as they are specifically set forth in the agreement and do not conflict with other substantive limitations on rate changes in the regulation. The Board intends this clarification to provide consistency between comment 5b(f)(1)-3 and comment 5b(f)(3)(i)-1. The proposal also would limit the amount by which a rate could be increased once circumstances qualifying the consumer for a preferred rate no longer apply. Specifically, a creditor could not raise the rate to be higher than it would have been had the consumer never qualified for a preferred rate. If a preferred rate of five percent is available to a consumer who is an employee of the creditor, for example, and the rate applicable if the consumer were not a creditor employee were seven percent, the creditor could not raise the rate above seven percent once the consumer is no longer the creditor's employee. The Board believes that such an increased rate would constitute a penalty rate imposed for reasons not permitted under Regulation Z. *See* § 226.5b(f)(2) and comment 5b(f)(2)-2; *see also* 15 U.S.C. § 1647(a); § 226.5b(f)(1).

The revised comment would clarify that the creditor could not impose a penalty rate for a reason other than those specified in § 226.5b(f)(2) (allowing termination and acceleration and certain lesser actions only under particular circumstances). The Board believes that permitting agreements to provide for the application of penalty rates upon the occurrence of any triggering event would be inconsistent with the restrictions on rate increases under the statute and regulation. *See* 15 U.S.C. § 1647(a); § 226.5b(fl(1). Thus, the proposed comment would state that the creditor would be permitted to increase the rate to a penalty rate level only if the triggering event is a circumstance that would permit the rate to be increased under the commentary to § 226.5b(f)(2), such as fraud or material misrepresentation by the consumer (§ 226.5b(f)(2)(i)), failure to make a required payment within 30 days of the due date for that payment (proposed § 226.5b(f)(2)(ii)), or action or inaction by the consumer that adversely affects the creditor's security interest for the plan (§ 226.5b(f)(2)(iii)). The Board believes, however, that a rate increased from a preferred rate to the rate available to consumers generally, when the condition for the preferred rate is no longer met, would be consistent with the statutory provision. A consumer who has a preferred rate is likely to be aware of the conditions for the rate, and thus if the conditions are no longer met, the rate increase would not come as an undue surprise.

5b(f)(3)(iv) Beneficial Changes

Section 226.5b(f)(3)(iv) permits a creditor to change a term of a home-equity plan if the change "will unequivocally benefit the consumer throughout the remainder of the plan." Comment 5b(f)(3)(iv)-1 gives several examples of beneficial changes, including a temporary reduction in the rate or fees charged during the plan. In this case, however, the comment indicates that a creditor "may" be required to give a change-in-terms notice required under § 226.9(c) (see proposed § 226.9(c)(1)) when the rate or fees return to their original level.

The proposal would clarify in comment 5b(f)(3)(iv)-1 that a change-in-terms notice "would," rather than "may," be required to be provided to the consumer under § 226.9(c) (proposed § 226.9(c)(1)) when the temporarily reduced rate or fees are returned to their original level, if these reductions and subsequent increases were not disclosed in the account agreement. The revised comment also would clarify that including notice of the increased rate or fee with the notice to the consumer that the rate or fee is being reduced would constitute appropriate notice of the increase, as long as this notice is provided 45 days before the effective date of the increase.

Comment 9(c)(1)(ii)-2 (redesignated in the proposal as comment 9(c)(1)(iv)-2) states that a creditor may offer temporary reductions in finance charges without giving notice when the charges return to their original level--as long as this feature is disclosed in the account-opening disclosures required under § 226.6 (including an explanation of the terms upon resumption). [24] The "beneficial changes" provision, however, permits the creditor temporarily to reduce finance charges such as rates and fees without disclosing these possible reductions in the account agreement (assuming the change is "unequivocally" beneficial). When a creditor relies on this provision to raise the rate or fees after the reduction period has ended, however, the Board believes that the consumer should be given notice of when these charges will return to their original level in accordance with the proposed 45 days advance notice rule under proposed § 226.9(c)(1). This would ensure that the consumer is given sufficient notice of the change to make any financial adjustments necessary.

5b(f)(3)(v) Insignificant Changes

Background

Section 226.5b(f)(3)(v) permits a creditor to make "insignificant" changes to a home-equity plan's terms. Existing comment 5b(f)(3)(v)-1 explains that this provision is intended to "accommodate[] operational and similar problems, such as changing the address of the creditor for purposes of sending payments." Under this comment, a creditor may not change a term such as a late-payment fee. Comment 5b(f)(3)(v)-2 gives several examples of changes in terms considered "insignificant." These include "minor changes" to the billing cycle date, the payment-due date, and the day of the month on which index values are measured; changes to the creditor's rounding practices for the APR; and changes to the balance computation method used. The comment also provides that these changes will not in all cases be considered "insignificant." For example, a change to the payment-due date would be insignificant only if this change would not diminish the grace period, if any, during which finance charges and late fees are not applied to new transactions. A change in the creditor's rounding practices for disclosing the APR would be insignificant only if the change is within the tolerances prescribed by § 226.14(a). A change to the balance computation method would be insignificant only if any resulting difference in the finance charge paid by the consumer is "insignificant."

A number of creditors have expressed concerns to the Board about difficulties arising when the servicing of a HELOC is transferred and the new servicer's platform is not programmed to allow for previously available terms. Creditors are concerned that changing the terms of a HELOC in this circumstance may not be permitted due to § 226.5b(f)(3)'s limitations on term changes. Creditors have reported that, as a result, they sometimes have to use multiple servicers or servicing systems to support all the terms of the various HELOCs they acquire. These servicers and servicing systems may be of widely varying quality, which could mean that consumers do not receive optimal service on their HELOCs. Some creditors have reported that a portfolio acquisition may not occur at all if the acquirer's servicing system cannot support the terms of the HELOCs offered, and that this may also harm consumers if, for example, the proposed acquisition was necessitated in part by challenges facing the current servicer. Differences between servicing systems cited by creditors may impact, among other terms, rate indices, minimum payment and late fee calculations, or the availability of certain payment options or access devices such as credit cards.

Proposal

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[24] This provision also states that temporary reductions in payments disclosed in theaccount-opening statement are subject to the notice exemption. *See* comment 9(c)(1)(ii)-2 (proposed comment 9(c)(1)(iv)-2). Temporary payment reductions might also be considered beneficial changes permitted under § 226.5b(1)(3)(iv). *See* comment 5b(f)(3)(iv)-1. However, in the Supplementary Information to the final rule implementing § 226.51)(1)(3)(iv), the Board noted that "reducing the amount of the minimum payment would not be unequivocally beneficial since it may result in less principal being repaid over the term of the plan and may result in a higher total amount of finance charges." 54 FR 3063 (Jan. 23, 1989).

The Board proposes to add to comment 5b(f)(3)(v)-2 an example of a change that would be considered insignificant under this provision: a creditor may eliminate a method of accessing the line, such as a credit card, as long as at least one means of access that was available at account opening remains available to the consumer on the original terms. The Board also proposes to clarify that changes to the original terms on which a means of access was originally available--such as any fees for using the access method--would not be considered insignificant, but might be permitted as "beneficial" changes under § 226.5b(f)(3)(iv) if the change met the requirements of comment 5b(f)(3)(iv)-1.

The Board believes that a general rule permitting changes in terms due to servicing transfers would not sufficiently protect consumers, and thus would undermine the purpose of the change-in-terms restrictions mandated by TILA. Such a rule would allow creditors to change terms as a result of a servicer change that are, in practical effect, significant. Changes to minimum payment calculations, for example, could increase the overall costs to the consumer of the HELOC, or materially increase the consumer's payments in the short or long term. Changes to late fee calculations could be confusing to consumers and cause undue surprise related to the amount or timing of the late-payment fee; in addition, longstanding Board policy prohibits changing fees charged for late payments. *See* comment 5b(f)(3)(v)-1.

The Board also considered setting a general standard for changes that would be considered insignificant, such as allowing changes to be deemed insignificant that result in the same or substantially similar payments (including periodic payments and the total of payments), rates, fees, and overall loan costs. One concern about establishing a general standard is that confusion among creditors and consumers, and possibly increased litigation, may result, particularly concerning the meaning of terms such as "substantially similar." The Board requests comment on whether setting a general standard for term changes that would be considered insignificant is desirable. In this regard, the Board also requests comment on whether prescribing specific tolerances for resulting payments, costs, and fees would be helpful, and what appropriate tolerances might be.

Servicing transfers, while sometimes beneficial to consumers, are neither initiated nor controlled by consumers. Thus, the Board believes that consumers should not in general be subjected to changes in their HELOC terms when their servicing is transferred. The current regulation provides several exceptions allowing creditors to change HELOC terms in keeping with the consumer protection purpose of TILA and Regulation Z--such as changes by written agreement (§ 226.5b(f)(3)(iii)), beneficial changes (§ 226.5b(f)(3)(iv)), and insignificant changes (§ 226.5b(f)(3)(v)). Regarding insignificant changes, current comment 5b(f)(3)(v)-2, as noted, clarifies in its examples that, in effect, a change cannot be considered insignificant if it diminishes or eliminates a financial benefit to the consumer, such as a grace period, or if it causes the consumer to pay a finance charge that is more than nominally higher than the finance charge that would have applied under the original terms.

Rather than make a broad revision such as permitting all term changes related to servicing transfers or setting a general standard for determining whether a change in terms is "insignificant," the Board is proposing to clarify that an access device such as a credit card may be eliminated as long as previously available access devices remain available. Creditors indicated that significant problems can arise where credit card access, for example, was available on the plan but a new servicer cannot support this; the creditor may be unable to transfer the servicing or may have to make individual arrangements with each consumer. The Board requests comment on the appropriateness of this additional example of an insignificant change. In addition, the Board requests comment on whether this example, if adopted, should be modified, broadened, or narrowed.

5b(f)(3)(vi) Temporary Suspension of Credit or Reduction of Credit Limit

Introduction

Section 226.5b(f)(3)(vi) lists several circumstances under which a creditor may temporarily suspend advances on a home-equity plan or reduce the credit limit. As discussed below, the Board proposes revisions to this section in three major areas: (1) Rules regarding when a creditor may suspend or reduce an account based on a significant decline in the property value (§ 226.5b(f)(3)(vi)(A) and existing comment 5b(f)(3)(vi)-6); (2) rules regarding when a creditor may suspend or reduce an account based on a material change in the consumer's financial circumstances (§ 226.5b(f)(3)(vi)(B) and existing comment 5b(f)(3)(vi)-7); and (3) rules regarding reinstatement of accounts that have been suspended or reduced (existing comments 5b(f)(3)(vi)-2, -3, and -4). As also discussed below, the proposal would permit a creditor to suspend or reduce an account temporarily if required to do so by federal law. Certain technical amendments are proposed to § 226.5b(f) and accompanying commentary as well.

Changes and Requests for Comment Related to § 226.5b(f)(3)(vi) Generally

No changes are proposed to existing comment 5b(f)(3)(vi)-1, which provides that a creditor may temporarily suspend advances on an account or reduce the credit limit only under circumstances specified in § 226.5b(f)(3)(vi), § 226.5b(f)(3)(i) when the maximum annual percentage is reached, or § 226.5b(f)(2), permitting suspension of advances or reduction of the credit limit in lieu of terminating and accelerating the account. *See* comment 5b(f)(2)-2. The Board requests comment, however, on the portion of this comment providing that the creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment. Specifically, the Board requests whether other limitations on the amount by which a home-equity line may be reduced may be appropriate. For example, should the amount by which a credit line may be reduced for a significant decline in the property value under § 226.5b(f)(3)(vi)(A) (discussed below) be limited to: (1) No more than the dollar amount of the property value decline; (2) no more than the amount needed to restore the creditor's equity cushion at origination (and whether, in this case, the relevant equity cushion should be the dollar amount or the percentage of the home value not encumbered by debt); or (3) some other measure? A related request for comment is whether a creditor should be prohibited from temporarily suspending advances on the line until, for example, the property value declines by the full amount of the credit line.

The proposal would redesignate comment 5b(f)(3)(vi)-5 as comment 5b(f)(3)(vi)-2 and make certain technical revisions. Current comment 5b(f)(3)(vi)-5 permits a creditor to honor a specific request by a consumer to suspend credit privileges. If two or more consumers are obligated under a plan and each can take advances, comment 5b(f)(3)(vi)-5 permits creditors to provide that any of the consumers may direct the creditor not to make further advances. This comment also permits a creditor to require that all persons obligated under a home-equity plan request reinstatement.

Proposed comment 5b(f)(3)(vi)-2 would add that consumers may request not only suspended advances but reduction of the credit limit. It also clarifies that when a consumer later requests reinstatement, but a condition permitting suspension or reduction exists (under §§ 226.5b(f)(2) or (f)(3)(i) or (f)(3)(vi)), a creditor that therefore does not re-open the plan must provide the disclosure of the specific reasons for the action taken under § 226.9(j)(1) (for temporary suspensions and reductions under §§ 226.5b(f)(3)(i) or (f)(3)(vi)) or (j)(3) (for termination or permitted lesser actions under § 226.5b(f)(2)), as applicable. Concerns were expressed to the Board during outreach for this proposal that under some circumstances, a person with an ownership interest in the property securing the line, but who is not obligated on the plan, may wish to request suspension of advances. The Board has not proposed a change to this provision to address these concerns, but invites comment on the issue.

Under longstanding Board policy, rate changes for reasons permitting suspension of advances or credit limit reductions under § 226.5b(f)(3)(i) and (f)(3)(vi) have been prohibited. *See* comment 5b(f)(3)(i)-2. Based on issues raised during the Board's outreach to prepare this proposal, the Board also requests comment on whether and under what circumstances it might be appropriate for Regulation Z to permit actions other than temporary suspension of advances or credit limit reductions under § 226.5b(f)(3)(i) and (f)(3)(vi).

Finally, as discussed in more detail under the section-by-section analysis for proposed § 226.5b(g), the proposal moves comments 5b(f)(3)(vi)-2, -3, and -4 regarding reinstatement of accounts to proposed § 226.5b(g) and accompanying commentary, and revises them.

5b(f)(3)(vi)(A) Suspensions and Credit Limit Reductions Based on a Significant Decline in the Property Value

Background

Section 226.5b(f)(3)(vi)(A), which implements TILA Section 137(c)(2)(B), permits a creditor temporarily to suspend advances or reduce a credit line on a HELOC if "the value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan." 15 U.S.C. 1647(c)(2)(B). Comment 226.5b(f)(3)(vi)-6 states that whether a decline in value is significant under this provision "will vary according to individual circumstances." The comment goes on to provide a "safe harbor" standard for determining whether a decline is significant. Specifically, a decline in value would be considered significant if it results in the initial difference between the credit limit and the available equity (the "equity cushion") diminishing by 50 percent or more.

Concerns have been expressed to the Board that the existing safe harbor may not be a viable standard for the higher combined loan-to-value (CLTV) HELOCs made in recent years. For loans nearing or exceeding 100 percent CLTV when originated, for example, a decline in value of a few dollars could result in more than a 50 percent decline in the creditor's equity cushion because the equity cushion was zero or close to zero at origination. For these higher CLTV loans in particular, creditors have indicated uncertainty about ***how*** to determine whether a decline in value is "significant." For their part, consumer advocates have expressed concerns that the lack of guidance on the proper application of the safe harbor gives creditors too much authority to take action based on nominal declines in value. Finally, noting that appraisals are not required to take action under this provision (*see* comment 5b(f)(3)(vi)-6), creditors have also ***asked*** the Board for guidance on appropriate property valuation methods for assessing property values under this provision.

Proposal

The proposal would eliminate references to the "appraised" value in both the regulation and commentary, to reflect that appraisals are not required to originate many HELOCs, [25] nor are they required to establish a basis for taking action under this provision. *See* existing comment 5b(f)(3)(vi)-6. Beyond this technical change, the proposal would revise the commentary interpreting § 226.5b(f)(3)(vi)(A) in two principal ways. First, the commentary would delineate two "safe harbors" on which creditors could rely to determine that a decline in property value is "significant" under this section. Second, the commentary would provide additional guidance regarding the appropriate valuation tools for creditors to use in valuing property under this section.

Proposed comment 5b(f)(3)(vi)-4 confirms existing guidance stating that whether a decline is "significant" under § 226.5b(f)(3)(vi)(A) depends on the individual circumstances of a particular HELOC secured by a property whose value has declined. Thus, in all cases the creditor must make an individualized assessment of whether a property value decline is significant, and may not solely consider general property value trends.

Safe harbors. To facilitate compliance, the Board proposes two standards under which a property value decline would be deemed significant under this section.

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[25] *See, e.g.*, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, "Interagency Appraisal and Evaluation Guidelines," SR Letter 94-55 (Oct. 28, 1994); *see also* 12 CFR 225.63 (FRB); 12 CFR 34.43 (OCC); 12 CFR 323.3 (FDIC); 12 CFR 564.3 (OTS). "Appraisal" is defined in federal banking agency regulations relating to appraisal standards as "a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information." 12 CFR 225.62(a) (FRB); 12 CFR 34.42(a) (OCC); 12 CFR 323.2(a) (FDIC); 12 CFR 564.2(a) (OTS).

. First, for plans with a CLTV at origination of 90 percent or higher, a five percent reduction in the property value on which the HELOC terms were based would constitute a significant decline in value for purposes of § 226.5b(f)(3)(vi)(A).

. Second, for plans with a CLTV at origination of under 90 percent, the Board proposes to retain the existing safe harbor, under which a decline in the value of the property securing the plan is significant if, as a result of the decline, the initial difference between the credit limit and the available equity (based on the property's value for purposes of the plan) is reduced by 50 percent.

Five percent decline for HELOCs with a CLTV at origination of 90 percent or higher. The current commentary allows creditors to assume that a decline in property value is "significant" if the decline results in a 50 percent decline in the creditor's equity cushion. *See* comment 5b(f)(3)(vi)-6. The Board proposes to modify this "safe harbor" for loans with a CLTV at origination of 90 percent or higher: For these loans, the creditor could assume that a decline in the property value is significant if the property value declines at least 5 percent from its value when the HELOC was originated.

The Board proposes this new safe harbor for several reasons. First, the current safe harbor, which allows action on a HELOC when the creditor's equity cushion falls by 50 percent, establishes an inappropriate metric for measuring whether a value decline on higher CLTV loans is "significant." As worded, this provision arguably permits action based on nominal property value declines. Specifically, the statute permits suspension of advances or reduction of the credit limit when the value of property securing the HELOC "is significantly less than the value of the property when the HELOC was originated. 15 U.S.C. 1647(c)(2)(B). The Board's proposal would interpret this statutory language to mean that, at minimum, the actual decline in value must be more than nominal. The 5 percent safe harbor thus is intended to protect consumers with higher CLTV HELOCs from having their lines suspended or reduced based on property value declines that are only slightly less than the value of the property at origination.

Second, the new proposed safe harbor standard would be consistent with the existing safe harbor. Arithmetically, a five percent decline on loans with an originating CLTV of 90 percent or higher results in at least a 50 percent decline in the equity cushion. By contrast, a five percent property value decline on loans with an originating CLTV of under 90 percent would not reduce the creditor's equity cushion by 50 percent.

Third, the proposed CLTV threshold of 90 percent or higher for applying a five percent value decline safe harbor would be consistent with a CLTV threshold already established by the Board. Specifically, Board risk management guidance defines a "high (C)LTV loan" [26] generally as a loan with a CLTV of 90 percent or higher, unless the loan has credit enhancements such as mortgage insurance to mitigate the risk of loss. [27] Research validates that loans in this category have a higher probability of default and yield greater losses upon default than loans of lower CLTVs. [28]

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[26] Relevant guidance uses the term "LTV" (loan-to-value ratio) to mean what is often referred to as "CLTV" (*combined* loan-to-value ratio); in other words, all liens on the property are considered: "[A] high LTV residential real estate loan is defined as any loan, line of credit, or combination of credits secured by *liens on or interests in* owner-occupied 1- to 4-family residential property that equals or exceeds 90 percent of the real estate's appraised value, unless the loan has appropriate credit support." Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, "Interagency Guidance on High LTV Residential Real Estate Lending," SR Letter 99-26 (Oct. 12, 1999) (emphasis added).

[27] 12 CFR part 208, subpart E, app. C (providing that, if a loan's LTV is equal to or exceeds 90 percent, the creditor must add other credit enhancements (such asmortgage insurance) or the loan will be considered to exceed the supervisory LTV ratios and be deemed a "high LTV loan," to which additional rules apply). *See also* Board of Governors of the Federal Reserve System, SR Letter 99-26 (Oct. 12, 1999).

[28] *See, e.g.*, Kristopher Gerardi, Federal Reserve Bank of Atlanta, Andreas Lehnert and Shane M. Sherlund, Board of Governors of the Federal Reserve System, and Paul Willen, Federal Reserve Bank of Boston, "Making Sense of the Subprime Crisis," Brookings ***Papers*** on Economic Activity (Fall 2008). *See also*, Min Qi and Xiaolong Yang, Office of the Comptroller of the

Retention of existing safe harbor for HELOCs with a CLTV at origination of lower than 90 percent. For loans with an originating CLTV of less than 90 percent, the Board proposes to retain the existing the safe harbor, under which a value decline is significant if the decline results in the creditor's equity cushion contracting by 50 percent. Comment 5b(f)(3)(vi)-4 clarifies that in determining whether a decline results in a 50 percent equity cushion reduction, the creditor may, but does not have to, consider any changes in available equity based on the status of the first mortgage.

The Board proposes to retain the existing safe harbor for several reasons. First, no parties during Board outreach to prepare this proposal objected to the general principal that a property value decline resulting in a 50 percent reduction of the equity cushion can reasonably be considered "significant" under this provision.

Second, applying this safe harbor to loans with CLTVs of under 90 percent does not depart significantly from the assumption on which the original safe harbor example was based. *See* comment § 226.5b(f)(3)(vi)-6. The commentary illustrates the existing safe harbor with a HELOC at a starting CLTV of 80 percent; thus, the illustration indicates that a 50 percent equity cushion reduction would be significant for loans originated with a CLTV of 80 percent. The proposal clarifies that a property value decline resulting in a 50 percent equity cushion reduction is significant for loans with a CLTV of only somewhat higher than 80 percent--under 90 percent.

Finally, there is an arithmetical basis for applying the existing safe harbor, rather than the proposed flat five percent decline safe harbor, to HELOCs with an originating CLTV of under 90 percent: a five percent decline in the value of the property for lines with a starting CLTV lower than 90 percent would not yield an equity cushion decline of 50 percent or more.

Among other alternatives, the Board considered proposing a safe harbor that applied a flat percentage property value decline to all HELOCs, regardless of the originating CLTV, but determined that defining an single metric appropriate for all loans was not possible. A safe harbor of a 10 percent decline, for example, may impair creditors' flexibility to take action where reasonable arguments could be made, as for higher CLTV loans such those discussed above, that adequate risk mitigation requires action based on a lesser decline. At the same time, a 10 percent decline may be inappropriate for loans with lower CLTVs, such as 50 percent. For these loans, a 10 percent property value decline would still leave the creditor with a significant equity cushion. By contrast, even on lower CLTV loans, the current safe harbor of a 50 percent reduction in the creditor's equity cushion might reasonably be deemed a sufficient change in the creditor's original risk level to justify action on the line, such as temporarily reducing the credit limit.

Significant declines outside of the safe harbors. The Board recognizes that not all property value declines that might reasonably be considered "significant" for taking action under this provision will fall into one of the two safe harbors. Thus, the Board requests comment on whether and what guidance regarding other factors that creditors might consider in determining whether a decline is significant is desirable. Specific comment is requested on whether the Board should provide guidance clarifying that the creditor may (but does not have to) consider any changes in available equity based on ***how*** much the consumer owes on a mortgage with a lien superior to that of the HELOC. On a second-lien HELOC where the first-lien mortgage is negatively amortizing, or was negatively amortizing during any part of the HELOC term, for example, the CLTV will decline more and faster than if the first mortgage were fully or partially amortizing, concomitantly reducing the HELOC creditor's equity cushion. The actual property value

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Currency, "Loss Given Default of High Loan-to-Value Residential Mortgages," Economics and Policy Analysis Working ***Paper*** 2007-4 (August 2007).

decline alone may not reduce the creditor's equity cushion by 50 percent, but a 50 percent reduction in the equity cushion may nonetheless occur if the first mortgage loan is negatively amortizing.

The Board also requests comment on whether and under what circumstances it may be appropriate to permit consideration of a clear and consistent trend of declining property values in the market area in which the securing property is located. The Board understands that creditors commonly rely on general market data to validate findings for a property-specific valuation; used in this way, general market data may be a valuable quality control tool contributing to sound portfolio management. (Depending on comments received, the Board would not anticipate that consideration of this factor would be permissible unless the creditor first completed a property valuation that accounts for specific characteristics of the subject property and meets other guidelines proposed in comment 5b(f)(3)(vi)-5.) In addition, the Board solicits comment on the type of market data that would be appropriate, such as data based on publicly available, empirically-based research, as well as on whether a more specific definition of "market area" would be needed and, if so, what definition would be appropriate.

Finally, as discussed above under the section-by-section analysis on § 5b(f)(3)(vi) (specifically concerning comment 5b(f)(3)(vi)-1), the Board requests comment on what, if any, restrictions on the amount by which a credit line may be reduced for a significant decline in value may be appropriate.

Property valuation methods. Existing comment 5b(f)(3)(vi)-6 states that § 226.5b(f)(3)(vi)(A) does not require a creditor to obtain an appraisal before suspending credit privileges or reducing the credit limit based on a significant decline in value, although a significant decline must have occurred. This means that the creditor must be able to demonstrate that a significant value decline in value has occurred, even if an appraisal is not obtained. To establish this basis when the creditor does not obtain an appraisal, the creditor would have to rely on a property value generated by a valuation method other than an appraisal. Proposed comment 5b(f)(3)(vi)-5 reaffirms that an appraisal is not required to take action under this provision, but provides additional guidance about the valuation tools that may be appropriate and the standards that should apply to using these tools.

Proposed comment 5b(f)(3)(vi)-5 would clarify that appropriate property valuation methods under § 226.5b(f)(3)(vi)(A) may include, but are not limited to, automated valuation models (AVMs), [29] tax assessment valuations (TAVs), [30] and broker price opinions (BPOs). [31] These examples of appropriate valuation tools are illustrative; the Board recognizes that the methods named in the commentary may in the future commonly be referred to by other names, and that new valuation methods that may be appropriate could be developed over time. Creditors would not be able to use any valuation method if state or other applicable law prohibits using that method for determining whether to suspend or reduce credit lines. For example, some state laws permit real estate brokers or salespersons to perform BPOs only as part of the real estate sales or listing process. [32]

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[29] An automated valuation model or "AVM" is a computer program that analyzes data to determine a property's market value. "Hedonic" models use property characteristics (such as square footage, room count) on the subject and comparable properties to determine a value. "Index" models determine value based on repeat sales in the marketplace rather than property characteristic data. "Blended or hybrid" models use elements of both hedonic and index models.

[30] A tax assessment valuation or "TAV" determines the value of the subject property based on the value established for property tax purposes.

[31] A broker price opinion or "BPO" is an estimate of value of the subject property prepared by a real estate broker, agent or sales person that details the probable listing price of the subject property and provides varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales. A BPO does not include use of an AVM.

[32] *See, e.g.*, Ark. Code Ann. § 17-14-104, Conn. Gen. Stat. § 20-526, Minn. Stat. § 82B.035, R.I. Gen. Laws § 5-20.7-3, Tex. Occ. Code § 1103.004.

Under proposed comment 5b(f)(3)(vi)-5, any property valuation method on which the creditor relies to take action under this section must consider specific property characteristics of the underlying collateral. Methods that use only indices measuring property values generally in a particular geographic area would not be appropriate. Thus, AVMs known as "hedonic" or "hybrid" (also referred to as "blended") models that account for specific property characteristics and location to produce a value would generally be appropriate, whereas AVMs known as "repeat sales index" or "home price index" models that do not account for property characteristics specific to the underlying collateral would not be appropriate. [33]

5b(f)(3)(vi)(B) Suspensions and Credit Limit Reductions Based on a Material Change in the Consumer's Financial Circumstances

Background

Section 226.5b(f)(3)(vi)(B), which implements TILA Section 137(c)(2)(C), permits a creditor to suspend advances or reduce the credit limit of a HELOC when "the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations of the plan because of a material change in the consumer's financial circumstances." 15 U.S.C. 1647(c)(2)(C).

In the Board's discussions with creditor representatives and others, concerns have been raised that the phrase "unable to meet" the repayment obligations is inappropriate in the modern credit market, in which credit decisions generally involve ranking consumers by their likelihood of repaying, not on whether they can or cannot repay. The Board understands that, in effect, a creditor may decide not to extend credit because a consumer's likelihood of default is calculated to be, for example, 15 percent over a given period. A 15 percent likelihood of default, however, does not necessarily ***show*** that the consumer is "unable" to repay the HELOC on the agreed terms. The Board also recognizes that credit availability may be reduced if the circumstances under which creditors may take action under this provision are ambiguous. One creditor expressed to the Board that uncertainty about ***how*** to fulfill the requirements of this provision contributed to the creditor's decision to stop offering HELOCs altogether. In sum, many creditors have requested more detailed guidance about when action is permissible under this provision, including the extent to which they may rely on declines in credit scores.

Consumer advocates expressed dissatisfaction with the guidance on § 226.5b(f)(3)(vi)(B) as well, voicing concerns that the lack of clear guidelines results in some creditors taking action on accounts of consumers who are fully capable of meeting their repayment obligations or whose financial circumstances in fact have not changed in a manner truly supporting a reasonable belief that the consumer will be unable to meet these obligations.

Proposal

As an initial matter, the Board is not proposing to eliminate the phrase "unable to meet" the repayment terms from the regulatory text, in part because the statute itself stipulates that the creditor must have "reason to believe that the consumer will be *unable* to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances." 15 U.S.C. § 1647(c)(2)(C) (emphasis added). Legislative history does not explain Congress's decision to set this standard; the Board interprets the statute's "unable" to pay standard as evincing a legislative intent to promote creditor restraint in taking action under this provision. At the same time, the Board, as did Congress, recognizes the need for creditors to be able to protect themselves against losses on home-

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[33] *See supra* note 29, regarding "hedonic," "hybrid," and "index" AVMs.

equity lines; [34] TILA and Regulation Z therefore permit creditors to take action on accounts in certain circumstances before the creditor begins to incur losses on those accounts. *See* 15 U.S.C. 1647(c)(2)(13)--(E); § 226.5b(f)(3)(vi)(A)-(F).

Thus, the Board requests comment on whether the Board should consider expressly interpreting the "unable" to pay standard to mean, for example, that the change in the consumer's financial circumstances resulted in the consumer's likelihood of default "substantially" increasing. Another possible interpretation on which the Board requests comment is that the "unable" to pay standard requires that, as a result in a change in the consumer's financial circumstances, the consumer moved into a higher default risk category than at origination (based on the statistical likelihood of default), such that the creditor would not have made the loan or would have made the loan on materially less favorable terms and conditions.

Overall, the proposed revisions to guidance in the commentary on § 226.5b(f)(3)(vi)(B) is intended to protect consumers by ensuring that creditors exercise prudent judgment in relying on this provision, while providing certain limited clarifications regarding the requirements of this provision to guide creditors. To ensure that before taking action, creditors carefully consider the consumer's financial circumstances and the likely impact of these circumstances on the account, the proposed commentary retains the existing two-part test for justifying account suspensions or credit limit reductions under § 226.5b(f)(3)(vi)(B). The creditor must first examine the consumer's financial circumstances and determine whether a "material" change has occurred. The Board interprets the word "material" in this part of the test to mean that the change has some bearing on the consumer's ability to pay his or her financial obligations. The creditor must then establish that this change supports the creditor's reasonable belief that the consumer will be unable to meet the repayment obligations of the HELOC. The proposal would revise the commentary interpreting § 226.5b(f)(3)(vi)(B) to include additional examples of ***how*** creditors may demonstrate that both parts of the test are met, as discussed below.

For the first part of the test, under proposed comment 5b(f)(3)(vi)-6 (based on existing comment 5b(f)(3)(vi)-7 with revisions), evidence of a significant change in financial circumstances includes, but is not limited to, a significant decrease in the consumer's income, or credit report information ***showing*** late payments or nonpayments on the part of the consumer, such as delinquencies, defaults, or derogatory collections or public records related to the consumer's failure to pay other obligations. The Board proposes to require that these payment failures must have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance. A safe harbor for determining whether a payment failure occurred within a reasonable time from the date of the creditor's review would be one that occurred within six months of the creditor's suspending advances or reducing the credit limit. In addition, the consumer cannot have brought the account on which the payment failure occurred current as of the time of the creditor's review. The Board believes that this six-month safe harbor appropriately observes the statutory and regulatory rule that action can be taken only "during any period in which" the consumer's financial circumstances have materially worsened from those on which the credit terms were based. *See* 15 U.S.C. 1647(c)(2)(C); § 226.5b(f)(3)(vi)(B). The Board solicits comment on this approach.

Meeting the second part of the test requires that the change in financial circumstances support the creditor's reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. For this part of the test, the proposal retains the existing commentary's safe harbor--namely, that the creditor may rely on evidence of the consumer's failure to pay other debts other than the HELOC to support a reasonable belief that the consumer

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[34] *See* Remarks of Rep. David Price (primary sponsor of the H.R. 3011, the Home Equity Loan Consumer Protection Act of 1988, Pub. L. 100-709, enacted on Nov. 23, 1988, Congr. Rec., H4473 (June 20, 1988) ("[T]hese provisions protect the consumer without hindering the ability of lenders to operate successfully equity credit plans.").

will not be able to meet the HELOC's repayment obligations. Proposed comment 5b(f)(3)(vi)-6 adds that these payment failures must have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance, with the six-month safe harbor discussed above.

Proposed comment 5b(f)(3)(vi)-6 also specifies that for the second prong of the test, the payment failures on which the creditor relies may not be solely late payments of 30 days or fewer. The Board does not believe that a late payment of 30 days or fewer is adequate evidence of a failure to pay a debt. For example, the consumer's payment may not have reached the creditor due to errors of which the consumer has not yet had an opportunity to become aware, such as mail delivery or electronic funds transfer errors.

Reliance on Credit Score Declines

Several industry representatives requested clarity on whether creditors could rely on credit score declines to satisfy the requirements of § 226.5b(f)(3)(vi)(B). The Board believes that credit score declines may be an appropriate screening tool for determining which consumers to examine more closely for potential action based on this provision. However, the Board is concerned about whether credit score declines alone can meet the required statutory ***showing***. For reasons discussed below, the proposal neither endorses nor prohibits reliance on credit score declines alone to meet the requirements of this provision, but solicits comment on this issue.

Permitting reliance on credit scores alone to satisfy the requirements of this provision raises several concerns. First, a Board study has observed that credit scores can drop for reasons unrelated to the consumer's actual failure to pay obligations, [35] which suggests that a credit score decline alone might be an insufficient basis to satisfy the two-part test. Credit scores sometimes drop, for example, due to increases in a consumer's utilization rate on her credit cards or because a consumer closes one or more credit card accounts. But an increased utilization rate may occur because a credit card creditor decides to reduce the credit limit for reasons out of the consumer's control, not because the consumer is relying more heavily on credit card credit. Similarly, if the consumer closes accounts because the consumer has consolidated these debts into a single, lower interest loan, the consumer may have freed up more income to repay the HELOC; here, the consumer's credit score drop in fact corresponds with improvement in the consumer's ability to pay.

Second, standard credit scores do not ***show*** a consumer's actual default or delinquency probability--they reflect only a consumer's likelihood of falling delinquent or defaulting relative to other consumers. For example, a consumer with a score of 700 is less likely to default than a consumer with a score of 600--but these scores by themselves do not indicate the actual probability that either consumer will default.

Third, the Board also recognizes the challenge of defining ***how*** much of a decline is sufficient to satisfy the standard. Applying a single metric such as a 40 point decline to all consumers is especially problematic, because a consumer whose score declines from 800 to 760 is still much more likely to be able to pay than, for example, a consumer whose score decreases from 600 to 560. In addition, different scoring models use different score ranges, so a decline of 40 points on one model would not have the same meaning as a 40-point decline in another model.

Fourth, any expected future debt performance associated with consumers having a given credit score (relative to consumers with different scores) can change over time based on macroeconomic conditions. For example, a consumer with a credit score of 700 in Year One may have better future debt performance than a consumer with a score of 700 in Year Three, if the macroeconomic conditions have worsened from Year One to Year Three. This is

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[35] Board of Governors of the Federal Reserve System, "Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit" (August 2007).

because all consumers will have lower average debt performance levels in Year Three. But again, credit scores ***show*** only a credit performance *rank* of one consumer compared to other consumers, not an actual default probability. Thus, to rely on credit score declines alone to meet the requirements of this exception, creditors may also have to account for macroeconomic changes.

In sum, without additional sophisticated empirical analysis, a creditor could not ***show*** that a particular consumer's credit score decline corresponds to an increased default probability that would meet either prong of the two-part test.

At the same time, the Board does not believe that expressly prohibiting reliance on credit scores alone under this provision is desirable. A black-and-white rule prohibiting reliance on credit scores to take action under this provision could be overly restrictive for at least two reasons. First, the Board understands that some creditors may have a strong empirical basis for relying on credit scores for a particular HELOC portfolio. The Board recognizes that creditors may be able to ***show*** that a particular level of drop is always associated with significant negative payment history, for example. Second, the Board's prohibition could become outdated or unnecessarily constraining on creditors in using innovative credit scoring tools developed in the future. Credit scoring methods may change over time in a manner that makes them more decisively indicative of default probability than today.

For these reasons, the proposal neither expressly permits nor prohibits reliance on credit scores alone to determine that action is justified under this provision. The Board requests comment on the appropriateness of this approach, as well as whether and why the Board should consider expressly permitting or prohibiting reliance on credit scores to meet the requirements of § 226.5b(f)(3)(vi)(B).

In addition, the Board requests comment on the following questions: What compliance challenges are posed by the proposed standards for meeting each prong of the test? What further guidance for compliance with this provision, including examples of well-defined, reasonably reliable indicators of compliance with each prong of the test, should the Board consider? For example, should reliance on factors not related to past credit performance, but that may indicate poor future performance, be sufficient grounds for taking action under this provision? In this regard, the Board recognizes that, notwithstanding the discussion above, factors such as increases in the consumer's utilization rate and the number of new accounts opened have been ***shown*** to correspond to a reduced capacity of the consumer to repay his or her financial obligations. [36]

5b(f)(3)(vi)(C) Default of a Material Obligation

Under § 226.5b(f)(3)(vi)(C), which implements TILA Section 137(c)(2)(D), a creditor may temporarily suspend or reduce an account if "the consumer is in default of a material obligation under the agreement." 15 U.S.C. 1647(c)(2)(D). Proposed comment 5b(f)(3)(vi)-7 would clarify that a creditor "must," rather than "may," specify which consumer obligations are "material" for purposes of this provision, if any. This clarification is intended to ensure that Regulation Z is interpreted to reflect the statutory requirement, found in TILA Section 137(c)(3), that the consumer must be given upon the consumer's request and at the time of account opening a list of the contract obligations that are considered "material" for purposes of TILA Section 137(c)(2)(D), which is the statutory provision permitting a creditor to suspend or reduce a line of credit "during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement." *See* 15 U.S.C. 1647(c)(3) (cross-referencing 15 U.S.C. 1647(c)(2)(D)).

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[36] *Id*.

5b(f)(3)(vi)(G) Suspensions and Credit Limit Reductions Required by Federal Law

Background

During outreach conducted by the Board in preparing the proposal, creditors pointed out that the federal Internet gambling law (the Unlawful Internet Gambling Enforcement Act of 2006 or the "Internet Gambling Act"), 31 U.S.C. 5361-5367, and implementing regulations, [37] require non-exempt financial institutions and other participants in payment systems to have and comply with policies and procedures that, among other things, "identify and block restricted transactions." [38] Rules administered by the Office of Foreign Assets Control ("OFAC") also require creditors to block accounts under certain circumstances. [39] Creditor representatives raised concerns about the potential for claims against creditors that prohibit draws to comply with the Internet Gambling Act or other federal laws, because TILA and Regulation Z do not expressly permit creditors to refuse to grant credit in those circumstances.

Proposal

Similar to the proposed amendments to § 226.5b(f)(2)(iv), discussed above, proposed § 226.5b(f)(3)(vi)(G) would permit creditors to suspend advances or reduce the credit limit if a federal law other than TILA requires the creditor to do so. Proposed § 226.5b(f)(3)(vi)(G) is intended to resolve the conflict between Regulation Z and federal laws that require creditors to block HELOC advances or reduce credit limits under circumstances not otherwise permitted under Regulation Z. Proposed comment 5b(f)(3)(vi)-9 would clarify that this rule permits creditors to prohibit either a single advance or multiple advances, depending on what the applicable federal law requires. By covering federal laws generally, this proposed section is intended to prevent the need for the Board to issue separate revisions to Regulation Z to account for any new federal law requiring creditors to suspend advances or reduce credit limits under particular circumstances.

The Board believes that this proposal is consistent with longstanding policy expressed in provisions that permit creditors to suspend an account or reduce the credit limit temporarily due to government action. *See* 15 U.S.C. 1647(c)(2)(E); § 226.5b(f)(3)(vi)(D) and (E). Specifically, TILA and Regulation Z allow creditors to take these actions when the government precludes them from imposing the contractual APR or when government action adversely affects the priority of the creditor's security interest such that the creditor's secured interest in the property is less than 120 percent of the credit limit on the account. 15 U.S.C. 1647(c)(2)(E); § 226.5b(f)(3)(vi)(D) and (E).

Regarding this proposed section, the Board requests comment on what additional examples of conflicts between Regulation Z's restrictions on account action and other laws the Board should consider, if any. The Board also requests comment on whether the definition of "federal law" should be broadened to include, for example, an order or directive of a federal agency.

5b(g) Reinstatement of Credit Privileges

Background

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[37] 12 CFR. Part 233 (Board of Governors of the Federal Reserve System); 31 CFR part 132 (U.S. Department of Treasury).

[38] 31 U.S.C. 5362(7) (defining "restricted transaction"). *See also* 31 U.S.C. § 5364: 12 CFR 233.5; 31 CFR 132.5 (requiring institutions to establish policies and procedures under the Internet Gambling Act).

[39] *See* 31 CFR 500.201, .202, .203.

Section 226.5b(f)(3)(i) and (f)(3)(vi) permit creditors to suspend advances on an account or reduce the credit limit only "during any period in which" designated circumstances exist. *See also* 15 U.S.C. 1647(c)(2)(B)--(E). The Board has long interpreted this language to indicate that reinstatement of credit privileges is required once no circumstances permitting a freeze or credit limit reduction under the statute or regulation exist. To facilitate compliance, the Board provided guidance on appropriate reinstatement practices in the Official Staff Commentary on this provision. *See* comments 5b(f)(3)(vi)-2, -3, -4.

Recently, due to declining property values and for other reasons, HELOCs have been suspended and credit limits reduced more often than in the past. Consumer groups and other federal agencies have raised concerns about whether consumers are properly informed about the creditor's obligation to reinstate credit lines and consumers' rights to request reinstatement. The Board has also examined the reinstatement practices of several creditors and determined that additional guidance is appropriate.

Proposal

The proposal would revise several provisions regarding reinstatement of credit privileges currently in comments 5b(f)(3)(vi)-2, -3 and -4, and move them to proposed § 226.5b(g) and comments 5b(g)-1, 5b(g)(1)-1, 5b(g)(2)(i)-1, and 5b(g)(2)(ii)-1. Proposed explanatory guidance regarding the reinstatement rules is found in proposed commentary on § 226.5b(g).

Proposed § 226.5b(g) and comment 5b(g)-1 (adopted from existing comment 5b(f)(3)(vi)-2 with revisions) confirm that line suspensions and credit limit reductions under both § 226.5b(f)(3)(i) and (f)(3)(vi) must be temporary and that, accordingly, the creditor is obligated to restore the consumer's credit privileges as soon as reasonably possible once no condition permitting the creditor's action exists, such as reaching the maximum APR or a significant decline in the value of the property securing the line. *See* comments 5b(f)(3)(vi)-1 and -2 and proposed comment 5b(g)-1. This new paragraph and comment 5b(g)-1 are also intended to clarify that the creditor is not obligated to restore credit privileges if the original condition permitting the action no longer exists but another condition permitting the creditor to freeze the line or reduce the credit limit exists.

Proposed comment 5b(g)-2 is adopted from existing comment 5b(f)(3)(vi)-3, with certain technical revisions. The proposed comment retains the existing prohibition on charging a fee to reinstate an account, and specifies that this fee prohibition applies when no condition permitting an account freeze or reduction exists.

5b(g)(1) Methods of Meeting the Obligation To Reinstate Accounts

Proposed § 226.5b(g)(1) and comment 5b(g)(1)-1 are adopted from existing comment 5b(f)(3)(vi)-4, with revisions. Proposed § 226.5b(g)(1) retains the existing two options for a creditor to fulfill its obligation to ensure that the consumer's credit privileges are restored as soon as reasonably possible after no circumstance permitting a freeze or credit limit reduction exists. First, a creditor may monitor the line on an ongoing basis to determine whether the condition permitting the freeze or credit line reduction continues to exist or another condition exists. Proposed comment 5b(g)(1)-1 requires creditors choosing this option to investigate the HELOC often enough to be certain that a condition permitting the action exists. ***How*** often a creditor must investigate depends on the individual circumstances of a particular situation. For example, in a market with long-term property value declines that publicly available, independently verifiable data ***show*** are continuing, a creditor might reasonably decide not to investigate the property value as often as might be reasonable if the trend of property values begins increasing.

The second compliance option permits creditors to forego ongoing monitoring and instead require the consumer to request reinstatement. This option is available only if the creditor complies with the provisions of § 226.5b(g)(2), described below. During outreach for this proposal, the Board was ***asked*** to consider requiring ongoing monitoring in all cases, rather than allowing creditors to shift the burden to consumers to request reinstatement. Proposals to strengthen requirements on creditors that require consumers to request reinstatement, as discussed below, were intended in part to address concerns about allowing creditors to require consumers to request reinstatement. The

Board requests comment on requiring ongoing monitoring in all cases, including specific information about potential benefits and burdens of this approach.

5b(g)(2) Obligations of Creditors That Require the Consumer To Request Reinstatement

Proposed § 226.5b(g)(2)(i), adopted from existing comment 5b(f)(3)(vi)-4, requires that if the creditor requires the consumer to request reinstatement, the creditor must disclose this requirement on the notice of action taken required under § 226.9(j)(1). As does existing § 226.9(c)(1)(iii) and comment 9(c)(1)(iii)-1, proposed § 226.9(j)(1) requires the creditor to disclose, among other things, the method by which the consumer must request reinstatement, such as whether the request must be in writing and the address to which a written request must be submitted.

Under § 226.5b(g)(2)(ii), as under the existing commentary (*see* comment 5b(f)(3)(vi)-4), the creditor's receipt of a reinstatement request triggers the creditor's obligation investigate whether the condition permitting the freeze or credit line reduction exists. *See* comment 5b(f)(3)(vi)-4. Proposed § 226.5b(g)(3)(ii), however, would require the creditor to complete the investigation within 30 days of receiving the reinstatement request. The Board is proposing a 30-day investigation rule to conform to the longstanding policy requiring creditors to investigate reinstatement requests "promptly" upon receiving a request. *See* comment 5b(f)(3)(vi)-4. Based on information on creditor practices, the Board believes that the time required to complete a reinstatement investigation may vary. If a new property valuation is the primary element of the investigation, creditors may be able to complete the investigation in as little as a few days. If the creditor must depend on financial information requested from the consumer to complete an investigation, the investigation may take longer, although the Board also believes that once a creditor receives the financial information necessary to determine whether the original finding regarding a consumer's financial circumstances continues to exist, most creditors should be able to evaluate this information in a few days. In sum, the Board understands that a reinstatement investigation typically will not take more than two to three weeks to complete.

The Board therefore proposes to require that the creditor complete the investigation and mail a notice of reinstatement results (see proposed § 226.5b(g)(2)(v), discussed in the section-by-section analysis below) within 30 days of receiving the consumer's reinstatement request. The Board requests comment on whether this timeframe is appropriate and whether the Board should consider additional guidance for creditors when consumers do not provide needed information to complete the investigation in a timely manner. Such guidance might, for example, require that the creditor request the information within a reasonable period of time after receiving the reinstatement request, and permit the creditor to delay sending the notice until a reasonable period of time after receipt of the requested information.

Proposed comment 5b(g)(2)(ii)-1 also provides guidance on investigating a reinstatement request. Specifically, the investigation should involve verifying that the information on which the creditor relied to take action in fact pertained to the specific property securing the affected line (as with a property valuation) or to the specific consumer (as with a credit report). In addition, to investigate whether a significant decline in property value exists under § 226.5b(f)(3)(vi)(A), the creditor should reassess the value of the property securing the line based on an updated property valuation meeting the guidance in proposed comment 5b(f)(3)(vi)-5, discussed above. To investigate whether a material change in the consumer's financial circumstances exists under § 226.5b(f)(3)(vi)(B), the creditor should obtain and evaluate financial information sufficient to validate the original finding on which the action was based.

Clarification on Fees. Current comment 5b(f)(3)(vi)-3, "Imposition of fees," states that, if not prohibited by state law, a creditor may collect bona fide and reasonable appraisal and credit report fees actually incurred in investigating whether the condition permitting the freeze continues to exist. The proposal would move this part of the comment to § 226.5b(g)(2)(iii) and (g)(2)(iv) and revise it. (The general prohibition in existing comment 5b(f)(3)(vi)-3 on imposing a fee to reinstate an account once a condition permitting a freeze or reduction no longer exists would be incorporated into the proposal at comment 5b(g)-2.)

First, proposed § 226.5b(g)(2)(iii) and (iv) would use the term "property valuation" rather than "appraisal," reflecting that an appraisal will not necessarily be the valuation method used to investigate a reinstatement request. Beyond this technical change, proposed § 226.5b(g)(2)(iii) would grant the consumer one reinstatement request investigation free of charge. That is, for consumers required by the creditor to request reinstatement, the regulation would prohibit a creditor from charging the consumer any fees for investigating the consumer's first reinstatement request after each time the line is frozen or reduced. Proposed § 226.5b(g)(2)(iv) would permit a creditor to charge bona fide and reasonable property valuation and credit report fees only for investigations of reinstatement requests other than the consumer's initial request after a line is suspended or reduced.

The Board proposes these rules pursuant to its authority in TILA Section 105(a) to issue provisions and make adjustments to the requirements of TILA necessary or proper to effectuate the statute's purposes. *See* 15 U.S.C. 1604(a). This proposal is intended to ensure that consumers have a meaningful opportunity to exercise their right to request reinstatement and to have this request investigated. Assessing an appraisal fee, for example, before the creditor will investigate the request may be a hardship for some consumers; in effect, up-front charges for the initial reinstatement investigation may discourage those consumers who are potentially the most in need of their HELOC funds from requesting reinstatement. The proposal is also intended to protect consumers for whom the original reason for the account freeze or credit limit reduction turned out to have been incorrect from having to pay extra costs for their HELOCs, and from the potential burden of having to pay expenses upfront.

This proposal is based in part on information about creditor practices suggesting that investigation costs may not be particularly burdensome for creditors. The Board understands that credit reports and many valuation methods may be available to a creditor at low cost, particularly when the creditor can take advantage of bulk rates for these services. Further, the Board believes that potential burdens on creditors of the above proposal are adequately offset by proposed § 226.5b(g)(2)(iv), which would permit creditors to charge reasonable and bona fide property valuation and credit report fees associated with investigations triggered by reinstatement requests after the consumer's first request. The Board is proposing this approach to address concerns about the time and expense associated with having to investigate multiple reinstatement requests made by a consumer in a period of time insufficiently long to support a reasonable expectation that the condition justifying the line action has changed. At the same time, the consumer's right to request reinstatement as many times as desired is retained, as are existing limits on the types of investigation fees that creditors may charge.

The Board requests comment on this approach, including whether consumers should have to pay reinstatement investigation costs for any reinstatement request. The Board also requests comment on whether, if the first reinstatement request is free but fees may be charged for subsequent requests, a consumer should be required to pay investigation costs for a subsequent reinstatement request made a significant time period after the first request, such as six months, one year, or other appropriate time period commenters might suggest. Finally, the Board requests comment on whether the Board should consider requiring that the amount of the fees be disclosed along with the notice that the consumer must request reinstatement, and the burdens and benefits of this requirement.

Notice of Reinstatement Results. Proposed § 226.5b(g)(2)(v) would require creditors that choose to have the consumer request reinstatement under § 226.5b(g)(1)(ii) to disclose to the consumer the results of the investigation of the consumer's reinstatement request. This notice requirement would apply only for investigations conducted in response to a consumer's request for reinstatement and only when the investigation results ***show*** that reinstatement is not warranted, either because the condition permitting the freeze or credit limit reduction continues to exist, another condition permitting a freeze or credit line reduction under Regulation Z exists, or both. The notice must be in writing, and must include the results of the investigation, as well as the information required in the § 226.9(j)(1) notice, such as the specific reasons for the continued freeze or credit limit reduction and information about the consumer's ongoing right to request reinstatement. To facilitate compliance with this provision, the Board is proposing Model Clauses in G-22(A) and G-22(B) of Appendix G to Regulation Z.

The Board proposes this rule pursuant to its authority in TILA Section 105(a) to issue provisions and make adjustments to the requirements of TILA necessary or proper to effectuate the statute's purposes. *See* 15 U.S.C. 1604(a). The Board recognizes that this new notice requirement will present a compliance cost on creditors who do not already have a policy of disclosing reinstatement results to their consumers. The Board believes, however, that the benefits of this notice requirement outweigh the burden. First, the Board believes that this provision upholds the consumer protection purpose of TILA by ensuring that consumers are adequately informed about the status of their HELOC accounts and responds to concerns expressed to the Board that currently many consumers are not. With this notice, consumers would be better equipped to take appropriate action, such as working to improve their credit or making alternative financial plans. In addition, the Board anticipates that this notice requirement may reduce consumer requests and complaints, because transparent investigation results will help consumers better understand the reasons for continued freezes or reductions and assure consumers that their reinstatement requests were considered.

The Board requests comment on this disclosure requirement, and on whether creditors also should be required to provide notice of reinstatement results to consumers whose accounts will be reinstated, but with the option to provide notice orally to these consumers.

5b(g)(3) Obligation To Make Document Supporting Property Valuation Available to the Consumer

Proposed § 226.5b(g)(2) would require a creditor, upon the consumer's request, to provide to the consumer a copy of the documentation supporting the property value on which the creditor relied to freeze or reduce a line, or to continue an existing line freeze or reduction, based on a significant decline in the property value under § 226.5b(f)(vi)(A). Proposed comment 5b(g)(2)1 would explain that the appropriate documentation under this provision would include a copy of a report for the valuation method used, such as an appraisal report, or any written evidence of another valuation method used (such as an AVM, TAV, or BPO) that clearly and conspicuously ***shows*** the property value specific to the subject property and factors considered to obtain the value.

The Board believes that consumers should have access to information about the property value on which action was relied because a line suspension or reduction may result in serious financial consequences to consumers. In light of the significance of the impact on the consumer of the creditor's actions, the consumer should be fully equipped with necessary information to challenge the finding or otherwise request reinstatement.

The Board requests comment on the appropriateness of this requirement, as well as the operational practicality for creditors of obtaining and providing the required documentation.

5b(g)(4) Reinstatement Rules for Action Taken Under § 226.5b(f)(2)

Proposed paragraph (g)(4) of § 226.5b would clarify that, when a creditor has a justification for terminating and accelerating a home-equity plan under § 226.5b(f)(2), but opts to suspend or reduce the line instead, the creditor is not obligated to comply with the reinstatement rules of proposed § 226.5b(g). This provision is intended to respond to questions posed to the Board about whether, when a creditor has a justification for terminating and accelerating a home-equity plan under § 226.5b(f)(2), but opts to suspend or reduce the line instead, the creditor is obligated to comply with the reinstatement rules of proposed § 226.5b(g). The Board believes that this clarification is consistent with the existing reinstatement scheme.

First, reinstatement guidance is in the commentary only for § 226.5b(f)(3)(vi), the provision permitting a creditor temporarily to suspend advances or reduce the credit limit, reflecting longstanding Board policy that it applies only when action is taken under § 226.5b(f)(3)(vi) (or under (f)(3)(i); *see* comments 5b(f)(3)(vi)-1 and -2). Second, the Board believes that applying the reinstatement rules to suspensions or line reductions taken when the creditor could terminate and accelerate a line may harm consumers; a creditor may be discouraged from choosing the lesser action of temporarily suspending advances or reducing the credit limit if additional rules apply to those actions. Third, the Board believes that compliance confusion may arise, as well as enforcement challenges, in determining to which line suspensions and reductions under § 226.5b(f)(2) the reinstatement rules should apply. Existing commentary on § 226.5b(f)(2) gives the creditor the right to suspend or reduce an account "temporarily or permanently." *See* comment 5b(f)(2)-2 (retained in the proposal). Logically, the reinstatement rules could only apply when the creditor chooses to take temporary action, but both creditors and examiners may have difficulty determining and documenting which line actions are intended to be temporary (and thus subject to the reinstatement rules) and which permanent. Again, creditors may be inclined simply to make all suspensions and reductions under this provision permanent, potentially harming consumers to whom creditors might otherwise have given an opportunity to restore their credit privileges.

Section 226.6 Account-Opening Disclosures

TILA Section 127(a), implemented in § 226.6, requires creditors to provide information about key credit terms before an open-end plan is opened, such as rates and fees that may be assessed on the account. Consumers' rights and responsibilities in the case of unauthorized use or billing disputes are also explained. 15 U.S.C. 1637(a). *See also* Model Forms G-2 and G-3 in Appendix G to part 226.

6(a) Rules Affecting Home-Equity Plans

Summary of Proposed Disclosure Requirements

Account-opening disclosure and format requirements for HELOCs subject to § 226.5b generally were unaffected by the January 2009 Regulation Z Rule, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a future rulemaking. To facilitate compliance, the Board in the January 2009 Regulation Z Rule grouped the requirements applicable to HELOCs together in § 226.6(a) (moved from former § 226.6(a) through (e)).

This proposal contains two significant proposed revisions to account-opening disclosures for HELOCs subject to § 226.5b, which are set forth in proposed § 226.6(a). The proposed revisions (1) would require a tabular summary of key terms to be provided before an account is opened (*see* proposed § 226.6(a)(1) and (a)(2)), and (2) would reform ***how*** and when cost disclosures must be made (*see* proposed § 226.6(a)(3) for content, proposed § 226.5(b) and proposed § 226.9(c) for timing).

Proposed Comments 6(a)-1 and 6(a)-2

Fixed-rate and-term payment plans during draw period. As discussed in the section-by-section analysis to proposed § 226.5b(c), HELOC plans typically offer the ability to obtain advances that must be repaid based on a variable interest rate that applies to all outstanding balances. Some HELOC plans, however, also offer a fixed-rate and-term payment feature, where a consumer is permitted to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. The Board understands that for most HELOC plans, consumers must take active steps to access the fixed-rate and-term payment feature; this feature is not automatically accessed when a consumer obtains advances from the HELOC plan. Current § 226.6(a) requires a creditor to disclose information related to fixed-rate and-term payment features. For example, a creditor would be required to disclose the rates applicable to the fixed-rate and-term feature under current § 226.6(a)(1), any fees that are finance charges under current § 226.6(a)(1), any fees that are other charges under current § 226.6(a)(2), and payment terms and other information required under current § 226.6(a)(3).

Under the proposal, the Board would continue to require that a creditor disclose information applicable to the fixed-rate and-term feature under proposed § 226.6. Generally, under the proposal, limited information about the fixed-rate and-term feature would be included in the account-opening table, and more detailed information would be included outside the table. Specifically, for the reasons discussed in the section-by-section analysis to proposed § 226.5b(c), if a HELOC plan offers a variable-rate feature and a fixed-rate and-term feature during the draw period, a creditor generally must only disclose limited information in the account-opening table about the fixed-rate and-term feature. *See* proposed § 226.6(a)(2). Instead of requiring that all the details of the fixed-rate and-term feature be disclosed in the table, the Board proposes to require a creditor offering this payment feature (in addition to a variable-rate feature) to disclose in the account-opening table the following: (1) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate; (2) the amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term; and (3) a statement that information about the fixed-rate and-term payment plan is included in the account-opening disclosures or agreement, as applicable. *See* proposed § 226.6(a)(2)(xix). However, if a HELOC plan does not offer a variable-rate feature during the draw period, but only offers a fixed-rate and-term feature during that period, a creditor must disclose in the account-opening table information related to the fixed-rate and-term feature when making the disclosures required by proposed § 226.6(a)(2). *See* proposed comment 6(a)-1.

Even though a creditor generally may not disclose the terms of fixed-rate and-term payment plans in the account-opening table, the creditor must disclose additional information about these payment plans in disclosures required by proposed § 226.6(a)(3), (a)(4) and (a)(5). For example, a creditor must disclose fees and rate information related to these features under proposed § 226.6(a)(3) and (a)(4), and information about payment terms and other terms related to these features under proposed § 226.6(a)(5)(v).

Disclosures for the repayment period. Current comment 6(a)(3)-4 provides that a creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under § 226.6. To the extent the required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases. The Board proposes to move current comment 6(a)(3)-4 to proposed comment 6(a)-2 and make technical revisions.

6(a)(1) Format for Home-Equity Plan Account Disclosures

As provided by Regulation Z, creditors may, and typically do, include account-opening disclosures for HELOC plans as a part of an account agreement document that also contains other contract terms and state law disclosures. The agreement typically is in a narrative form, and is lengthy and in small print.

The Board proposes in new § 226.6(a)(1) to impose format requirements for account-opening disclosures for HELOCs subject to § 226.5b, similar to proposed format requirements for the proposed early HELOC disclosures discussed in the section-by-section analysis to proposed § 226.5b(b)(2). The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Specifically, under the proposal, a creditor would be required to disclose to a consumer key terms relating to the HELOC plan in a tabular format at account opening. As discussed in more detail below, the proposed account-opening table would contain disclosures that are similar to the ones disclosed in the proposed early HELOC disclosures table required by proposed § 226.5b(b). A creditor would be required to disclose certain identification disclosures, such as the borrower's name and address, directly above the account-opening table. In addition, a creditor would be required to disclose other information, such as a statement that the consumer should confirm that the terms disclosed in the table are the same terms for which the consumer applied, below the account-opening table. Under the proposal, not all disclosures that a creditor would be required to provide to a consumer at account opening would be included in the account-opening table (or directly above or below the table). For account-opening disclosures that are not specifically required to be in the account-opening table (or directly above or below the table), a creditor would be able to include these disclosures as part of the account agreement.

The Board did not directly test whether providing account-opening disclosures in a narrative form as part of the account agreement is an effective way to communicate those disclosures to consumers. Nonetheless, in the consumer testing conducted by the Board on HELOC disclosures, the Board tested application disclosures in a narrative form. Participants in consumer testing found this form difficult to read and understand, and their responses to follow-up questions ***showed*** that they also had difficulty identifying specific information in the text. Participants who saw forms that were structured in a tabular format, on the other hand, commented that the information was easier to understand and had more success answering comprehension questions. These results regarding the benefit of disclosing information in a tabular format are consistent with the results of research that the Board conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule. (*See* §§ 226.5a(a)(2), 226.6(b)(1), 226.9(b)(3), 226.9(c)(2)(iii)(B) and 226.9(g)(3)(iii) for certain disclosures applicable to open-end (not home-secured) credit that must be disclosed in a tabular format.) The Board also believes that providing key terms in a table at account opening, which would be similar to the proposed early HELOC disclosures table required by proposed § 226.5b(b), would allow consumers to compare more easily the account-opening terms to those terms that were disclosed earlier to the consumer. For these reasons, the Board proposes to require that certain account-opening disclosures must be provided in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in proposed G-15 in Appendix G. *See* proposed § 226.6(a)(1). Proposed comment 6(a)(1)-3 clarifies that § 226.6(a)(1)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in G-15 to Appendix G.

Comparison to early HELOC disclosures table. TILA Section 127(a)(8) provides that any disclosures required to be disclosed as part of the early HELOC disclosures required under TILA Section 127A(a) also must be disclosed as part of the account-opening disclosures. 15 U.S.C. 1637(a)(8). Thus, as discussed in more detail below, most of the disclosures required to be disclosed in the proposed early HELOC disclosures table described in proposed § 226.5b(b) also would be included in the account-opening table described in proposed § 226.6(a)(1) and (a)(2). Nonetheless, while these two proposed tables would be similar, they would not be identical. For example, the table containing the early HELOC disclosures would ***show*** and compare two payment options offered on the HELOC (unless a creditor offers only one), while the account-opening disclosures would ***show*** only the payment plan chosen by the consumer. Proposed comment 6(a)-1 provides guidance on ***how*** the proposed early HELOC disclosures table described in proposed § 226.5b(b) differs from the proposed account-opening table in proposed § 226.6(a)(1) and (a)(2). Proposed comment 6(a)(1)-1 specifically notes which rules in proposed § 226.5b applicable to the early HELOC disclosures table described in proposed § 226.5b(b) would not apply to the proposed account-opening table.

Clear and conspicuous standard. As discussed in the section-by-section analysis to proposed § 226.5(a), the Board proposes a clear and conspicuous standard applicable to § 226.6 disclosures. Proposed comment 6(a)(1)-2 provides a cross reference to the clear and conspicuous standard applicable to proposed § 226.6(a) set forth in proposed comment 5(a)(1)-1.

Terminology. As discussed in the section-by-section analysis to proposed § 226.5(a), the Board proposes that creditors offering HELOCs subject to § 226.5b must use certain terminology when disclosing the draw period, any repayment period, and certain other terms in the account-opening table. *See* proposed § 226.5(a)(2). Proposed comment 6(a)(1)-3 provides a cross reference to the terminology requirements set forth in proposed § 226.5(a)(2).

6(a)(2) Required Disclosures for Account-Opening Table for Home-Equity Plans

Fees. Current § 226.6(a)(1) and (a)(2), which implements TILA Section 127(a)(3) and (a)(5), require a creditor to disclose in the account-opening disclosures any finance charges or other charges imposed on the HELOC plan. 15 U.S.C. 1637(a)(3) and (a)(5). As discussed in more detail below, the Board proposed in new § 226.6(a)(2) that certain fees must be disclosed in the account-opening table described in proposed § 226.6(a)(1) and (a)(2). Under the proposal, creditors would have more flexibility regarding disclosure of other charges imposed as part of a HELOC plan. *See* proposed § 226.6(a)(3) for content, proposed § 226.5(b) and proposed § 226.9(c) for timing.

Pursuant to TILA Section 127(a)(8) and for the reasons discussed in the section-by-section analysis to proposed § 226.5b(c), the Board proposes that a creditor must disclose in the account-opening table the following fees that also must be disclosed in the early HELOC disclosures table described in proposed § 226.5b(b): (1) a total of the one-time fees imposed by the creditor or third parties to open the HELOC plan and an itemization of those fees; (2) fees imposed by the creditor for the availability of the HELOC plan; (3) fees imposed by the creditor for early termination of the plan by the consumer; and (4) fees imposed for required insurance, debt cancellation or suspension coverage. *See* proposed § 226.6(a)(2)(vii), (viii), (ix) and (xx). In addition, the Board proposes that the account-opening table also contain the following additional fees that are not required to be disclosed in the early HELOC disclosures table described in proposed § 226.5b(b): (1) Late-payment fees; (2) over-the-limit fees; (3) transaction charges; (4) returned-payment fees; and (5) fees for failure to comply with transaction limitations described under proposed § 226.6(a)(2)(xvii). *See* proposed § 226.6(a)(2)(x), (xi), (xii), (xiii), and (xiv).

The Board intends that the proposed list of fees and categories of fees that would be included in the account-opening table be exclusive, for two reasons. The Board believes that only allowing an exclusive list of fees to be disclosed in the account-opening table would benefit consumers. Based on consumer testing conducted by the Board on HELOC disclosures, the Board believes the fees listed above to be the most important fees, at least in the current marketplace, for consumers to know about before they start to use a HELOC account. Participants in this testing who were ***shown*** an account-opening table which contained the fees listed above indicated that they found this list sufficient, and could not identify any additional types of fees that they would want disclosed to them at account opening.

The fees listed above include charges that a consumer could incur and which a creditor likely would not otherwise be able to disclose in advance of the consumer engaging in the behavior that triggers the cost, such as fees triggered by a consumer's use of a cash advance check or by a consumer's late payment. The proposed list is manageable and focuses on key information rather than attempting to be comprehensive. Since consumers must be informed of all fees imposed as part of the plan before the cost is incurred, the Board believes that not all fees need to be included in the account-opening table provided at account opening.

The Board believes an exclusive list also would ease compliance and reduce the risk of litigation for creditors; creditors would have the certainty of knowing that as new services (and associated fees) develop, fees not required to be disclosed in the summary table under the proposed rule need not be included in the account-opening summary unless and until the Board requires their disclosure after notice and public comment. In addition, as discussed in the section-by-section analysis to proposed § 226.5(a)(1) and (b)(1), charges required to be included in the proposed account-opening table would be required to be provided in a written and retainable form before the first transaction, and a subsequent written notice is required if one of these fees increases or if these fees are newly introduced during the life of the plan (but only as permitted under § 226.5b(f)). Under the proposal, creditors would have more flexibility regarding disclosure of other charges imposed as part of a HELOC plan.

6(a)(2)(i) Identification Information

Pursuant to TILA Section 127(a)(8) and for the reasons discussed in the section-by-section analysis to proposed § 226.5b(c)(1), the Board proposes in new § 226.6(a)(2)(i) that a creditor must disclose above the account-opening table the following identification information that also must be disclosed above the early HELOC disclosures table described in proposed § 226.5b(b): (1) The consumer's name and address; (2) the identity of the creditor making the disclosures; (3) the date the disclosure was prepared; and (4) the loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act") Sections 1503(3) and (12). 12 U.S.C. 5102(3) and (12); 15 U.S.C. 1637(a)(8). In addition, the Board proposes also that the creditor also disclose the account number as part of the identification information that would be disclosed above the account-opening table. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board believes that including the account number above the account-opening table may allow a consumer in the future (after account opening) to connect better the account-opening table with the account to which the disclosures apply.

6(a)(2)(ii) Security Interest and Risk to Home

Current § 226.6(a)(4), which implements TILA Section 127(a)(6), provides that a creditor must disclose as part of the account-opening disclosures the fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type. 15 U.S.C. 1637(a)(6). The Board proposes in new § 226.6(a)(2)(ii) to require that a creditor must disclose in the account-opening table a statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default. This same statement would be required to be disclosed as part of the proposed early HELOC disclosures table described in proposed § 226.5b(b). *See* proposed § 226.5b(c)(6).

6(a)(2)(iii) Possible Actions by Creditor

As discussed in the section-by-section analysis to proposed § 226.5b(c), the Board proposes to require a creditor to disclose in the early HELOC disclosures table a statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and implement changes in the plan. Pursuant to TILA Section 127(a)(8), the Board also proposes in new § 226.6(a)(2)(iii) to require a creditor to disclose the above statement in the account-opening table. 15 U.S.C. 1637(a)(8). In addition, under the proposal, a creditor also would be required to disclose in the account-opening table a statement that information about the circumstances under which the creditor may take these actions is provided in the account-opening disclosures or agreement, as applicable. Current § 226.6(a)(3)(i) requires a creditor to disclose as part of the account-opening disclosures the circumstances under which the creditor may take the above actions on the HELOC plan. The Board proposed to move current § 226.6(a)(3)(i) to proposed § 226.6(a)(5)(iv) and make technical revisions. Under the proposal, a creditor would be required to disclose the information about the circumstances under which the creditor may take the above actions on the HELOC plan outside of the account-opening table under proposed § 226.6(a)(5)(iv).

6(a)(2)(iv) Tax Implications

Current § 226.6(a)(3)(v), which implements TILA Section 127(a)(8), requires that a creditor must disclose in the account-opening disclosures a statement that the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges. The Board proposed to move this provision in current § 226.6(a)(3)(v) to proposed § 226.6(a)(2)(iv). Under the proposal, a creditor would be required to include this statement about consulting a tax adviser in the account-opening table.

In addition, as discussed in the section-by-section analysis to proposed § 226.5b(c)(8), in implementing Section 1302 of the Bankruptcy Act, the Board proposes to require a creditor to disclose in the early HELOC disclosures table a statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes. Pursuant to TILA Section 127(a)(8), the Board also proposes that a creditor be required to disclose this statement in the account-opening table. 15 U.S.C. 1637(a)(8).

6(a)(2)(v) Payment Terms

Current § 226.6(a)(3)(ii), which implements TILA Section 127(a)(8), requires a creditor to disclose as part of the account-opening disclosures certain information related to payment terms on the HELOC plan that is currently required to be disclosed as part of the application disclosures, as discussed in the section-by-section analysis to proposed § 226.5b(c)(9). 15 U.S.C. 1637(a)(8). For example, current § 226.6(a)(3)(ii) requires a creditor to disclose in the account-opening disclosures the following information: (1) The length of the draw period and any repayment period; (2) an explanation of ***how*** the minimum periodic payment will be determined and the timing of the payments; and (3) if paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result. In addition, current § 226.6(a)(3)(vii) requires a creditor to disclose as part of the account-opening disclosures payment examples that are currently required to be disclosed as part of the application disclosures, unless the application disclosures were in a form the consumer could keep and included representative payment examples for the category of the payment option chosen by the consumer. The Board proposes to move these provisions in current § 226.6(a)(3)(ii) and (a)(4)(iv) to proposed § 226.6(a)(2)(v) and make revisions.

The proposal. Consistent with TILA Section 127(a)(8), the Board proposes to require a creditor to disclose the same disclosures relating to payment terms in the account-opening table that a creditor would be required to disclose in the early HELOC disclosures table described in proposed § 226.5b(b) (as discussed in the section-by-section analysis to proposed § 226.5b(c)(9)), with one exception. 15 U.S.C. 1637(a)(8). The table containing the early HELOC disclosures would ***show*** and compare two payment options offered on the HELOC (unless a creditor offers only one), while the account-opening disclosures would ***show*** only the payment plan chosen by the consumer. Specifically, proposed § 226.6(a)(2)(v) requires a creditor to disclose in the account-opening table certain payment terms of the plan that will apply to the consumer at account opening. Under the proposal, the creditor would be required to distinguish payment terms applicable to the draw period and the repayment period, by using the applicable heading "Borrowing Period" for the draw period and "Repayment Period" for the repayment period, in a format substantially similar to the format used in any of the applicable tables found in proposed Samples G-15(B) and G-15(D) in Appendix G.

Under the proposal, a creditor would be required to disclose in the account-opening table the length of the plan, the length of the draw period and the length of any repayment period. When the length of the plan is definite, a creditor would be required to disclose the length of the plan, the length of the draw period and the length of any repayment period in a format substantially similar to the format used in any of the applicable tables found in proposed Samples G-15(B) and G-15(C) in Appendix G. If there is no repayment period on the plan, the creditor would be required to disclose a statement that after the draw period ends, the consumer must repay the remaining balance in full. In addition, under the proposal, a creditor would be required to disclose in the account-opening table an explanation of ***how*** the minimum periodic payment will be determined and the timing of the payments.

Also, under the proposal, a creditor would be required to disclose in the account-opening table payment examples based on the assumptions that the consumer borrows the full credit line at account opening, and does not obtain any additional extensions of credit; the consumer makes only minimum periodic payments during the draw period and any repayment period; and the APRs (as described below) used to calculate the payment examples will remain the same during the draw period and any repayment period. A creditor would be required to provide payment examples for two APRs: (1) The current APR for the plan, except that if an introductory APR applies, the creditor would be required to use the rate that would otherwise apply to the plan after the introductory rate expires, as described in proposed § 226.6(a)(2)(vi)(B); and (2) the maximum APR applicable to the payment plan described in the table, as described in proposed § 226.6(a)(2)(vi)(A)(*1*)(*v*). A creditor also would be required to disclose other information along with the payment examples, such as a statement that the sample payments are not the consumer's actual payments. Under the proposal, a creditor would be required to disclose the proposed payment examples, and related information, in a format that is substantially similar to the format used in any of the applicable tables found in proposed Samples G-15(B), G-15(C) and G-15(D) in Appendix G.

Moreover, under the proposal, if under the payment plan disclosed in the account-opening table a consumer may pay a balloon payment, a creditor would be required to disclose information about the balloon payment twice in the account-opening table: at the beginning of the information about payment terms, and as part of the payment examples. Specifically, proposed § 226.6(a)(2)(v)(B) provides that if under the payment plan disclosed in the table, paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the HELOC plan, the creditor must disclose a statement of this fact in the account-opening table, as well as a statement that a balloon payment may result. The "Balloon Payment" row in the "Borrowing and Repayment Terms" section of proposed Samples G-15(B) and G-15(C) in Appendix G provides guidance on ***how*** to comply with the requirements in proposed § 226.6(a)(2)(v)(B).

In addition, regarding disclosure of the amount of the balloon payment in the proposed payment examples, proposed § 226.6(a)(2)(v)(C)(*3*)(*iii*) provides that if a consumer may pay a balloon payment under the payment plan disclosed in the account-opening table, a creditor would be required to disclose that fact when disclosing the proposed payment examples, as well as disclose the amount of the balloon payment based on the assumptions used the calculate the payment examples as described in proposed § 226.6(a)(2)(v)(C). The first paragraph of the "Sample Payments" section of proposed Samples G-15(B) and G-15(C) in Appendix G provides guidance on ***how*** to comply with the requirements in proposed § 226.6(a)(2)(v)(C)(*3*)(*iii*).

Under the proposal, a creditor would be required to disclose in the account-opening table a statement that the consumer can borrow money during the draw period. In addition, if a repayment period is provided, a creditor would be required to disclose in the account-opening table a statement that the consumer cannot borrow money during the repayment period. Under the proposal, a creditor also would be required to disclose in the account-opening table a statement indicating whether minimum payments are due in the draw period and any repayment period.

Choosing payment plan at account opening. The Board understands that some creditors currently do not require consumers to choose a payment plan until account opening. Under the proposal, even if a creditor does not require a consumer to choose a payment plan until account opening, a creditor would still be required to disclose in the account-opening table only the payment plan chosen by the consumer. Thus, a creditor that allows a consumer to choose a payment plan at account opening would need to prepare account-opening tables for each payment plan offered on the HELOC plan from which a consumer may choose (except for fixed-rate and-term payment plans unless those are the only plans offered during the draw period) and take steps to ensure that the proper account-opening table is provided to the consumer depending on which payment plan is chosen by the consumer.

6(a)(2)(vi) Annual Percentage Rate

Current § 226.6(a)(1), which implements TILA Section 127(a)(1) and (a)(4), sets forth disclosure requirements for rates that would apply to HELOC accounts. 15 U.S.C. 1637(a)(1) and (a)(4). The Board proposes to require a creditor to disclose in the account-opening table the same disclosures relating to APRs that a creditor would be required to disclose in the early HELOC disclosures table described in proposed § 226.5b(b) (as discussed in the section-by-section analysis to proposed § 226.5b(c)(10)). For example, under the proposal, a creditor would be required to disclose in the account-opening table each APR applicable to the payment plan disclosed in the table, except a creditor must not disclose any penalty rate set forth in the initial agreement that may be imposed in lieu of termination of the plan. *See* proposed § 226.6(a)(2)(vi). Under the proposal, a creditor also would be required to disclose certain information about any variable rates disclosed in the account-opening table, such as the fact that the APR may change due to the variable-rate feature. *See* proposed § 226.6(a)(2)(vi)(A). In addition, under the proposal, a creditor would be required to disclose in the account-opening table any introductory rate that applies to the payment plan disclosed in the table, as well as the time period during which the introductory rate will remain in effect and the rate that will apply after the introductory rate expires. *See* proposed § 226.6(a)(2)(vi)(B).

Under the proposal, a creditor would be required to disclose other rate information under proposed § 226.6(a)(3) and (a)(4). For example, periodic rates would not be permitted to be disclosed in the account-opening table. Nonetheless, under the proposal, the Board proposes to require creditors to disclose periodic rates, as a cost imposed as part of the plan, before the consumer agrees to pay or becomes obligated to pay for the charge, and these disclosures could be provided in the credit agreement or other disclosure, as is likely currently the case.

6(a)(2)(vii) Fees Imposed by the Creditor and Third Parties To Open the Plan

Current § 226.6(a)(1) and (a)(2) require a creditor to disclose in the account-opening disclosures any finance charges or other charges imposed on the HELOC plan. As discussed above, the Board proposes in new § 226.6(a)(2)(vii) to require that a creditor disclose in the account-opening table a total of the one-time fees imposed by the creditor or third parties to open the HELOC plan and an itemization of those fees. Under the proposal, the disclosure of these fees in the account-opening table might differ from ***how*** these fees may have been disclosed in the early HELOC disclosures table. As discussed in the section-by-section analysis to proposed § 226.5b(c)(11), with respect to disclosing the itemization of the one-time account-opening fees in the proposed early HELOC disclosures table, if the dollar amount of a fee is not known at the time the early HELOC disclosures are delivered or mailed, a creditor would be allowed to provide a range for such fee. *See* proposed § 226.5b(c)(11). With respect to disclosure of the total of one-time account-opening fees in the proposed early HELOC disclosures table, if the exact total of one-time fees for account opening is not known at the time the early HELOC disclosures are delivered or mailed, a creditor would be required to disclose in the table as part of the early HELOC disclosures the highest total of one-time account opening fees possible for the plan with a indication that the one-time account opening costs may be "up to" that amount. *See* proposed § 226.5b(c)(11). Nonetheless, in the account-opening table, a creditor would be required to disclose in the account-opening table an itemization of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose a range for those fees, as otherwise allowed under proposed § 226.5b(c)(11) for the proposed early HELOC disclosures table. *See* proposed comment 6(a)(2)(vii)-1. In addition, in the account-opening table, a creditor would be required to disclose in the account-opening table the total of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose the highest amount of possible fees as allowed under proposed § 226.5b(c)(11) for the proposed early HELOC disclosures table. *See* proposed comment 6(a)(2)(vii)-1. At the time the creditor is disclosing the account-opening table, a creditor would know the exact amount of the one-time fees that will be imposed by the creditor and any third parties to open the HELOC account, and thus would be able to disclose the exact total of these one-time fees and an exact itemization of these fees.

Unlike the proposed early HELOC disclosures table, in the account-opening table, the itemization of the one-time fees to open the account would not be disclosed with the total of these one-time fees but instead the itemization of the fees would be disclosed on the second page of the table with penalty fees and transactions fees. Thus, under the proposal, a creditor would be required to include in the account-opening table a cross reference near the disclosure of the total of one-time fees for opening an account, indicating that the itemization of the fees is located elsewhere in the table.

6(a)(2)(x) Late-Payment Fee

As discussed above, under the proposal, a creditor would be required to disclose in the account-opening table any fee imposed for a late payment. *See* proposed § 226.6(a)(2)(x) Proposed comment 6(a)(2)(x)-1 provides that the disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. This proposed comment cross references commentary to § 226.4(c)(2) for additional guidance on late-payment fees. In addition, this proposed comment notes that Samples G-15(B), G-15(C) and G-15(D) provide guidance to creditors on ***how*** to disclose clearly and conspicuously the late-payment fee in the account-opening table.

6(a)(2)(xi) Over-the-Limit Fee

As discussed above, under the proposal, a creditor would be required to disclose in the account-opening table any fee imposed for exceeding a credit limit. *See* proposed § 226.6(a)(2)(xi). Proposed comment 6(a)(2)(xi)-1 provides that the disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure would be required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. In addition, this proposed comment notes that Samples G-15(B), G-15(C) and G-15(D) provide guidance to creditors on ***how*** to disclose clearly and conspicuously the over-the-limit fee.

6(a)(2)(xii) Transaction Charges

As discussed above, under the proposal, a creditor would be required to disclose in the account-opening table any transaction charge imposed by the creditor for use of the HELOC plan. *See* proposed § 226.6(a)(2)(xii). Proposed comment 6(a)(2)(xii)-1 provides that charges imposed by a third party, such as a seller of goods, must not be disclosed in the account-opening table. This proposed comment also notes that the third party would be responsible for disclosing the charge under § 226.9(d)(1).

In addition, proposed comment 6(a)(2)(xii)-2 provides that a transaction charge imposed by the creditor for use of the HELOC plan includes any fee imposed by the creditor for transactions in a foreign currency or that take place outside the United States or with a foreign merchant. This proposed comment cross references comment 4(a)-4 for guidance on when a foreign transaction fee is considered charged by the creditor. This proposed comment also notes that Sample G-15(D) provide guidance to creditors on ***how*** to disclose a foreign transaction fee for use of a credit card where the same foreign transaction fee applies for purchases and cash advances in a foreign currency, or that take place outside the United States or with a foreign merchant.

6(a)(2)(xv) Statement About Other Fees

As discussed above, under the proposal, a creditor would not be required to disclose all the fees that apply to a HELOC plan in the account-opening table. Under the proposal, creditors would be provided with flexibility in disclosing fees that would be required to be disclosed under the regulation but not in the account-opening table. As discussed in more detail in the section-by-section analysis to proposed § 226.5(a)(1) and (b)(1), under the proposal, a creditor would be permitted to disclose charges that are not required to be disclosed in the account-opening table either before the first transaction or later, so long as they are disclosed before the cost is imposed. Despite this flexibility to disclose certain charges after account opening, the Board expects that creditors would continue to disclose some of these charges in the account-opening disclosures or account agreement because of contract law or other reasons. Thus, the Board proposes in new § 226.6(a)(2)(xv) to require a creditor to disclose in the account-opening table a statement that information about other fees is included in the account-opening disclosures or agreement, as applicable. In addition, because certain fees disclosed in the account-opening table would be disclosed on the first page of the table, and other fees disclosed in the table would be included on the second page of the table, the Board proposes to require a creditor to disclose in the account-opening table near the disclosure of fees on the first page of the table a statement that other fees are located elsewhere in the table.

6(a)(2)(xvi) Negative Amortization

Current § 226.6(a)(3)(iii), which implements TILA Section 127(a)(8), provides that a creditor must disclose in the account-opening disclosures a statement that negative amortization may occur as described in current § 226.5b(d)(9). 15 U.S.C. 127(a)(8). The Board proposes to move current § 226.6(a)(3)(iii) to proposed 226.6(a)(2)(xvi) and make revisions. Specifically, under the proposal, a creditor would be required to disclose in the account-opening table, as applicable, a statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling. This same disclosure would be required as part of the early HELOC disclosures table required under proposed § 226.5b(b). *See* proposed § 226.5b(c)(15).

6(a)(2)(xvii) Transaction Requirements

Current § 226.6(a)(3)(iv), which implements TILA Section 127(a)(8), provides that a creditor must disclose in the account-opening disclosures a statement of any transaction requirements as described in current § 226.5b(d)(10). The Board proposes to move current § 226.6(a)(3)(iv) to proposed § 226.6(a)(2)(xvii) and make revisions. Specifically, under the proposal, a creditor would be required to disclose in the account-opening table any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements. This same disclosure would be required as part of the early HELOC disclosures table required under proposed § 226.5b(b). *See* proposed § 226.5b(c)16).

6(a)(2)(xviii) Credit Limit

Currently, a creditor is not required to disclose in the account-opening disclosures the credit limit applicable to the HELOC plan. As discussed in the section-by-section analysis to proposed § 226.5b(c)(17), the Board proposes to require a creditor to disclose the credit limit applicable to the HELOC plan in the early HELOC disclosures table required under proposed § 226.5b(b). Pursuant to TILA Section 127(a)(8) and for the reasons set forth in the section-by-section analysis to proposed § 226.5b(c)(17), the Board proposes that this disclosure also be required in the account-opening table. 15 U.S.C. 1637(a)(8).

6(a)(2)(xix) Statements About Fixed-Rate and-term Payment Plan

As discussed above, the Board proposes that if a HELOC plan offers a variable-rate feature and a fixed-rate and-term feature during the draw period, a creditor generally would not be allowed to disclose in the account-opening table all the terms applicable to the fixed-rate and-term feature. *See* proposed § 226.6(a)(2). Instead, the Board proposes to require a creditor offering this payment feature (in addition to a variable-rate feature) to disclose in the account-opening table the following: (1) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate; (2) the amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term; and (3) a statement that information about the fixed-rate and-term payment plan is included in the account-opening disclosures or agreement, as applicable. *See* proposed § 226.6(a)(2)(xix). The Board proposes a similar disclosure in the proposed early HELOC disclosures table described in proposed § 226.5b(b). *See* proposed § 226.5b(c)(18).

6(a)(2)(xx) Required Insurance, Debt Cancellation or Debt Suspension Coverage

Current § 226.6(a)(1) and (a)(2) require a creditor to disclose in the account-opening disclosures any finance charges or other charges imposed on the HELOC plan. As discussed in the section-by-section analysis to proposed § 226.5b(c)(19), in the event that a creditor requires the insurance or debt cancellation or debt suspension coverage (to the extent permitted by state or other applicable law), the Board proposes to require a creditor to disclose in the early HELOC disclosures table any fee for this coverage. *See* proposed § 226.5b(c)(19). In addition, proposed § 226.5a(b)(19) require that a creditor also disclose in the early HELOC disclosures table a cross reference to where the consumer may find more information about the insurance or debt cancellation or debt suspension coverage, if additional information is included outside the early HELOC disclosures table. For the reasons set forth in the section-by-section analysis to proposed § 226.5b(c)(19), the Board also proposes to require that a creditor make these same disclosures in the account-opening table.

6(a)(2)(xxi) Grace Period

Current § 226.6(a)(1)(i), which implements TILA Section 127(a)(1), provides that a creditor must disclose as part of the account-opening disclosures a statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. 15 U.S.C. 1637(a)(1). Under the proposal, the Board proposes to require that a creditor disclose below the account-opening table the date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, a creditor would be required to disclose that fact below the account-opening table. If the length of the grace period varies, the creditor would be allowed to disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing a grace period that applies to all features on the account, under the proposal, a creditor would be required to use the phrase "***How*** to ***Avoid*** Paying Interest" as the heading for the information below the table describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact below the table, a creditor would be required to use the phrase "Paying Interest" as the heading for this information.

Proposed comment 6(a)(2)(xxi)-1 provides that a creditor that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet the requirements in proposed § 226.6(a)(2)(xxi) by providing the following disclosure, as applicable: "***Your*** due date is [at least] days after the close of each billing cycle. We will not charge you interest on ***your*** account if you pay ***your*** entire balance by the due date each month." Proposed comment 6(a)(2)(xxi)-2 provides that a creditor may use the following language to describe below the account-opening table that no grace period is offered, as applicable: "We will begin charging interest on [applicable transactions] on the date the transaction is posted to ***your*** account."

The Board understands that most creditors currently do not offer a grace period on any transactions on the HELOC plan. Thus, in most cases, creditors would include below the account-opening table a statement that the creditor will begin charging interest on the transactions on the HELOC plan on the date the transaction is posted to the account. The Board believes that requiring a creditor to disclose this statement below the account-opening table would be an effective way to inform a consumer that he or she cannot ***avoid*** paying interest on transactions on the HELOC plan.

6(a)(2)(xxii) Balance Computation Method

Current § 226.6(a)(1)(iii), which implements TILA Section 127(a)(2), provides that creditors must explain as part of the account-opening disclosures the method used to determine the balance to which rates are applied. 15 U.S.C. 1637(a)(2). Under the proposal, a creditor would be required to disclose below the account-opening table the name of the balance computation method used by the creditor for each feature of the account, along with a statement that an explanation of the method(s) is provided in the account agreement or disclosure statement. *See* proposed § 226.6(a)(2)(xxii). To determine the name of the balance computation method to be disclosed, a creditor would be required to refer to § 226.5a(g) for a list of commonly-used methods; if the method used is not among those identified, creditors would be required to provide a brief explanation in place of the name. In determining which balance computation method to disclose, the creditor would be required to assume that credit extended will not be repaid within any grace period, if any. The Board believes that the proposed approach of disclosing the name of the balance computation method below the table, with a more detailed explanation of the method in the account-opening disclosures or account agreement, would provide an effective way to communicate information about the balance computation method used on a HELOC plan to consumers, while not distracting from other information included in the account-opening table.

Proposed comment 6(a)(2)(xxii)-1 provides that in cases where the creditor uses a balance computation method that is identified by name in the regulation, the creditor must disclose below the table only the name of the method. In cases where the creditor uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance computation methods in § 226.5a(g). The explanation would not need to be as detailed as that required for the disclosures under proposed § 226.6(a)(4)(i)(D), as discussed below. Proposed comment 6(a)(2)(xxii)-2 notes that proposed Samples G-15(B), G-15(C) and G-15(D) would provide guidance to creditors on ***how*** to disclose the balance computation method where the same method is used for all features on the account.

6(a)(2)(xxiii) Billing Error Rights Reference

Current § 226.6(a)(6), which implements TILA Section 127(a)(7), provides that creditors offering HELOC accounts subject to § 226.5b must provide notices of billing rights at account opening. This information is important, but lengthy. The Board proposes in new § 226.6(a)(2)(xxiii) to draw consumers' attention to the notices by requiring a creditor to disclose below the account-opening table a statement that information about billing rights and ***how*** to exercise them is provided in the account-opening disclosures or account agreement, as applicable. As discussed in the section-by-section analysis to proposed § 226.6(a)(5), under the proposal, a creditor would be required to provide information about billing rights in the account-opening disclosures or account agreement, as applicable. *See* proposed § 226.6(a)(5)(iii).

6(a)(2)(xxiv) No Obligation Statement

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(2), the Board proposes in new § 226.5b(c)(2) to require a creditor to disclose below the early HELOC disclosures table a statement that the consumer has no obligation to accept the terms disclosed in the table. In addition, under proposed § 226.5b(c)(2), if a creditor provides space for the consumer to sign or initial the early HELOC disclosures, the creditor would be required to include a statement that a signature by the consumer only confirms receipt of the disclosure statement.

Pursuant to TILA Section 127(a)(8) and for the same reasons discussed in the section-by-section analysis to proposed § 226.5b(c)(2), the Board proposes in new § 226.6(a)(2)(xxiv) to require these same statements below the account-opening table. 15 U.S.C. 1637(a)(8). In addition, the Board also proposes to require a creditor to disclose below the account-opening table a statement that the consumer should confirm that the terms disclosed in the table are the same terms for which the consumer applied. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board believes this statement would be a helpful reminder to consumers to check that the terms disclosed in the account-opening table are the terms that the consumer expects to apply to the HELOC plan based on the terms disclosed in the early HELOC disclosures table.

6(a)(2)(xxv) Statement About ***Asking*** Questions

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(20), the Board proposes in new § 226.5b(c)(20) to require a creditor to disclose below the early HELOC disclosures table a statement that if the consumer does not understand any disclosure in the table the consumer should ***ask*** questions. Pursuant to TILA Section 127(a)(8) and for the same reasons discussed in the section-by-section analysis to proposed § 226.5b(c)(20), the Board proposes in new § 226.6(a)(2)(xxv) to require that a creditor disclose this same statement below the account-opening table. 15 U.S.C. 1637(a)(8).

6(a)(2)(xxvi) Statement About Board's Web Site

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(21), the Board proposes in new § 226.5b(c)(21) to required a creditor to disclose below the early HELOC disclosures table a statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board, and a reference to that Web site. Pursuant to TILA Section 127(a)(8), the Board proposes in new § 226.5b to require a creditor to provide these same statements below the account-opening table. 15 U.S.C. 1637(a)(8). Although it is hard to predict ***how*** many consumers might use the Board's Web site, and recognizing that not all consumers have access to the Internet, the Board believes that this Web site may be helpful to some consumers as they use their HELOC plan.

6(a)(3) Disclosure of Charges Imposed as Part of Home-Equity Plans

The current rules for disclosing costs related to open-end plans create two categories of charges covered by TILA: finance charges (former § 226.6(a)) and "other charges" (former § 226.6(b)). The terms "finance charge" and "other charge" are given broad and flexible meanings in the current regulation and commentary. This ensures that TILA adapts to changing conditions, but it also creates uncertainty. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. Examples of charges that are included or excluded charges are in the regulation and commentary, but they cannot provide definitive guidance in all cases. As creditors develop new kinds of services, some creditors find it difficult to determine whether associated charges for the new services meet the standard for a "finance charge" or "other charge" or are not covered by TILA at all. This uncertainty can pose legal risks for creditors that act in good faith to classify fees.

To address this problem, the January 2009 Regulation Z Rule created a single category of "charges imposed as part of open-end (not home-secured) plans," specified in § 226.6(b)(3). These charges include finance charges under § 226.4(a) and (b), penalty charges, taxes, and charges for voluntary credit insurance, debt cancellation or debt suspension coverage. In addition, charges to be disclosed include any charge the payment or nonpayment of which affects the consumer's access to the plan, duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment. Charges imposed for terminating a plan are also included.

Three examples of types of charges that are not imposed as part of the plan are listed in § 226.6(b)(3)(iii). These examples include charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM; charges for a package of services that includes an open-end credit feature, if the charges would be required whether or not the open-end credit feature were included and the non-credit services are not merely incidental to the credit feature; and charges under § 226.4(e).

The Board proposes to apply the same approach to disclosure of charges under HELOC plans subject to § 226.5b, for the same reasons as for open-end (not home-secured) plans. Accordingly, proposed § 226.6(a)(3) would set forth a single category of "charges imposed as part of home-equity plans." The disclosures included, as specified in proposed § 226.6(a)(3)(i) and (ii), would generally parallel those included for open-end (not home-secured) plans in § 226.6(b)(3)(i) and (ii). Similarly, proposed § 226.6(a)(3)(iii) would list types of charges not considered to be charges imposed as part of a home-equity plan, generally paralleling § 226.6(b)(3)(iii), which specifies types of charges not included as charges imposed as part of an open-end (not home-secured) plan.

As the Board acknowledged in the June 2007 Regulation Z Proposal and the January 2009 Regulation Z Rule, this proposed approach does not completely eliminate ambiguity about what charges are subject to TILA disclosure requirements. However, the proposed commentary provides examples to ease compliance. In addition, to further mitigate ambiguity, the proposed rule would provide a complete list in § 226.6(a)(2), as discussed above, of which charges must be disclosed in tabular format in writing at account opening. Under the proposal, any charges covered by § 226.6(a)(3), but not identified in § 226.6(a)(2), would *not* be required to be disclosed in writing at account opening. However, if they are not disclosed in writing at account opening, a creditor would be required to disclose these other charges imposed as part of a HELOC plan in writing or orally at a time and in a manner such that a consumer would be likely to notice them before the consumer agrees to or becomes obligated to pay the charge. This proposed approach is intended in part to reduce creditor burden. For example, when a consumer orders a service by telephone, creditors presumably disclose fees related to that service at that time for business reasons and to comply with other state and federal laws.

Moreover, compared to the approach reflected in the current regulation, the Board believes that the broad application of the statutory standard of fees "imposed as part of the plan" would make it easier for a creditor to determine whether a fee is a charge covered by TILA, and reduce litigation and liability risks. Proposed comment 6(a)(3)(ii)-3 would be added to provide that if a creditor is unsure whether a particular charge is a cost imposed as part of the plan, the creditor may, at its option, consider such charges as a cost imposed as part of the plan for Truth in Lending purposes. In addition, this proposed approach will help ensure that consumers receive the information they need when it would be most helpful to them.

Under proposed § 226.6(a)(3)(ii)(B), one of the categories of charges included in charges imposed as part of a home-equity plan would be "charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default; costs for protection of the creditor's interest in the collateral for the plan due to default; attorney's fees whether or not automatically imposed; foreclosure costs; and post-judgment interest rates imposed by law." This provision generally parallels § 226.6(b)(3)(ii)(B) applicable to open-end (not home-secured) plans under the January 2009 Regulation Z Rule, as well as longstanding comment 6(b)-2.ii. in the current regulation. Two of the excepted charges, "costs for protection of the creditor's interest in the collateral due to default" and "foreclosure costs," do not appear in § 226.6(b)(3)(ii)(B); "foreclosure costs" appears in current comment 6(b)-2.ii. These types of charges could occur in HELOC accounts, and would most likely not occur in the case of open-end (not home-secured) credit; they are similar to the other excepted types of charges in that all would likely occur in the context of default or foreclosure. It would likely be impracticable for creditors to disclose, at the time an account is opened, charges related to default or foreclosure, since the amount of such charges may not be known at that time. Therefore, the Board believes it would be appropriate to include these two types of charges in the list of exceptions in proposed § 226.6(a)(3)(ii)(B).

Proposed comment 6(a)(3)(ii)-2 would give examples of fees that affect the consumer's access to the plan (and thus are included as charges that must be disclosed since they are considered charges imposed as part of the plan). This proposed comment generally parallels comment 6(b)(3)(ii)-2 for open-end (not home-secured) credit; however, proposed comment 6(a)(3)(ii)-2 would refer to "fees to obtain additional checks or credit cards" and "fees to expedite delivery of checks or credit cards," as examples of charges affecting access to the plan, rather than only referring to fees to obtain or expedite delivery of credit cards, since HELOC plans are typically accessed by checks as well as, in some cases, credit cards.

Proposed § 226.6(a)(3)(iii) would list types of charges not considered to be charges imposed as part of a home-equity plan. As in the case of open-end (not home-secured) credit under § 226.6(b)(3)(iii), these charges would include charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM; charges for a package of services that includes an open-end credit feature, if the charges would be required whether or not the open-end credit feature were included and the non-credit services are not merely incidental to the credit feature; and charges under § 226.4(e) (generally, taxes and fees prescribed by law and related to security instruments). In proposed comment 6(a)(3)(iii)(B)-1, discussing charges for a package of services including an open-end credit feature, "credit" is substituted for "a credit card," because HELOCs may not offer credit card access.

The Board also proposes new comment 6(a)(3)-1, which would cross-reference comment 6(a)-1 for guidance on disclosing information related to fixed-rate and-term payment options; there is no parallel comment under § 226.6(b)(3), because open-end (not home-secured) credit plans generally do not offer such options. Proposed comments 6(a)(3)-2 and -3 discuss requirements for disclosing grace periods, and would generally parallel comments 6(b)(3)-1 and -2, respectively, applying to open-end (not home-secured) credit as adopted in the January 2009 Regulation Z Rule. Proposed comment 6(a)(3)-4 discusses circumstances where no finance charge is imposed when the outstanding balance is less than a certain amount, and would generally parallel comment 6(b)(3)-3 as adopted in the January 2009 Regulation Z Rule.

6(a)(4) Disclosure of Rates for Home-Equity Plans

The January 2009 Regulation Z Rule reorganizes and consolidates rules for disclosing interest rates in open-end (not home-secured) credit in § 226.6(b)(4). The Board proposes to follow the same approach for HELOCs; thus, rules for disclosing interest rates for HELOCs would appear in proposed § 226.6(a)(4). Proposed § 226.6(a)(4) would generally parallel § 226.6(b)(4). The proposed commentary to § 226.6(a)(4) also would generally parallel the commentary to § 226.6(b)(4), with adjustments in certain comments to address matters in which HELOCs differ from credit card accounts and other open-end (not home-secured) credit, as well as differences between the rules applicable to HELOCs and those applicable to open-end (not home-secured) credit (see, for example, proposed comments 6(a)(4)(ii)-1, -2, and -3 and 6(a)(4)(iii)-1 and -2). In addition, the Board proposes new comment 6(a)(4)-1, which would cross-reference comment 6(a)-1 for guidance on disclosing information related to fixed-rate and-term payment options.

6(a)(4)(i)(D) Balance Computation Method

Proposed § 226.6(a)(4)(i)(D) would require creditors to explain the method used to determine the balance to which rates apply. In addition to disclosing the name of the balance computation method with the account-opening summary table, as discussed under § 226.6(a)(2) above, creditors would be required, as in the current regulation, to explain the balance computation method in the account-opening agreement or other disclosure statement. Under the proposal, a creditor would be required to disclose under the account-opening summary table a reference to where the explanation is found, along with the name of the balance computation method.

Model clauses that explain commonly used balance computation methods, such as the average daily balance method, are in Model Clauses G-1 and G-1(A) in Appendix G. In the January 2009 Regulation Z Rule, the Board adopted new Model Clause G-1(A) containing balance computation method model clauses for open-end (not home-secured) credit, while retaining existing Model Clause G-1 to continue to provide the existing model clauses for HELOCs. The Board is now proposing to eliminate existing Model Clause G-1 and redesignate Model Clause G-1(A) as G-1; all creditors offering open-end credit would use the same model clauses for explanations of balance computation methods. *See* the discussion under Appendix G below.

6(a)(4)(ii) Variable-Rate Accounts

Proposed § 226.6(a)(4)(ii) would set forth the rules for variable-rate disclosures, parallel to § 226.6(b)(4)(ii) for open-end (not home-secured) credit as adopted in the January 2009 Regulation Z Rule and contained in footnote 12 to § 226.6(a)(1)(ii) in the regulation currently in effect. Guidance on the accuracy of variable rates provided at account opening would be moved from the commentary to the regulation and revised. Currently, comment 6(a)(1)(ii)-3 provides that creditors in disclosing a variable-rate in the account-opening disclosures may provide the current rate, a rate as of a specified date if the rate is updated from time to time, or an estimated rate under § 226.5(c). In the January 2009 Regulation Z Rule, the Board adopted an accuracy standard for variable rates disclosed at account opening for open-end (not home-secured) credit; the rate disclosed was deemed accurate if it was in effect as of a specified date within 30 days before the disclosures were provided. Creditors' option to provide an estimated rate as the rate in effect for a variable-rate account was eliminated. In adopting this accuracy standard, the Board stated its belief that 30 days provides sufficient flexibility to creditors and reasonably current information to consumers. *See* § 226.6(b)(4)(ii)(G). The Board proposed a further technical clarification to the accuracy standard in the May 2009 Regulation Z Proposal. Proposed § 226.6(a)(4)(ii)(G) provides that a variable rate on HELOC plans disclosed in the account-opening disclosures is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided. This proposed accuracy standard reflects the proposed technical clarification that the Board proposed to § 226.6(b)(4)(ii)(G) in May 2009.

6(a)(5) Additional Disclosures for Home-Equity Plans

Section 226.6(b)(5) of the January 2009 Regulation Z Rule contains rules for additional disclosures relating to open-end (not home-secured) credit, including: The disclosures required under § 226.4(d) that, if provided, entitle the creditor to exclude voluntary credit insurance or debt cancellation or suspension coverage from the finance charge (§ 226.6(b)(5)(i)); the disclosure of security interests (§ 226.6(b)(5)(ii)); and the statement about consumers' billing rights under TILA (§ 226.6(b)(5)(iii)). Proposed § 226.6(a)(5) would set forth the parallel disclosures for HELOCs, in § 226.6(a)(5)(i), (ii), and (iii), respectively.

Proposed comment 6(a)(5)(i)-1 (similar to comment 6(b)(5)(i)-1 for open-end (not home-secured) credit) would provide that creditors comply with § 226.6(a)(5)(i) if they provide disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge in accordance with § 226.4(d) before the consumer agrees to the purchase of the insurance or coverage. For example, if the § 226.4(d) disclosures are given at application, creditors need not repeat those disclosures at account opening.

Model forms for the billing rights statement under proposed § 226.6(a)(5)(iii) are in Appendices G-3 and G-3(A). In the January 2009 Regulation Z Rule, the Board adopted new Appendix G-3(A) for open-end (not home-secured) credit for improved readability, while retaining existing Appendix G-3 to give HELOC creditors the option of providing the existing model billing rights statement form. The Board proposes to eliminate existing Appendix G-3 and redesignate Appendix G-3(A) as G-3; thus, all creditors offering open-end credit would use the same model form for the billing rights statement. *See* the discussion under Appendix G below.

Proposed commentary for § 226.6(a)(5)(i), (ii), and (iii) would parallel the commentary to § 226.6(b)(5)(i), (ii), and (iii), respectively, with adjustments to address differences between HELOCs and open-end (not home-secured) credit and between the rules applicable to each. For example, in proposed comment 6(a)(5)(ii)-2, a reference to "***your***" home" (as the collateral for the credit) would be substituted for "motor vehicle or household appliances." Comments 6(b)(5)(ii)-4 and -5 for open-end (not home-secured) credit, do not appear relevant to HELOCs, and therefore parallel comments under § 226.6(a)(5)(ii) are not proposed and current comments 6(a)(4)-4 and -5, which state these interpretations for HELOCs, would be deleted. Comment 6(b)(5)(ii)-4 (and comment 6(a)(4)-4) addresses the situation where collateral will be required only when the outstanding balance reaches a certain amount; HELOCs generally require that the consumer's home secure the line of credit from the outset. Comment 6(b)(5)(ii)-5 (and comment 6(a)(4)-5) discusses circumstances in which the collateral is owned by someone other than the consumer liable for the credit extended; this would generally not be the case with HELOCs. However, the

Board requests comment on whether, and ***how*** often, the situations addressed by these two comments might occur in HELOC accounts, and accordingly whether these two comments should be retained for HELOCs.

Proposed § 226.6(a)(5) would contain two additional paragraphs without counterparts in § 226.6(b)(5). Section 226.6(a)(5)(iv) would require a disclosure of the conditions under which the creditor in a HELOC may take certain actions, such as terminating the plan or changing its terms. The account-opening table required under proposed § 226.6(a)(2), as discussed above, would require a statement of the actions the creditor may take, such as terminating and accelerating a HELOC, reducing the credit limit, suspending further advances, or changing other terms, but would not require or permit setting forth the conditions under which the creditor is permitted, under § 226.5b(f), to take such actions. Instead, the account-opening table would have to contain a reference to the disclosure or credit agreement in which the conditions would be disclosed. *See also* discussion under § 226.6(a)(2)(iii), above.

Proposed § 226.6(a)(5)(v) would require disclosure of additional information about any fixed-rate and-term payment option offered under the HELOC plan. Under current Regulation Z, guidance on disclosing fixed-rate and-term payment options is contained only in the commentary (comment 5b(d)(5)(ii)-2). To provide clearer guidance, the Board proposes to state the rules about disclosure of such options in § 226.6(a)(5)(v).

The account-opening table required under proposed § 226.6(a)(2), as discussed above, would require a brief statement about a fixed-rate and-term payment option, including a statement that the consumer has the option during the draw period to borrow at a fixed interest rate, the amount of credit available under the option, and a statement that details about this option are included in the credit agreement or other document, as applicable. *See* the discussion under § 226.6(a)(2)(xix), above. Proposed § 226.6(a)(5)(v) would require that a creditor disclose at account opening, but outside of the table prescribed in § 226.6(a)(2), the following additional information about the option: The period during which the option may be exercised (§ 226.6(a)(5)(v)(A)), the length of time over which repayment can occur (§ 226.6(a)(5)(v)(B)), an explanation of ***how*** the minimum periodic payment for the option will be determined (§ 226.6(a)(5)(v)(C)), and any limitations on the number or total amount of loans that can be obtained under the option, as well as any minimum outstanding balance or minimum draw requirements (§ 226.6(a)(5)(v)(D)). Proposed comment 6(a)(5)(v)-1 would refer to proposed comment 6(a)-1 for further guidance on disclosing information related to fixed-rate and-term payment options.

Section 226.7 Periodic Statement

TILA Section 127(b), implemented in § 226.7, identifies information about an open-end account that must be disclosed when a creditor is required to provide periodic statements. *See* 15 U.S.C. 1637(b).

Periodic statement disclosure and format requirements for HELOCs subject to § 226.5b generally were unaffected by the January 2009 Regulation Z Rule, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a future rulemaking. To facilitate compliance, the Board in the January 2009 Regulation Z Rule grouped the requirements applicable to HELOCs together in § 226.7(a) (moved from former § 226.7(a) through (k)).

This proposal contains a number of significant revisions to periodic statement disclosures currently applicable to creditors offering HELOCs subject to § 226.5b. Except as discussed below, these proposed revisions are substantially similar to revisions adopted for open-end (not home-secured) credit plans in the January 2009 Regulation Z Rule, and as proposed to be revised in the May 2009 Regulation Z Proposal. First, the Board proposes to eliminate the requirement to disclose the effective APR for HELOC accounts subject to § 226.5b. Second, the proposal contains several formatting requirements for periodic statement disclosures for HELOC accounts subject to § 226.5b. For example, interest charges and fees imposed as part of the plan must be grouped together and totals disclosed for the statement period and year to date. In addition, if an advance notice of a change in rates or terms is provided on or with a periodic statement, the proposal requires that a summary of the change appear on the front of the periodic statement. To facilitate compliance, sample forms are proposed to illustrate the revisions. *See* proposed Samples G-24(A), C-24(B) and G-24(C) of Appendix G to part 226.

Effective Annual Percentage Rate

Background on effective APR. TILA Section 127(b)(6) requires disclosure of an APR calculated as the quotient of the total finance charge for the period to which the charge relates divided by the amount on which the finance charge is based, multiplied by the number of periods in the year. *See* 15 U.S.C. 1637(b)(6) (implemented by § 226.7(a)(7) for HELOCs subject to § 226.5b). This rate has come to be known as the "historical APR" or "effective APR." A creditor does not have to disclose an effective APR when the total finance charge is 50 cents or less for a monthly or longer billing cycle, or the *pro rata* share of 50 cents for a shorter cycle. *See* 15 U.S.C. 1637(b)(6). In such a case, the creditor must disclose only the periodic rate and the annualized rate that corresponds to the periodic rate (the "corresponding APR"). *See* 15 U.S.C. 1637(b)(5).

The effective APR and corresponding APR for any given plan feature are the same when the finance charge in a period arises only from applying the periodic rate to the applicable balance (the balance calculated according to the creditor's chosen method, such as average daily balance method). When the two APRs are the same, Regulation Z requires that the APR be stated just once. The effective and corresponding APRs diverge when the finance charge in a period arises (at least in part) from a charge not determined by application of a periodic rate and the total finance charge exceeds 50 cents. When they diverge, Regulation Z currently requires that both be stated. *See* § 226.7(a)(4) and (a)(7).

The statutory requirement of an effective APR is intended to provide the consumer with an annual rate that reflects the total finance charge, including both the finance charge due to application of a periodic rate (interest) and finance charges that take the form of fees. This rate, like other APRs required by TILA, presumably was intended to provide consumers information about the cost of credit that would help consumers compare credit costs and make informed credit decisions and, more broadly, strengthen competition in the market for consumer credit. *See* 15 U.S.C. 1601(a). There is, however, a longstanding controversy about whether the requirement to disclose an effective APR advances TILA's purposes or, as some argue, actually undermines them.

Industry and consumer groups disagree as to whether the effective APR conveys meaningful information for open-end plans. Creditors argue that the cost of a transaction is rarely, if ever, as high as the effective APR makes it appear, and that this tendency of the rate to exaggerate the cost of credit makes this APR misleading. Industry representatives also claim that the effective APR imposes direct costs on creditors that consumers pay indirectly. They represent that the effective APR raises compliance costs when they introduce new services, including costs of: (1) Conducting legal analysis of Regulation Z to determine whether the fee for the new service is a finance charge and must be included in the effective APR; (2) reprogramming software if the fee must be included; and (3) responding to telephone inquiries from confused customers and accommodating them (*e.g.*, with fee waivers or rebates).

Consumer groups contend that the information the rate provides about the cost of credit, even if limited, is meaningful. The effective APR for a specific transaction or set of transactions in a given cycle may provide the consumer a rough indication that the cost of repeating such transactions is high in some sense or, at least, higher than the corresponding APR alone conveys. Consumer advocates and industry representatives also disagree as to whether the effective APR promotes credit shopping. Industry and consumer group representatives find some common ground in their observations that consumers do not understand the effective APR well.

Consumer research on credit card disclosures conducted by the Board. In relation to the January 2009 Regulation Z Rule, the Board undertook research through a third-party consultant on consumer awareness and understanding of the effective APR, and on whether changes to the presentation of the disclosure could increase awareness and understanding. The consultant used one-on-one cognitive interviews with consumers; consumers were provided mock disclosures of periodic statements for credit card accounts that included effective APRs and ***asked*** questions about the disclosure designed to elicit their understanding of the rate. The Board tested effective APR disclosures with different versions of explanatory text in seven rounds of one-on-one interviews with consumers. In the first round the statements were copied from examples in disclosures currently used in the market. For subsequent testing rounds, the language and design of the statements were modified to better convey ***how*** the effective APR differs from the corresponding APR. Several different approaches and many variations on those approaches were tested. For example, in later rounds of testing, the effective APR was labeled the "Fee-Inclusive APR."

In all but one round of testing, a minority of participants correctly explained that the effective APR for cash advances was higher than the corresponding APR for cash advances because the effective APR included a cash advance fee that had been imposed. A smaller minority correctly explained that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee had been imposed on purchases. A majority offered incorrect explanations or did not offer any explanation. In addition, the inclusion of the effective APR disclosure on the statement was often confusing to participants; in each round some participants mistook the effective APR for the corresponding APR.

In addition, in September 2008 the Board conducted additional consumer research using quantitative methods for the purpose of validating the qualitative research (one-on-one interviews) conducted previously. The quantitative consumer research conducted by the Board validated the results of the qualitative testing; it ***shows*** that most consumers do not understand the effective APR, and that for some consumers the effective APR is confusing and detracts from the effectiveness of other disclosures. The quantitative consumer research involved surveys of around 1,000 consumers at shopping malls in seven locations around the country. Two research questions were investigated. The first was designed to determine what percentage of consumers understand the significance of the effective APR. The interviewer pointed out the effective APR disclosure for a month in which a cash advance occurred, triggering a transaction fee and thus making the effective APR higher than the corresponding APR (interest rate). The interviewer then ***asked*** what the effective APR would be in the next month, in which the cash advance balance was not paid off but no new cash advances occurred. A very small percentage of respondents gave the correct answer (that the effective APR would be the same as the corresponding APR). Some consumers stated that the effective APR would be the same in the next month as in the current month, others indicated that they did not know, and the remainder gave other incorrect answers.

The second research question was designed to determine whether the disclosure of the effective APR adversely affects consumers' ability to identify correctly the current corresponding APR on cash advances. Some consumers were ***shown*** a periodic statement disclosing an effective APR, while other consumers were ***shown*** a statement without an effective APR disclosure. Consumers were then ***asked*** to identify the corresponding APR on cash advances. A greater percentage of consumers who were ***shown*** a statement without an effective APR than of those ***shown*** a statement with an effective APR correctly identified the corresponding APR on cash advances. This finding was statistically significant, as discussed in the December 2008 Macro Report on Quantitative Testing. Some of the consumers who did not correctly identify the corresponding APR on cash advances instead mistakenly identified the effective APR as that rate.

Proposal. After considering the results of the consumer testing and other factors mentioned in the background discussion of the effective APR, the Board is proposing that creditors offering HELOCs subject to § 226.5b no longer be required to disclose the effective APR on periodic statements. (An identical exemption was adopted for open-end (not home-secured) plans in the January 2009 Regulation Z Rule.) The Board proposes this rule pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. *See* 15 U.S.C. 1604(f)(1). The Board must make this determination in light of specific factors. *See* 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes that the proposed exemption is appropriate. Consumer testing conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule ***shows*** that consumers find the current disclosure of an APR that combines rates and fees to be confusing. Based on this consumer testing, the Board believes that consumers are likely confused by the effective APR disclosure on HELOC accounts. Under this proposal, creditors offering HELOCs subject to § 226.5b would be required to disclose interest and fees in a manner that is more readily understandable and comparable across institutions. The Board believes that this approach can more effectively further the goals of consumer protection and the informed use of credit for all types of open-end credit.

The Board also considered whether there were potentially competing considerations that would suggest retention of the requirement to disclose an effective APR. First, the Board considered the extent to which "sticker shock" from the effective APR benefits consumers, even if the disclosure does not enable consumers to compare costs meaningfully from month to month or for different products. A second consideration was whether the effective APR may be a hedge against fee-intensive pricing by creditors, and if so, the extent to which it promotes transparency. On balance, however, the Board believes that the benefits of eliminating the requirement to disclose the effective APR outweigh these considerations.

The consumer testing conducted for the Board supports this determination. Again, with the exception of one round of one-on-one testing, the overall results of the testing demonstrated that most consumers do not correctly understand the effective APR. Some consumers in the testing offered no explanation of the difference between the corresponding and effective APR, and others appeared to have an incorrect understanding.

Even if some consumers have some understanding of the effective APR, the Board believes that sound reasons support eliminating the requirement to disclose it. Disclosure of the effective APR on periodic statements does not significantly assist consumers in credit shopping, because the effective APR disclosed on a periodic statement for a HELOC account cannot be compared to the corresponding APR disclosed in early disclosures given pursuant to § 226.5b. In addition, even within the same account, the effective APR for a given cycle is unlikely to indicate accurately the cost of credit in a future cycle, because if any of several factors (such as the timing of transactions and payments and the amount carried over from the prior cycle) is different in the future cycle, the effective APR will be different even if the amounts of the transaction and the fee are the same in both cycles.

As to contentions that the effective APR for a particular billing cycle provides the consumer a rough indication that the cost of repeating transactions triggering transaction fees is high in some sense, the Board believes the proposed requirements to disclose interest and fee totals for the cycle and year to date will better serve that purpose. In addition, the proposed interest and fee total disclosure requirements would ensure that creditors must clearly disclose all costs; this should address concerns that eliminating the effective APR would remove disincentives for creditors to adopt fee-intensive pricing on HELOC accounts.

7(a) Rules Affecting Home-Equity Plans

In the January 2009 Regulation Z Rule, the Board provided in § 226.7(a) that at their option, creditors offering HELOCs subject to § 226.5b may comply with the periodic statement requirements of § 226.7(b) applicable to creditors offering open-end (not home-secured) credit, instead of the requirements in § 226.7(a). The Board provided this flexibility because some creditors may use a single processing system to generate periodic statements for all open-end products they offer, including HELOCs. These creditors would have the option to generate statements according to a single set of rules, until the Board completed its review of Regulation Z's disclosure rules for home-secured credit. In this proposal, the Board proposes to remove the option for creditors offering HELOCs to comply with the periodic statement requirements of § 226.7(b) applicable to creditors offering open-end (not home-secured) credit. Instead, creditors offering HELOCs subject to § 226.5b would have to comply with the requirements in § 226.7(a). Nonetheless, the proposed periodic statement requirements in § 226.7(a) applicable to HELOC creditors are substantially similar to the requirements in § 226.7(b) applicable to open-end (not home-secured) plans, except for provisions related to the itemization of interest charges in § 226.7(a)(6), and certain late-payment disclosures, minimum payment disclosures and formatting requirements related to those disclosures, as discussed in more detail below. The Board requests comment on whether creditors that currently use a single processing system to generate periodic statements for all open-end products they offer would be able to continue to do so under the proposal.

7(a)(1) Previous Balance

Section 226.7(a)(1), which implements TILA Section 127(b)(1), requires a creditor offering HELOCs subject to § 226.5b to disclose on the periodic statement the account balance outstanding at the beginning of the billing cycle. 15 U.S.C. 1637(b)(1). The Board proposes no changes to these disclosure requirements.

7(a)(2) Identification of Transactions

Section 226.7(a)(2), which implements TILA Section 127(b)(2), requires creditors offering HELOCs subject to § 226.5b to identify on the periodic statement transactions according to the rules in § 226.8. 15 U.S.C. 1637(b)(2). Some HELOC plans involve different features, such as a variable-rate feature and optional fixed-rate features. Comment 7(a)(2)-1 currently provides that in identifying transactions under § 226.7(a)(2) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature or in some other clear manner, such as by arranging the transactions in chronological order. The Board proposes technical revisions to this comment, without substantive change, to conform this comment to a similar comment applicable to open-end (not home-secured) credit plans. *See* comment 7(b)(2)-1. Specifically, the Board proposes to revise comment 7(a)(2)-1 to specify that creditors may, but are not required to, arrange transactions by feature. Thus, creditors offering HELOCs subject to § 226.5b would still be permitted to list transactions chronologically or organize transactions in any other way that would be clear to consumers. The Board also proposes to revise this comment to clarify, consistent with proposed § 226.7(a)(6), that all fees and interest must be grouped together under separate headings and may not be interspersed with transactions.

7(a)(3) Credits

Section 226.7(a)(3), which implements TILA Section 127(b)(3), requires creditors offering HELOCs subject to § 226.5b to disclose any credits to the account during the billing cycle. 15 U.S.C. 1637(b)(3). Creditors typically disclose credits among other transactions. The Board proposes to revise comment 7(a)(3)-1 to clarify that credits may be distinguished from transactions in any way that is clear and conspicuous; for example, by use of debit and credit columns or by use of plus signs for credits and minus *signs* for debits.

7(a)(4) Periodic Rates

Rates that "may be used." TILA Section 127(b)(5) requires creditors to disclose all periodic rates that may be used to compute the finance charge, and the APR that corresponds to the periodic rate multiplied by the number of periods in a year. *See* 15 U.S.C. 1637(b)(5); § 226.14(b). Prior to the January 2009 Regulation Z Rule, former comment 7(d)-1 interpreted the requirement to disclose all periodic rates that "may be used" to mean "whether or not [the rate] is applied during the billing cycle." In the January 2009 Regulation Z Rule, the Board adopted for HELOCs a limited exception to TILA Section 127(b)(5) regarding promotional rates that were offered but not actually applied, to effectuate the purposes of TILA to require disclosures that are meaningful and to facilitate compliance. Specifically, creditors offering HELOCs subject to § 226.5b are required to disclose a promotional rate only if the rate actually applied during the billing period. *See* § 226.7(a)(4)(ii) and comment 7(a)(4)-1. The Board noted that interpreting TILA to require the disclosure of all promotional rates would be operationally burdensome for creditors and result in information overload for consumers. This proposal retains the exception in § 226.7(a)(4)(ii).

Periodic rates. In this proposal, the Board proposes to eliminate the requirement to disclose periodic rates on periodic statements for HELOCs subject to § 226.5b. *See* proposed § 226.7(a)(4) and accompanying commentary. Under the proposal, creditors would still be required to disclose an APR that corresponds to each periodic rate that may be used to compute the finance charge. For example, assume a monthly periodic rate of 1.5 percent applies to transactions on a HELOC account. The corresponding APR to this periodic rate would be 18 percent. Under the proposal, creditors would be required to disclose the 18 percent corresponding APR, but would not be required to disclose the 1.5 percent periodic rate.

The Board proposes to eliminate the requirement to disclose periodic rates on periodic statements, pursuant to the Board's exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. *See* 15 U.S.C. 1604(f)(1). The Board must make this determination in light of specific factors. *See* 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

For this proposal, the Board considered each of these factors carefully, and based on that review, determined that the proposed exemption is appropriate. In consumer testing conducted for the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule, consumers indicated they do not use periodic rates to verify interest charges. Based on this consumer testing, the Board believes consumers are not likely to use periodic rates to verify interest charges for HELOC accounts. Requiring periodic rates to be disclosed on periodic statements may detract from more important information on the statement, and contribute to information overload. Thus, eliminating periodic rates from the periodic statement has the potential to further the goals of consumer protection and the informed use of credit for HELOCs more effectively than if they are included. The Board notes that under the proposal, creditors may continue to disclose the periodic rate, as long as the additional information is presented in a way that is consistent with creditors' duty to provide required disclosures clearly and conspicuously. *See* proposed comment app. G-15.

Labeling APRs. Currently creditors offering HELOCs subject to § 226.5b are provided with considerable flexibility in identifying the APR that corresponds to the periodic rate. Comment 7(a)(4)-4 permits labels such as "corresponding annual percentage rate," "nominal annual percentage rate," or "corresponding nominal annual percentage rate." This proposal would amend § 226.7(a)(4) to require creditors offering HELOCs subject to § 226.5b to label the APR disclosed under § 226.7(a)(4) as the "annual percentage rate." Comment 7(a)(4)-4 would be deleted. The proposal is intended to promote uniformity in ***how*** the "interest only" APR is described in HELOC disclosures. Under §§ 226.5b and 226.6, creditors must use the term "annual percentage rate" to describe the "interest only" APR(s) that must be disclosed in the tabular disclosures described in proposed § 226.5b(b) provided to a consumer within three business days after the consumer submits an application (but no later than account opening) and in the tabular disclosures described in proposed § 226.6(a)(1) provided at account opening. *See* proposed Model Forms G-14(A) and G-15(A).

Combining interest and other charges. Currently, creditors offering HELOCs subject to § 226.5b must disclose finance charges attributable to periodic rates. These costs are typically interest charges but may include other costs such as premiums for required credit insurance. If applied to the same balance, creditors may disclose each rate, or a combined rate. *See* comment 7(a)(4)-3. As discussed below, consumer testing for the Board conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule indicated that participants appeared to understand credit costs in terms of "interest" and "fees." Because consumers tend to associate periodic rates with "interest," it seems unhelpful to consumers' understanding to permit creditors to include periodic rate charges other than interest in the dollar cost disclosed for "interest." Thus, the Board proposes to require creditors offering HELOCs subject to § 226.5b that impose finance charges attributable to periodic rates (other than interest) to disclose the amount of those charges in dollars as a "fee." *See* section-by-section analysis to § 226.7(a)(6) below. This proposal would delete current guidance in comment 7(a)(4)-3, which permits periodic rates attributable to interest and other finance charges to be combined.

In addition, the Board proposes to add new comment 7(a)(4)-4 to provide guidance to creditors when a fee is imposed, remains unpaid, and interest accrues on the unpaid balance. The proposed comment provides that creditors disclosing fees in accordance with the format requirements of § 226.7(a)(6) need not separately disclose which periodic rate applies to the unpaid fee balance. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.

7(a)(5) Balance on Which Finance Charge Is Computed

Section 226.7(a)(5), which implements TILA Section 127(b)(7), currently requires creditors offering HELOCs subject to § 226.5b to disclose the amount of the balance to which a periodic rate was applied and an explanation of ***how*** the balance was determined. 15 U.S.C. 127(b)(7) The Board provides model clauses that creditors may use to explain common balance computation methods. *See* Model Clauses G-1. The staff commentary to § 226.7(a)(5) interprets ***how*** creditors may comply with TILA in disclosing the "balance," which typically changes in amount throughout the cycle, on periodic statements.

*Explanation of **how** finance charges may be verified*. In disclosing the amount of the balance to which a periodic rate was applied, creditors offering HELOCs subject to § 226.5b that use a daily balance method are permitted to disclose an average daily balance for the period, so long as they explain that the amount of the finance charge can be verified by multiplying the average daily balance by the number of days in the statement period, and then applying the periodic rate. *See* comment 7(a)(5)-4. The Board proposes to revise comment 7(a)(5)-4 to permit creditors offering HELOCs subject to § 226.5b, at their option, not to include an explanation of ***how*** the finance charge may be verified for creditors that use a daily balance method. As a result, the Board proposes to retain the rule permitting creditors to disclose an average daily balance but eliminate the requirement to provide the explanation. Consumer testing conducted for the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule suggested that the explanation may not be used by consumers as an aid to calculate their interest charges. Participants suggested that if they had questions about ***how*** the balances were calculated or wanted to verify interest charges based on information on the periodic statement, they would call the creditor for assistance. Based on this consumer testing, the Board believes that the explanation may not be useful to consumers with HELOC accounts.

In addition, the Board proposes to require creditors offering HELOCs subject to § 226.5b to refer to the balance as "balances subject to interest rate," to complement proposed revisions intended to further consumer understanding of interest charges, as distinguished from fees. *See* section-by-section analysis to § 226.7(b)(6). Proposed Samples G-24(B) and G-24(C) illustrate this format requirement.

Explanation of balance computation method. As discussed above, creditors offering HELOCs subject to § 226.5b currently must disclose the amount of the balance to which a periodic rate was applied and an explanation of ***how*** the balance was determined This proposal contains an alternative to providing an explanation of ***how*** the balance was determined. Under proposed § 226.7(a)(5), a creditor that uses a balance computation method identified in § 226.5a(g) would have two options. The creditor could: (1) Provide an explanation, as the rule currently requires, or (2) identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain more information from the creditor about ***how*** the balance is computed and resulting interest charges are determined. If the creditor uses a balance computation method that is not identified in § 226.5a(g), the creditor would be required to provide a brief explanation of the method. Under the proposal, comment 7(a)(5)-6, which refers creditors to guidance in comment 6(a)(1)(ii)-1 about disclosing balance computation methods, would be deleted as unnecessary. The Board's proposal is guided by the following factors.

Calculating balances on open-end plans can be complex, and requires an understanding of ***how*** creditors allocate payments, assess fees, and record transactions as they occur during the cycle. Currently, neither TILA nor Regulation Z requires creditors to disclose on periodic statements all the information necessary to compute a balance, and requiring that level of detail appears unwarranted. Although the Board's model clauses are intended to assist creditors in explaining common balance computation methods, consumers continue to find these explanations lengthy and complex. As stated earlier, consumer testing conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule indicates that consumers call the creditor for assistance when they have questions on ***how*** to calculate balances and verify interest charges.

7(a)(6) Charges Imposed

Section 227.7(a)(6)(i), which implements TILA Section 127(b)(4), requires creditors offering HELOC subject to § 226.5b to disclose on the periodic statement the amount of any finance charge added to the account during the period, itemized to ***show*** amounts due to the application of periodic rates and the amount imposed as a fixed or minimum charge. 15 U.S.C. 1637(b)(4). In addition, § 226.7(a)(6)(ii) requires these creditors to disclose on the periodic statement the amount, itemized and identified by type, of any "other charges" debited to the account during the billing cycle. Some charges do not fall with the "finance charge" and "other charges" categories and thus are not required to be disclosed on the periodic statement even if they are imposed in a particular billing cycle. *See* current comment 6(a)(2)-2.

As discussed in the section-by-section analysis to proposed § 226.6(a)(3), the Board proposes to create a single category of charges, namely "charges imposed as part of home-equity plans." Consistent with proposed § 226.6(a)(3), proposed § 226.7(a)(6) requires creditors offering HELOCs subject to § 226.5b to disclose on the periodic statement the amount of any charge imposed as part of a HELOC plan, as stated in proposed § 226.6(a)(3), for the statement period. Charges imposed as part of a HELOC plan consist of two types of charges--interest and fees. Proposed § 226.7(a)(6)(ii) establishes periodic statement disclosure requirements for interest charges. If different periodic rates apply to different types of transactions, creditors offering HELOCs subject to § 226.5b would be required to itemize interest charges for the statement period by type of transaction or group of transactions subject to different periodic rates. The Board proposes that these itemized interest charges must be grouped together. In addition, the Board proposes to require a creditor to disclose a total of interest charges disclosed for the statement period and calendar year. *See* proposed § 226.7(a)(6)(ii). Proposed § 226.7(a)(iii) establishes periodic statement disclosure requirements for fees. The Board proposes that fee imposed during the statement period must be itemized and grouped together, and a total of fees disclosed for the statement period and calendar year to date. *See* proposed § 226.7(a)(6)(iii). In addition, the Board proposes that these disclosures regarding interest and fees must be grouped together in proximity to the transactions identified under § 226.7(a)(2), in a manner substantially similar to Sample G-24(A) in Appendix G to part 226. *See* proposed § 226.7(a)(6)(i).

Charges imposed as part of the plan. As discussed above, under the proposal, creditors would be required to disclose on the periodic statement the amount of any charges imposed as part of a HELOC plan, as stated in proposed § 226.6(a)(3), for the statement period. Guidance on which charges would be deemed to be imposed as part of the plan is in proposed § 226.6(a)(3)(ii) and accompanying commentary. As discussed in the section-by-section analysis to proposed § 226.6(a)(3), coverage of charges is broader under the proposed standard of "charges imposed as part of the plan" than under current standards for finance charges and other charges. While the Board understands that some creditors offering HELOCs subject to § 226.5b have been disclosing on the statement all charges debited to the account regardless of whether they are now defined as "finance charges," "other charges," or charges that do not fall into either category, other creditors currently do not disclose on periodic statements the charges that fall outside the current "finance charge" and "other charge" categories. Nonetheless, the Board believes that requiring creditors to disclose on the periodic statement all charges imposed as part of the

HELOC plan that are charged during a particular billing cycle would help ensure that consumers are informed of these charges

Labeling costs imposed as part of the plan as interest or fees. For creditors offering HELOCs subject to § 226.5b, the Board proposes to delete the requirement in § 226.7(a)(6) to label finance charges as such. Consumer testing conducted for the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule indicated that most participants reviewing mock credit card periodic statements could not correctly explain the term "finance charge." Consumers generally understand interest as the cost of borrowing money over time and view other costs--regardless of their characterization under TILA and Regulation Z--as fees. Based on this consumer testing, the Board proposes to amend § 226.7(a)(6) to label costs as either "interest charge" or "fees" rather than "finance charge" to align more closely with consumers' understanding.

Interest charges. TILA Section 127(b)(4) requires creditors to disclose on periodic statements the amount of any finance charge added to the account during the period, itemized to ***show*** amounts due to the application of periodic rates and the amount imposed as a fixed or minimum charge. *See* 15 U.S.C. 1637(b)(4). This current requirement with respect to creditors offering HELOCs subject to § 226.5b is implemented in § 226.7(a)(6)(i), which gives considerable flexibility regarding totaling or subtotaling finance charges attributable to periodic rates and other fees. *See* current § 226.7(a)(6)(i) and comments 7(a)(6)(i)-1, -2, -3, and -4. As discussed in more detail below, the Board proposes to amend § 226.7(a)(6) to require creditors offering HELOCs subject to § 226.5b to disclose total interest charges, for the statement period and year to date, labeled as such. In addition, if different periodic rates apply to different types of transactions, creditors offering HELOCs subject to § 226.5b would be required to itemize finance charges attributable to interest by type of transaction, or group of transactions subject to different periodic interest rates, labeled as such. Creditors offering HELOCs subject to § 226.5b, at their option, would be allowed to itemize interest charges by transaction type, even if the same periodic interest rates apply to those transactions. A creditor would be required to group all itemized interest charges on an account together, regardless of whether the interest charges are attributable to different authorized users or subaccounts. *See* proposed § 226.7(a)(6)(ii). Under this proposal, finance charges attributable to periodic rates other than interest charges, such as required credit insurance premiums, would be required to be identified as fees and would not be permitted to be combined with interest costs. *See* proposed comments 7(a)(4)-3 and 7(a)(6)-3.

The Board understands that for most HELOCs subject to § 226.5b, the same variable rate on the account applies to most transactions on the account, regardless of the type of transactions (*e.g*., purchases or cash advances) and regardless of whether these transactions are initiated by check, wire transfer or by a credit card device linked to the HELOC. In some cases, creditors may offer optional features on the HELOC at different periodic interest rates from the generally applicable variable rate feature, such as fixed-rate features. Under the proposal, in this example, creditors offering HELOCs subject to § 226.5b would be required to itemize the interest charges applicable to the general variable-rate feature separate from the interest charges applicable to other features (such as fixed rate optional features) that are subject to different periodic interest rates. Proposed Sample G-24(A) in Appendix G to part 226 illustrates the proposal.

Although creditors offering HELOCs subject to § 226.5b are not currently required to itemize interest charges, these creditors often do so. For example, creditors may separately disclose the dollar interest costs associated with advances under the general variable-rate feature and advances under fixed-rate optional features. The Board believes that the breakdown of interest charges by features subject to different periodic interest rates enables consumers to better understand the cost of using each feature.

This proposal regarding itemization of interest charges differs from the provision for itemization of interest charges applicable to open-end (not home-secured) credit plans that the Board adopted in the January 2009 Regulation Z Rule. Specifically, creditors offering open-end (not home-secured) credit plans must itemize interest charges by transaction type, regardless of whether the same rate applies to the types of transactions. Unlike for open-end (not home-secured) credit, the Board is not proposing for HELOC accounts to require an itemization of interest charges by transaction type in all cases, even if the same rates apply to those types of transactions (although creditors are permitted to do so). The distinction between types of transactions (such as purchases and cash advances) is generally more important for open-end (not home-secured) credit plans--particularly unsecured credit card accounts--than for HELOCs. For unsecured credit card accounts, different rates, fees and other account terms typically apply to purchases and cash advances. The Board believes that requiring a breakdown of interest charges by transactions type in all cases for unsecured credit cards, even if a particular unsecured credit card does not apply different rates to purchases and cash advances, provides for uniformity in periodic statements and allows consumers to compare more easily one unsecured credit card account with other unsecured credit card accounts the consumer may have. As discussed above, most HELOC accounts do not charge different rates on purchases and cash advances.

Fees. For HELOC accounts, existing § 226.7(a)(6)(ii) requires the disclosure of "other charges" parallel to the requirement in TILA Section 127(a)(5) and § 226.6(b) to disclose such charges at account opening. *See* 15 U.S.C. 1637(a)(5). Consistent with current rules to disclose "other charges," proposed § 226.7(a)(6)(iii) requires that charges other than interest be identified consistent with the feature (*e.g*., cash advances or fixed-rate transactions) or type (*e.g*., late-payment or over-the-limit), and itemized. The proposal differs from current requirements in the following respect: Fees would be required to be grouped together and a total of all fees for the statement period and year to date would be required, as discussed in more detail below.

In consumer testing conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule, the Board tested in the fall of 2008 consumers' ability to identify fees (1) on periodic statements where fees were grouped together and (2) on periodic statements where fees were interspersed with transactions, and the fees and transactions were listed in chronological order. Testing evidence ***showed*** that the periodic statement with grouped fees performed better among participants with respect to identifying fees.

Consumers' ability to match a transaction fee to the transaction giving rise to the fee was also tested. Among participants who correctly identified the transaction to which they were ***asked*** to find the corresponding fee, a larger percentage of consumers who saw a statement on which account activity was arranged chronologically were able to match the fee to the transaction than when the fees were grouped together; however, out of the participants who were able to identify the transaction to which they were ***asked*** to find the corresponding fee, the percentage of participants able to find the corresponding fee was very high for both types of listings.

The Board believes that the ability to identify all fees is important for consumers to assess their cost of credit. As discussed above, the Board would expect that the vast majority of consumers with HELOC accounts would not comprehend the effective APR; thus, the Board believes that highlighting fees and interest for consumers would more effectively inform consumers of their costs of credit on HELOC accounts. As also discussed above, the results of consumer testing on credit card disclosures indicated that grouping fees together on periodic statements for unsecured credit cards helped consumers find fees more easily. Based on this consumer testing, the Board proposes under § 226.7(a)(6)(iii) to require creditors offering HELOCs subject to § 226.5b to group fees together. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Under the proposal, a creditor would be required to group all fees assessed on the account during the billing cycle together under one heading even if fees may be attributable to different users of the account or to different sub-accounts.

The Board solicits comment on this aspect of the proposal. Specifically, the Board solicits comment on whether grouping fees together (and not allowing them to be interspersed with transactions) is necessary to help consumer find fees more easily on HELOC accounts. The Board understands that consumers may use unsecured credit cards differently than HELOC accounts, even where the HELOC is linked to a credit card device. For example, consumers may use unsecured credit cards to engage in a significant number of smaller transactions per billing cycle. On the other hand, consumers appear to use their HELOC accounts for only a small number of larger transactions each billing cycle, even if those HELOCs are linked to credit card devices. Consumers may have more difficulty identifying fees on unsecured credit cards when the fees are interspersed with transactions because of the large number of transactions ***shown*** on the periodic statement. The Board solicits comment on the typical number of transactions and fees ***shown*** on periodic statements for HELOC accounts. The Board also solicits comment on the burden on creditors and the benefit to consumers of requiring fees to be grouped together on periodic statements for HELOC accounts.

Cost totals for the statement period and year to date. Under this proposal, creditors offering HELOCs subject to § 226.5b would be required to disclose the total amount of interest charges and fees for the statement period and calendar year to date. *See* proposed § 226.7(a)(6)(ii) and (iii). The Board believes that providing consumers with the total of interest and fee costs, expressed in dollars, for the statement period and year to date would be a significant enhancement to consumers' ability to understand the overall cost of credit for the account. The Board's consumer testing on credit card disclosures in relation to the January 2009 Regulation Z Rule indicates that consumers notice and understand credit costs expressed in dollars. In addition, year-to-date cost information enables consumers to evaluate ***how*** the use of an account may impact the amount of interest and fees charged over the year and thus promotes the informed use of credit.

Proposed comment 7(a)(6)-3 provides guidance on ***how*** creditors may disclose the year-to-date totals at the end of a calendar year on monthly and quarterly statements. Proposed comment 7(a)(6)-5 provides guidance on creditors' duty to reflect refunded fees or interest in year-to-date totals.

Proposed comments 7(a)-6 and -7 clarify a creditor's obligations under § 227.7(a)(6) when it acquires a HELOC account from another creditor or when a creditor replaces one HELOC account it has with a consumer with another HELOC account. The proposed comments would generally provide that the creditor must include the interest charges and fees incurred by the consumer prior to the account acquisition or replacement in the aggregate totals provided for the statement period and calendar year to date after the change. At the creditor's option, the creditor would be allowed to add the prior charges and fees to the disclosed totals following the change, or it may provide separate totals for each time period. Comment is requested regarding the operational issues associated with carrying over cost totals in the circumstances described in the proposed commentary.

Format requirements. Under proposed § 226.7(a)(6)(i), interest charges and fees must be grouped together and listed in proximity to transactions identified under § 226.7(a)(2), in a manner substantially similar to proposed Sample G-24(A) in Appendix G to part 226. In consumer testing conducted by the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule, consumers consistently reviewed transactions identified on their periodic statements and noticed fees and interest charges when they were grouped together, and disclosed in proximity to the transactions on the statement. The Board believes that similar results would exist with respect to HELOC accounts. Some HELOC creditors also disclose these costs in account summaries or in a progression of figures associated with disclosing finance charges attributable to periodic interest rates. This proposal does not affect creditors' flexibility to provide this information in these summaries. *See* proposed Samples G-24(B) and G-24(C), which illustrate, but do not require, these summaries. Nonetheless, creditors would be required to group interest charges and fees together and list them in proximity to transaction identified in § 226.7(a)(2), regardless of whether these creditors also provide information about interest and fees in the account summaries. The Board believes that TILA's purpose to promote the informed use of credit would be furthered significantly if consumers are uniformly provided basic cost information--interest and fees--in a location they routinely review.

7(a)(7) Change-in-Terms and Increased Penalty Rate Summary

For the reasons set forth in the section-by-section analysis to proposed § 226.9(c) and (i), the Board proposes to require creditors that provide a change-in-terms notice required by proposed § 226.9(c)(1), or a rate increase notice required by proposed § 226.9(i), on or with the periodic statement, to disclose the information in proposed § 226.9(c)(1)(iii)(A) or proposed § 226.9(i)(3) on the periodic statement in accordance with the format requirements in proposed § 226.9(c)(1)(iii)(B), and proposed § 226.9(i)(4).

7(a)(8) Grace Period

Section 226.7(a)(8), which implements TILA Section 127(b)(9), requires a creditor offering HELOCs subject to 226.5b to disclose on the periodic statement the date by which or the time period within which the new balance or any portion of the new balance must be paid to ***avoid*** additional finance charges. 15 U.S.C. 1637(b)(9). If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

Comment 7(a)(8)-1 provides that although the creditor is required under § 226.7(a)(8) to indicate on the periodic statement any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the account-opening disclosure statement.

The Board proposes to revise this comment to provide that in describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement and to cross reference proposed § 226.6(a)(2)(xxi) that contains required terminology that a creditor must use in describing a grace period beneath the account-opening table described in proposed § 226.6(a)(1). As discussed in the section-by-section analysis to proposed § 226.6(a)(2)(xxi), the Board proposes to require that a creditor disclose below the account-opening table the date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. In disclosing a grace period that applies to all features on the account, the Board proposes to require a creditor to use the phrase "***How*** to ***Avoid*** Paying Interest" as the heading for the information below the table describing the grace period.

7(a)(9) Address for Notice of Billing Errors

Consumers who allege billing errors must do so in writing. *See* 15 U.S.C. 1666; § 226.13(b). Section 226.7(a)(9), which implements TILA Section 127(b)(10), requires creditors offering HELOCs subject to § 226.5b must provide on or with periodic statements an address for this purpose. 15 U.S.C. 1637(b)(10). Former comment 7(k)-1 provides that creditors may also provide a telephone number along with the mailing address as long as the creditor makes clear a telephone call to the creditor will not preserve consumers' billing error rights. In many cases, an inquiry or question can be resolved in a phone conversation, without requiring the consumer and creditor to engage in a formal error resolution procedure.

In the January 2009 Regulation Z Rule, the Board moved this comment to 7(a)(9)-2 and updated it to address notification by e-mail or via a Web site. Specifically, this comment states that the address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or via a Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning. (See also comment 13(b)-2, which addresses circumstances under which electronic notices are deemed to satisfy the written billing error requirement.) This rule gives consumers flexibility to attempt to resolve inquiries or questions about billing statements informally, while advising them that if the matter is not resolved in a telephone call or via e-mail, mail, the consumer must submit a written inquiry to preserve billing error rights. Under this proposal, the revised comment would be retained in 7(a)(9)-2.

7(a)(10) Closing Date of Billing Cycle; New Balance

Section 226.7(a)(10), which implements TILA Section 127(b)(8), requires creditors offering HELOCs subject to § 226.5b to disclose the closing date of the billing cycle and the account balance outstanding on that date. 15 U.S.C. 1637(b)(8). The Board proposes no changes to these disclosure requirements.

Late-Payment Disclosures

In 2005, the Bankruptcy Act amended TILA to add Section 127(b)(12), which required creditors that charge a late-payment fee to disclose on the periodic statement (1) the payment due date, or, if the due date differs from when a late-payment fee would be charged, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. *See* 15 U.S.C. 1637(b)(12). In the January 2009 Regulation Z Rule, the Board implemented this section of TILA for open-end (not home-secured) plans. In addition, in the **SUPPLEMENTARY INFORMATION** to the January 2009 Regulation Z Rule, the Board stated its intention to implement this section of TILA for HELOC accounts subject to § 226.5b as part of its review of rules affecting home-secured credit.

The Credit Card Act (cited above) was enacted in May 2009. Section 202 of the Credit Card Act amends TILA Section 127(b)(12) to provide that for a "credit card account under an open-end consumer credit plan," a credit card issuer that charges a late-payment fee must disclose in a conspicuous location on the periodic statement (1) the payment due date, or, if the due date differs from when a late-payment fee would be charged, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. In addition, if a late payment may result in an increase in the APR applicable to the account, a credit card issuer also must provide on the periodic statement a disclosure of this fact, along with the applicable penalty APR. The disclosure related to the penalty APR must be placed in close proximity to the due-date disclosure discussed above. Finally, if a credit card issuer is a financial institution which maintains branches or offices at which payments on a credit card account under an open-end consumer credit plan are accepted from a cardholder in person, the date on which the cardholder makes a payment on the account at the branch or office must be considered to be the date on which the payment is made for determining whether a late-payment fee may be imposed due to the failure of the cardholder to make payment by the due date for such payment. These amendments to TILA Section 127(b)(12) become effective February 22, 2010. *See* Credit Card Act § 3.

The Board is interpreting the term "credit card account under an open-end consumer credit plan," as that term is used in TILA Section 127(b)(12), not to include HELOC accounts subject to § 226.5b, even if those accounts may be accessed by a credit card device. Thus, the provisions in TILA Section 127(b)(12), as amended by the Credit Card Act, would not apply to HELOC accounts. The Board makes this interpretation pursuant to its authority in TILA Section 105(a) to prescribe regulations to carry out the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a).

In addition, the Board does not propose to use its authority in TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA to apply newly-revised TILA Section 127(b)(12) to HELOC accounts subject to § 226.5b. 15 U.S.C. 1604(a). The Board believes that the late-payment disclosures and the provision about crediting of payments made at a financial institution's branches or offices are not needed for HELOC accounts to effectuate the purposes of TILA. The consequences to a consumer of not making the minimum payment by the due date are less severe for HELOC accounts than for unsecured credit cards. As discussed in more detail below, unlike with unsecured credit cards, creditors offering HELOC accounts subject to § 226.5b typically do not impose a late-payment fee until 10-15 days after the payment is due. In addition, under the proposal, creditors offering HELOC accounts would be restricted from terminating and accelerating the account, permanently suspending the account or reducing the credit line, or imposing penalty rates or penalty fees (except for the contractual late-payment fee) for a consumer's failure to pay the minimum payment due on the account, unless the payment is more than 30 days late.

Late-payment fee. For HELOC accounts, the Board does not believe that disclosure of the late-payment fee is needed on the periodic statement to effectuate the purposes of TILA. The Board understands that creditors offering HELOCs subject to § 226.5b generally are restricted by state law, or the terms of the account agreement or both, from imposing a late-payment fee until a certain number of days have elapsed following a due date--typically 10-15 days after the due date. In contrast, most unsecured credit card issuers will impose a late-payment fee if the payment is not received by the due date. Some unsecured credit card issuers may provide informal "courtesy periods" that are not part of the legal agreement where the card issuer will not impose a late-payment fee if a cardholder's payment is received after the due date but before the end of the "courtesy period." Nonetheless, these "courtesy periods" are typically only one to three days, not 10-15 days long.

In addition, some unsecured credit card issuers currently consider payment in person at their branches or offices to be non-conforming payments, and thus, under current Regulation Z, may delay crediting of these payments for up to five days after these payments are received at the branch or office. *See* current § 226.10(b). Under the Credit Card Act, unsecured credit card issuers must consider the date on which a person makes payment in person at the issuer's branches or offices as the date on which the payment is made for determining whether a late-payment fee may be imposed. By contrast, even if creditors offering HELOCs subject to § 226.5b treat payments in person at branches or offices as non-conforming payments and delay crediting of these payments for up to five days after the payments are received, this delay in crediting typically will not result in late-payment fees because, as discussed above, creditors for HELOC accounts typically do not impose late-payment fees until the account is 10-15 days past due.

Penalty rates and fees. Under the Credit Card Act, if a late payment may result in an increase in the APR applicable to the account, a credit card issuer offering an unsecured credit card account must provide on the periodic statement a disclosure that a late payment may result in a penalty APR, along with the applicable penalty APR. For unsecured credit card accounts, some credit card issuers currently increase the rates applicable to both existing balances and new transactions on a consumer's account to a penalty rate if a consumer does not pay by the due date just one time. Under Section 101 of the Credit Card Act, unsecured credit card issuers would be restricted from increasing a rate or fee during the first year after an account is opened unless the consumer is more than 60 days late in making the minimum payment, in which case the creditor could apply the increase rate or fee to existing balances and new transactions. *See* Credit Card Act § 101(b). After the first year an account is opened, unsecured credit card issuers may increase rates or fees on new transactions for a late payment, even if the consumer is only one day late in making the minimum payment. If the consumer is more than 60 days late, an unsecured credit card issuer may increase the rates or fees on all transactions (including existing balances). Credit Card Act § 101(d). These provisions become effective February 22, 2010. *See* Credit Card Act § 3.

The Board does not believe that a disclosure of the penalty APR on the periodic statement is needed for HELOC accounts to effectuate the purposes of TILA. In this proposal, the Board proposes strict limits on when penalty rates or penalty fees may be imposed for HELOCs subject to § 226.5b. As discussed in the section-by-section analysis to § 226.5b(f), the Board proposes to restrict creditors offering HELOCs subject to § 226.5b from imposing a penalty rate or penalty fees (except for a contractual late-payment fee) on the account for a consumer's failure to pay the account when due, unless the consumer is more than 30 days late in paying the account. As discussed above, under the Credit Card Act, after the first year an account is opened, unsecured credit card issuers may increase rates or fees on new transactions for a late payment, even if the consumer is only one day late in making the minimum payment. Unlike with unsecured credit cards, even after the first year that the account is open, creditors offering HELOC accounts subject to § 226.5b could not impose penalty rates or penalty fees (except for a contractual late-payment fee) on new transactions for a consumer's failure to pay the minimum payment on the account, unless the consumer's payment is more than 30 days late.

Other actions. Under the proposal, HELOC creditors would not be restricted from temporarily suspending the account or reducing the line if a consumer does not pay by the due date (assuming that failure to pay by the due date is considered a default of a material obligation under the HELOC contract). *See* § 226.5b(f)(3)(vi)(C). Nonetheless, even though creditors may have the right under the HELOC contract to suspend temporarily the account or reduce the credit line if a consumer does not pay by the due date (*i.e.*, one day delinquent on the account), the Board understands that creditors typically do not temporarily suspend the account or reduce the credit line until the consumer's payment is at least 10-15 days late on the account, and oftentimes later.

For all the reasons discussed above, the Board does not propose to use its authority under TILA Section 105(a) to require creditors offering HELOC accounts subject to § 226.5b to provide the late-payment disclosures on periodic statements, or to comply with the provision about crediting of payments made at a financial institution's branches or offices, as set forth in the Credit Card Act. The Board solicits comment on this aspect of the proposal.

Minimum Payment Disclosures

The Bankruptcy Act added TILA Section 127(b)(11) to require creditors that extend open-end credit to provide a disclosure on the front of each periodic statement in a prominent location about the effects of making only minimum payments. 15 U.S.C. 1637(b)(11). This disclosure included: (1) A "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of ***how*** long it would take to pay off a specified balance if only minimum payments are made; and (3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay his or her actual account balance.

In the January 2009 Regulation Z Rule, the Board implemented this section of TILA. In that rulemaking, the Board limited the minimum payment disclosures required by the Bankruptcy Act to credit card accounts, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The Board exempted all HELOC accounts from the minimum payment disclosures required by the Bankruptcy Act, even where the HELOC account could be accessed by a credit card device. In the **SUPPLEMENTARY INFORMATION** to the January 2009 Regulation Z Rule, the Board explained that the minimum payment disclosures would not appear to provide additional information to consumers that is not already disclosed to them with the application under § 226.5b(d)(5)(i) and at account opening under § 226.6(a)(3)(ii). Specifically, § 226.5b(d)(5)(i) requires a creditor to disclose with the application the length of the draw period and any repayment period. A creditor is also required to provide this information at account opening under § 226.6(a)(3)(ii). The Board stated that these disclosures appear to be sufficient for HELOC consumers because, unlike most unsecured credit card accounts, most HELOCs have a fixed repayment period determinable at the outset of the plan. In addition, the Board stated that the cost to creditors of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, appeared not to be justified by the limited benefit to consumers.

The Credit Card Act substantially revised this section of TILA. Specifically, Section 201 of the Credit Card Act amends TILA Section 127(b)(11) to provide that creditors that extend open-end credit must provide the following disclosures on each periodic statement: (1) A "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the number of months that it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and if no further advances are made; (3) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made; (4) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and (5) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services. *See* Credit Card Act § 201. These provisions become effective February 22, 2010. *See* Credit Card Act § 3.

The Board proposes that the minimum payment disclosures required by TILA Section 127(b)(11), as amended by the Credit Card Act, not apply to HELOC accounts, including HELOC accounts that can be accessed by a credit card device. The Board proposes this rule pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. *See* 15 U.S.C. 1604(f)(1). The Board must make this determination in light of specific factors. *See* 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes that the proposed exemption is appropriate. The Board believes that the minimum payment disclosures in the Credit Card Act would be of limited benefit to consumers for HELOC accounts and are not necessary to effectuate the purposes of TILA. As discussed above, the Board understands that most HELOCs have a fixed repayment period. Under the proposal, creditors offering HELOCs subject to § 226.5b would be required to disclose the length of the plan, the length of the draw period and the length of any repayment period in the disclosures that must be given within three business days after application (but not later than account opening). *See* proposed § 226.5b(d)(9)(i). In addition, this information also must be disclosed at account opening under proposed § 226.6(a)(2)(v)(A). Thus, for a HELOC account with a fixed repayment period, a consumer could learn from those disclosures the amount of time it would take to repay the HELOC account if the consumer only makes required minimum payments. The cost to creditors of providing this information a second time, including the costs to reprogram periodic statement systems, appears not to be justified by the limited benefit to consumers.

In addition, the Board does not believe that the disclosure about total cost to the consumer of paying that balance in full (if the consumer pays only the required minimum monthly payments and if no further advances are made) would be useful to consumers for HELOC accounts. The Board understands that HELOC consumers intend to finance the transactions made on the HELOC account over a number of years, and often will not have the ability to repay the balances on the HELOC account at the end of each billing cycle, or even within a few years. By contrast, consumers tend to use unsecured credit cards to engage in a significant number of small dollar transactions per billing cycle, and may not intend to finance these transactions for many years. HELOC consumers, however, tend to use HELOC accounts for larger transactions that they can finance at a lower interest rate than is offered on unsecured credit cards, and intend to repay these transactions over the life of the HELOC account. To illustrate, the Board's 2007 Survey of Consumer Finances data indicates that the median balance on HELOCs (for families that had a balance at the time of the interview) was $ 24,000, while the median balance on credit cards (for families that had a balance at the time of the interview) was $ 3,000. [40]

The nature of consumers' use of HELOCs also underlie the Board's belief that periodic disclosure of the monthly payment amount required for the consumer to eliminate the outstanding balance in 36 months, and the total cost to the consumer of paying that balance in full if the consumer pays the balance over 36 months, would not provide useful information to consumers for HELOC accounts.

For all these reasons, the Board proposes to exempt HELOC accounts (even when they are accessed by a credit card account) from the minimum payment disclosure requirements set forth in TILA Section 127(b)(11), as revised by the Credit Card Act.

Format Requirements Related to Late-Payment and Minimum Payment Disclosures

Under the January 2009 Regulation Z Rule, creditors offering open-end (not home-secured) plans are required to disclose the payment due date on the front side of the first page of the periodic statement. The amount of any late-payment fee and penalty APR that could be triggered by a late payment is required to be disclosed in close proximity to the due date. In addition, the ending balance and the minimum payment disclosures must be disclosed

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[40] Brian Bucks,*et al*., Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 2009).

closely proximate to the minimum payment due. Also, the due date, late-payment fee, penalty APR, ending balance, minimum payment due, and the minimum payment disclosures must be grouped together. *See* § 226.7(b)(13). In the Supplementary Information to the January 2009 Regulation Z Rule, the Board stated that these formatting requirements were intended to fulfill Congress' intent to have the new late payment and minimum payment disclosures enhance consumers' understanding of the consequences of paying late or making only minimum payments. Because the Board proposes not to require the late-payment disclosures (*i.e*., the due date, late-payment fee and penalty APR) and the minimum payment disclosures for HELOC accounts, the Board proposes not to require the format requirements described above for HELOC accounts.

Section 226.9 Subsequent Disclosure Requirements

Section 226.9 sets forth a number of disclosure requirements that apply after a HELOC subject to § 226.5b is opened, including a requirement to provide at least 15 days' advance notice whenever a term required to be disclosed in the account-opening disclosures is changed, and a requirement to provide notice of the action taken and specific reasons for the action when a HELOC creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(i) or (f)(3)(vi).

9(c) Change in Terms

Under § 226.9(c) of Regulation Z, a creditor must notify a consumer of certain changes to the terms of an open-end plan. The general rule has been that a change-in-terms notice must be given 15 days in advance of the effective date of the change, with some exceptions. Advance notice has not been required in all cases; for example, if an interest rate increases due to a consumer's default or delinquency, notice has been required, but not in advance of the rate increase. In addition, no notice (either advance or contemporaneous) has been required if the specific change is set forth in the account-opening disclosures.

In the January 2009 Regulation Z Rule, the Board adopted a number of revisions to the requirements for change-in-terms notices. The revisions are intended to improve consumers' awareness about changes to their account terms or increased rates due to delinquency, default, or otherwise as a penalty, and to enhance consumers' ability to shop for alternative financing before the changes become effective. First, the revisions expand the circumstances in which consumers receive advance notice of changed terms, or of increased rates due to delinquency or default or otherwise as a penalty. Second, the revisions provide consumers with earlier notice. Third, the revisions introduce format requirements to make the disclosures about changes in terms, or of increased rates due to delinquency, default or otherwise as a penalty, more effective.

The January 2009 revisions to the change-in-terms notice rules do not affect HELOCs subject to § 226.5b; the revised rules for credit card and other open-end (not home-secured) credit appear in § 226.9(c)(2) and 226.9(g) (for increased rates due to delinquency, default or otherwise as a penalty), while the existing rules are preserved for HELOCs in § 226.9(c)(1). In the January 2009 Regulation Z Rule, the Board stated that the change-in-terms rules for HELOCs would be addressed in the review of open-end (home-secured) credit.

The Board is proposing to revise the change-in-terms rules for HELOCs to parallel generally the revisions adopted for open-end (not home-secured) credit, including with regard to the circumstances covered, timing, and format, although with some differences. The Board believes that the purposes underlying the revisions to the change-in-terms rules for open-end (not home-secured) credit--to improve consumers' awareness of changes in their account terms and to enhance consumers' ability to seek alternative sources of credit--are applicable to HELOC credit as well. The proposed revisions to § 226.9(c)(1) are explained in the section-by-section discussion below. The proposal regarding notice of increased rates due to delinquency, default or otherwise as a penalty would be set forth in new § 226.9(*i*) and is explained in the section-by-section discussion of that section. In addition to the substantive changes discussed below, other minor revisions would be made, such as to change cross-references as appropriate for new or renumbered provisions, substitute examples and other wording appropriate for HELOCs for wording appropriate for credit card accounts or other open-end (not home-secured) credit, or conform wording to the revised wording in § 226.9(c)(2) for open-end (not home-secured) credit.

9(c)(1) Rules Affecting Home-Equity Plans

Comment 9(c)(1)-1, which discusses changes that do not require notice because the specific change has been set forth in the account-opening disclosures, would be revised. First, the phrase "Except as provided in § 226.9(*i*)" would be added, referring to the fact that under proposed new § 226.9(*i*), notice of increased rates due to delinquency, default or otherwise as a penalty would be required under § 226.9(*i*) even though that change was set forth in the account-opening disclosures. Second, language referring to a rate increase occurring because a preferential rate ends (such as because the consumer is no longer employed by the creditor or because the consumer no longer maintains a certain balance in a deposit account with the creditor) would be deleted because rate increases triggered by these events would require notice under proposed § 226.9(*i*), discussed below, even though they would not require notice under § 226.9(c).

Comment 9(c)(1)-3 would be revised by deleting the phrase "or increases the minimum payment" as redundant, because the minimum payment is a required disclosure under § 226.6(a); the comment already requires notice of changes affecting any term required to be disclosed under § 226.6(a). This comment would also be revised to delete the example referring to a grace period because the Board understands that grace periods (in which interest does not accrue on an outstanding balance) are not typical in HELOCs.

9(c)(1)(i) Written Notice Required

The requirement for notice 15 days in advance of the effective date of a change would be changed to require notice 45 days in advance, for the same reasons the Board adopted this requirement for open-end (not home-secured) credit. As discussed in the January 2009 Regulation Z Rule, the Board believes that the shorter notice periods suggested by some commenters on the June 2007 Regulation Z Proposal, such as 30 days or one billing cycle, would not provide consumers with sufficient time to shop for and possibly obtain alternative financing. The 45-day advance notice requirement refers to when the change-in-terms notice must be sent, but as discussed in the June 2007 Regulation Z Proposal, it may take several days for the consumer to receive the notice. As a result, as stated in the January 2009 Regulation Z Rule, the Board believes that the 45-day advance notice requirement will give consumers, in most cases, at least one calendar month after receiving a change-in-terms notice to seek alternative financing or otherwise to mitigate the impact of an unexpected change in terms.

The Board solicits comment on whether 45 days is an appropriate period for the advance notice requirement for changes in terms of HELOCs. Commenters are ***asked*** to address, for example, whether it may be more difficult to seek alternative financing or otherwise mitigate the impact of a change in terms for HELOCs than for credit card accounts, as well as whether, because changes in terms are more narrowly restricted for HELOCs than for credit card accounts, the impact on consumers of term changes for HELOCs is likely to be less severe than for credit cards and thus the proposed time period is likely adequate.

In other changes to this paragraph, the phrase "or the required minimum periodic payment is increased" would be deleted as redundant because the minimum payment is a required disclosure under current § 226.6(a)(3) (redesignated as proposed § 226.6(a)(2)(v)(B)); the rule already requires notice of changes affecting any term required to be disclosed under § 226.6(a). A sentence would be added to clarify that an increase in the rate due to delinquency, default or otherwise as a penalty would require notice under proposed new § 226.9(*i*) rather than under § 226.9(c)(1).

Revisions would be made to comments 9(c)(1)(i)-1 through - 4 to refer to the proposed requirement for notice 45 days in advance rather than 15 and to replace examples of changes appropriate for credit cards and other open-end (not home-secured) credit with examples more appropriate for HELOCs, or to replace examples that would not be permissible for HELOCs with examples that would be permissible. In comment 9(c)(1)(i)-3, language referring to a consumer's general acceptance of a creditor's contract reservation of the right to change terms, as well as other unilateral term changes, would be deleted, to ***avoid*** the possible inference that such changes in terms would be permissible under § 226.5b(f). In comment 9(c)(1)(i)-4, language would be added to clarify that a complete set of account-opening disclosures containing the changed term does not qualify as a change-in-terms notice if § 226.9(c)(1)(iii) applies. (Section 226.9(c)(1)(iii), as discussed below, would require that disclosures required to be in a tabular format in the account-opening disclosures also appear in a tabular format, and meet other formatting requirements, when the disclosed terms change. However, changes in other disclosures, not required to be in a tabular format at account opening, would not be subject to these requirements.)

Comment 9(c)(1)(i)-5, which discusses changes involving addition of a security interest or addition or substitution of collateral, would be deleted because the Board believes it unlikely that any of these events would occur in the case of an existing HELOC. However, the Board solicits comment on whether the comment should be retained to cover the possibility of such an event occurring.

In comment 9(c)(1)(i)-6 (redesignated as proposed comment 9(c)(1)(i)-5), the limitation to plans entered into on or after November 7, 1989, would be deleted; it appears unlikely that any HELOCs opened before that date are still in existence.

9(c)(1)(ii) Charges Not Covered by Tabular Format Requirements of § 226.6(a)(2)

Current § 226.9(c)(1)(ii) would be renumbered § 226.9(c)(1)(iv), as discussed below. The Board proposes to add, as new § 226.9(c)(1)(ii), an exception to the requirement for written advance notice of changes in terms. The exception would apply to disclosures of charges not required to appear in a tabular format in the account-opening disclosures under § 226.6(a)(2), and would parallel a similar exception for credit cards and other open-end (not home-secured) credit in § 226.9(c)(2)(ii). Under the exception, if a creditor increases a charge, or introduces a new charge, required to be disclosed under § 226.6(a)(3) but not required to appear in the summary account-opening table under § 226.6(a)(2), the creditor may either provide advance written notice under § 226.9(c)(1)(i), or provide oral or written notice of the amount of the charge at a relevant time before the consumer agrees to or becomes obligated to pay the charge. Comment

9(c)(1)(ii)-1 would discuss a fee for expedited delivery of a credit card as an example of ***how*** this exception would operate. Of course, any increase in a charge, or addition of a new charge, would have to be permissible under § 226.5b(f).

9(c)(1)(iii) Disclosure Requirements

Current § 226.9(c)(1)(iii), regarding notices to restrict credit on HELOCs subject to § 226.5b, would be renumbered as § 226.9(j) and revised, as discussed below. The Board proposes to add, as new § 226.9(c)(1)(iii), a provision specifying the content and format of disclosures for certain changes in terms, similar to the new requirements for change-in-terms notices for open-end (not home-secured) credit set forth in § 226.9(c)(2)(iii). If any of the terms required to be provided at account opening in a tabular format under § 226.6(a)(2) changes, the creditor would have to provide a summary of the changes (as set forth in proposed § 226.9(c)(1)(iii)(A)(*1*), similar to § 226.9(c)(2)(iii)(A)(*1*) for open-end (not home-secured) credit), in a tabular format (as set forth in § 226.9(c)(1)(iii)(B)(1), similar to § 226.9(c)(2)(iii)(B)(1) for open-end (not home-secured) credit), with headings and format substantially similar to any of the account-opening tables in G--15 in Appendix G.

In addition, the notice would be required to contain a statement that changes are being made to the account, a statement indicating (if applicable) that the consumer has the right to opt out of the changes, the effective date of the changes, and a statement (if applicable) that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice. These disclosures are in proposed § 226.9(c)(1)(ii)(A)(*2*) through (*5*), similar to § 226.9(c)(2)(iii)(A)(*2*) through (*5*) for open-end (not home-secured) credit.

Two other disclosures required for open-end (not home-secured) credit, found in § 226.9(c)(2)(iii)(A)(*6*) and (*7*), would not be required for HELOCs subject to § 226.5b. Section 226.9(c)(2)(iii)(A)(*6*) applies if a creditor is changing a rate on an account other than the penalty rate, and requires a disclosure that if the penalty rate currently applies to the account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate. The Board believes that this situation is unlikely to occur for HELOCs subject to § 226.5b because of the restrictions on rate increases for these HELOCs. Section § 226.9(c)(2)(iii)(A)(*7*) applies if the change being disclosed is a rate increase, and requires a disclosure of the balances to which the increased rate will apply. Section 226.9(c)(1)(iii) is not an appropriate location for this disclosure, because in general rate increases for HELOCs subject to § 226.5b, where permissible at all, must occur only as specified in the credit agreement and therefore the notice of such an increase would be provided under § 226.9(*i*) rather than § 226.9(c)(1). A similar disclosure of the balances to which the increased rate would apply is proposed under § 226.9(*i*), as discussed below.

Under proposed § 226.9(c)(1)(iii)(B)(*2*) and (*3*), if the change-in-terms notice is included on or with a periodic statement, the tabular summary required under § 226.9(c)(1)(iii)(A)(*1*) must appear on the front of any page of the statement, immediately following the other items required to be disclosed (as specified in § 226.9(c)(1)(iii)(A)(*2*) through (*5*)). If the notice is not included on or with a periodic statement, the tabular summary must appear on the front of the first page of the notice or segregated on a separate page from other information given with the notice, immediately following the other items. These requirements would be similar to those applicable to open-end (not home-secured) credit, as set forth in § 226.9(c)(2)(iii)(B)(*2*) and (*3*).

The Board is proposing these content and format rules for the same reasons as for the new open-end (not home-secured) credit rules adopted in the January 2009 Regulation Z Rule. As discussed in the January 2009 Regulation Z Rule, consumer testing conducted on behalf of the Board suggests that consumers tend to set aside change-in-terms notices when they are presented as a separate pamphlet inserted in the periodic statement. In addition, testing prior to the June 2007 Regulation Z Proposal also revealed that consumers are more likely to identify the changes to their account correctly if the changes in terms are summarized in a tabular format. Quantitative consumer testing conducted in the fall of 2008 confirmed that disclosing a change in terms in a tabular summary on the statement (versus a disclosure on the statement indicating that changes were being made to the account and referring to a separate change-in-terms insert) led to a small increase in the percentage of consumers who were able to identify correctly the new rate that would apply to the account following the change. As stated in the January 2009 Regulation Z Rule, the Board believes that as consumers become more familiar with the new format for the change-in-terms summary, which was new to all testing participants, they may become better able to recognize and understand the information presented. The same could be expected to apply to the change-in-terms summary for HELOCs.

Although the Board has not yet conducted consumer testing of change-in-terms notices for HELOCs, consumer testing of disclosures provided at application and account-opening for HELOCs indicates, as discussed above, that consumers find disclosures presented in a tabular format more useful and understandable than disclosures in the current format; thus the Board proposes to require such a format for the HELOC application and account-opening disclosures. A tabular format standard for change-in-terms notices for HELOCs would be consistent with this approach and could be expected to result in greater noticeability and consumer comprehension of HELOC change-in-terms notices. The Board intends to conduct consumer testing of tabular-format change-in-terms notices for HELOCs during the comment period on this proposal.

Proposed comments 9(c)(1)(iii)(A)-1 through -10 provide guidance on the change-in-terms disclosures required under § 226.9(c)(1)(iii)(A), and parallel comments 9(c)(2)(iii)(A)-1 through 10 applying to open-end (not home-secured) credit change-in-terms disclosures. The changes discussed in comments 9(c)(1)(iii)(A)-1 through-7 might or might not be permissible under § 226.5b(f) depending upon the circumstances; therefore, language would be included in each of these comments to refer to change in terms restrictions for HELOCs subject to § 226.5b, to ***avoid*** implying that the changes discussed would be permissible in all cases.

9(c)(1)(iv) Notice Not Required

Section 226.9(c)(1)(ii) in the current regulation (as modified by the January 2009 Regulation Z Rule) relates to changes for which a change-in-terms notice is not required (reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding), and would be renumbered § 226.9(c)(1)(iv). Language would be added to clarify that suspension of credit privileges, reduction of a credit limit, or termination of an account would not require notice under § 226.9(c)(1)(i), but must be disclosed pursuant to § 226.9(j), discussed below.

In comment 9(c)(1)(ii)-1 (renumbered comment 9(c)(1)(iv)-1), two examples of changes not requiring notice--paragraphs i. (change in the consumer's credit limit) and iv. (termination or suspension of credit privileges)--would be deleted, because such actions (assuming they were permissible under § 226.5b(f)) would require notice, although notice under § 226.9(j) rather than § 226.9(c)(1)(i). A new paragraph iv. would be added to clarify that suspension of credit privileges, reduction of a credit limit, or termination of an account would not require notice under § 226.9(c)(1)(i), but must be disclosed pursuant to § 226.9(j). In paragraph v. (changes arising merely by operation of law; renumbered paragraph iii.), the example given (the creditor's security interest in a consumer's car automatically extending to the proceeds when the consumer sells the car) would be deleted as unlikely to apply to HELOC accounts.

In comment 9(c)(1)(ii)-2 (renumbered comment 9(c)(1)(iv)-2), relating to skip features and temporary reductions in finance charges, language would be added to clarify that the actions discussed would be permissible as beneficial changes under § 226.5b(f)(3)(iv), and that a creditor offering a temporary reduction in an interest rate must provide a notice complying with the timing, content, and format requirements of § 226.9(c)(1) prior to resuming the original rate. The latter addition parallels a clarification to the comparable comment 9(c)(2)(iv)-2, applying to open-end (not home-secured) credit, proposed for comment in the May 2009 Regulation Z Proposal.

New comments 9(c)(1)(iv)-3 and - 4, similar to comments 9(c)(2)(iv)-3 and - 4 for open-end (not home-secured) credit, would be added. These comments would clarify that if a creditor changes a rate from a variable rate to a non-variable rate, or vice versa (assuming such action is permissible under § 226.5b(f)), a change-in-terms notice must be provided even if the immediate effect of the change is a lower rate.

9(i) Increase in Rates Due to Delinquency or Default or as a Penalty--Rules Affecting Home-Equity Plans

As discussed above under § 226.9(c)(1)(i), an increase in the rate due to delinquency, default, or as a penalty, pursuant to the contractual terms of the consumer's account, would not require notice under § 226.9(c)(1), but would require a notice under proposed new § 226.9(i). Under the previous version of Regulation Z for credit cards and other open-end (not home-secured) credit (and the current version for HELOCs), if the agreement between the consumer and the creditor specifically sets forth a change that will take place upon the occurrence of a specific triggering event, a change-in-terms notice is not required when the change occurs. This rule was changed in the January 2009 Regulation Z Rule for open-end (not home-secured) credit by the addition of new § 226.9(g).

In discussing § 226.9(g) in the June 2007 Regulation Z Proposal and the January 2009 Regulation Z Rule, the Board expressed concern that the imposition of penalty rates might come as a costly surprise to consumers who are not aware of, or do not understand, what behavior constitutes a default under the credit agreement, even though for credit card and other open-end (not home-secured) credit, the account-opening disclosures are required to set forth the penalty rate. The Board also stated that it believed that consumers would be the most likely to notice and be motivated to act to ***avoid*** the imposition of the penalty rate if they receive a specific notice alerting them of an imminent rate increase, rather than a general disclosure stating the circumstances when a rate might increase.

In the case of HELOCs subject to § 226.5b, the same reasoning could be expected to apply. In addition, because the proposed account-opening disclosures for HELOCs do not include a disclosure of the penalty rate, providing notice to a consumer at the time the penalty rate is imposed is even more important. Therefore, the Board proposes to add new § 226.9(*i*) applying to HELOCs, which would generally parallel § 226.9(g) applying to open-end (not home-secured) credit.

Section 226.9(*i*)(1) would require that a creditor must provide written notice to each consumer who may be affected when a rate is increased due to the consumer's delinquency or default or otherwise as a penalty for one or more events specified in the account agreement. Rate increases could only occur, of course, as permitted under § 226.5b(f). Section 226.9(*i*)(2) would require that the notice be provided at least 45 days before the effective date of the increase, and after the occurrence of the events that trigger the imposition of the increase.

Section 226.9(*i*)(3) would specify the content of the notice, which would include a statement that the delinquency or default rate, or other penalty rate, has been triggered (§ 226.9(*i*)(3)(i)); the date on which the increased rate will apply (§ 226.9(*i*)(3)(ii)); the circumstances under which the increased rate will cease to apply to the consumer's account, or that the increased rate will remain in effect for a potentially indefinite time period (§ 226.9(*i*)(3)(iii)); and a disclosure indicating to which balances the increased rate will apply (§ 226.9(*i*)(3)(iv)). These disclosures parallel disclosures under § 226.9(g)(3)(i). One other disclosure under § 226.9(g)(3)(i), however, would not be included in § 226.9(*i*)(3): A description of any balances to which the current rate will continue to apply (§ 226.9(g)(3)(i)(E)). For credit cards, under the Credit Card Act (cited above), in some circumstances increases in rates may be permitted to apply only to future balances; in other cases rate increases may apply to all balances, including outstanding balances. *See* Credit Card Act § 101(b) and (d). In contrast, rate increases for HELOCs subject to § 226.5b, where permissible at all (*i.e.*, for a reason that would permit termination and acceleration of the plan under § 226.5b(f)(2)), would generally apply to all balances. Thus, the disclosure under § 226.9(g)(3)(i)(E) would not appear appropriate for HELOCs. However, the disclosure under § 226.9(*i*)(3)(i)(D) may be useful to indicate, for example, whether a rate increase would apply to balances under the regular variable-rate feature of a HELOC, while not applying to balances under a fixed-rate option. The Board solicits comment on the appropriateness of this disclosure.

Section 226.9(*i*)(4) would parallel § 226.9(g)(3)(ii) and would address format requirements. Section 226.9(*i*)(4)(i) would provide that if the notice is included on or with a periodic statement, it must be in the form of a table and must appear on the front of any page of the periodic statement. Section 226.9(*i*)(4)(ii) would provide that if the notice is not included on or with a periodic statement, the disclosures must be appear on the front of the first page of the notice.

Section 226.9(*i*)(5) would parallel § 226.9(g)(4)(i) and would provide an exception for workout and temporary hardship arrangements, where the rate increases due to completion of the arrangement, or for failure to comply with the terms of the arrangement, provided that the increased rate does not exceed the rate that applied before the start of the arrangement. Two other exceptions in § 226.9(g)(4) would not be included in § 226.9(*i*)(5): A rate increase where the credit limit is exceeded, and a rate increase applicable to outstanding balances where a notice had already been provided of a rate increase on future balances. The first situation would not arise for HELOCs subject to § 226.5b because, under § 226.5b(f), a creditor may not increase an interest rate based on the credit limit being exceeded. The second situation also likely would not arise for HELOCs subject to § 226.5b because, as discussed above, a rate increase for a HELOC, if permissible at all, would not apply to future balances differently than to outstanding balances.

Comments 9(*i*)-1 through-5 would be added to the commentary and would provide general guidance regarding notices of rate increases under § 226.9(*i*). The proposed comments would parallel comments 9(g)-2 through -6 under § 226.9(g). A comment would not be added to parallel comment 9(g)-1, because that comment addresses the relationship between the change-in-terms notice requirements (and notice of rate increase requirements) under Regulation Z and the requirements under Regulation AA (or similar law) regarding unfair or deceptive acts or practices in credit card accounts, which do not apply to HELOCs subject to § 226.5b.

9(j) Notices of Action Taken for Home-Equity Plans

As noted above, § 226.9(c)(1)(iii), regarding notices to restrict credit for HELOCs subject to § 226.5b, would be redesignated as § 226.9(j)(1) and revised. Proposed § 226.9(j)(1) would retain the existing requirement that a creditor provide the consumer with notice of temporary account suspension or credit limit reduction under § 226.5b(f)(3)(i) or (f)(3)(vi), but with certain clarifications and additions. The proposal also would eliminate the existing exemption from notice requirements for a creditor that suspends advances, reduces a credit limit, or terminates a plan under § 226.5b(f)(3). *See* comment 9(c)(1)(iii)-2. Under proposed § 226.9(j)(3), creditors taking action under § 226.5b(f)(2) would be required to provide the consumer with a notice of the action taken and specific reasons for the action. To facilitate compliance, model clauses are proposed to illustrate the requirements for these notices. *See* proposed Model Clauses G--23(A) and G--23(B) in Appendix G of part 226.

9(j)(1) Notice of Action Taken Under § 226.5b(f)(3)(i) or (f)(3)(vi)

Proposed § 226.9(j)(1) would retain the existing requirement that require a creditor taking action under § 226.5b(f)(3)(i) or (f)(3)(vi) must provide to any consumer who will be affected notice of the action taken and specific reasons for the action within three business days of the action. The proposed paragraph, however, would require the creditor to include a number of additional disclosures in the notice. The clarifications and additional disclosures discussed below are proposed in response to concerns expressed during outreach conducted by the Board that creditors are not certain ***how*** to comply with the current notice requirements and that notices provided often contain unclear or incomplete information about the reasons for the action taken and the consumer's reinstatement rights. The Board's independent review of notices of action taken currently used by creditors corroborated these concerns.

First, proposed § 226.9(j)(1)(i) and comment 9(j)(1)-1 clarify that, as part of the disclosure of the action taken, the creditor must include the following basic information that the HELOC consumer whose credit privileges have been restricted needs to make appropriate financial accommodations: (1) If the creditor reduced the credit limit, the new credit limit; and (2) the date as of which the account suspension or reduction took effect.

Second, proposed § 226.9(j)(1)(ii) requires disclosure of specific reasons for the action, and proposed comments 9(j)(1)-2, -3, -4, and - 5 would provide additional guidance regarding what the creditor must disclose to comply with this requirement. Proposed comment 9(j)(1)-2 requires that a creditor provide the principal reasons for the action taken, and indicates that the principal reasons should include the reason permitting the action under § 226.5b(f)(3)(i) or (vi), such as that the maximum APR has been reached or the value of property securing the plan has significantly declined.

Proposed comment 9(j)(1)-3 sets forth information that, if disclosed, would constitute compliance with the requirement to disclose the specific reasons for the action taken when the reason for the action taken is a significant decline in the property value under § 226.5b(f)(3)(vi)(A). Specifically, compliance with the requirement would be met by disclosing the following information--

(i) The value of the property obtained by the creditor.

(ii) The type of valuation method used to obtain the property value.

(iii) A statement that the consumer has a right to a copy of documentation supporting the property value on which the action was based.

The Board believes that the property value on which the creditor relied to freeze or reduce a line, and access to information about the basis for that property value finding, are integral components of the "specific reasons" disclosure required when a creditor freezes or reduces a line due to a significant decline in the property value. This information is also necessary for the consumer to assess whether and when to challenge the finding and request reinstatement.

Proposed comment 9(j)(1)-4 sets forth information that, if disclosed, would constitute compliance with the requirement to disclose the specific reasons for the action taken when a creditor prohibits credit extensions or reduces a credit limit because the consumer's financial circumstances have materially changed such that the creditor has a reasonable belief that the consumer will be unable to meet the repayment obligations of the plan under § 226.5b(f)(3)(vi)(B). Specifically, compliance with the provision would be met by disclosing the type of information concerning the consumer's financial circumstances on which the creditor relied, such as information about the consumer's income, credit report information, or some other indicia of the consumer's financial circumstances, as applicable.

The Board believes that more information than simply the regulatory reason for the action taken is an appropriate element of the "specific reasons" disclosure requirement when action is taken due to a material change in the consumer's financial circumstances under § 226.5b(f)(vi)(B). First, the type of financial information relied on (*i.e.*, income, credit report information) gives the consumer more "specific" reasons for the action taken than a disclosure simply stating that the line was frozen or reduced because the consumer's financial circumstances have changed. Second, the consumer is thereby better able to assess whether to request reinstatement and to address problems that the consumer may be able to correct, such as errors in the consumer's credit report, credit performance deficiencies, or inadequate or outdated income information.

Proposed comment 9(j)(1)-5 explains when a creditor takes action because the consumer defaulted on a material obligation under the agreement (see § 226.5b(f)(3)(vi)(C)), the creditor would comply with this provision if it specified the material obligation on which the consumer defaulted. The Board believes that the material obligation on which the consumer defaulted is a key element of "specific reasons" disclosure requirement when action is based on a consumer's default of a material obligation. With this information, the consumer would have an opportunity to correct a default or to dispute the creditor's determination that a default occurred. Either way, the consumer would be in a better position to exercise his or her reinstatement right and to have credit privileges restored.

Proposed comment 9(j)(1)-5 also addresses the specific reasons disclosure requirement for other reasons justifying temporary line suspension or reduction. This includes the following: (1) the creditor is precluded by government action from imposing the APR provided for in the agreement (§ 226.5b(f)(3)(vi)(D)); the priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line (§ 226.5b(f)(3)(vi)(E)); the creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice (§ 226.5b(f)(3)(vi)(F)); and federal law prohibits the creditor from extending credit under a plan or requires that the creditor reduce the credit limit for a plan (§ 226.5b(f)(3)(vi)(G)). For action based on these provisions, the Board believes that a statement of the regulatory reason for the action is sufficient to comply the "specific reasons" disclosure requirement. The principal reason for this proposed approach is that the consumer is not likely to be able to take any steps to change the circumstances justifying the suspension or reduction.

The Board requests comment on whether more or less information than the information proposed would be appropriate to require to meet the "specific reasons" disclosure requirement when action is taken for any of the reasons permitted under § 226.5b(f)(3)(i) and (f)(3)(vi). The Board requests comment in particular on whether more or less information would be appropriate to require to meet the "specific reasons" disclosure requirement when action is taken due to a material change in the consumer's financial circumstances under § 226.5b(f)(3)(vi)(B).

Disclosure of information regarding reinstatement. Proposed § 226.9(j)(1)(iii) requires the creditor to provide certain information when the creditor has opted to require that the consumer request reinstatement before the creditor will consider restoring credit privileges. As in the existing commentary, the proposal would require that the creditor disclose that the consumer must request reinstatement. Addressing concerns that creditors may provide inadequate information about reinstatement rights to consumers, the proposal would amplify existing requirements by requiring that the creditor inform the consumer of his or her right to request reinstatement of the account at any time, and that the creditor disclose the specific manner in which the consumer should request reinstatement, including the address or telephone number to which the creditor must submit requests. In addition, the creditor must disclose that the creditor will complete an investigation of the consumer's request within 30 days of receiving the request (as required under proposed § 226.5b(g)(2)(ii)). The purpose of these disclosures is to ensure that consumers understand their rights regarding an investigation.

The proposal also requires the creditor to disclose that, in accordance with proposed § 226.5b(g)(2)(iii) and (iv), the creditor may not charge the consumer for costs associated with the investigation of the consumer's first reinstatement request made after the creditor has suspended advances or reduced the credit limit, but may charge the consumer bona fide and reasonable costs for property valuations or credit reports associated with investigations of any requests that the consumer makes after the first request. This provision is intended to put the consumer on notice of the potential for additional costs when requesting reinstatement. The reasons for proposing the above rules regarding when creditors may charge consumers fees for investigating a reinstatement request are discussed in the section-by-section analysis to proposed § 226.5b(g)(2).

9(j)(2) Imposition of Fees

Proposed § 226.9(j)(2) provides that a creditor that reduces the credit limit on an account under § 226.5b(f)(3)(i) or (vi) may not charge the consumer fees for exceeding the credit limit until after the consumer has received notice of the action under § 226.9(j)(1). Similarly, after a creditor has suspended advances on an account, the creditor may not charge the consumer a fee for any advance that it denies until the consumer receives the § 226.9(j)(1) notice. Proposed § 226.9(j)(2) and comment 9(j)(2)-1 specify that in general only fees disclosed in the original agreement may be charged and that these would be subject to the notice waiting period. Imposing denied advance or over-the-limit fees not disclosed in the original agreement would be permitted only if an exception to the general limitations on changing home-equity plan terms under § 226.5b(f) applies.

The Board believes that imposition of denied advance or over-the-limit fees before the consumer has notice of the suspension on advances or credit limit reduction is inappropriate for at least two reasons. First, consumers who did not yet receive the notice of action taken under § 226.9(j)(1) presumably did not know of the credit limit reduction or suspension of advances and may have attempted to access their home-equity funds with the good faith expectation that these funds would be available to them. Second, in many cases, action taken under § 226.5b(f)(3)(i) or (f)(3)(vi) is based on circumstances beyond the consumer's control, such as the maximum rate being reached or a significant decline in the value of the consumer's dwelling. Prohibiting creditors from imposing over-the-limit or denied advance fees until consumers have appropriate notice of a suspension or credit limit reduction is intended to strengthen the protection of consumers facing the financial challenge of a HELOC freeze or reduction.

Proposed comment 9(j)(2)-2 clarifies that, for purposes of determining when the consumer receives the notice, the more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) applies referred to in § 226.2(a)(6). *See* comment 2(a)(6)-2. For example, if the creditor were to place the disclosures in the mail on Thursday, June 4, under the proposal the disclosures would be considered received on Monday, June 8. The Board proposes that the more precise definition apply to determining when § 226.9(j)(1) notices are received by the consumer to conform to the Board's rules for determining receipt of disclosures for other dwelling--secured transactions under §§ 226.19(a)(1)(ii) and 226.31(c), as well as to the Board's recently adopted rules under § 226.19(a)(2). *See* 74 FR 23289 (May 19, 2009).

The Board requests comment on this proposed limitation on when denied advance and over-the-limit fees may be charged.

9(j)(3) Notice of Action Taken Under § 226.5b(f)(2)

Proposed § 226.9(j)(2) would require creditors to provide a notice to each consumer affected by the creditor's termination and acceleration of the account, suspension of advances on the account, or reduction of the credit limit under circumstances permitting these actions pursuant to § 226.5b(f)(2). This notice requirement is intended to remedy an inconsistency in the current rules--namely, that suspending or reducing lines under § 226.5b(f)(3)(i) and (f)(3)(vi) is required under § 226.9(c)(1)(iii) (redesignated and revised in the proposal as § 226.9(j)(1)), but no notice is required for any action taken under § 226.5b(f)(2). The Board believes that this new notice requirement for actions taken under § 226.5b(f)(2) will enhance consumer protection and education by ensuring that affected consumers will know why the action was taken. As with the current and proposed notice requirement for credit restrictions under § 226.5b(f)(3)(i) and (f)(3)(vi), the proposed notice for actions taken under § 226.5b(f)(2) is not required until three business days after the action is taken, rather than before the action is taken. The principal reason for this timing is that post-action notice protects creditors from the risk that consumer may immediately draw down the line once they receive advance notice of the action; concerns about this risk were confirmed through Board outreach in preparing this proposal. The Board's recognition of this risk is reflected in the longstanding policy of requiring notice for actions under § 226.5b(f)(3)(i) and (f)(3)(vi) three business days after the action taken.

As indicated in proposed comment 5b(f)(2)-2, the specific reasons that a creditor must disclose when taking action under § 226.5b(f)(2) will vary, because § 226.5b(f)(2) allows creditors to terminate and accelerate a home-equity plan or take a lesser action, such as suspending advances or reducing the credit limit, for four reasons: (1) "Fraud or material misrepresentation on the part of the consumer in connection with the account" (§ 226.5b(f)(2)(i)); (2) failure of the consumer "to make a required minimum periodic payment within 30 days after the due date for that payment" (proposed § 226.5b(f)(2)(ii)); (3) "any other action or failure to act by the consumer which adversely affects the creditor's security for the account or any right of the creditor to such security" (§ 226.5b(f)(2)(iii)); or, (4) "compliance with federal law requires the creditor to terminate and demand repayment of the entire outstanding balance in advance of the original term" (in which case, lesser action would not be appropriate) (proposed § 226.5b(f)(2)(iv)).

Thus, proposed comment 9(j)(2)-2 explains that when a creditor takes action under § 226.5b(f)(2)(i) for a consumer's fraud or misrepresentation related to the home-equity plan, the creditor need only disclose that the action was taken due to either, as applicable, fraud or misrepresentation by the consumer; the creditor is not required to specify in the notice the nature of the fraud or misrepresentation. During Board outreach, creditors expressed concerns that a requirement to disclose the specific nature of the fraud or misrepresentation could more readily expose them to claims of libel or slander, whether spurious or not, than a generic disclosure that the consumer's fraud or misrepresentation precipitated the creditor's action. Concerns were also expressed that, even if the consumer in fact committed fraud or misrepresentation, a court may penalize the creditor for the particular way in which it phrased the nature of the fraud or misrepresentation in the notice. The Board requests comment on whether the creditor should also be required to include on the notice a toll-free telephone number that the consumer may call to receive additional information about the action taken and other information on the notice, particularly when the reason for the action is stated simply as fraud or material misrepresentation.

Also under proposed comment 5b(f)(2)-2, when a creditor takes action under § 226.5b(f)(2)(iii) for a consumer's action or inaction affecting the creditor's security interest, the creditor must include in the notice the consumer's action or inaction that threatens creditor's interest in the property securing the account, such as failing to pay property taxes or allowing a new superior lien on the property.

9(j)(3) Notices Required When Action Other Than Termination, Suspension, or Credit Limit Reduction Is Taken Under § 226.5b(f)(2)

Proposed § 226.9(j)(3) would require a creditor that takes action other than account termination, suspension, or credit limit reduction under § 226.5b(f)(2), such as a rate increase or fee, to disclose these changes according to the 45-day advance notice requirements of § 226.9(c)(1) (for fee changes) or (i) (for rate changes), as applicable. The Board does not believe that advance notice for these actions jeopardizes the creditor's interest as in the case of account termination, suspension, or reduction, where a concern about the consumer drawing down the full line exists. By taking lesser action such as imposing a fee or rate increase, the creditor itself has determined that adequate risk management does not require taking away from the consumer full access to the account. The proposed provision is intended to enhance consumer protection and education for the reasons discussed in this section-by-section analysis under § 226.9(c)(1) and (*i*).

Section 226.14 Determination of Annual Percentage Rate

Section 226.14 contains rules for calculation of the APR for open-end credit. Section 226.14(a) states general rules for determination of the APR, including rules on accuracy and good faith errors in disclosure. Section 226.14(b) contains rules for calculation of the APR for disclosure at the time of application for open-end (not home-secured) credit under § 226.5a or a HELOC under § 226.5b, at account opening under § 226.6, in change-in-terms notices under § 226.9, in rescission notices under § 226.15, in advertising under § 226.16, and in oral disclosures under § 226.26. The APR is calculated for purposes of these disclosures, as stated in § 226.14(b), by multiplying each periodic rate by the number of periods in a year.
Section 226.14(b) also states the rules for calculation of the APR for disclosure on periodic statements for open-end (not home-secured) plans under § 226.7(b)(4), and for disclosure of the corresponding APR for HELOCs subject to § 226.5b under § 226.7(a)(4). The calculation rules for the § 226.7(a)(4) and (b)(4) disclosures are the same as those stated above, *i.e.*, multiply each periodic rate by the number of periods in a year. For HELOCs, creditors have the option of disclosing, in addition to the corresponding APR, the effective APR under § 226.7(a)(7). The rules for calculation of the effective APR for optional disclosure for HELOCs are set forth in § 226.14(c) and (d).

As discussed above under § 226.7, in the January 2009 Regulation Z Rule, the Board eliminated the requirement to disclose the effective APR for open-end (not home-secured) credit, and made the disclosure of the effective APR optional for HELOCs subject to § 226.5b. As also discussed above under § 226.7, the Board is now proposing to eliminate the disclosure of the effective APR for HELOCs subject to § 226.5b. Accordingly, the Board proposes to delete § 226.14(c) and (d) and the accompanying staff commentary.

Section 226.14(b) would be revised by replacing a reference to disclosures under various sections of the regulation with a reference to disclosures under Subpart B, because with the elimination of the requirement to disclose the effective APR on periodic statements, § 226.14 would now provide rules for calculation of the APR for open-end disclosures generally. Comment 14(b)-1 would be revised similarly. Comment 14(b)-1 would also be revised by deleting a sentence referring to the "corresponding annual percentage rate," because that term would now become obsolete; all disclosures of the annual percentage rate would use the term "annual percentage rate" or "APR."

Appendix F--Annual Percentage Rate Computations for Certain Open-End Credit Plans

Appendix F contains guidance on calculation of the effective APR under § 226.14(c)(3) when the finance charge imposed during the billing cycle includes a charge relating to a specific transaction. As discussed above under §§ 226.7 and 226.14, the Board is proposing to eliminate the disclosure of the effective APR on periodic statements, and therefore is also proposing to delete § 226.14(c) and (d), which contain the rules for calculation of the effective APR. If the effective APR disclosure is eliminated, Appendix F will have no further purpose. Accordingly, the Board proposes to remove and reserve Appendix F and the accompanying staff commentary.

Appendix G--Open-End Model Forms and Clauses

Appendix G to part 226 sets forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z for open-end credit. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures.

As discussed in detail below, the Board proposes to modify the model clauses applicable to balance computation method disclosures, notices of liability for unauthorized use, and notices of billing-error rights; to add new model and sample forms for HELOC early disclosures and account-opening disclosures; to add new model clauses for notices of results of reinstatement investigations and for notices of actions taken on accounts in HELOCs; and to add new sample forms for HELOC periodic statements, change-in-terms notices, and notices of rate increases. In addition, as discussed below, the Board is proposing to adopt, for both open-end and closed-end credit, new samples and models for disclosures relating to credit insurance, debt cancellation or debt suspension; for a detailed discussion of these proposed disclosures and the related proposed models and samples, refer to the notice of the

Board's proposal regarding closed-end mortgage lending requirements under Regulation Z, published today elsewhere in this **Federal Register**.

The staff commentary to Appendices G and H contains comment App. G and H-1, which discusses permissible changes that creditors may make to the model forms and clauses without losing protection from liability for failure to comply with the regulation's disclosure requirements. Comment App. G and H-1 also lists the models to which formatting changes may not be made because the related disclosure requirements provide that the disclosures must be made in a form substantially similar to that in the models. The Board proposes to revise comment App. G and H-1 by adding a number of proposed new open-end and closed-end models to this list.

Model clauses for balance computation methods. Under various sections of the regulation, creditors are required to disclose the method of calculating the balance to which rates are applied. See §§ 226.5a(b)(6), 226.6(b)(2)(vi), 226.6(b)(4)(i)(D), and 226.7(b)(5), and proposed §§ 226.6(a)(2)(xxii), 226.6(a)(4)(i)(D), and 226.7(a)(5). Under some of these provisions, the creditor is permitted in some circumstances to identify the name of the balance calculation method, but under others the creditor must in either some or all cases provide an explanation of ***how*** the balance was calculated. Model Clauses that explain commonly used methods, such as the average daily balance method, are at Appendices G--1 and G--1(A) to part 226.

In the January 2009 Regulation Z Rule, Appendix G--1(A) was added for open-end (not home-secured) plans. The clauses in Appendix G--1(A) refer to "interest charges" rather than "finance charges" to explain balance computation methods. The consumer testing conducted by the Board prior to the June 2007 Regulation Z Proposal indicated that consumers generally had a better understanding of "interest charge" than "finance charge," which is reflected in the Board's use of "interest" (rather than "finance charge") in account-opening samples and to describe costs other than fees on periodic statement samples and forms in the January 2009 Regulation Z Rule. For HELOCs subject to § 226.5b, the January 2009 Regulation Z Rule permits creditors to use the model clauses in either Appendix G--1 or G--1(A).

Consumer testing conducted for the Board during the development of this proposal for HELOCs confirms that consumers generally understand "interest charge" better than "finance charge." As discussed above under §§ 226.5b, 226.6, and 226.7, the Board is accordingly proposing to require use of "interest charge" in HELOC disclosures. Therefore, the Board proposes to delete current Appendix G--1 and to redesignate Appendix G--1(A) as Appendix G--1 for use by all creditors offering open-end credit, both HELOCs and open-end (not home-secured) credit. In addition, the commentary would be revised to delete material that refers only to the existing version of Appendix G--1, or that indicates that HELOC creditors have the option to use either Appendix G--1 or G--1(A).

Model clauses for notice of liability for unauthorized use and billing-error rights. Appendix G contains Model Clauses G--2 and G--2(A), which provide models for the notice of liability for unauthorized use of a credit card. In the January 2009 Regulation Z Rule, the Board adopted Model Clause G--2(A) for open-end (not home-secured) plans. Model Clause G--2(A) does not differ in substance from Model Clause G--2, but was revised to improve readability. In addition, Appendix G includes Model Forms G--3 and G--3(A), which contain models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement), and G--4 and G--4(A), which contain models for the alternative billing-error rights statement (for use with each periodic statement). As with Model Clause G--2, the Board adopted Model Forms G--3(A) and G--4(A) for open-end (not home-secured) plans, with revisions to improve readability. For HELOCs subject to § 226.5b, the January 2009 Regulation Z rule permits a creditor to use either the current forms (G--2, G--3, and G--4) or the revised forms (G--2(A), G--3(A), and G--4(A)), in order to ***avoid*** requiring HELOC creditors to make forms changes pending the completion of the Board's HELOC review.

Revised Model clauses and forms G--2(A), G--3(A), and G--4(A) adopted in the January 2009 Regulation Z Rule are fully applicable to HELOCs, and represent improvements on models G--2, G--3, and G--4 in terms of readability. Therefore, the Board proposes to delete current G--2, G--3, and G--4, and to redesignate G--2(A), G--3(A), and G--4(A) as G--2, G--3, and G--4, respectively, for use by all creditors offering open-end credit, both HELOCs and open-end (not home-secured) credit. A technical correction would be made in the titles of Model Forms G--3 and G--4 in the table of contents to Appendix G. In addition, the commentary would be revised to delete material that refers to existing versions of G--2, G--3, or G--4, or that indicates that HELOC creditors have the option to use either the old or the new versions.

Model and sample forms applicable to HELOC early disclosures and account-opening disclosures. Currently, Appendix G contains three sample and model forms and clauses related to the disclosures required by § 226.5b at the time a consumer submits an application for a HELOC: G--14A and G--14B, which are sample application disclosures, and G--15, which contains model clauses that may be used as applicable in a creditor's HELOC application disclosure. Appendix G does not currently contain any model or sample forms or clauses related to the account-opening disclosures required by § 226.6(a) at the time a consumer opens a HELOC.

As discussed above in the section-by-section analysis to § 226.5b, the Board is proposing to change disclosure timing so that the generic application disclosures required under the current regulation would be replaced with more transaction-specific disclosures to be provided within three business days after a consumer submits a HELOC application (the "early disclosures"). In addition, as discussed above, the Board is proposing to substantially revise the format of the disclosures. The application disclosures currently required are subject to few formatting requirements and, in particular, are not required to be in a tabular format or in any minimum font size. Under the proposal, the early disclosures would have to be provided in a tabular format, in a minimum font size of 10 points, and would be subject to other format requirements.

Accordingly, the Board proposes to replace current Samples G--14A and G--14B and Model G--15 with new model and sample forms reflecting the proposed new format requirements. Proposed Models G--14(A) and G--14(B) and Samples G--14(C), G--14(D), and G--14(E) would illustrate, in the tabular format, the early disclosures proposed to be required under § 226.5b. Under proposed § 226.5b, the early disclosures would have to be given in the form of a table with headings, content, and format substantially similar to any of the applicable models.

Proposed Models G--14(A) and G--14(B) differ in that the former provides guidance for creditors that offer two or more HELOC plans, while the latter provides guidance for creditors that offer only one HELOC plan. Proposed Samples G--14(C), G--14(D), and G--14(E) differ in that they illustrate differing minimum payment terms, such as whether the HELOC has a repayment period, ***how*** the length of the repayment period is determined, whether a balloon payment will or may be due, and ***how*** the minimum payment amount is calculated during the draw and repayment periods. The proposed samples also differ in that Samples G--14(C) and G--14(E) illustrate plans with discounted introductory APRs, while Sample G--14(D) illustrates a plan without a discounted introductory APR.

As discussed above in the section-by-section analysis to § 226.6, the Board is also proposing to require that certain account-opening disclosures be provided in a tabular format, a minimum font size of 10 points, and subject to other format requirements, similar to the proposed requirements for the early disclosures under proposed § 226.5b. The disclosures that would be required to be provided in tabular format as set forth in proposed § 226.6(a)(2); account-opening disclosures set forth in proposed § 226.6(a)(3), (4), and (5), if not listed in proposed § 226.6(a)(2), would not have to be given in tabular format.

As mentioned above, Appendix G does not currently contain any model or sample forms or clauses for the account-opening disclosures. To provide guidance on the proposed new account-opening disclosure tabular format requirements, the Board proposes to adopt new Model G--15(A) and Samples G--15(B), G--15(C), and G--15(D), reflecting those requirements. Under proposed § 226.6(a)(1), specified account-opening disclosures would have to be given in the form of a table with headings, content, and format substantially similar to any of the applicable models.

The Board is proposing only one model form for the account-opening disclosures, rather than two forms as in the case of the early disclosures. When the early disclosures are provided soon after application, the consumer may not have chosen a particular HELOC plan, and thus if the creditor offers more than one plan, ***showing*** more than one in the disclosures would be helpful to the consumer and accordingly one of the early disclosure models ***shows*** two plans, as discussed above. In contrast, at the time the HELOC account is opened, the consumer will have chosen a particular plan and therefore a second model form is not needed.

Proposed Samples G--15(B), G--15(C), and G--15(D), similarly to proposed Samples G--14(C), G--14(D), and G--14(E), differ in that they illustrate differing minimum payment terms, such as whether the HELOC has a repayment period, ***how*** the length of the repayment period is determined, whether a balloon payment will or may be due, and ***how*** the minimum payment amount is calculated during the draw and repayment periods. The proposed samples also differ with regard to whether the illustrated plan has a discounted introductory APR.

Currently, the staff commentary to Appendix G does not contain any comments addressing the model and sample forms and clauses related to the HELOC disclosures. The Board proposes to add staff commentary to provide guidance on the proposed new model and sample forms for the early HELOC disclosures required under proposed § 226.5b(b), as well as on the proposed new model and sample forms for certain account-opening disclosures under proposed § 226.6(a)(2). The proposed commentary would provide guidance on ***how*** to use the model and sample forms and on ***how*** the various forms differ. In addition, the proposed commentary would provide details on the formatting techniques used in presenting the information in the sample forms, such as on font style and size, spacing between lines of text, paragraphs, words, and characters, and sufficient contrast. The commentary would also state that, while the Board would not require creditors to use these formatting techniques (except for the font size requirements), the Board would encourage creditors to consider these techniques when deciding ***how*** to disclose information in the table, to ensure that the information is presented in a readable format. This portion of the proposed commentary would generally parallel the commentary to the model and sample forms and clauses for open-end (not home-secured) credit adopted in the January 2009 Regulation Z Rule.

Model clauses for notice of results of reinstatement investigation. Model clauses in proposed Models G--22(A) and G--22(B) illustrate the disclosures required under § 226.5b(g)(2)(v). They inform the consumer that the consumer's reinstatement request has been received and that the creditor has investigated the request. They contain sample language for explaining the results of a reinstatement investigation in which the creditor found that a reason for suspension of advances or reduction of the credit limit still exists. Clauses in Model G--22(A) illustrate ***how*** a notice may explain that the same reason or reasons originally supporting the suspension or reduction still exist. Clauses in Model G--22(B) illustrate ***how*** a creditor may explain that a new reason or reasons for account suspension or reduction exist.

Models G--22(A) and G--22(B) do not contain sample clauses for all reasons in which a creditor may temporarily suspend or reduce a home-equity plan; they illustrate only three of the reasons why a creditor may take these actions: (1) A significant decline in the value of the property securing the plan (§ 226.5b(f)(3)(vi)(A)); (2) a material change in the consumer's financial circumstances such that the creditor has a reasonable belief that the consumer will be unable to meet the repayment terms of the plan (§ 226.5b(f)(3)(vi)(B)); and (3) the consumer's default of a material obligation under the plan (§ 226.5b(f)(3)(vi)(C)). The Board chose to feature these three reasons for temporary suspension or reduction because Board outreach and research indicated that creditors rely on these reasons to take action more often than the reasons found in § 226.5b(f)(3)(vi)(D)-(F), and because they may present more challenges regarding the specificity required to comply with disclosure requirement.

Proposed comment 12 to Appendix G of part 226 is intended to affirm that the creditor has flexibility in complying with the disclosure requirement of § 226.5b(g)(2)(v). The creditor may comply by using language substantially similar to the language in the model clauses or by substituting applicable reasons for the action not represented in the model clauses, as long as the information required to be disclosed is clear and conspicuous.

Model clauses for notice of action taken on account. These model clauses illustrate the disclosures required under § 226.9(j)(1) and (j)(3). Clauses in Model G--23(A) contain information required under proposed § 226.9(j)(1) regarding the nature of the action taken on the account under § 226.5b(f)(3)(i) and (f)(3)(vi) and the specific reasons for the action taken. In particular, they illustrate language for a notice in which the creditor temporarily suspended advances or reduced a credit limit due to a significant decline in the value of the property securing the plan under § 226.5b(f)(3)(vi)(A); a material change in the consumer's financial circumstances such that the creditor has a reasonable belief that the consumer will be unable to meet the repayment terms of the plan under § 226.5b(f)(3)(vi)(B); and the consumer's default of a material obligation under the plan under § 226.5b(f)(3)(vi)(C). Again, the Board chose to feature these three reasons for temporary suspension or reduction because Board outreach and research indicated that creditors rely on these reasons to take action more often than the reasons found in § 226.5b(f)(3)(vi)(D)-(F), and because they may present more challenges regarding the specificity required to comply with the disclosure requirement. Model G--23(A) clauses also contain information regarding the consumer's rights when the creditor requires the consumer to request reinstatement under § 226.5b(g)(1)(ii).

Clauses in Model G--23(B) contain information required under proposed § 226.9(j)(3) regarding the nature of the action taken on the account under § 226.5b(f)(2) and the specific reasons for the action taken. In particular, they illustrate language for a notice in which the creditor takes action on an account due to the consumer's failure to make a required minimum periodic payment within 30 days of the due date under proposed § 226.5b(f)(2)(ii) and the consumer's action or inaction that adversely affected the creditor's interest in the property securing the plan under § 226.5b(f)(2)(iii). Model clauses for the notice when a creditor takes action due to a consumer's fraud or material misrepresentation under § 226.5b(f)(2)(i) are not included because, under proposed comment 9(j)(3)-2.ii, a creditor need disclose only that the consumer's fraud or misrepresentation is the reason for the action.

Proposed comment 13 to Appendix G is intended to affirm that a creditor has flexibility in complying with the disclosure requirements of § 226.9(j)(1) and (j)(3). The creditor may comply by using language substantially similar to the language in the model clauses or by substituting applicable reasons for the action not represented in the model clauses, as long as the information required to be disclosed is clear and conspicuous.

The Board developed the clauses in proposed Models G--22(A), G--22(B), G--23(A) and G--23(B) in consultation with ICF Macro, a third-party consumer research and testing firm contracted by the Board to assist with developing and testing disclosures for home-equity plans. The Board has not yet tested the clauses in proposed Models G--22(A), G--22(B), G--23(A) and G--23(B) with consumers. The Board requests comment on whether consumer testing of these clauses is necessary, whether the Board should develop model forms rather than model clauses for the disclosure requirements of § 226.5b(g)(2)(v) and § 226.9(j)(1) and (j)(3), and whether the Board should consider modifying, deleting, or adding any proposed clauses for these models.

Sample forms for periodic statements, change-in-terms notices, and notices of rate increases. As discussed above in the section-by-section analysis to proposed § 226.7(a), the Board is proposing to revise the requirements for disclosures on periodic statements for HELOC accounts. Periodic statements would be subject to certain content and formatting requirements, including a requirement to disclose a total of interest and a total of fees charged, both for the statement period and for year to date, in proximity to the list of transactions on the statement. To provide guidance on the proposed periodic statement requirements, the Board proposes to adopt new Samples G--24(A), G--24(B), and G--24(C). Under proposed § 226.7(a), the interest and fee disclosures would have to be made using a format substantially similar to the samples. Proposed Sample G--24(A) illustrates the disclosure of total interest and total fees for the period and year to date in proximity to transactions. Proposed Samples G--24(B) and G--24(C) ***show*** entire periodic statements, including the grouping ***shown*** in Sample G--24(A) as well as other elements of the statements.

As discussed above in the section-by-section analysis to proposed § 226.9(c)(1) and (*i*), the Board is also proposing to revise the requirements for providing change-in-terms notices for HELOCs, and to adopt a new requirement to provide a notice of rate increase. The notice would be subject to certain formatting requirements including the use of a tabular format, and if the notice is given with a periodic statement, would have to be disclosed on the front of any page of the statement. If the notice is not given with a periodic statement, the notice would have to be disclosed, at the creditor's option, on the front of the first page or segregated on a separate page from other information. The Board proposes to adopt new Sample G--25, illustrating a change-in-terms notice using the tabular format, and Sample G--26, ***showing*** a notice of rate increase using the tabular format. Proposed Sample G--24(C) illustrates a change-in-terms notice given on the front of a periodic statement using the tabular format, and proposed Sample G--24(B) provides the same guidance with regard to a notice of rate increase.

The Board also proposes to adopt staff commentary to provide guidance on the use of proposed Samples G--24(A), G--24(B), G--24(C), G--25, and G--26. The proposed commentary would discuss ***how*** the forms may be used and ***how*** they differ from each other. In addition, the commentary would make clear that the samples contain information that is not required by Regulation Z, and that they present information in additional formats that are not required by Regulation Z.

Model and sample forms for credit insurance, debt cancellation or debt suspension. As discussed in the notice of the Board's proposal regarding closed-end mortgage lending requirements under Regulation Z, published today elsewhere in this **Federal Register**, the Board is proposing certain additional disclosure requirements relating to credit insurance, debt cancellation or debt suspension. Generally, the proposed disclosures would enhance information provided to consumers about the optional nature of the insurance or coverage, the cost, and eligibility requirements. The Board is proposing to adopt new samples and models for these disclosures, designated G--16(C) and G--16(D) for open-end credit and H-17(C) and H-17(D) for closed-end credit. For the proposed text of the sample and model disclosures and for further discussion of them, refer to the Board's separate **Federal Register** notice published today elsewhere in this **Federal Register**.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq*.). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/ recordkeepers are creditors and other entities subject to Regulation Z.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months, § 226.25, for certain types of records. [41]

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Board that engage in consumer credit activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other

[41] See comments 25(a)-3 and - 4.

federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 734,127 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed in the preamble, the Board is proposing changes to format, timing, and content requirements for HELOC disclosures required by Regulation Z: (1) Educational information published by the Board provided at application; (2) transaction-specific disclosures provided within three days after application; (3) transaction-specific disclosures provided at account-opening; (4) periodic statements and notices of changes to the transaction's terms provided during the life of the plan; and (5) notices related to terminating, suspending, and reinstating accounts, and reducing the credit limit. The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 104,160 hours, from 734,127 to 838,287 hours. In addition, the Board estimates that, on a continuing basis, the proposed revisions to the rules would increase the total annual burden on a continuing basis from 734,127 to 1,323,049 hours.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Board expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. Furthermore, the burden estimate for this rulemaking does not include the burden of complying with proposed disclosure and timing requirements that apply to private educational lenders making private education loans as announced in a separate proposed rulemaking (Docket No. R-1353) or the proposed disclosure and timing requirements of the Board's separate notice published simultaneously with this proposal for closed-end mortgages.

The Board estimates that 651 respondents regulated by the Federal Reserve would take, on average, 160 hours (four business weeks) to update their systems, internal procedure manuals, and provide training for relevant staff to comply with the proposed disclosure requirements in § 226.5b(b). This one-time revision would increase the burden by 104,160 hours. On a continuing basis the Board estimates that 651 respondents regulated by the Federal Reserve would take, on average, 64 hours a month to comply with the all of the disclosure requirements for open-end credit plans secured by real property and would increase the ongoing burden from 15,532 hours to 500,294 hours. To ease the burden and cost of complying with the new and proposed requirements under Regulation Z the Board proposes to revise or add several model forms, model clauses and sample forms to Appendix G.

The other federal financial agencies: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15 U.S.C. 1607(a). These agencies may, but are not required to, use the Board's burden estimation methodology. Using the Board's method, the total current estimated annual burden for the approximately 17,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA would be approximately 13,568,725 hours. The proposed rule would impose a one-time increase in the estimated annual burden for such institutions by 2,752,000 hours to 16,320,725 hours. On a continuing basis the proposed rule would impose an increase in the estimated annual burden by 13,209,600 to 26,778,325 hours. The above estimates represent an average across all respondents; the Board expects variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

VIII. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration, an entity is considered "small" if it has $ 175 million or less in assets for banks and other depository institutions; and $ 7 million or less in revenues for non-depository lenders and loan originators. [42]

Based on its analysis and for the reasons stated below, the Board believes that the proposed rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the following areas.

A. Reasons for the Proposed Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and ***avoid*** the uninformed use of credit. In this regard, the goal of the proposed amendments to Regulation Z is to improve the effectiveness of the disclosures that creditors provide to consumers beginning before application and throughout the life of a HELOC plan. Accordingly, the Board is proposing changes to format, timing, and content requirements for HELOC disclosures required by Regulation Z: (1) Educational information published by the Board provided with the application; (2) transaction-specific disclosures provided shortly after application; (3) transaction-specific disclosures provided at account-opening; (4) periodic statements and notices of changes to the transaction's terms provided during the life of the plan; and (5) notices related to terminating, suspending, and reinstating accounts, and reducing the credit limit.

Specifically, the proposed regulations would revise and enhance the content of HELOC disclosures currently required at application and account-opening, as well as periodic statements and change-in-terms notices. The Board's proposal also would require creditors to provide transaction-specific disclosures early enough in the process (*i.e.*, within three business days after application rather than at account-opening, as currently required) to enable consumers to make decisions based on credit terms that would be offered to them and not on general information that may not apply to a particular consumer. The Board's proposal also would revise notice of action taken requirements for accounts that are temporarily suspended or reduced; require a notice of action taken when a creditor takes any action for reasons that would allow the creditor to terminate the account; and require a notice of the results of a creditor's investigation of a consumer's request for reinstatement of credit privileges on accounts

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[42] 13 CFR 121.201.

that have been temporarily suspended or reduced. These amendments are proposed in furtherance of the Board's responsibility to prescribe regulations to carry out the purposes of TILA, including promoting consumers' awareness of the cost of credit and their informed use of credit.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** contains information about objectives of and legal basis for the proposed rule. In summary, the proposed amendments to Regulation Z are designed to achieve two goals: (1) Revise content, timing and format of disclosures required for HELOCs at application, account-opening, and after the HELOC is opened; and (2) clarify and strengthen certain substantive restrictions on when creditors may change the terms of a HELOC plan, including when a creditor may terminate, suspend, or reduce a HELOC.

The legal basis for the proposed rule is in Sections 105(a), 105(f), 127(a)(8), 127A(a)(14) and 127A(e) of TILA. 15 U.S.C. 1604(a), 1604(f), 1637(a)(8), 1637a(a)(14), and 1637a(e). A more detailed discussion of the Board's rulemaking authority is set forth in part IV of the **SUPPLEMENTARY INFORMATION**.

C. Description of Small Entities to Which the Proposed Rule Would Apply

The proposed regulations would apply to all institutions and entities that engage in originating or extending HELOCs. The Board is not aware of a reliable source for the total number of small entities likely to be affected by the proposal; and the credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that originate, extend and service even small numbers of home-secured credit. *See* § 226.1(c)(1). [43] Thus, all small entities that originate, extend, or service HELOCs potentially could be subject to at least some aspects of the proposed rule.

The Board can, however, identify through data from Reports of Condition and Income ("call reports") approximate numbers of small depository institutions that would be subject to the proposed rules if they originate or extend HELOCs. Based on December 2008 call report data, approximately 7,557 small institutions would be subject to the proposed rule. Approximately 16,345 depository institutions in the United States filed call report data, approximately 11,907 of which had total domestic assets of $ 175 million or less and thus were considered small entities for purposes of the Regulatory Flexibility Act. Of 4,231 banks, 565 thrifts and 7,111 credit unions that filed call report data and were considered small entities, 2,397 banks, 363 thrifts, and 4,797 credit unions, totaling 7,557 institutions, extended HELOCs. For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks.

The Board cannot identify with certainty the number of small non-depository institutions that would be subject to the proposed rule. Home Mortgage Disclosure Act (HMDA) [44] data indicate that 1,752 non-depository institutions filed

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[43] Regulation Z generally applies to "each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended toconsumers; (ii) the offering or extension of credit is done regularly, (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes." § 226.1(c)(1).

[44] The 8,610 lenders (both depository institutions andmortgage companies) covered by HMDA in 2007 accounted for an estimated 80% of all home lending in the United States (2008 HMDA data are not yet available). Under HMDA, lenders use a "loan/application register" (HMDA/LAR) to report information annually to their federal supervisory agencies for each application and loan acted on during the calendar year. Lenders must make their HMDA/LARs available to the public by March 31 following

HMDA reports in 2007. [45] Based on the small volume of lending activity reported by these institutions in general, most are likely to be small. [46]

Another aspect of the Board's proposal that would affect individuals and small entities that are non-depositories is the requirement that creditors disclose as part of the early HELOC disclosure the identity of the creditor making the disclosures and the loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act") Sections 1503(3) and (12), 12 U.S.C. 5102(3) and (12). 15 U.S.C. 1637a(a)(14). Currently, a creditor is not required to disclose identification information about the creditor and the borrower as part of the application disclosures. Loan originators other than brokers that would be affected by the proposal are employees of creditors (or of brokers) and, as such, are not business entities in their own right. In its 2008 proposed rule under HOEPA, 73 FR 1672, 1720 (Jan. 9, 2008), the Board noted that, according to the National Association of Mortgage Brokers (NAMB), in 2004 there were 53,000 brokerage companies that employed an estimated 418,700 people. [47] The Board estimated that most of these companies are small entities. In addition, a comment letter received from the U.S. Small Business Administration under the Board's 2008 HOEPA proposal cited the U.S. Census Bureau's 2002 Economic Census in stating that there were 15,195 small broker entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the proposed rules are described in parts II, V and VI of the **SUPPLEMENTARY INFORMATION**. The exact effect of the proposed revisions to Regulation Z on small entities is unknown. Some small entities would be required, among other things, to modify their HELOC disclosures and disclosure delivery process to comply with the revised rules. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and to administer and maintain accounts, the complexity of the terms of HELOCs that they offer, and the range of their HELOC product offerings.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Other Federal Rules

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the year to which the data relate, and they must remove the two date-related fields to help preserve applicants' privacy. Only lenders that have offices (or, for non-depository institutions, are deemed to have offices) in metropolitan areas are required to report under HMDA. However, if a lender is required to report, it must report information on all of its home loan applications and loans in all locations, including non-metropolitan areas.

[45] *The 2007 HMDA Data, http:// www.federalreserve.gov/pubs/bulletin/2008/articles/hmda/default.htm* .

[46] The Board recognizes that reporting HELOC originations under HMDA is optional, so HMDA reporting is not an exact gauge of small non-depositories engaging in HELOC lending.

[47] *http://www.namb.org/namb/Industry_Facts.asp?SnID=719224934* . The cited page of the NAMB Web site, however, no longer provides an estimate of the number of mortgage brokerage companies.

The Board has not identified any federal rules that conflict with the proposed revisions to Regulation Z.

Overlap With SAFE Act

The proposed rule's required disclosure contents for HELOCs would overlap with the SAFE Act by requiring that the disclosure include the loan originator's unique identifier, as defined by SAFE Act, if applicable.

F. Identification of Duplicative, Overlapping, or Conflicting State Laws

State Laws Requiring Loan Originator's Unique Identifier

The Board is aware that many states regulate loan originators, especially brokers. Under TILA Section 111, the proposed rule would not preempt such state laws except to the extent they are inconsistent with the proposal's requirements. 15 U.S.C. 1610.

State TILA Equivalents

Many states regulate consumer credit through statutory disclosure schemes similar to TILA ("TILA equivalents"). Similarly to state laws regulating loan originators, such state TILA equivalents would be preempted only to the extent they are inconsistent with the proposal's requirements. *Id*.

The Board seeks comment regarding any state or local statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

G. Discussion of Significant Alternatives

The Board welcomes comments on any significant alternatives, consistent with the requirements of TILA, that would minimize the impact of the proposed rule on small entities.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is ***shown*** inside arrows while language that would be deleted is set off with brackets. In certain cases deemed appropriate by the Board to aid understanding, redesignated text, such as text moved from the commentary into the regulation or from one paragraph to another, reflects changes to the original text, with arrows and brackets.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, 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 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, and 1637(c)(5).

Subpart A--General

2. Section 226.2 is amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(6) *Business Day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.5b(e), § 226.9(j)(2), § 226.19(a)(1)(ii), § 226.19(a)(2), and § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

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Subpart B--Open-End Credit

3. Section 226.5 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (b)(1), (b)(4), and (c), and by republishing paragraph (d) to read as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures*--(1) *General*.

(i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing, [7] in a form that the consumer may keep, [8] except that:

(A) The following disclosures need not be written:

(*1*) Disclosures under § 226.6(a)(3) of charges that are imposed as part of a home-equity plan that are not required to be disclosed under § 226.6(a)(2) and related disclosures under § 226.9(c)(1)(ii)(B) of charges;

(*2*) Disclosures under § 226.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under § 226.6(b)(2) and related disclosures under § 226.9(c)(2)(ii)(B) of charges;

(*3*) Disclosures [disclosures] under § 226.9(c)(2)(v); and

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[7] [Reserved].

[8] [Reserved].

(*4*) Disclosures [disclosures] under § 226.9(d) when a finance charge is imposed at the time of the transaction.

(B) The following disclosures need not be in a retainable form:

(*1*) Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section;

(*2*) Disclosures [disclosures] for credit and charge card applications and solicitations under § 226.5a; [home-equity disclosures under § 226.5b(d)];

(*3*) The [the] alternative summary billing-rights statement under § 226.9(a)(2);

(*4*) The [the] credit and charge card renewal disclosures required under § 226.9(e); and

(*5*) The [the] payment requirements under § 226.10(b), except as provided in § 226.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The disclosures required by §§ 226.5a, 226.5b(a), and 226.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(2) *Terminology*. (i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3)(ii) of this section, the terms *borrowing period* (in reference to the draw period), *repayment period*, and *balloon payment* shall be used, as applicable. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term required shall be used and the program shall be identified by its name. [For home-equity plans subject to § 226.5b, the terms *finance charge* and *annual percentage rate*, when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. [9] The terms need not be more conspicuous when used for periodic statement disclosures under § 226.7(a)(4) and for advertisements under § 226.16.]

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3)(except for paragraph (a)(3)(ii) and the disclosures required under § 226.6(a)(2) that must be presented in a tabular format pursuant to paragraph (a)(3)(iii)) of this section, the term *penalty APR* shall be used, as applicable. The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) (except for the disclosures required under § 226.6(a)(2) that must be presented in a tabular format pursuant to paragraph (a)(3)(iii)) of this section), the term *fixed*, or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

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[9] [Reserved].

(3) *Specific formats*. (i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of § 226.5a(a)(2).

(ii) Certain disclosures for home-equity plans [must precede other disclosures and] must be [given] provided in a tabular format in accordance with the requirements of § 226.5b[(a)](b)(2).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of § 226.6(a)(1) and (b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of § 226.7(a)(6), (b)(6) and (b)(13).

(v) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of § 226.9(b)(3).

(vi) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of § 226.9(c)(1)(iii)(B) and (c)(2)(iii)(B).

(vii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of § 226.9(g)(3)(ii)and (*i*)(4).

* * * *

(b) *Time of disclosures*--(1) *Account-opening disclosures*--(i) *General rule*. The creditor shall furnish account-opening disclosures required by § 226.6 before the first transaction is made under the plan.

(ii) *Charges imposed as part of an open-end [(not home-secured)] plan*. Charges that are imposed as part of an open-end [(not home-secured)] plan and are not required to be disclosed under § 226.6(a)(2) or (b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner such that a consumer would be likely to notice them. [This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of § 226.5b.]

(iii) *Telephone purchases*. Disclosures required by § 226.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) *Membership fees*--(A) *General*. In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under § 226.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 226.5a(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) *Home-equity plans*. Creditors offering home-equity plans subject to the requirements of § 226.5b are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section. (See §§ 226.5b(d), 226.5b(e), and 226.15 regarding requirements for refunds of fees applicable to creditors offering home-equity plans.)

(v) *Application fees*. (A) *General*. In general, a [A] creditor may collect an application fee excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. See § 226.5(b)(1)(iv).

(B) *Home-equity plans*. Creditors offering home-equity plans subject to the requirements of § 226.5b are not subject to the requirements of paragraph (b)(1)(v)(A) of this section. (See §§ 226.5b(d), 226.5b(e), and 226.15 regarding requirements for refunds of fees applicable to creditors offering home-equity plans.)
* * * *

(4) *Home-equity plan[s] application and three days after application disclosures*. Disclosures for home-equity plans shall be made in accordance with the timing requirements of § 226.5b(a)(1) and (b)(1).

(c) *Basis of disclosures and use of estimates*. Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, the creditor [it] shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers*. If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by §§ 226.6 and 226.15(b) shall be made to each consumer having the right to rescind.
* * * *

4. Section 226.5b is amended by revising paragraphs (a) through (e), (f)(2)(ii), (f)(2)(iv), and (f)(3)(vi)(A), adding new paragraphs (f)(3)(vi)(G), and (g), and revising and redesignating current paragraph (g) as paragraph (d) and current paragraph (h) as paragraph (e) as follows:

§ 226.5b Requirements for home-equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. [For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under section 226.14(b).]

(a) *Home-equity document provided on or with the application*--(1) *In general*. (i) Except as provided in paragraph (a)(1)(ii) of this section, the home-equity document "Key Questions to ***Ask*** about Home Equity Lines of Credit" published by the Board shall be provided at the time an application is provided to the consumer. The document must be provided in a prominent location on or with an application.

(ii) For telephone applications or applications received through an intermediary agent or broker, the document required by paragraph (a)(1)(i) of this section must be delivered or mailed not later than account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier, with the disclosures required by paragraph (b) of this section.

(2) *Electronic disclosure*. For an application that is accessed by the consumer in electronic form, the document required by paragraph (a)(1) of this section may be provided to the consumer in electronic form on or with the application.

(3) *Duties of third parties*. Persons other than the creditor who provide applications to consumers for home-equity plans must comply with paragraphs (a)(1) and (a)(2) of this section, except that these third parties are not required to deliver or mail the document required by paragraph (a)(1)(i) of this section for telephone applications as discussed in paragraph (a)(1)(ii) of this section. [10a]

(b) *Home-equity disclosures provided no later than account opening or three business days after application, whichever is earlier*--(1) *Timing*. The disclosures required by paragraph (c) of this section shall be delivered or mailed not later than account opening, or three business days following receipt of a consumer's application by the creditor, whichever is earlier.

(2) *Form of disclosures; tabular format*. (i) The disclosures required by paragraphs (c)(4)(ii) through (c)(19) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G--14 in Appendix G to this part.

(ii) The table described in paragraph (b)(2)(i) of this section shall contain only the information required or permitted by paragraphs (c)(4)(ii) through (c)(19).

(iii) Disclosures required by paragraph (c)(1) and (c)(3) of this section must be placed directly above the table described in paragraph (b)(2)(i) of this section, in a format substantially similar to any of the applicable tables found in G--14 in Appendix G to this part.

(iv) The disclosures required by paragraphs (c)(2), (c)(4)(i), (c)(20) through (c)(22) of this section must be disclosed directly below the table described in paragraph (b)(2)(i) of this section, in a format substantially similar to any of the applicable tables found in G--14 in Appendix G to this part.

(v) Other information may be presented with the table described in paragraph (b)(2)(i) of this section, provided that such information appears outside of the required table.

(vi) The following disclosures must be disclosed in bold text:

(A) Disclosures required by paragraphs (c)(2), (c)(4)(i), (c)(20), (c)(21), and (c)(22)(i) of this section.

(B) Any annual percentage rates required to be disclosed under paragraph (c)(10) of this section.

(C) Total account opening fees disclosed under paragraph (c)(11) of this section.

(D) Any percentage or dollar amount required to be disclosed under paragraphs (c)(12), (c)(13), (c)(16), (c)(17) and (c)(19) of this section, except the amount of any periodic fee disclosed pursuant to paragraph (c)(12) of this section that is not an annualized amount.

(E) If a creditor is required under paragraph (c)(9) of this section to provide a disclosure in a format substantially similar to the format used in any of the applicable tables found in Samples G--14(C), 14(D) and 14(E) in Appendix G to this part, the creditor must provide in bold text any terms and phrases that are ***shown*** in bold text for that disclosure in the applicable tables.

(3) *Disclosures based on a percentage*. Except for disclosing fees under paragraph (c)(11) of this section, if the amount of any fee required to be disclosed under paragraph (c) of this section or if the amount of any transaction

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[10a] [Reserved].

requirement required to be disclosed under paragraph (c)(16) of this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee or transaction amount, as applicable.

[(a) *Form of disclosures*--(1) *General*. The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees described in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) *Precedence of certain disclosures*. The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(3) For an application that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application.

(b) *Time of disclosures*. The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer. [10a]

(c) *Duties of third parties*--Persons other than the creditor who provide applications to consumers for home-equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section for a creditor's home-equity plan, they also shall provide the disclosures at such time. n10a]

[(d)](c) *Content of disclosures*. The creditor shall provide the following disclosures in the manner prescribed by paragraph (b) of this section, as applicable. In making the disclosures required by this paragraph (except under paragraph (c)(18) of this section), a creditor must not disclose in the table described in paragraph (b)(2)(i) of this section any terms applicable to fixed-rate and-term payment plans offered during the draw period of the plan, unless fixed-rate and-term payment plans are the only payment plans offered during the draw period of the plan.

(1) *Identification information*.

(i) The consumer's name and address.

(ii) The identity of the creditor making the disclosures.

(iii) The date the disclosure was prepared.

(iv) The loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 Sections 1503(3) and (12), 12 U.S.C. 5102(3) and (12). [(1) *Retention of information*. A statement that the consumer should make or otherwise retain a copy of the disclosures.]

(2) *No obligation statement*. A statement that the consumer has no obligation to accept the terms disclosed in the table. If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement.

[10a] [Thedisclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.]

(3) *Identification of plan as a home-equity line of credit*. A statement that the consumer has applied for a home-equity line of credit.

(4)[(2)] *Conditions for disclosed terms*. (i) [A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification] Identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer [therefore] elects not to open the plan, the consumer may receive a refund of all fees paid by the consumer [in connection with the application].

(5) *Refund of fees under paragraph (e) of this section*. A statement that the consumer may receive a refund of all fees paid by the consumer, if the consumer notifies the creditor within three business days of receiving the disclosures given pursuant to paragraph (b) of this section that the consumer does not want to open the plan.

(6)[(3)] *Security interest and risk to home*. A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(7)[(4)] *Possible actions by creditor*. (i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and [, as specified in the initial agreement,] implement [certain] changes in the plan.

(ii) As applicable, either (A) a [A] statement that the consumer may receive, upon request, information about the conditions under which such actions may occur, or (B) if the information about the conditions is provided with the table described in paragraph (b)(2)(i) of this section, a reference to the location of the information.

[(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.]

(8) *Tax implications*. A statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes. A statement that the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(9)[(5)] *Payment terms*. The payment terms of the plan, as follows. [including:] A creditor must distinguish payment terms applicable to the draw period and the repayment period, by using the heading "Borrowing Period" for the draw period and "Repayment Period" for the repayment period, in a format substantially similar to the format used in any of the applicable tables found in Samples G--14(C) and G--14(E) in Appendix G to this part.

(i) The length of the plan, the length of the draw period and the length of any repayment period. When the length of the plan is definite, a creditor must disclose the length of the plan, the length of the draw period and the length of any repayment period in a format substantially similar to the format used in any of the applicable tables found in Samples G--14(C) and G--14(D) in Appendix G to this part. If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full.

(ii) (A) If a creditor offers to the consumer only one payment plan option, an [An] explanation of ***how*** the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement of this fact, as well as a statement that a balloon payment may result or will result, as applicable. [10b] If a

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[10b] Reserved. [Aballoon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.]

balloon payment will not result under the payment plan, a creditor must not disclose in the table required by paragraph (b)(2)(i) of this section the fact that a balloon payment will not result for the plan.

(B) If a creditor offers to the consumer more than one payment plan option, the creditor must disclose only two payment plan options in the table described in paragraph (b)(2)(i) of this section. If under one or more payment plans offered by the creditor a consumer would repay all of the principal by the end of the plan if the consumer makes only the minimum payments, the creditor must describe one of these payment plans in the table required by paragraph (b)(2)(i) of this section. A creditor must include a statement indicating that the table ***shows*** ***how*** the creditor determines minimum required payments for two plans offered by the creditor. If a creditor offers more than the two payment plans described in the table described in paragraph (b)(2)(i) of this section (other than fixed-rate and-term payment plans unless those are the only plans offered on the HELOC plan during the draw period), the creditor also must disclose that other payment plans are available, and that the consumer should ***ask*** the creditor for additional details about these other payment plans. The creditor must provide the following information:

(*1*) If under at least one of the payment plans disclosed in the table required by paragraph (b)(2)(i) of this section, paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement of this fact, as well as a statement that a balloon payment may result or will result, as applicable. If a balloon payment would result under one payment plan but not both payment plans, the creditor must disclose that a balloon payment may result depending on the terms of the payment plan. If a balloon payment would result under both payment plans, the creditor must disclose that a balloon payment will result. If a balloon payment would not result under both payment plans, a creditor must not disclose in the table required by paragraph (b)(2)(i) of this section the fact that a balloon payment would not result for both plans.

(*2*) An explanation of ***how*** the minimum periodic payments will be determined and the timing of the payments for each plan.

(*3*) For each payment plan described in the table required under paragraph (b)(2)(i) of this section, if paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement that a balloon payment may result or will result under that plan, as applicable. If one of the plans has a balloon payment and the other does not, a creditor must disclose that a balloon payment will not result for the plan in which no balloon payment would occur. If neither payment plan has a balloon payment, a creditor must not disclose the fact that a balloon payment will not result for the plan.

(iii)(A) For the payment plan(s) described in paragraph (c)(9)(ii) of this section, sample payments ***showing*** the first minimum periodic payment for the draw period and any repayment period, and the balance outstanding at the beginning of any repayment period, based on the following assumptions:

(*1*) The consumer borrows the full credit line (as disclosed in paragraph (c)(17) of this section) at account opening, and does not obtain any additional extensions of credit.

(*2*) The consumer makes only minimum periodic payments during the draw period and any repayment period.

(*3*) The annual percentage rates used to calculate the sample payments, as described in paragraph (c)(9)(iii)(B) of this section, will remain the same during the draw period and any repayment period.

(B) A creditor must provide the information described in paragraph (c)(9)(iii)(A) of this section for the following two annual percentage rates:

(*1*) The current annual percentage rate for the plan, as disclosed under paragraph (c)(10) of this section, except that if an introductory annual percentage rate applies, the creditor must use the rate that would otherwise apply to the plan after the introductory rate expires, as described in paragraph (c)(10)(ii) of this section.

(*2*) The maximum annual percentage rate that may apply under the payment option, as described in paragraph (c)(10)(i)(A)(5).

(C) In disclosing the payment samples as required by paragraph (c)(9)(iii)(A) of this section, a creditor also must include the following information:

(*1*) A statement that the sample payments ***show*** the first periodic payments at the current and maximum annual percentage rates if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money.

(*2*) A statement that the sample payments are not the consumer's actual payments. A statement that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period.

(*3*) If a creditor is disclosing two payment plans under paragraph (c)(9)(ii) of this section, the creditor must identify which plan results in the least amount of interest, and which plan results in the most amount of interest, based on the assumptions described in paragraphs (c)(9)(iii)(A) and (B) of this section.

(*4*) For each payment plan disclosed under paragraph (c)(9)(ii) of this section, if a consumer may pay a balloon payment under that plan, the creditor must disclose that fact, and the amount of the balloon payment based on the assumptions described in paragraphs (c)(9)(iii)(A) and (B) of this section. If a creditor is disclosing only one payment plan under paragraph (c)(9)(ii), and a balloon payment will not occur for that plan, the creditor must not disclose that a balloon payment will not result for the plan. If a creditor is disclosing two payment plans under paragraph (c)(9)(ii) of this section, one in which a balloon payment would occur and one in which it would not, a creditor must disclose that a balloon payment will not result for the plan in which no balloon payment would occur. If neither payment plan has a balloon payment, a creditor must not disclose the fact that a balloon payment will not result for the plan.

(D) A creditor must provide the information described in paragraph (c)(9)(iii) of this section in a format that is substantially similar to the format used in any of the applicable tables found in Samples G--14(C), G--14(D) and G--14(E) in Appendix G to this part.

[(iii) An example, based on a $ 10,000 outstanding balance and a recent annual percentage rate, [10c] ***showing*** the minimum periodic payment, any balloon payment, and the time it would take to repay the $ 10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.]

(iv) A statement that the consumer can borrow money during the draw period. If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period.

[10c] Reserved. [Forfixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.]

(v) A statement indicating whether minimum payments are due in the draw period and any repayment period.

(10)[(6)] *Annual percentage rate*. Each periodic interest rate applicable to any payment plan disclosed under paragraph (c)(9)(ii) of this section that may be used to compute the finance charge on an outstanding balance, expressed as an annual percentage rate (as determined by § 226.14(b)), except a creditor must not disclose any penalty rate set forth in the initial agreement that may be imposed in lieu of termination of the plan. The annual percentage rates disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Any minimum or maximum annual percentage rates that may apply; and any disclosure of rate changes set forth in the initial agreement except for rates that would apply after the expiration of an introductory rate. [For fixed-rate plans, a recent annual percentage rate [10c] imposed under the plan and a statement that the rate does not include costs other than interest.]

(i) *Disclosures for variable-rate plans*. (A) If a rate disclosed under paragraph (c)(10) of this section is a variable rate, the following disclosures, as applicable:

(*1*) The fact that the annual percentage rate may change due to the variable-rate feature, using the term "variable rate" in underlined text as ***shown*** in any of the applicable tables found in Samples G--14(C), G--14(D) and G--14(E) in Appendix G to this part.

(*2*) An explanation of ***how*** the annual percentage rate will be determined. Except as provided in paragraph (c)(10)(A)(6) of this section, in providing this disclosure, a creditor must only identify the index used and the amount of any margin.

(*3*) The frequency of changes in the annual percentage rate.

(*4*) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(*5*) A statement of any limitations on changes in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed under each payment plan disclosed under paragraph (c)(9)(ii) of this section. If no annual or other periodic limitations apply to changes in the annual percentage rate, a statement that no annual limitation exists.

(*6*) The lowest and highest value of the index in the past 15 years.

(B) A variable rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(ii) *Introductory initial rate*. If the initial rate is an introductory rate, the creditor must also disclose the rate that would otherwise apply to the plan pursuant to paragraph (c)(10) of this section. Where the rate is fixed, the creditor must disclose the rate that will apply after the introductory rate expires. Where the rate is variable, the creditor must disclose the rate based on the applicable index or formula. A creditor must disclose in the table described in paragraph (b)(2)(i) of this section the introductory rate along with the rate that would otherwise apply to the plan,

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[10c] Reserved. [Forfixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.]

and use the term "introductory" or "intro" in immediate proximity to the introductory rate. The creditor must also disclose the time period during which the introductory rate will remain in effect.

(11) [(7)] *Fees imposed by the creditor and third parties to open the plan*. The total of all one-time fees imposed by the creditor and any third parties to open the plan, stated as a dollar amount. An itemization of [any] all one-time fees imposed by the creditor and any third parties to open [, use, or maintain] the plan, stated as a dollar amount [or percentage], and when such fees are payable. If the exact total of one-time fees for account opening is not known at the time the disclosures under paragraph (b) of this section are delivered or mailed, a creditor must provide the highest total of one-time account opening fees possible for the plan terms described in the table required under paragraph (b)(2)(i) of this section with a indication that the one-time account opening costs may be "up to" that amount. If the dollar amount of an itemized fee is not known at the time the disclosures under paragraph (b) of this section are delivered or mailed, a creditor must provide a range for such fee. A creditor must not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(12) *Fees imposed by the creditor for availability of the plan*. All annual or other periodic fees that may be imposed by the creditor for the availability of the plan, including any fee based on account activity or inactivity; ***how*** frequently the fee will be imposed; and the annualized amount of the fee. A creditor must not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(13) *Fees imposed by the creditor for early termination of the plan by the consumer*. Any fee that may be imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity.

(14) *Statement about other fees*. A statement that other fees will apply and a reference to penalty fees and transaction fees as examples of those fees, as applicable. As applicable, either (i) a statement that the consumer may receive, upon request, additional information about fees applicable to the plan, or (ii) if the additional information about fees is provided with the table described in paragraph (b)(2)(i) of this section, a reference to the location of the information.

[(8) *Fees imposed by third parties to open a plan*. A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.]

(15) [(9)] Negative amortization. If applicable, a [A] statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(16) [(10)] *Transaction requirements*. Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements [, stated as dollar amounts or percentages].

[(11) *Tax implications*. A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.]

(17) *Credit limit*. The credit limit applicable to the plan.

(18) *Statements about fixed-rate and-term payment plans*. (i) Except as provided in paragraph (c)(18)(ii) of this section, if a creditor offers a fixed-rate and-term payment plan under the plan, the following information:

(A) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate.

(B) The amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term.

(C) As applicable, either (*1*) a statement that the consumer may receive, upon request, further details about the fixed-rate and-term payment plan, or (*2*) if information about the fixed-rate and-term payment plan is provided with the table described in paragraph (b)(2)(i) of this section, a reference to the location of the information.

(ii) A creditor must not make the disclosures required by paragraph (c)(18)(i) of this section if fixed-rate and-term payment plans are the only payment plans offered during the draw period.

(19) *Required insurance, debt cancellation or debt suspension coverage*. (i) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided with the table described in paragraph (b)(2)(i) of this section about the insurance or coverage, as applicable.

(20) *Statement about **asking** questions*. A statement that if the consumer does not understand any disclosure in the table the consumer should ***ask*** questions.

(21) *Statement about Board's Web site*. A statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board, and a reference to that Web site.

(22) *Statement about refundability of fees*. (i) A statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan; and

(ii) A cross reference to the "Fees" section in the table described in paragraph (b)(2)(i) of this section.

[(12) *Disclosures for variable-rate plans*. For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of ***how*** the annual percentage rate will be determined, including an explanation of ***how*** the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ***ask*** about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $ 10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a $ 10,000 extension of credit, illustrating ***how*** annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(e) *Brochure*. The home-equity brochure published by the Board or a suitable substitute shall be provided.]

[(g)] (d) *Refund of fees*. A creditor shall refund all fees paid by the consumer [to anyone in connection with an application] if any term required to be disclosed under paragraph [(d)] (b) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and [, as a result,] the consumer elects not to open the plan.

[(h)] (e) *Imposition of nonrefundable fees*. Neither a creditor nor any other person may impose a nonrefundable fee [in connection with an application] until three business days after the consumer receives the disclosures [and brochure] required under paragraph (b) of this section. [10d] If the disclosures required under this section are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(f) *Limitations on home-equity plans*. No creditor may, by contract or otherwise--

* * * *

(2) terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse-mortgage transactions that are subject to paragraph (f)(4) of this section) unless--

(i) there is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) the consumer fails to make a required minimum periodic payment within 30 days after the due date for that payment [meet the repayment terms of the agreement for any outstanding balance];

(iii) any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) federal law requires the creditor to terminate the plan and demand repayment of the entire outstanding balance in advance of the original term [dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand], provided that the creditor includes such a provision in the initial agreement.

(3) change any term, except that a creditor may-

(i) provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have

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[10d] Reserved [If thedisclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.]

resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) make a specified change if the consumer specifically agrees to it in writing at that time.

(iii) make a specified change if the consumer specifically agrees to it in writing at that time.

(v) make an insignificant change to terms.

(vi) prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which--

(A) the value of the dwelling that secures the plan declines significantly below the dwelling's [appraised] value for purposes of the plan;

(B) the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) the consumer is in default of any material obligation under the agreement;

(D) the creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) the priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(F) the creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(G) federal law prohibits the creditor from extending credit under a plan or requires that the creditor reduce the credit limit for a plan.

(g) *Reinstatement of credit privileges*. If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home-equity plan pursuant to § 226.5b(f)(3)(i) or (f)(3)(vi), the creditor must reinstate credit privileges as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist, assuming that no other circumstance permitting such action exists at that time.

(1) The creditor shall meet the obligation of this paragraph by either--

(i) monitoring the line on an ongoing basis to determine when no condition permitting the action exists; or

(ii) requiring the consumer to request reinstatement of credit privileges.

(2) If the creditor requires the consumer to request reinstatement of credit privileges under § 226.5b(g)(1)(ii), the creditor--

(i) shall disclose that the consumer must request reinstatement of credit privileges in accordance with § 226.9(j)(1)(iii)(A);

(ii) upon receipt of a reinstatement request from a consumer, shall complete an investigation of whether a condition allowing the suspension of credit extensions or credit limit reduction exists within 30 days of receiving the consumer's request;

(iii) may not charge the consumer any fees associated with investigating the consumer's first reinstatement request after a suspension of advances or credit limit reduction;

(iv) if not prohibited by state law, may charge the consumer bona fide and reasonable property valuation and credit report fees actually incurred in investigating the consumer's reinstatement requests after the first request; and

(v) if investigation of the consumer's reinstatement request ***shows*** that a condition permitting continued suspension of advances or reduction of the credit limit exists and that therefore credit privileges will not be restored, shall, within 30 days of receiving the consumer's request, mail or deliver to the consumer a written notice with the following information (see Model Clauses G--22(A) and G--22(B) in Appendix G to this part):

(A) the results of any investigation by the creditor conducted in response to the consumer's first request; and

(B) the information required by § 226.9(j)(1).

(3) If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home-equity plan for a significant decline in the property value pursuant to § 226.5b(f)(vi)(A), or continues an existing suspension of credit extensions or reduction of the credit limit pursuant to § 2265b(f)(vi)(A), the creditor must provide, upon the consumer's request, a copy of the documentation supporting the property value on which the creditor based the action.

(4) When conditions permitting termination and acceleration exist under § 226.5b(f)(2), but the creditor opts to suspend advances or reduce the credit limit, the creditor has no obligation to reinstate the account.

[(g)] (d)

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[(h)](e)

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5. Section 226.6 is amended by revising paragraph (a) as follows:

§ 226.6 Account-opening disclosures.

(a) *Rules affecting home-equity plans*.

The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of § 226.5b. [A creditor shall disclose the items in this section, to the extent applicable:]

(1) *Form of disclosures; tabular format*--(i) In general. A creditor must provide the account-opening disclosures specified in paragraphs (a)(2)(ii) through (a)(2)(xx) of this section in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G--15 in Appendix G to this part.

(ii) *Location*. Only the information required or permitted by paragraphs (a)(2)(ii) through (a)(2)(xx) of this section shall be in the table required under paragraph (a)(1)(i) of this section. Disclosures required by paragraph (a)(2)(i) of this section must be placed directly above the table, in a format substantially similar to any of the applicable tables found in G--15 in Appendix G to this part. Disclosures required by paragraphs (a)(2)(xxi) through (a)(2)(xxvi) of this section must be placed directly below the table, in a format substantially similar to any of the applicable tables found in G--15 in Appendix G to this part. Disclosures required by paragraphs (a)(3) through (a)(5) of this section that are not otherwise required to be in the table (or directly above or below the table) and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(iii) *Highlighting*. The following disclosures must be disclosed in bold text:

(A) Any annual percentage rates required to be disclosed under paragraph (a)(2)(vi) of this section.

(B) Any percentage or dollar amount required to be disclosed under paragraphs (a)(2)(vii) through (a)(2)(xiv), (a)(2)(xvii), (a)(2)(xviii) and (a)(2)(xx) of this section, except the amount of any periodic fee disclosed pursuant to paragraph (a)(2)(viii) of this section that is not an annualized amount.

(C) If a creditor is required under paragraph (a)(2)(v) of this section to provide a disclosure in a format substantially similar to the format used in any of the applicable tables found in Samples G--15(B), G--15(C) and G--15(D) in Appendix G to this part, the creditor must provide in bold text any terms and phrases that are ***shown*** in bold text for that disclosure in the applicable tables.

(D) Disclosures required by paragraphs (a)(2)(xxiv)(A), (a)(2)(xxiv)(C) and (a)(2)(xxv) through (a)(2)(xxvi) of this section.

(iv) *Fees based on a percentage*. Except for disclosing fees under paragraph (a)(2)(vii) of this section, if the amount of any fee required to be disclosed under paragraph (a)(2) of this section or if the amount of any transaction requirement required to be disclosed under paragraph (a)(2)(xvii) of this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee or transaction amount, as applicable.

(2) *Required disclosures for account-opening table for home-equity plans*. The creditor shall disclose the items in paragraph (a)(2) of this section to the extent applicable. In making the disclosures required by paragraph (a)(2) of this section (except under paragraph (a)(2)(xix) of this section), a creditor must not disclose in the table described in paragraph (a)(1) of this section any terms applicable to fixed-rate and-term payment plans offered during the draw period of the plan, unless fixed-rate and-term payment plans are the only payment plans offered during the draw period of the plan.

(i) *Identification information*. The following information:

(A) The consumer's name, address, and account number.

(B) The identity of the creditor making the disclosures.

(C) The date the disclosure was prepared.

(D) The loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 Sections 1503(3) and (12), 12 U.S.C. 5102(3) and (12).

(ii) *Security interest and risk to home*. A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(iii) *Possible actions by creditor*. (A) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and implement changes in the plan.

(B) A statement that information about the conditions under which the creditor may take the actions described in paragraph (a)(2)(iii)(A) of this section is included in the account-opening disclosures or agreement, as applicable.

(iv) *Tax implications*. A statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes. A statement that the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(v) *Payment terms*. The payment terms of the plan that will apply to the consumer at account opening, as follows. The creditor must distinguish payment terms applicable to the draw period and the repayment period, by using the applicable heading "Borrowing Period" for the draw period and "Repayment Period" for the repayment period, in a format substantially similar to the format used in any of the applicable tables found in Samples G--15(B) and G--15(D) in Appendix G to this part.

(A) The length of the plan, the length of the draw period and the length of any repayment period. When the length of the plan is definite, a creditor must disclose the length of the plan, the length of the draw period and the length of any repayment period in a format substantially similar to the format used in any of the applicable tables found in Samples G--15(B) and G--15(C) in Appendix G to this part. If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full.

(B) An explanation of ***how*** the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement of this fact, as well as a statement that a balloon payment may result or will result, as applicable. If a balloon payment will not result under the payment plan, a creditor must not disclose in the table required by paragraph (a)(1) of this section the fact that a balloon payment will not result for the plan.

(C)(*1*) For the payment plan described in paragraph (a)(2)(v) of this section, sample payments ***showing*** the first minimum periodic payment for the draw period and any repayment period, and the balance outstanding at the beginning of any repayment period, based on the following assumptions:

(*i*) The consumer borrows the full credit line (as disclosed in paragraph (a)(2)(xviii) of this section) at account opening, and does not obtain any additional extensions of credit.

(*ii*) The consumer makes only minimum periodic payments during the draw period and any repayment period.

(*iii*) The annual percentage rate used to calculate the sample payments, as described in paragraph (a)(2)(v)(C)(*2*) of this section, will remain the same during the draw period and any repayment period.

(*2*) A creditor must provide the information described in paragraph (a)(2)(v)(C)(*1*) of this section for the following two annual percentage rates:

(*i*) The current annual percentage rate for the plan, as disclosed under paragraph (a)(2)(vi) of this section, except that if an introductory annual percentage rate applies, the creditor must use the rate that would otherwise apply to the plan after the introductory rate expires, as described in paragraph (a)(2)(vi)(B) of this section.

(*ii*) The maximum annual percentage rate that may apply under the payment plan as described in paragraph (a)(2)(vi)(A)(*1*)(*v*).

(*3*) In disclosing the payment samples as required by paragraph (a)(2)(v)(C) of this section, a creditor also must include the following information:

(*i*) A statement that the sample payments ***show*** the first periodic payments at the current and maximum annual percentage rates if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money.

(*ii*) A statement that the sample payments are not the consumer's actual payments. A statement that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period.

(*iii*) If a creditor is disclosing a payment plan under paragraph (a)(2)(v)(B) of this section under which a consumer may pay a balloon payment, the creditor must disclose that fact, and the amount of the balloon payment based on the assumptions described in paragraphs (a)(2)(v)(C)(*1*) and (a)(2)(v)(C)(*2*) of this section. If a balloon payment will not result under the payment plan, a creditor must not disclose in the table required by paragraph (a)(1) of this section the fact that a balloon payment will not result for the plan.

(*4*) A creditor must provide the information described in paragraph (a)(2)(v)(C) of this section in a format that is substantially similar to the format used in any of the applicable tables found in Samples G--15(B), G--15(C) and G--15(D) in Appendix G to this part.

(D) A statement that the consumer can borrow money during the draw period. If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period.

(E) A statement indicating whether minimum payments are due in the draw period and any repayment period.

(vi) *Annual percentage rate*. Each periodic interest rate applicable to the payment plan disclosed under paragraph (a)(2)(v) of this section that may be used to compute the finance charge on an outstanding balance, expressed as an annual percentage rate (as determined by § 226.14(b)), except a creditor must not disclose any penalty rate set forth in the initial agreement that may be imposed in lieu of termination of the plan. The annual percentage rates disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Any minimum or maximum annual percentage rates that may apply; and any disclosure of rate changes set forth in the initial agreement except for rates that would apply after the expiration of an introductory rate.

(A) *Disclosures for variable rate plans*. (*1*) If a rate disclosed under paragraph (a)(2)(vi) of this section is a variable rate, the following disclosures, as applicable:

(*i*) The fact that the annual percentage rate may change due to the variable-rate feature, using the term "variable rate" in underlined text as ***shown*** in any of the applicable tables found in Samples G--15(B), G--15(C) and G--15(D) in Appendix G of this part.

(*ii*) An explanation of ***how*** the annual percentage rate will be determined. Except as provided in paragraph (a)(2)(vi)(A)(*1*)(*vi*) of this section, in providing this disclosure, a creditor must only identify the type of index used and the amount of any margin.

(*iii*) The frequency of changes in the annual percentage rate.

(*iv*) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(*v*) A statement of any limitations on changes in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed under the payment plan disclosed under paragraph (a)(2)(v) of this section. If no annual or other periodic limitations apply to changes in the annual percentage rate, a statement that no annual limitation exists.

(*vi*) The lowest and highest value of the index in the past 15 years.

(*2*) A variable rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(B) *Introductory initial rate*. If the initial rate is an introductory rate, the creditor must disclose the rate that would otherwise apply to the plan pursuant to paragraph (a)(2)(vi) of this section. Where the rate is fixed, the creditor must disclose the rate that will apply after the introductory rate expires. Where the rate is variable, the creditor must disclose the rate based on the applicable index or formula. A creditor must disclose in the table described in paragraph (a)(1) of this section the introductory rate along with the rate that would otherwise apply to the plan, and use the term "introductory" or "intro" in immediate proximity to the introductory rate. The creditor must also disclose the time period during which the introductory rate will remain in effect.

(vii) *Fees imposed by the creditor and third parties to open the plan*. The total of all one-time fees imposed by the creditor and any third parties to open the plan, stated as a dollar amount. An itemization of all one-time fees imposed by the creditor and any third parties to open the plan, stated as a dollar amount, and when such fees are payable. A cross-reference from the disclosure of the total of one-time fees, indicating that the itemization of the fees is located elsewhere in the table. A creditor must not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(viii) *Fees imposed by the creditor for availability of the plan*. Any annual or other periodic fees that may be imposed by the creditor for the availability of the plan, including any fee based on account activity or inactivity; ***how*** frequently the fee will be imposed; and the annualized amount of the fee. A creditor must not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(ix) *Fees imposed by the creditor for early termination of the plan by the consumer*. Any fee that may be imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity.

(x) *Late-payment fee*. Any fee imposed for a late payment.

(xi) *Over-the-limit fee*. Any fee imposed for exceeding a credit limit.

(xii) *Transaction charges*. Any transaction charge imposed by the creditor for use of the home-equity plan.

(xiii) *Returned-payment fee*. Any fee imposed by the creditor for a returned payment.

(xiv) *Fees for failure to comply with transaction limitations*. Any fee imposed by the creditor for a consumer's failure to comply with:

(A) Any limitations on the number of extensions of credit or the amount of credit that may be obtained during any time period.

(B) Any minimum outstanding balance requirements.

(C) Any minimum draw requirements.

(xv) *Statement about other fees*. A cross-reference indicating that other fees are located elsewhere in the table. A statement that other fees may apply. A statement that information about other fees is included in the account-opening disclosures or agreement, as applicable.

(xvi) *Negative amortization*. If applicable, a statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(xvii) *Transaction requirements*. Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements.

(xviii) *Credit limit*. The credit limit applicable to the plan.

(xix) *Statements about fixed-rate and-term payment plans*. (A) Except as provided in paragraph (a)(2)(xix)(B) of this section, if a creditor offers a fixed-rate and-term payment plan under the plan, the following information:

(*1*) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate.

(*2*) The amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term.

(*3*) A statement that information about the fixed-rate and-term payment plan is included in the account-opening disclosures or agreement, as applicable.

(B) A creditor must not make the disclosures required by paragraph (a)(2)(xix)(A) of this section if fixed-rate and-term payment plans are the only payment plans offered during the draw period.

(xx) *Required insurance, debt cancellation or debt suspension coverage*. (A) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(B) A cross reference to any additional information provided with the table described in paragraph (a)(1) of this section about the insurance or coverage, as applicable.

(xxi) *Grace period*. The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing a grace period that applies to all features on the account, the phrase "***How*** to ***Avoid*** Paying Interest" shall be used as the heading for the information below the table describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact below the table, the phrase "Paying Interest" shall be used as the heading for this information.

(xxii) *Balance computation method*. The name of the balance computation method listed in § 226.5a(g) that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by paragraph (a)(4)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the creditor shall assume that credit extended will not be repaid within any grace period, if any.

(xxiii) *Billing error rights reference*. A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

(xxiv) *No obligation statement*.

(A) A statement that the consumer has no obligation to accept the terms disclosed in the table.

(B) A statement that the consumer should confirm that the terms disclosed in the table are the same terms for which the consumer applied.

(C) If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement.

(xxv) *Statement about* ***asking*** *questions*. A statement that if the consumer does not understand any disclosure in the table the consumer should ***ask*** questions.

(xxvi) *Statement about Board's Web site*. A statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board, and a reference to this Web site.

(3) *Disclosure of charges imposed as part of home-equity plans*. A creditor shall disclose, to the extent applicable:

[(1) *Finance charge*. The circumstances under which a finance charge will be imposed and an explanation of ***how*** it will be determined, as follows.]

(i) For charges imposed as part of a home-equity plan subject to the requirements of § 226.5b, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of ***how*** the charge is determined. [11] For finance charges, a [(i) A] statement of when the charge [finance charges] begins to accrue [, including] and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the [a finance] charge. If such a time period is provided, a creditor may, at

[11] [Reserved].

its option and without disclosure, elect not to impose [no] a finance charge when payment is received after the time period expires. ['s expiration.]

(ii) Charges imposed as part of the plan are:

(A) Finance charges identified under § 226.4(a) and § 226.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default; costs for protection of the creditor's interest in the collateral for the plan due to default; attorney's fees whether or not automatically imposed; foreclosure costs; and post-judgment interest rates imposed by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(iii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under § 226.4(e) disclosed as specified.

(4) *Disclosure of rates for home-equity plans*. A creditor shall disclose, to the extent applicable:

(i) For each periodic rate that may be used to calculate interest:

(A) *Rates*. The rate, expressed as a periodic rate and a corresponding annual percentage rate. [12]

(B) *Range of balances*. The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies. [13]

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[12] [Reserved].

[13] [Reserved].

(C) *Type of transaction*. The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) *Balance computation method*. An explanation of the method used to determine the balance to which the rate is applied.

(ii) *Variable-rate accounts*. For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) specifically set forth in the account agreement:

(A) The fact that the annual percentage rate may increase.

(B) ***How*** the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) A rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(iii) *Rate changes not due to index or formula*. For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (a)(4)(i)(A) of this section.

(B) ***How*** long the initial rate will remain in effect and the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) The balances to which the new rate will apply.

(E) The balances to which the current rate at the time of the change will apply.

[(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If a creditor offers a variable-rate plan, the creditor shall also disclose: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.

(iv) An explanation of ***how*** the amount of any finance charge will be determined, including a description of ***how*** any finance charge other than the periodic rate will be determined.

(2) *Other charges*. The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of ***how*** the charge will be determined.

(3) *Home-equity plan information*. The following disclosures described in § 226.5b(d), as applicable:

(i) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(ii) The payment information described in § 226.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.

(iii) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(iv) A statement of any transaction requirements as described in § 226.5b(d)(10).

(v) A statement regarding the tax implications as described in § 226.5b(d)(11).

(vi) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in § 226.5b(d)(6) and (d)(12)(ii).

(vii) The variable-rate disclosures described in § 226.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.]

(5) *Additional disclosures for home-equity plans*. A creditor shall disclose, to the extent applicable:

(i) *Voluntary credit insurance, debt cancellation or debt suspension*. The disclosures in §§ 226.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10).

(ii)[(4)] *Security interests*. The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(iii)[(5)] *Statement of billing rights*. A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G--3 [or, at the creditor's option G--3(A),] in Appendix G to this part.

(iv) *Possible creditor actions*. A statement of the conditions under which the creditor may take certain actions, as described in § 226.5b(c)(7)(i), such as terminating the plan or changing the terms.

(v) *Additional information on fixed-rate and-term payment plans*. Information related to any fixed-rate and-term payment plans, as follows.

(A) The period during which the plan can be selected.

(B) The length of time over which repayment can occur.

(C) An explanation of ***how*** the minimum periodic payment will be determined for the payment plan.

(D) Any limitations on the number of extensions of credit or the amount of credit that may be obtained under the payment plan. Any minimum outstanding balance requirements or any minimum draw requirements applicable to the payment plan.

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6. Section 226.7, as amended on January 29, 2009 (74 FR 5409) is amended by republishing the introductory text and by revising paragraph (a), as follows:

§ 226.7 Periodic Statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Rules affecting home-equity plans*. The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of § 226.5b. [Alternatively, a creditor subject to this paragraph may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses not to provide a disclosure under paragraph (a)(7) of this section must comply with paragraph (b)(6) of this section.]

(1) *Previous balance*. The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions*. An identification of each credit transaction in accordance with § 226.8.

(3) *Credits*. Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in [accounting] crediting does not result in any finance or other charge.

(4) *Periodic rates*. (i) Except as provided in paragraph (a)(4)(ii) of this section, each periodic rate that may be used to compute the [finance charge,] interest charge expressed as an annual percentage rate and using the term, *Annual Percentage Rate*, [14] along with the range of balances to which it is applicable [, and the corresponding annual percentage rate]. [15] If no [finance] interest charge is imposed 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 [finance] interest charge will be imposed. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the [periodic rate(s)] annual percentage rate may vary.

(ii) *Exception*. An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed*. The amount of the balance to which a periodic rate was applied and an explanation of ***how*** that balance was determined using the term *Balance Subject to Interest Rate*. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. As an alternative to providing an explanation of ***how*** the balance was determined, a creditor that uses a balance computation method identified in § 226.5a(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and ***how*** resulting interest charges were determined. If the method used is not identified in § 226.5a(g), the creditor shall provide a brief explanation of the method used.

(6) *Charges imposed*. (i) The amounts of any charges imposed as part of a plan as stated in § 226.6(a)(3) grouped together, in proximity to transactions identified under paragraph (a)(2) of this section, substantially similar to Sample G--24(A) in Appendix G to this part.

(ii) *Interest*. A total of finance charges attributable to periodic interest rates, using the term *Total Interest*, must be disclosed for the statement period and calendar year to date. If different periodic rates apply to different types of transactions, finance charges attributable to periodic interest rates, using the term *Interest Charge*, must be grouped together under the heading *Interest Charged*, itemized and totaled by type of transaction or group of

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[14] [Reserved].

[15] [Reserved].

transactions subject to different periodic rates. The disclosures made pursuant to this paragraph must be provided using a format substantially similar to Sample G--24(A) in Appendix G to this part.

(iii) *Fees*. Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading *Fees*, identified consistent with the feature or type, and itemized, and a total of charges, using the term *Fees*, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G--24(A) in Appendix G.

(7) *Change-in-terms and increased penalty rate summary for home-equity loans*. Creditors that provide a change-in-terms notice required by § 226.9(c)(1), or a rate increase notice required by § 226.9(i), on or with the periodic statement, must disclose the information in § 226.9(c)(1)(iii)(A) or § 226.9(i)(3) on the periodic statement in accordance with the format requirements in § 226.9(c)(1)(iii)(B), and § 226.9(i)(4). See Samples G--25 and G--26 in Appendix G to this part.

[(6) *Amount of finance charge and other charges*. Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.

(i) *Finance charges*. The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge*. The components of the finance charge shall be individually itemized and identified to ***show*** the amount(s) due to the application of any periodic rates and the amount(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(ii) *Other charges*. The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(7) *Annual percentage rate*. At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14(c) using the term *annual percentage rate*.]

(8) *Grace period*. The date by which or the time period within which the new balance or any portion of the new balance must be paid to ***avoid*** additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors*. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

(10) *Closing date of billing cycle; new balance*. The closing date of the billing cycle and the account balance outstanding on that date.

7. Section 226.9, as amended on January 29, 2009 (74 FR 5412), is amended by revising paragraph (c)(1), and adding new paragraphs (*i*) and (*j*), as follows

§ 226.9 Subsequent disclosure requirements.

* * * *

(c) *Change in terms*--(1) *Rules affecting home-equity plans*--(i) *Written notice required*. For home-equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(1)(ii) and (c)(1)(iv) of this section, whenever any term required to be disclosed under § 226.6(a) is changed [or the required minimum periodic payment is increased], a [the] creditor must provide a [shall mail or deliver] written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. [The notice shall be mailed or delivered at least 15 days prior to the effective date of the change.] The 45-day[15-day] timing requirement does not apply if the consumer has agreed to a particular change [has been agreed to by the consumer]; the notice shall be given, however, before the effective date of the change. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (i) of this section must be disclosed pursuant to paragraph (*i*) of this section.

(ii) *Charges not covered by § 226.6(a)(1) and (a)(2)*. Except as provided in paragraph (c)(1)(iv) of this section, if a creditor increases any component of a charge or introduces a new charge required to be disclosed under § 226.6(a)(3) that is not required to be disclosed in a tabular format under § 226.6(a)(2), a creditor may either, at its option:

(A) Comply with the requirements of paragraph (c)(1)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iii) *Disclosure requirements*--(A) *Changes to terms described in account-opening table*. If a creditor changes a term required to be disclosed in a tabular format pursuant to § 226.6(a)(1) and (a)(2), the creditor must provide the following information on the notice provided pursuant to paragraph (c)(1)(i) of this section:

(*1*) A summary of the changes made to terms required by § 226.6(a)(1) and (2);

(*2*) A statement that changes are being made to the account;

(*3*) A statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(*4*) The date the changes will become effective; and

(*5*) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice.

(B) *Format requirements--(1) Tabular format*. The summary of changes described in paragraph (c)(1)(iii)(A)(*1*) of this section must be in a tabular format, with headings and format substantially similar to any of the account-opening tables found in G--15 in Appendix G to this part. The table must disclose the changed term(s) and information relevant to the change(s), if that relevant information is required by § 226.6(a)(1) and (a)(2). The new terms must be described with the same level of detail as required when disclosing the terms under § 226.6(a)(2).

(2) Notice included with periodic statement. If a notice required by paragraph (c)(1)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(1)(iii)(A)(*1*) of this section must be disclosed on the front of any page of the statement. The summary of changes described in paragraph (c)(1)(iii)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(2) through (c)(1)(iii)(A)(5) of this section, and be substantially similar to the format ***shown*** in Sample G--25 in Appendix G to this part.

(*3*) *Notice provided separately from periodic statement*. If a notice required by paragraph (c)(1)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(1)(iii)(A)(*1*) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(1)(iii)(A)(*1*) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(1)(iii)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(2) through (c)(1)(iii)(A)(5) of this section, substantially similar to the format ***shown*** in Sample G--25 in Appendix G to this part.

(iv)[(ii)] *Notice not required*. For home-equity plans subject to the requirements of § 226.5b, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding. Suspension of credit privileges, reduction of a credit limit, or termination of an account do not require notice under paragraph (c)(1)(i) of this section, but must be disclosed pursuant to paragraph (j) of this section.

[(iii) *Notice to restrict credit*. For home-equity plans subject to the requirements of § 226.5b, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(i) or (f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.]

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(g) *Increase in rates due to delinquency or default or as a penalty--rules affecting open-end (not home-secured) plans*.

* * * *

(*i*) *Increase in rates due to delinquency or default or as a penalty--rules affecting home-equity plans*--(1) *Increases subject to this section*. For home-equity plans subject to the requirements of § 226.5b, except as provided in paragraph (i)(5) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default as specified in the account agreement; or

(ii) A rate is increased as a penalty for one or more events, other than a consumer's default or delinquency, as specified in the account agreement.

(2) *Timing of written notice*. Whenever any notice is required to be given pursuant to paragraph (*i*)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (*i*)(1)(i) and (*i*)(1)(ii) of this section that trigger the imposition of the rate increase.

(3) *Disclosure requirements for rate increases*. If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (i)(1) of this section:

(i) A statement that the delinquency, default, or penalty rate, as applicable, has been triggered;

(ii) The date on which the delinquency, default, or penalty rate will apply;

(iii) The circumstances under which the delinquency, default, or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency, default, or penalty rate will remain in effect for a potentially indefinite time period; and

(iv) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied.

(4) *Format requirements*. (i) If a notice required by paragraph (i)(1) of this section is included on or with a periodic statement, the information described in paragraph (*i*)(3) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(1)(iii)(A) of this section if that notice is provided on the same statement.

(ii) If a notice required by paragraph (*i*)(1) of this section is not included on or with a periodic statement, the information described in paragraph (*i*)(3) of this section must be disclosed on the front of the first page of the notice.

Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(1)(iii)(A) of this section.

(5) *Exception for workout and temporary hardship arrangements*. A creditor is not required to provide a notice pursuant to paragraph (*i*)(1) of this section if a rate applicable to a category of transactions is increased due to the consumer's completion of a workout or temporary hardship arrangement or as a result of the consumer's failure to comply with the terms of a workout or temporary hardship arrangement between the creditor and the consumer, provided that:

(i) The rate following any such increase does not exceed the rate that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; or

(ii) If the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement.

(j) *Notices of action taken for home-equity plans*.

(1) For home-equity plans subject to the requirements of § 226.5b, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(i) or 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to any consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain [specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice shall state that fact.] the following information (see Model Clauses G--23(A) in Appendix G of this part):

(i) a statement of the action taken, including the date on which the action was effective and, if the credit limit was reduced, the amount of the new credit limit;

(ii) a statement of specific reasons for the action taken;

(iii) if the creditor requires the consumer to request reinstatement of credit privileges under § 226.5b(g)(1)(ii)--

(A) a statement that the consumer has a right to request reinstatement of the account at any time and the method with which the consumer may request reinstatement, including specific contact information for submitting reinstatement requests to the creditor;

(B) a statement that, upon receiving a reinstatement request, the creditor will complete an investigation of whether a reason for continuing the suspension or reduction exists within 30 days of receiving the request, and that if no reason is found to exist, the creditor will restore the consumer's credit privileges; and

(C) a statement that, to investigate the consumer's first reinstatement request after advances have been suspended or the credit limit reduced, the creditor may not charge the consumer any fees, but that for subsequent reinstatement requests by the consumer, the creditor has a right to charge the consumer bona fide and reasonable property valuation or credit report fees associated with the investigation.

(2) For home-equity plans subject to the requirements of § 226.5b, if a creditor suspends advances or decreases the credit limit on an account under § 226.5b(f)(3)(i) or (f)(3)(vi), the creditor may not charge a fee for denied advances or exceeding the credit limit provided for in the original agreement until the consumer has received the notice of action taken required by § 226.9(j)(1).

(3) For home-equity plans subject to the requirements of § 226.5b, if, pursuant to § 226.5b(f)(2), a creditor terminates a plan and demands repayment of the entire outstanding balance in advance of the original term or temporarily or permanently suspends further advances or reduces the credit limit applicable to a home-equity plan, the creditor shall mail or deliver written notice of the action to any consumer who will be affected. The notice must

be provided not later than three business days after the action is taken and shall contain the following information (see Model Clauses G--23(B) in Appendix G of this part):

(i) a statement of the action taken; and

(ii) a statement of specific reasons for the action taken.

(4) If, pursuant to § 226.5b(f)(2), a creditor takes any action other than terminating a plan and demanding repayment of the entire outstanding balance in advance of the original term, or temporarily or permanently suspending further advances or reducing the credit limit for a home-equity plan, the creditor must comply with the notice requirements of § 226.9(c)(1) or (i), as applicable.

8. Section 226.14 is revised to read as follows:

§ 226.14 Determination of annual percentage rate.

(a) *General rule*. The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than 1/8th of 1 percentage point above or below the annual percentage rate determined in accordance with this section. [31a] An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if:

(1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(2) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.

(b) *Annual percentage rate--in general*. Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of subpart B of this regulation [§§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16, and 226.26] shall be computed by multiplying each periodic rate by the number of periods in a year.

[(c) *Optional effective annual percentage rate for periodic statements for creditors offering open-end plans subject to the requirements of § 226.5b*. A creditor offering an open-end plan subject to the requirements of § 226.5b need not disclose an effective annual percentage rate. Such a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to § 226.7(a)(7) and compute the effective annual percentage rate as follows:

(1) *Solely periodic rates imposed*. If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

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

(ii) 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) *Minimum or fixed charge, but not transaction charge, imposed*. If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a

[31a] [Reserved].

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 it is applicable [32] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year. [33] If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

(3) *Transaction charge imposed*. If the finance charge imposed during the billing cycle is or includes a charge relating to a 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 a 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, [34] 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. [35] Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate. See Appendix F to this part regarding determination of the denominator of the fraction under this paragraph.

(4) If the finance charge imposed during the billing cycle is or includes a 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 paragraphs (c)(2) and (c)(3) of this section.

(d) *Calculations where daily periodic rate applied*. If the provisions of paragraph (c)(1)(ii) or (c)(2) of this section apply and 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 either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.]

9. Appendix F is removed and reserved as follows:

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[32] [Reserved].

[33] [Reserved].

[34] [Reserved].

[35] [Reserved].

Appendix F to Part 226 [--Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5b] [Reserved]

[In determining the denominator of the fraction under § 226.14(c)(3), no amount will be used more than once when adding the sum of the balances [1] subject to periodic rates to the sum of the amounts subject to specific transaction charges. (Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase "sum of the balances" shall also mean the "average of daily balances.") In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance--none. A specific transaction of $ 100 occurs on the first day of the billing cycle. The average daily balance is $ 100. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 11/2 percent applicable to the average daily balance. The numerator is the amount of the finance charge, which is $ 4.50. The denominator is the amount of the transaction (which is $ 100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $ 100.

The annual percentage rate is the quotient (which is 4 1/2 percent) multiplied by 12 (the number of months in a year), i.e., 54 percent.

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

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 subject only to the periodic rate, the $ 100 previous balance). As explained in example 1, the annual percentage rate is 2 1/4 percent x 12 = 27 percent.

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

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 per check. The periodic rate is 1 1/2 percent applied to the average daily balance. The numerator is the amount of the finance charge, which is $ 2.50 and includes the $ .25 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 1 2/3 percent x 12 = 20 percent.

[1] [Reserved].

6. Previous balance--none. A specific transaction of $ 100 occurs at the midpoint of the billing cycle. The average daily balance is $ 50. The specific transaction charge is 3 percent of the transaction amount or $ 3.00. The periodic rate is 1 1/2 percent per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $ 3.75, including the $ 3.00 transaction charge and $ .75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($ 100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction ($ 0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($ 50 - $ 100 = -$ 50). The denominator, in this case, is $ 100. As explained in example 1, the annual percentage rate is 3 3/4 percent x 12 = 45 percent.]

10. Appendix G to Part 226 is amended by:

A. Revising the table of contents at the beginning of the appendix;

B. Removing Model Clauses and Forms G--1, G--2, G--3, and G--4;

C. Redesignating Model Clauses and Forms G--1(A), G--2(A), G--3(A), and G--4(A) as Model Clauses and Forms G--1, G--2, G--3, and G--4, respectively;

D. Removing Sample Forms and Model Clauses G--14A, G--14B, and G--15; and

E. Adding new Model and Sample Forms and Clauses G--14(A) through G--14(E), G--15(A) through G--15(D), G--22(A), G--22(B), G--23(A), G--23(B), G--24(A) through G--24(C), G--25, and G--26, in numerical order, to read as follows:

Appendix G to Part 226-Open-End Model Forms and Clauses

G--12 Reserved

G--13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))

G--13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))

[G--14A Home-equity Sample

G--14B Home-equity Sample

G--15 Home-equity Model Clauses]

G--14(A) Early Disclosure Model Form (Home-equity Plans) (§ 226.5b(c))

G--14(B) Early Disclosure Model Form (Home-equity Plans) (§ 226.5b(c))

G--14(C) Early Disclosure Sample (home-equity Plans) (§ 226.5b(c))

G--14(D) Early Disclosure Sample (home-equity Plans) (§ 226.5b(c))

G--14(E) Early Disclosure Sample (home-equity Plans) (§ 226.5b(c))

G--15(A) Account-Opening Disclosure Model Form (Home-equity Plans) (§ 226.6(a)(2))

G--15(B) Account-Opening Disclosure Sample (Home-equity Plans) (§ 226.6(a)(2))

G--15(C) Account-Opening Disclosure Sample (Home-equity Plans) (§ 226.6(a)(2))

G--15(D) Account-Opening Disclosure Sample (Home-equity Plans) (§ 226.6(a)(2))

G--16(A) Debt Suspension Model Clause (§ 226.4(d)(3))

G--16(B) Debt Suspension Sample (§ 226.4(d)(3))

G--17(A) Account-opening Model Form (§ 226.6(b)(2))

G--17(B) Account-opening Sample (§ 226.6(b)(2))

G--17(C) Account-opening Sample (§ 226.6(b)(2))

G--17(D) Account-opening Sample (§ 226.6(b)(2))

G--18(A) Transactions; Interest Charges; Fees Sample (§ 226.7(b))

G--18(B) Late Payment Fee Sample (§ 226.7(b))

G--18(C) Actual Repayment Period Sample Disclosure on Periodic Statement (§ 226.7(b))

G--18(D) New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit cards) (§ 226.7(b))

G--18(E) New Balance, Due Date, and Late Payment Sample (Open-end Plans (Non-credit-card Accounts)) (§ 226.7(b))

G--18(F) Periodic Statement Form

G--18(G) Periodic Statement Form

G--19 Checks Accessing a Credit Card Account Sample (§ 226.9(b)(3))

G--20 Change-in-Terms Sample (§ 226.9(c)(2))

G--21 Penalty Rate Increase Sample (§ 226.9(g)(3))

G--22(A) Home-equity Notice of Reinstatement Investigation Results Model Clauses (§ 226.5b(g)(2)(v))

G--22(B) Home-equity Notice of Reinstatement Investigation Results Model Clauses (§ 226.5b(g)(2)(v))

G--23(A) Home-equity Notice of Action Taken Model Clauses (§ 226.9(j)(1))

G--23(B) Home-equity Notice of Action Taken Model Clauses (§ 226.9(j)(2))

G--24(A) Periodic Statement Transactions; Interest Charges; Fees Sample (home-equity Plans) (§ 226.7(a))

G--24(B) Periodic Statement Sample (home-equity Plans) (§ 226.7(a))

G--24(C) Periodic Statement Sample (home-equity Plans) (§ 226.7(a))

G--25 Change-in-Terms Sample (home-equity Plans) (§ 226.9(c)(1))

G--26 Rate Increase Sample (Home-equity Plans) (§ 226.9(*i*)(3))

[G--1--Balance Computation Methods Model Clauses (Home-equity Plans)

(a) Adjusted balance method

We figure [a portion of] the finance charge on ***your*** account by applying the periodic rate to the "adjusted balance" of ***your*** account. We get the "adjusted balance" by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure [a portion of] the finance charge on ***your*** account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance charges]. We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to ***your*** account this billing cycle was $.]

(c) Average daily balance method (excluding current transactions)

We figure [a portion of] the finance charge on ***your*** account by applying the periodic rate to the "average daily balance" of ***your*** account (excluding current transactions). To get the "average daily balance" we take the beginning balance of ***your*** account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(d) Average daily balance method (including current transactions)

We figure [a portion of] the finance charge on ***your*** account by applying the periodic rate to the "average daily balance" of ***your*** account (including current transactions). To get the "average daily balance" we take the beginning balance of ***your*** account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(e) Ending balance method

We figure [a portion of] the finance charge on ***your*** account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure [a portion of] the finance charge on ***your*** account by applying the periodic rate to the "daily balance" of ***your*** account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of ***your*** account each day, add any new [purchases/advances/fees], and subtract [any unpaid finance charges and] any payments or credits. This gives us the daily balance.]

G--1[(A)]--Balance Computation Methods Model Clauses [(Plans Other Than Home-Equity Plans)]

(a) Adjusted balance method

We figure the interest charge on ***your*** account by applying the periodic rate to the "adjusted balance" of ***your*** account. We get the "adjusted balance" by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid interest or other finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure the interest charge on ***your*** account by applying the periodic rate to the amount you owe at the beginning of each billing cycle. We do not subtract any payments or credits received during the billing cycle.

(c) Average daily balance method (excluding current transactions)

We figure the interest charge on ***your*** account by applying the periodic rate to the "average daily balance" of ***your*** account. To get the "average daily balance" we take the beginning balance of ***your*** account each day and subtract [any unpaid interest or other finance charges and] any payments or credits. We do not add in any new [purchases/advances/fees]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(d) Average daily balance method (including current transactions)

We figure the interest charge on ***your*** account by applying the periodic rate to the "average daily balance" of ***your*** account. To get the "average daily balance" we take the beginning balance of ***your*** account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(e) Ending balance method

We figure the interest charge on ***your*** account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new [purchases/advances/fees] and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure the interest charge on ***your*** account by applying the periodic rate to the "daily balance" of ***your*** account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of ***your*** account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance.

[G--2--Liability for Unauthorized Use Model Clause (Home-Equity Plans)

You may be liable for the unauthorized use of ***your*** credit card [or other term that describes the credit card]. You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. [You may also contact us on the Web: [Creditor Web or e-mail address]] In any case, ***your*** liability will not exceed [insert $ 50 or any lesser amount under agreement with the cardholder].]

G--2[(A)]--Liability for Unauthorized Use Model Clause [(Plans Other Than Home-equity Plans)]

If you notice the loss or theft of ***your*** credit card or a possible unauthorized use of ***your*** card, you should write to us immediately at: [address] [address listed on ***your*** bill], or call us at [telephone number].

[You may also contact us on the Web: [Creditor Web or e-mail address]]

You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before ***your*** notice to us. In any case, ***your*** liability will not exceed [insert $ 50 or any lesser amount under agreement with the cardholder].

[G--3--Long--Form Billing--Error Rights Model Form (Home-Equity Plans)

YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about ***your*** rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About *Your* Bill

If you think ***your*** bill is wrong, or if you need more information about a transaction on ***your*** bill, write us [on a separate sheet] at [address] [the address listed on ***your*** bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. [You may also contact us on the Web: [Creditor Web or e-mail address]] You can telephone us, but doing so will not preserve ***your*** rights.

In ***your*** letter, give us the following information:

. ***Your*** name and account number.

. The dollar amount of the suspected error.

. Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay ***your*** credit card bill automatically from ***your*** savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment ***your*** letter must reach us three business days before the automatic payment is scheduled to occur.

Your **Rights and Our Responsibilities After We Receive *Your* Written Notice**

We must acknowledge ***your*** letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive ***your*** letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against ***your*** credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of ***your*** bill that are not in question.

If we find that we made a mistake on ***your*** bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about ***your*** bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $ 50 of the questioned amount, even if ***your*** bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services.

There are two limitations on this right:

(a) You must have made the purchase 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.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.]

G--3[(A)]--Long--Form Billing--Error Rights Model Form [(Plans Other Than Home-equity Plans)]

Your **Billing Rights: Keep this Document for Future Use**

This notice tells you about ***your*** rights and our responsibilities under the Fair Credit Billing Act.

What To Do If You Find a Mistake on ***Your*** **Statement**

If you think there is an error on ***your*** statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or e-mail address]]

In ***your*** letter, give us the following information:

. *Account information*: ***Your*** name and account number.

. *Dollar amount*: The dollar amount of the suspected error.

. *Description of problem*: If you think there is an error on ***your*** bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

. Within 60 days after the error appeared on ***your*** statement.

. At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive *__Your__* Letter

When we receive ***__your__*** letter, we must do two things:

1. Within 30 days of receiving ***__your__*** letter, we must tell you that we received ***__your__*** letter. We will also tell you if we have already corrected the error.

2. Within 90 days of receiving ***__your__*** letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

. We cannot try to collect the amount in question, or report you as delinquent on that amount.

. The charge in question may remain on ***__your__*** statement, and we may continue to charge you interest on that amount.

. While you do not have to pay the amount in question, you are responsible for the remainder of ***__your__*** balance.

. We can apply any unpaid amount against ***__your__*** credit limit.

After we finish our investigation, one of two things will happen:

. *If we made a mistake*: You will not have to pay the amount in question or any interest or other fees related to that amount.

. *If we do not believe there was a mistake*: You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe ***__your__*** bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning ***__your__*** bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first $ 50 of the amount you question even if ***__your__*** bill is correct.

__Your__ **Rights If You Are Dissatisfied With *__Your__* Credit Card Purchases**

If you are dissatisfied with the goods or services that you have purchased with ***__your__*** credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in ***__your__*** home state or within 100 miles of ***__your__*** current mailing address, and the purchase price must have been more than $ 50. (Note: Neither of these are necessary if ***__your__*** purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used ***__your__*** credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses ***__your__*** credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

[Creditor Name]

[Creditor Address]

[[Creditor Web or e-mail address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

[G--4--Alternative Billing--Error Rights Model Form (Home-equity Plans)

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About *Your* Bill

If you think ***your*** bill is wrong, or if you need more information about a transaction on ***your*** bill, write us [on a separate sheet] at [address] [the address ***shown*** on ***your*** bill] as soon as possible. [You may also contact us on the Web: [Creditor Web or e-mail address]] We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve ***your*** rights.

In ***your*** letter, give us the following information:

. ***Your*** name and account number.

. The dollar amount of the suspected error.

. Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of ***your*** bill that are not in question. While we investigate ***your*** question, we cannot report you as delinquent or take any action to collect the amount you question.

Special Rule for Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $ 50 and the purchase was made in ***your*** home state or within 100 miles of ***your*** mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)]

G--4[(A)]--Alternative Billing--Error Rights Model Form [(Plans Other Than Home-equity Plans)]

What To Do If You Think You Find a Mistake on *Your* Statement

If you think there is an error on ***your*** statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or e-mail address]]

In ***your*** letter, give us the following information:

. *Account information*: ***Your*** name and account number.

. *Dollar amount*: The dollar amount of the suspected error.

. *Description of Problem*: If you think there is an error on ***your*** bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on ***your*** statement.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

. We cannot try to collect the amount in question, or report you as delinquent on that amount.

. The charge in question may remain on ***your*** statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.

. While you do not have to pay the amount in question, you are responsible for the remainder of ***your*** balance.

. We can apply any unpaid amount against ***your*** credit limit.

Your **Rights If You Are Dissatisfied With** ***Your*** **Credit Card Purchases**

If you are dissatisfied with the goods or services that you have purchased with ***your*** credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in ***your*** home state or within 100 miles of ***your*** current mailing address, and the purchase price must have been more than $ 50. (Note: Neither of these are necessary if ***your*** purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used ***your*** credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses ***your*** credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

[Creditor Name]

[Creditor Address]

[Creditor Web address]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

[SEE G-14(A) Early Disclosure Model Form (Home-equity Plans) IN ORIGINAL]

G-22(A)--Home-equity Notice of Reinstatement Investigation Results Model Clauses (§ 226.5b(g)(2)(v)) (The Same Reason Originally Permitting Action Still Exists)

We received ***your*** request to have ***your*** credit privileges on ***your*** account reinstated and have investigated this matter. Based on the results of our investigation, we are not able to reinstate ***your*** credit privileges at this time.

Our investigation ***showed*** that [***your*** property value as of [date] is [property value], which still ***shows*** a significant decline in value. To determine the value of ***your*** home, we relied on [property valuation type, such as a tax record, automated valuation model, appraisal]. You have a right to receive a copy of information supporting this property value. You may send ***your*** request to the following [mail/e-mail address or telephone number:].

[***your*** financial circumstances have not [improved] [improved enough to reinstate ***your*** credit privileges]. To review ***your*** financial circumstances, we relied on [information about ***your*** income] [credit report information] [other].

You have the right to ***ask*** us to reinstate ***your*** credit privileges at any time [by sending a request for reinstatement in writing to: [mail/e-mail address]] [other method of requesting reinstatement and corresponding contact information designated by the creditor, such as by telephone].

We will complete an investigation within 30 days of receiving ***your*** request. If no reason for [suspending ***your*** credit privileges] [reducing ***your*** credit limit] is found, we will restore ***your*** credit privileges.

If you ***ask*** us again to reinstate ***your*** account, we may charge you fees for credit report information and property valuation reports to investigate ***your*** request.

G-22(B)--Home-equity Notice of Reinstatement Investigation Results Model Clauses (§ 226.5b(g)(2)(v)) (A different reason than the original reason permitting action exists)

Our investigation ***showed*** that [***your*** property value as of [date] is [property value]]. However, our investigation also ***showed*** that [***your*** financial circumstances have materially changed.] As a result, we will not be able to reinstate ***your*** credit privileges at this time. To review ***your*** financial circumstances, we relied on [information about ***your*** income] [credit report information] [other].

You have the right to ***ask*** us to reinstate ***your*** credit privileges at any time [by sending a request for reinstatement in writing to: [mail/e-mail address]] [other method of requesting reinstatement and corresponding contact information designated by the creditor, such as by telephone].

We will complete an investigation within 30 days of receiving ***your*** request. If no reason for [suspending ***your*** credit privileges] [reducing ***your*** credit limit] is found, we will restore ***your*** credit privileges.

If you ***ask*** us again to reinstate ***your*** account, we may charge you fees for credit information and property valuation reports to investigate ***your*** request.

G-23(A) Home-equity Notice of Action Taken Model Clauses (§ 226.9(j)(1))

(a) Action Based on a Significant Decline in the Property Value

As of [month/day/year], ***your*** [line of credit has been suspended] [credit limit has been reduced] to [new credit limit] because the value of the property securing ***your*** loan has declined significantly. The value of ***your*** property as of [month/day/year] has declined to [property value obtained].

The property valuation method used to obtain ***your*** updated property value was [property valuation type, such as a tax record, automated valuation model, appraisal]. You have a right to receive a copy of information supporting this property value. You may send ***your*** request to the following [mail/e-mail address or telephone number:].

(b) Action Based on a Material Change in the Consumer's Financial Circumstances

As of [date], [***your*** line of credit has been suspended] [credit limit has been reduced] because ***your*** financial circumstances have materially changed. To review ***your*** financial circumstances, we relied on [information about ***your*** income] [credit report information] [other].

(c) Action Taken Based on the Consumer's Default of a Material Obligation

As of [month/day/year], [***your*** line of credit has been suspended] [credit limit has been reduced] because you defaulted on ***your*** obligation under ***your*** HELOC agreement to [material obligation].

You have the right to ***ask*** us to reinstate ***your*** credit privileges at any time [by sending a request for reinstatement in writing to: [mail/e-mail address]] [other method of requesting reinstatement and corresponding contact information designated by the creditor, such as by telephone].

We will complete an investigation within 30 days of receiving ***your*** request. If no reason for [suspending ***your*** credit privileges] [reducing ***your*** credit limit] is found, we will restore ***your*** credit privileges.

We do not charge you any fees to investigate the first time you ***ask*** us to reinstate ***your*** credit privileges after ***your*** [line of credit has been suspended] [credit limit has been reduced]. If you ***ask*** us to reinstate ***your*** account after the first request, we may charge you a fee for a credit report or property valuation needed to investigate ***your*** request.

G-23(B) Home-equity Notice of Action Taken Model Clauses (§ 226.9(j)(2))

As of [month/day/year], ***your***

[line of credit has been terminated. The outstanding balance on ***your*** account is due on [month/day/year]]

[line of credit has been suspended]

[credit limit has been reduced to [new credit limit]].

The specific reason[s] for the action on ***your*** account [is][are] the following:

[***your*** payment is [more than 30 days overdue.]

[Our interest in the property securing ***your*** HELOC has been adversely affected because [you transferred title to the property without our permission.] [you failed to maintain property insurance on the property.] [you did not pay required taxes on the property.]]

[We have reason to believe that fraud or material misrepresentation regarding ***your*** account has occurred.]

[SEE G-24(A) Periodic Statement Transactions; Interest Charges; Fees Sample (Home-equity Plans) IN ORIGINAL]

[SEE G-25 Change-in-Terms Sample (Home-equity Plans) IN ORIGINAL]

[SEE G-26 Rate Increase Sample (Home-equity Plans) IN ORIGINAL]

BILLING CODE 6210-01-C

11. In Supplement I to Part 226:

A. Under *Section 226.2--Definitions and Rules of Construction, 2(a)(6) Business day*, paragraph 2 is revised.

B. *Section 226.5--General Disclosure Requirements* is revised.

C. Under *Section 226.5b--Requirements for Home-equity Plans*:

i. Paragraph 1 is republished; paragraph 2 is revised; paragraphs 3 and 4 are removed; and paragraphs 5 and 6 are redesignated as paragraphs 3 and 4, respectively.

ii. *5b(a) Form of disclosures* and *5b(b) Time of disclosures* are removed.

iii. New *5b(a) Home-equity document provided on or with the application* and *5b(b) Home-equity disclosures provided no later than account opening or three business days after application, whichever is earlier* are added.

iv. *5b(c) Duties of third parties* is removed.

V. *5b(d) Content of disclosures* is redesignated *5b(c) Content of disclosures* and revised.

vi. *5b(g) Refund of fees* is redesignated *5b(d) Refund of fees* and revised.

vii. *5b(e) Brochure* is removed.

viii. *5b(h) Imposition of nonrefundable fees* is redesignated *5b(e) Imposition of nonrefundable fees* and revised.

ix. Under *5b(f) Limitations on home-equity plans, Paragraph 5b(f)(2)(ii)* is revised; new *Paragraph 5b(f)(2)(iv)* is added; and *Paragraphs 5b(f)(3), 5b(f)(3)(i), 5b(f)(3)(iv), 5b(f)(3)(v)* and *5b(f)(3)(vi)* are revised.

x. New *5b(g) Reinstatement of Credit Privileges* is added.

D. Under *Section 226.6--Account-opening Disclosures, 6(a) Rules affecting home-equity plans* is revised.

E. Under *Section 226.7--Periodic Statement, 7(a) Rules affecting home-equity plans* is revised.

F. Under *Section 226.9--Subsequent Disclosure Requirements, 9(c) Change in terms, 9(c)(1) Rules affecting home-equity plans* is revised; *9(g) Increase in rates due to delinquency or default or as a penalty*, the heading is revised; and new *9(i) Increase in rates due to delinquency or default or as a penalty--rules affecting home-equity plans* and *(9)(j) Notices of action taken for home-equity plans* are added.

G. Section 226.14--Determination of Annual Percentage Rate is revised.

H. Appendix F--Optional Annual Percentage Rate Computations for Creditors Offering Open-end Plans Subject to the Requirements of § 226.5b is removed and reserved.

I. Under Appendices G and H--Open-end and Closed-end Model Forms and Clauses, paragraph 1 is revised.

J. Under Appendix G--Open-end Model Forms and Clauses, paragraphs 1, 2, and 3 are revised and new paragraphs 12, 13, 14, and 15 are added.

Supplement I to Part 226--Official Staff Interpretations

* * * *

Subpart A--General

* * * *

§ 226.2--Definitions and Rules of Construction.

2(a) Definitions.
* * * *

2(a)(6) Business day.
* * * *

2. *Rule for rescission and disclosures for certain mortgage and home-equity line of credit transactions*. A more precise rule for what is a business day (all calendar days except Sundays and the federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission or the receipt of disclosures for certain dwelling-secured mortgage transactions for purposes of [under] §§ 226.5b(e), 226.9(i)(2), 226.19(a)(1)(ii), 226.19(a)(2), or 226.31(c) is involved. Four federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.
* * * *

Subpart B--Open-end Credit

§ 226.5--General Disclosure Requirements

1. *Guidance on compliance with rules for open-end (not home-secured) credit versus rules for home-equity plans*. In some cases creditors offering open-end credit plans secured by residential property may not know whether the property is, or remains, the consumer's principal residence, second or vacation home, or rental or investment property. If the property is the consumer's principal residence or a second or vacation home (and not rental property), the credit plan is subject to § 226.5b and the associated rules for home-equity plans elsewhere in Regulation Z such as those in §§ 226.6(a), 226.7(a), 226.9(c)(1), 226.9(i), and 226.9(j). If the property is the consumer's rental or investment property, and the credit plan is used primarily for personal, family, or household purposes, the credit plan is subject to the rules for open-end (not home-secured) credit set forth in §§ 226.6(b), 226.7(b), 226.9(c)(2), and 226.9(g). (In this case, if the credit plan is accessible by credit card, the creditor must also comply with the rules applicable to open-end credit card plans under § 226.5a.) If the credit plan is used primarily for business purposes rather than personal, family, or household purposes, the credit plan is not subject to Regulation Z. (See § 226.3(a) and the related staff commentary provisions for guidance in determining whether credit is considered to be used primarily for business purposes.) In determining which rules apply, creditors may rely on the following guidance:

i. For existing credit plans, if the creditor does not know whether the property is or remains the consumer's principal residence or second or vacation home, and the creditor has been complying with the rules under § 226.5b and associated other rules, the creditor may continue to do so.

ii. Alternatively, the creditor in these circumstances may investigate the use of the property. If the creditor ascertains that the property is not used as the consumer's principal residence or as a second or vacation home, but the credit plan is nonetheless used for personal, family, or household purposes, the creditor may begin complying with the rules applicable to open-end (not home-secured) credit under Regulation Z. In this case, if the credit plan is accessible by credit card, the creditor must comply with the rules for open-end (not home-secured) credit card plans under § 226.5a and associated sections in the regulation, in addition to the rules applicable to open-end credit generally.

iii. When a new open-end credit plan is opened, the creditor may attempt to ascertain the status of the property securing the plan, and comply accordingly with the appropriate set of rules. However, if the creditor is not able, or chooses not, to determine the status of the property, the creditor may comply with the rules for home-equity plans under § 226.5b and associated sections of the regulation.

5(a) Form of disclosures.

5(a)(1) General.

1. *Clear and conspicuous standard*. The "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. Disclosures for credit card applications and solicitations under § 226.5a, disclosures for home-equity plans required three business days after application under § 226.5b(b), highlighted account-opening disclosures under § 226.6(a)(1) and § 226.6(b)(1), highlighted disclosure on checks that access a credit card under § 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(1)(iii)(B) and § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or otherwise as [for] a penalty under § 226.9(g)(3)(ii) and § 226.9(i)(4) must also be readily noticeable to the consumer to meet the "clear and conspicuous" standard.

2. *Clear and conspicuous--reasonably understandable form*. Except where otherwise provided, the reasonably understandable form 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. For disclosures that are given orally, the standard requires that they be given at a speed and volume sufficient for a consumer to hear and comprehend them. (See comment 5(b)(1)(ii)-1.) Except where otherwise provided, the standard does not prohibit:

i. Pluralizing required terminology ("finance charge" and "annual percentage rate").

ii. Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

iii. Sending promotional material with the required disclosures.

iv. Using commonly accepted or readily understandable abbreviations (such as "mo." for "month" or "Tx." for "Texas") in making any required disclosures.

v. 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.

3. *Clear and conspicuous--readily noticeable standard*. To meet the readily noticeable standard, disclosures for credit card applications and solicitations under § 226.5a, disclosures for home-equity plans required three business days after application under § 226.5b(b), highlighted account-opening disclosures under § 226.6(a)(1) and § 226.6(b)(1), highlighted disclosures on checks that access a credit card account under § 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(1)(iii)(B) and § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under § 226.9(g)(3)(ii) and § 226.9(i)(4) must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases in an open-end (not home-secured) plan under §§ 226.5a(b)(1) and 226.6(b)(2)(i), and for the annual percentage rate in a home-equity plan under §§ 226.5b(c)(10) and 226.6(a)(2)(vi).)

4. *Integrated document*. The creditor may make both the account-opening disclosures (§ 226.6) and the periodic-statement disclosures (§ 226.7) on more than one page, and use both the front and the reverse sides, except where

otherwise indicated, so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

i. Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labeled to ***show*** that they relate to one another; or

ii. A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features.

5. *Disclosures covered*. Disclosures that must meet the "clear and conspicuous" standard include all required communications under this subpart. For example, disclosures made by a person other than the card issuer, such as disclosures of finance charges imposed at the time of honoring a consumer's credit card under § 226.9(d), and notices, such as the correction notice required to be sent to the consumer under § 226.13(e), must also be clear and conspicuous.

Paragraph 5(a)(1)(ii)(A).

1. *Electronic disclosures*. Disclosures that need not be provided in writing under § 226.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electronic form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

Paragraph 5(a)(1)(iii).

1. *Disclosures not subject to E-Sign Act*. See the commentary to § 226.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under § 226.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

5(a)(2) Terminology.

[1. *When disclosures must be more conspicuous*. For home-equity plans subject to § 226.5b, the terms *finance charge* and *annual percentage rate*, when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in § 226.5(a)(2)(ii). At the creditor's option, *finance charge* and *annual percentage rate* may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

i. In disclosing the annual percentage rate as required by § 226.6(a)(1)(ii), the term *annual percentage rate* is subject to the more conspicuous rule.

ii. In disclosing the amount of the finance charge, required by § 226.7(a)(6)(i), the term *finance charge* is subject to the more conspicuous rule.

iii. Although neither *finance charge* nor *annual percentage rate* need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under § 226.6(a)(1)(iii) and (a)(1)(iv), they may be equally conspicuous as the disclosures required under §§ 226.6(a)(1)(ii) and 226.7(a)(7).

2. *Making disclosures more conspicuous*. In disclosing the terms *finance charge* and *annual percentage rate* more conspicuously for home-equity plans subject to § 226.5b, only the words *finance charge* and *annual percentage rate* should be accentuated. For example, if the term *total finance charge* is used, only *finance charge* should be emphasized. The disclosures may be made more conspicuous by, for example:

i. Capitalizing the words when other disclosures are printed in lower case.

ii. Putting them in bold print or a contrasting color.

iii. Underlining them.

iv. Setting them off with asterisks.

v. Printing them in larger type.

3. *Disclosure of figures--exception to more conspicuous rule*. For home-equity plans subject to § 226.5b, the terms *annual percentage rate* and *finance charge* need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).]

1. [4.] *Consistent terminology*. Language used in disclosures required in this subpart must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical.

5(b) Time of disclosures.

5(b)(1) Account-opening disclosures.

5(b)(1)(i) General rule.

1. *Disclosure before the first transaction*. When disclosures must be furnished "before the first transaction," account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:

i. *Purchases*. The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously (see commentary to § 226.5(b)(1)(iii) below).

ii. *Advances*. The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

2. *Reactivation of suspended account*. If an account is temporarily suspended (for example, for open-end (not home-secured) plans, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new account-opening disclosures are required.

3. *Reopening closed account*. If an account has been closed (for example, for open-end (not home-secured) plans, due to inactivity, cancellation, or expiration) and then is reopened, new account-opening disclosures are required. No new account-opening disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.

4. *Converting closed-end to open-end credit*. If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, account-opening disclosures under § 226.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to § 226.17 on converting open-end credit to closed-end credit.)

5. *Balance transfers*. A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must furnish the disclosures required by § 226.6 so that the consumer has an opportunity, after receiving the disclosures, to contact the creditor before the balance is transferred and decline the transfer. For example, assume a consumer responds to a card issuer's solicitation for a credit card account subject to § 226.5a that offers a range of balance transfer annual percentage rates, based on the consumer's creditworthiness. If the creditor opens an account for the consumer, the creditor would comply with the timing rules

of this section by providing the consumer with the annual percentage rate (along with the fees and other required disclosures) that would apply to the balance transfer in time for the consumer to contact the creditor and withdraw the request. A creditor that permits consumers to withdraw the request by telephone has met this timing standard if the creditor does not affect the balance transfer until 10 days after the creditor has sent account-opening disclosures to the consumer, assuming the consumer has not contacted the creditor to withdraw the request. Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both §§ 226.5a and 226.6 in a single disclosure statement.

5(b)(1)(ii) Charges imposed as part of an open-end [(not home-secured)] plan.

1. *Disclosing charges before the fee is imposed*. Creditors may disclose charges imposed as part of an open-end [(not home-secured)] plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under § 226.6(a)(2) or § 226.6(b)(2). (Charges imposed as part of an open-end [(not home-secured plan)] that are not specified under § 226.6(a)(2) or § 226.6(b)(2) may alternatively be disclosed in electronic form; see the commentary to § 226.5(a)(1)(ii)(A).) Creditors must provide such disclosures at a time and in a manner such that a consumer would be likely to notice them. For example, if a consumer telephones a creditor [card issuer] to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call orally to the consumer. Similarly, a creditor providing marketing materials in writing to a consumer about a particular service would meet the standard if the creditor provided a clear and conspicuous written disclosure of the fee for that service in those same materials. A creditor that provides written materials to a consumer about a particular service but provides a fee disclosure for another service not promoted in such materials would not meet the standard. For example, if a creditor provided marketing materials promoting payment by Internet, but included the fee for a replacement card on such materials with no explanation, the creditor would not be disclosing the fee at a time and in a manner that the consumer would be likely to notice the fee.

2. *Relationship to rule prohibiting changes in home-equity plans*. Creditors offering home-equity plans subject to § 226.5b are subject to the rules under § 226.5b(f) restricting changes in terms. Therefore, even though the rule in § 226.5(b)(1)(ii) permits certain charges to be disclosed at a time later than account opening, a home-equity plan creditor would not be permitted to impose a charge for a feature or service previously not subject to a charge, or to increase a charge for a feature or service previously subject to a lower charge, even if the absence of a charge, or the lower charge, had not been previously disclosed to the consumer.

5(b)(1)(iii) Telephone purchases.

1. *Return policies*. In order for creditors to provide disclosures in accordance with the timing requirements of this paragraph, consumers must be permitted to return merchandise purchased at the time the plan was established without paying mailing or return-shipment costs. Creditors may impose costs to return subsequent purchases of merchandise under the plan, or to return merchandise purchased by other means such as a credit card issued by another creditor. A reasonable return policy would be of sufficient duration that the consumer is likely to have received the disclosures and had sufficient time to make a decision about the financing plan before his or her right to return the goods expires. Return policies need not provide a right to return goods if the consumer consumes or damages the goods, or for installed appliances or fixtures, provided there is a reasonable repair or replacement policy to cover defective goods or installations. If the consumer chooses to reject the financing plan, creditors comply with the requirements of this paragraph by permitting the consumer to pay for the goods with another reasonable form of payment acceptable to the merchant and keep the goods although the creditor cannot require the consumer to do so.

5(b)(1)(iv) Membership fees.

1. *Membership fees*. See § 226.5a(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.

2. *Rejecting the plan*. If a consumer has paid or promised to pay a membership fee including an application fee excludable from the finance charge under § 226.4(c)(1) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee, application fee, or any other fee or charge. A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan.

3. *Using the account*. A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not "use" the account by activating the account. A consumer also does not "use" the account when the creditor assesses fees on the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures). For example, the consumer does not "use" the account when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. A consumer also does not "use" the account by paying an application fee excludable from the finance charge under § 226.4(c)(1) prior to receiving the account-opening disclosures.

4. *Home-equity plans*. Creditors offering home-equity plans subject to the requirements of § 226.5b are subject to the requirements of § 226.5b[(g)] (d) and (e) regarding the collection and refundability of fees.

5(b)(2) Periodic statements.

Paragraph 5(b)(2)(i).

1. *Periodic statements not required*. Periodic statements need not be sent in the following cases:

i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $ 1--so long as no finance charge has been imposed on the account for that cycle.

ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See § 226.13(a)(7).)

2. *Termination of draw privileges*. When a consumer's ability to draw on an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under § 226.5(b)(2)(i), for example, when the draw period of an open-end credit plan ends and consumers are paying off outstanding balances according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. In addition, creditors must continue to follow all of the other open-end credit requirements and procedures in subpart B.

3. *Uncollectible accounts*. An account is deemed uncollectible for purposes of § 226.5(b)(2)(i) when a creditor has ceased collection efforts, either directly or through a third party.

4. *Instituting collection proceedings*. Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.

Paragraph 5(b)(2)(ii).

1. *14-day rule*. The 14-day rule for mailing or delivering periodic statements does not apply if charges (for example, transaction or activity charges) are imposed regardless of the timing of a periodic statement. The 14-day rule does apply, for example:

i. If current debits retroactively become subject to finance charges when the balance is not paid in full by a specified date.

ii. For open-end plans not subject to 12 CFR part 227, subpart C; 12 CFR part 535, subpart C; or 12 CFR part 706, subpart C, if charges other than finance charges will accrue when the consumer does not make timely payments (for example, late payment charges or charges for exceeding a credit limit). (For consumer credit card accounts subject to 12 CFR part 227, subpart C; 12 CFR part 535, subpart C; or 12 CFR part 706, subpart C, see 12 CFR 227.22, 12 CFR 535.22, or 12 CFR 706.22, as applicable.)

2. *Deferred interest transactions*. See comment 7(b)-1.iv.

Paragraph 5(b)(2)(iii).

1. *Computer malfunction*. The exceptions identified in § 226.5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.

2. *Calling for periodic statements*. When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a grace period, the statement must be made available in accordance with the 14-day rule.

5(e) Basis of disclosures and use of estimates.

1. *Legal obligation*. The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

i. The legal obligation is determined by applicable state or other law.

ii. The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

iii. The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. *Estimates--obtaining information*. Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. *Estimates--redisclosure*. If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.

5(d) Multiple creditors; multiple consumers.

1. *Multiple creditors. Under § 226.5(d)*:

i. Creditors must choose which creditor [of them] will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

2. *Multiple consumers*. Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.15.

3. *Card issuer and person extending credit not the same person*. Section 127(c)(4)(D) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(D)) contains rules pertaining to charge card issuers with plans that allow access to an open-end credit plan that is maintained by a person other than the charge card issuer. These rules are not implemented in Regulation Z (although they were formerly implemented in § 226.5a(f)). However, the statutory provisions remain in effect and may be used by charge card issuers with plans meeting the specified criteria.

5(e) Effect of subsequent events.

1. *Events causing inaccuracies*. Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under § 226.9(c).

2. *Use of inserts*. When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:

i. Should clearly refer to the disclosure provision it replaces.

ii. Need not be physically attached or affixed to the basic disclosure statement.

iii. May be used only until the supply of outdated forms is exhausted.
* * * *

§ 226.5b--Requirements for Home-equity Plans.

1. *Coverage*. This section applies to all open-end credit plans secured by the consumer's "dwelling," as defined in § 226.2(a)(19), and is not limited to plans secured by the consumer's *principal* dwelling. (See the commentary to § 226.3(a), which discusses whether transactions are consumer or business-purpose credit, for guidance on whether a home-equity plan is subject to Regulation Z.)

2. *Changes to home-equity plans [entered into on or after November 7, 1989]*. Section 226.9(c) applies if, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home-equity plan [--entered into on or after November 7, 1989--] at or before its scheduled expiration, for example, by renewing a plan on different terms. A new plan results, however, if the plan is renewed (with or without changes to the terms) after the scheduled expiration. The new plan is subject to all open-end credit rules, including §§ 226.5b, 226.6, and 226.15.

[3. *Transition rules and renewals of preexisting plans*. The requirements of this section do not apply to home-equity plans entered into before November 7, 1989. The requirements of this section also do not apply if the original consumer, on or after November 7, 1989, renews a plan entered into prior to that date (with or without changes to the terms). If, on or after November 7, 1989, a security interest in the consumer's dwelling is added to a line of credit entered into before that date, the substantive restrictions of this section apply for the remainder of the plan, but no new disclosures are required under this section.

4. *Disclosure of repayment phase--applicability of requirements*. Some plans provide in the initial agreement for a period during which no further draws may be taken and repayment of the amount borrowed is made. All of the applicable disclosures in this section must be given for the repayment phase. Thus, for example, a creditor must

provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(d)(5). If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an annual percentage rate under § 226.5b(d)(6) for that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion to the repayment phase--even if the rate will thereafter be fixed--the creditor must provide the information in § 226.5b(d)(12), as applicable.]

3. [5.] *Payment terms--applicability of closed-end provisions and substantive rules*. All payment terms that are provided for in the initial agreement are subject to the requirements of subpart B and not subpart C of the regulation. Payment terms that are subsequently added to the agreement may be subject to subpart B or to subpart C, depending on the circumstances. The following examples apply these general rules to different situations:

(i) If the initial agreement provides for a repayment phase or for other payment terms such as options permitting conversion of part or all of the balance to a fixed rate during the draw period, these terms must be disclosed pursuant to §§ 226.5b and 226.6, and not under subpart C. Furthermore, the creditor must continue to provide periodic statements under § 226.7 and comply with other provisions of subpart B (such as the substantive requirements of § 226.5b(f)) throughout the plan, including the repayment phase.

(ii) If the consumer and the creditor enter into an agreement during the draw period to repay all or part of the principal balance on different terms (for example, with a fixed rate of interest) and the amount of available credit will be replenished as the principal balance is repaid, the creditor must continue to comply with subpart B. For example, the creditor must continue to provide periodic statements and comply with the substantive requirements of § 226.5b(f) throughout the plan.

(iii) If the consumer and creditor enter into an agreement during the draw period to repay all or part of the principal balance and the amount of available credit will not be replenished as the principal balance is repaid, the creditor must give closed-end credit disclosures pursuant to subpart C for that new agreement. In such cases, subpart B, including the substantive rules, does not apply to the closed-end credit transaction, although it will continue to apply to any remaining open-end credit available under the plan.

4. [6.] *Spreader clause*. When a creditor holds a mortgage or deed of trust on the consumer's dwelling and that mortgage or deed of trust contains a *spreader clause* (also known as a *dragnet* or cross-collateralization clause), subsequent occurrences such as the opening of an open-end plan are subject to the rules applicable to home-equity plans to the same degree as if a security interest were taken directly to secure the plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

5b(a) Home-equity Document Provided on or with the Application.

5b(a)(1) In General.

1. *Mail and telephone applications*. If an application is sent through the mail, the document required by § 226.5b(a) must accompany the application. If an application is taken over the telephone, the document must be delivered or mailed not later than account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier. If an application is mailed to the consumer following a telephone request, however, the document must be sent along with the application.

2. *General purpose applications*. The document required by § 226.5b(a) need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a home-equity plan or (2) the application is provided in response to a consumer's specific inquiry about a home-equity plan. On the other hand, if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a home-equity plan, the document need not be provided even if the application indicates it can be used for a home-equity plan, unless it is accompanied by promotional information about home-equity plans.

3. *Publicly-available applications*. Some creditors make applications for home-equity plans, such as take-ones, available without the need for a consumer to request them. These applications must be accompanied by the document required by § 226.5b(a), such as by attaching the document to the application form.

4. *Response cards*. A creditor may solicit consumers for its home-equity plan by mailing a *response card* which the consumer returns to the creditor to indicate interest in the plan. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the document required by § 226.5b(a) with the response card. See comment 5b(a)(1)-1 discussing mail and telephone applications.

5. *Denial or withdrawal of application*. Section 226.5b(a)(1)(ii) provides that for telephone applications and applications received through an intermediary agent or broker, creditors must deliver or mail the document required by § 226.5b(a)(1)(i) to the consumer not later than account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier. If the creditor determines within that three-day period that an application will not be approved, the creditor need not provide the document. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the document.

6. *Prominent location*. i. *When document not given in electronic form*. The document required by § 226.5b(a)(1) must be prominently located on or with the application. The document is deemed to be prominently located, for example, if the document is on the same page as an application. If the document appears elsewhere, it is deemed to be prominently located if the application contains a clear and conspicuous reference to the location of the document and indicates that the document provides information about home-equity lines of credit.

ii. *Form of electronic document provided on or with electronic applications*. Generally, creditors must provide the document required by § 226.5b(a)(1) in a prominent location on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. (See comment 5b(a)(2)-1) Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

A. The document could automatically appear on the screen when the application appears;

B. The document could be located on the same Web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the document and indicates the document provides information about home-equity lines of credit.

C. Creditors could provide a link to the electronic document on or with the application as long as consumers cannot bypass the document before submitting the application. The link would take the consumer to the document, but the consumer need not be required to scroll completely through the document; or

D. The document could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

Whatever method is used, a creditor need not confirm that the consumer has read the document.

7. *Intermediary agent or broker*. In determining whether or not an application involves an *intermediary agent or broker* as discussed in § 226.5b(a)(1)(ii), creditors should consult the provisions in comment 19(d)(3)-3.

8. *Definition of "business day"*. The general definition of "business day" in § 226.2(a)(6)--a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions--is used for purposes of § 226.5b(a)(1)(ii). *See* comment 2(a)(6)-1.

9. *As published*. The document required by § 226.5b(a)(1) must be provided as published by the Board. A creditor may not revise the document required by § 226.5b(a)(1).

5b(a)(2) Electronic Disclosures.

1. *When electronic disclosure must be given*. Whether the document required by § 226.5b(a)(1) must be in electronic form depends upon the following:

i. If a consumer accesses a home-equity credit line application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosure required by § 226.5b(a)(1) in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide the disclosure in a timely manner on or with the application. If the creditor instead mailed a ***paper*** disclosure to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses a home-equity credit line application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide the disclosure in either electronic or ***paper*** form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

5b(a)(3) Duties of Third Parties.

1. *Duties of third parties*. The duties under § 226.5b(a)(3) are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations.

2. *Effect of third party delivery of document required by § 226.5b(a)(1)*. If a creditor determines that a third party has provided a consumer with the document required by § 226.5b(a)(1), the creditor need not give the consumer a second copy of the document.

3. *Telephone applications taken by third party*. For telephone applications taken by a third party, the third party is not required to provide the document required by § 226.5b(a)(1). The document required by § 226.5b(a)(1) must be provided by the creditor not later than account opening or three business days following receipt of the consumer's application by the creditor, whichever is earlier, along with the disclosures required by § 226.5b(b).

5b(b) Home-Equity Disclosures Provided No Later Than Account Opening or Three Business Days After Application, Whichever is Earlier

5b(b)(1) Timing.

1. *Denial or withdrawal of application*. Section 226.5b(b)(1) provides that creditors must deliver or mail disclosures required by § 226.5b(b) to the consumer not later than account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier. If the creditor determines within the three-day period that an application will not be approved, the creditor need not provide the disclosures. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the disclosures.

2. *Definition of "business day"*. The general definition of "business day" in § 226.2(a)(6)--a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions--is used for purposes of § 226.5b(b)(1). *See* comment 2(a)(6)-1.

5b(b)(2) Form of disclosures; tabular format.

1. *Terminology*. Section 226.5b(b)(2)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in Appendix G-14 to part 226. See § 226.5(a)(2) for terminology requirements applicable to disclosures provided pursuant to § 226.5b(b).

2. *Other format requirements*. See § 226.5b(c)(9) for formatting requirements applicable to disclosure of certain payment terms in the table required by § 226.5b(b). See § 226.5b(c)(10)(i)(A)(*1*) for formatting requirements applicable to disclosure of variable rates in the table required by § 226.5b(b). See comments 5b(c)(7)(ii)-1,

5b(c)(9)(ii)-5, 5b(c)(14)-1 and 5b(c)(18)-2 for format requirements that apply to information that a creditor provides to a consumer upon request.

3. *Highlighting of disclosures*. i. *In general*. See Samples G-14(C), G-14(D) and G-14(E) for guidance on providing the disclosures described in § 226.5b(b)(2)(vi) in bold text.

ii. *Periodic fees*. Section 226.5b(b)(2)(vi)(D) provides that any periodic fee disclosed pursuant to § 226.5b(c)(12) that is not an annualized amount must not be disclosed in bold. For example, if a creditor imposes a $ 10 monthly maintenance fee for a HELOC account, the creditor must disclose in the table that there is a $ 10 monthly maintenance fee, and that the fee is $ 120 on an annual basis. In this example, the $ 10 fee disclosure would not be disclosed in bold, but the $ 120 annualized amount must be disclosed in bold. In addition, if a creditor must disclose any annual fee in the table, the amount of the annual fee must be disclosed in bold.

iii. *Format requirements under § 226.5b(c)(9)*. Section 226.5b(b)(2)(vi)(E) provides that if a creditor is required under § 226.5b(c)(9) to provide a disclosure in a format substantially similar to the format used in any of the applicable tables found in Samples G-14(C), 14(D) or 14(E), the creditor in making that disclosure must provide in bold text any terms and phrases that are ***shown*** in bold text with regard to that disclosure in the applicable tables. For example, § 226.5b(c)(9) provides that a creditor must distinguish payment terms applicable to the draw period from payment terms applicable to the repayment period, by using the applicable heading "Borrowing Period" for the draw period and "Repayment Period" for the repayment period in a format substantially similar to the format used in any of the applicable tables found in Samples G-14(C) and G-14(E). Because the tables found in Samples G-14(C) and G-14(E) ***show*** the heading "Borrowing Period" and "Repayment Period" in bold text, a creditor must disclose these headings in bold text. See § 226.5b(c)(9)(i) and (c)(9)(iii)(D) for other instances in which a creditor may be required to provide disclosures in a format substantially similar to the format used in any of the applicable tables found in Samples G-14(C), G-14(D) and G-14(E).

iv. *Itemized list of fees to open the plan*. The total amount of account-opening fees disclosed under § 226.5b(c)(11) must be disclosed in bold text. The itemization of those fees also required to be disclosed under § 226.5b(c)(11) must not be disclosed in bold text.

4. *Clear and conspicuous standard*. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to § 226.5b(b) disclosures.

5b(b)(3) Disclosures Based on a Percentage.

1. *Transaction requirements*. Section 226.5b(c)(16) requires a creditor to disclose in the table required under § 226.5b(b) any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements. If any amount that must be disclosed under § 226.5b(c)(16) is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the transaction amount.

[5b(a) Form of Disclosures

5b(a)(1) General.

1. *Written disclosures*. The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (See the commentary to § 226.6(a)(3) for special rules when disclosures required under § 226.5b(d) are given in a retainable form.)

2. *Disclosure of annual percentage rate--more conspicuous requirement*. As provided in § 226.5(a)(2), when the term *annual percentage rate* is required to be disclosed with a number, it must be more conspicuous than other required disclosures.

3. *Segregation of disclosures*. While most of the disclosures must be grouped together and segregated from all unrelated information, the creditor is permitted to include information that explains or expands on the required disclosures, including, for example:

. Any prepayment penalty

. ***How*** a substitute index may be chosen

. Actions the creditor may take short of terminating and accelerating an outstanding balance

. Renewal terms

. Rebate of fees

An example of information that does not explain or expand on the required disclosures and thus cannot be included is the creditor's underwriting criteria, although the creditor could provide such information separately from the required disclosures.

4. *Method of providing disclosures*. A creditor may provide a single disclosure form for all of its home-equity plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all such options must be disclosed. (See, however, the commentary to § 226.5b(d)(5)(iii) and (d)(12)(x) and (xi) for disclosure requirements relating to these provisions.) If any aspects of a plan are linked together, the creditor must disclose clearly the relationship of the terms to each other. For example, if the consumer can only obtain a particular payment option in conjunction with a certain variable-rate feature, this fact must be disclosed. A creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a creditor that offers different payment options for the draw period may prepare separate disclosure forms for the two payment options. A creditor using this alternative, however, must include a statement on each disclosure form that the consumer should ***ask*** about the creditor's other home-equity programs. (This disclosure is required only for those programs available generally to the public. Thus, if the only other programs available are employee preferred-rate plans, for example, the creditor would not have to provide this statement.) A creditor that receives a request for information about other available programs must provide the additional disclosures as soon as reasonably possible.

5. *Form of electronic disclosures provided on or with electronic applications*. Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

i. The disclosures could automatically appear on the screen when the application appears;

ii. The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

iii. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

iv. The disclosures could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

Whatever method is used, a creditor need not confirm that the consumer has read the disclosures.

5b(a)(2) Precedence of Certain Disclosures.

1. *Precedence rule*. The list of conditions provided at the creditor's option under § 226.5b(d)(4)(iii) need not precede the other disclosures.

Paragraph 5b(a)(3).

1. *Form of disclosures*. Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a home-equity credit line application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed ***paper*** disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses a home-equity credit line application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or ***paper*** form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

5b(b) Time of Disclosures

1. *Mail and telephone applications*. If the creditor sends applications through the mail, the disclosures and a brochure must accompany the application. If an application is taken over the telephone, the disclosures and brochure may be delivered or mailed within three business days of taking the application. If an application is mailed to the consumer following a telephone request, however, the creditor also must send the disclosures and a brochure along with the application.

2. *General purpose applications*. The disclosures and a brochure need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a home-equity plan or (2) the application is provided in response to a consumer's specific inquiry about a home-equity plan. On the other hand, if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a home-equity plan, the disclosures and brochure need not be provided even if the application indicates it can be used for a home-equity plan, unless it is accompanied by promotional information about home-equity plans.

3. *Publicly-available applications*. Some creditors make applications for home-equity plans, such as *take-ones*, available without the need for a consumer to request them. These applications must be accompanied by the disclosures and a brochure, such as by attaching the disclosures and brochure to the application form.

4. *Response cards*. A creditor may solicit consumers for its home-equity plan by mailing a *response card* which the consumer returns to the creditor to indicate interest in the plan. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the disclosures and brochure with the response card.

5. *Denial or withdrawal of application*. In situations where footnote 10a permits the creditor a three-day delay in providing disclosures and the brochure, if the creditor determines within that period that an application will not be approved, the creditor need not provide the consumer with the disclosures or brochure. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the disclosures or brochure.

6. *Intermediary agent or broker*. In determining whether or not an application involves an *intermediary agent or broker* as discussed in footnote 10a, creditors should consult the provisions in comment 19(b)-3.

5b(c) Duties of Third Parties

1. *Disclosure requirements*. Although third parties who give applications to consumers for home-equity plans must provide the brochure required under § 226.5b(e) in all cases, such persons need provide the disclosures required under § 226.5b(d) only in certain instances. A third party has no duty to obtain disclosures about a creditor's home-equity plan or to create a set of disclosures based on what it knows about a creditor's plan. If, however, a creditor provides the third party with disclosures along with its application form, the third party must give the disclosures to the consumer with the application form. The duties under this section are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations. If an intermediary agent or broker takes an application over the telephone or receives an application contained in a magazine or other publication, footnote 10a permits that person to mail the disclosures and brochure within three business days of receipt of the application. (See the commentary to § 226.5b(h) about imposition of nonrefundable fees.)]

5b[(d)] (c) Content of Disclosures

1. *Disclosures given as applicable*. The disclosures required under this section generally need be made only as applicable. Thus, for example, if negative amortization cannot occur in a home-equity plan, a reference to it need not be made. Nonetheless, there are exceptions to this general rule. Specifically, in certain circumstances, a creditor must state that a balloon payment will not result for payment plans in which no balloon payment would occur, as set forth in § 226.5b(c)(9)(ii)(B)(3) and

(c)(9)(iii)(C)(4). In addition, if there are no annual or other periodic limitations on changes in the annual percentage rate, a creditor must state that no annual limitation exists, as set forth in § 226.5b(c)(10)(i)(A)(5).

2. *Duty to respond to requests for information*. If the consumer, prior to the opening of a plan, requests information described [as suggested] in the disclosures (such as additional information about fees applicable to the plan or the conditions under which the creditor may make take certain actions with respect to the plan [the current index value or margin]), the creditor must provide this information as soon as reasonably possible after the request. See comments 5b(c)(7)(ii)-1, 5b(c)(9)(ii)-5, 5b(c)(14)-1 and 5b(c)(18)-2 for format requirements that apply to information that a creditor provides to a consumer upon request.

3. *Disclosure of repayment phase--applicability of requirements*. Some plans provide in the initial agreement for a period during which the consumer may make no further draws and must repay all or a portion of the amount borrowed. All of the applicable disclosures in this section must be given for the repayment phase. Thus, for example, a creditor must provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(c)(9). To the extent required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

4. *Fixed-rate and -term payment plans during draw period*. Home-equity plans typically offer a variable-rate feature during the draw period. Specifically, withdrawals on a home-equity plan typically will access a general-revolving feature to which a variable rate applies. Nonetheless, some home-equity plans also offer a fixed-rate and -term payment feature, where a consumer is permitted to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. If a home-equity plan offers a variable-rate feature and a fixed-rate and -term feature during the draw period, a creditor generally may not disclose in the table the terms applicable to the fixed-rate and -term feature in making the disclosures under § 226.5b(c), except as required under § 226.5b(c)(18). For example, the creditor would not be allowed to disclose in the table information about the payment terms and the annual percentage rate applicable to the fixed-rate and -term payment feature, under § 226.5b(c)(9) and (c)(10), respectively. In this case, the creditor would only be allowed to disclose this information for the variable-rate feature; for the fixed-rate and -term feature, the creditor would be allowed to disclose in the table only information specified in § 226.5b(c)(18). The creditor may, however, disclose additional information relating to the fixed-rate and -term feature outside of the table. See § 226.5b(b)(2)(v). If a home-equity plan does not offer a variable-rate feature during the draw period, but only offers fixed-rate and -term payment features during the draw period, a creditor must disclose in the table information for the fixed-rate and -term features when making the disclosures required by § 226.5b(c).

5b(c)(1) Identification Information.

1. *Identification of creditor*. The creditor making the disclosures must be identified. Use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

2. *Multiple loan originators*. In transactions with multiple loan originators, each loan originator's unique identifier must be disclosed. For example, in a transaction where a mortgage broker meets the definition of a loan originator under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Section 1503(3), 12 U.S.C. 5102(3), the identifiers for the broker and for its employee originator meeting that definition must be disclosed.

[5b(d)(1) Retention of Information.

1. *When disclosure not required*. The creditor need not disclose that the consumer should make or otherwise retain a copy of the disclosures if they are retainable-for example, if the disclosures are not part of an application that must be returned to the creditor to apply for the plan.]

5b(c)(4) [5b(d)(2).] Conditions for Disclosed Terms.

Paragraph 5b(c)(4)(i) [5b(d)(2)(i)]

1. *Guaranteed terms*. [The requirement that the creditor disclose the time by which an application must be submitted to obtain the disclosed terms does not require the creditor to guarantee any terms.] If a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor also is permitted to guarantee some terms and not others, but must indicate which terms are subject to change.

[2. *Date for obtaining disclosed terms*. The creditor may disclose either a specific date or a time period for obtaining the disclosed terms. If the creditor discloses a time period, the consumer must be able to determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms. For example, the disclosure might read, "To obtain the following terms, you must submit ***your*** application within 60 days after the date appearing on this disclosure," provided the disclosure form also ***shows*** the date.]

Paragraph 5b(c)(4)(ii) [5b(d)(2)(ii)].

1. *Relation to other provisions*. Creditors should consult the rules in § 226.5b(d) [§ 226.5b(g)] regarding refund of fees when terms change.

5b(c)(5) Refund of Fees Under § 226.5b(e).

1. *Relation to other provisions*. Creditors should consult the rules in § 226.5b(e) regarding refund of fees if the consumer rejects the plan within three business days of receiving the disclosures required by § 226.5b(b).

5b(c)(7) [5b(d)(4)] Possible Actions by Creditor.

Paragraph 5b(c)(7)(i) [5b(d)(4)(i)].

1. *Fees imposed upon termination*. This disclosure applies only to fees (such as penalty or prepayment fees) that the creditor imposes if it terminates the plan prior to normal expiration. The disclosure does not apply to fees that are imposed either when the plan expires in accordance with the agreement or if the consumer terminates the plan prior to its scheduled maturity. In addition, the disclosure does not apply to fees associated with collection of the debt, such as attorneys' fees and court costs, or to increases in the annual percentage rate linked to the consumer's failure to make payments. The actual amount of the fee need not be disclosed.

2. *Changes to the plan [specified in the initial agreement]*. If changes may occur pursuant to § 226.5b(f)(3)(i)-(v), a creditor must state that the creditor can make changes to the plan. [certain changes will be implemented as specified in the initial agreement].

Paragraph 5b(c)(7)(ii) [Paragraph 5b(d)(4)(iii)].

1. *Disclosure of conditions*. A creditor may disclose the conditions under which a creditor may take certain actions as specified in § 226.5b(c)(7) either upon the consumer's request (prior to account opening) or with the disclosures required by § 226.5b(b). In making this disclosure, the creditor may provide a highlighted copy of the document that contains such information, such as the contract or security agreement. The relevant items must be distinguished from the other information contained in the document. For example, the creditor may provide a cover sheet that specifically points out which contract provisions contain the information, or may mark the relevant items on the document itself. As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in § [§] 226.5b(f)(2)(i)-[(iii)] (iv), [226.5b](f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached), and [226.5b](f)(3)(vi) or language that is substantially similar. [The condition contained in § 226.5b(f)(2)(iv) need not be stated.] In describing [specified] changes that may be implemented during the plan under § 226.5b(f)(3)(i)-(v), the creditor may provide a disclosure such as, "We are allowed to make certain changes in the terms of the line, such as [Our agreement permits us to make certain] changes [to the terms of the line] at specified times or upon the occurrence of specified events as set forth in the initial agreement." See comment 5b(c)-2 regarding ***how*** soon after the consumer's request the creditor must disclose this information to the consumer.

[2. *Form of disclosure*. The list of conditions under § 226.5b(d)(4)(iii) may appear with the segregated disclosures or apart from them. If the creditor elects to provide the list of conditions with the segregated disclosures, the list need not comply with the precedence rule in § 226.5b(a)(2).]

5b(c)(9) [5b(d)(5).] Payment Terms.

1. *Balloon payments*. i. *In general*. Section 226.5b(c)(9)(ii) and (iii) require disclosures of balloon payments. A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time. The creditor must not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan. The balloon payment disclosures in § 226.5b(c)(9)(ii) and (iii) do not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration.

ii. *Terminology*. In disclosing a balloon payment under § 226.5b(c)(9)(ii) and (iii), a creditor must disclose that a balloon payment "may" result if a balloon payment under a payment plan is possible, even if such a payment is uncertain or unlikely; a creditor must disclose that a balloon payment "will" result if a balloon payment will occur under a payment plan, such as a payment plan with interest-only payments during the draw period and no repayment period.

2. *Disclosing balloon payment when one payment plan is disclosed*. If under the payment plan, paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, the creditor must disclose information about the balloon payment twice in the table--under § 226.5b(c)(9)(ii)(A) and (c)(9)(iii)(C)(4). See the row "Balloon Payment" in the "Borrowing and Repayment Terms" section of Sample G-14(D) for guidance on ***how*** to comply with the requirements in § 226.5b(c)(9)(ii)(A). See the first paragraph in the "Sample Payments on a $ 80,000 Balance" section of Sample G-14(D) for guidance on ***how*** to comply with the requirements in § 226.5b(c)(9)(iii)(C)(4).

3. *Disclosing balloon payments when two payment plans are disclosed*. If under at least one of the payment plans, paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, the creditor must disclose information about the balloon payment three times in the table--under § 226.5b(c)(9)(ii)(B)(1), (c)(9)(ii)(B)(3), and (c)(9)(iii)(C)(4). See the row "Balloon Payment"

in the "Borrowing and Repayment Terms" section of Sample G-14(C) for guidance on ***how*** to comply with the requirements in § 226.5b(c)(9)(ii)(B)(1). See the rows "Plan A" and "Plan B" in the "Payment Plans" section of Sample G-14(C) for guidance on ***how*** to comply with the requirements in § 226.5b(c)(9)(ii)(B)(3). See the "Plan A vs. Plan B" part of the "Plan Comparison: Sample Payments on an $ 80,000 Balance" section of Sample G-14(C) for guidance on ***how*** to comply with the requirements in § 226.5b(c)(9)(iii)(C)(4).

Paragraph 5b(c)(9)(i) [5b(d)(5)(i)]

1. *Length of the plan*. [The combined length of the draw period and any repayment period need not be stated. If the length of the repayment phase cannot be determined because, for example, it depends on the balance outstanding at the beginning of the repayment period, the creditor must state that the length are determined by the size of the balance. If the length of the plan is indefinite (for example, because there is no time limit on the period during which the consumer can take advances), the creditor must state that fact.] i. If a maturity date is set forth for the plan, the length of the plan, the length of the draw period and the length of any repayment period are definite. The length of the plan must be based on the maturity date of the plan, regardless of whether the outstanding balance will be paid off before or after the maturity date. For example, assume that a plan has a draw period of 10 years and a maturity date of 20 years. If the outstanding balance on the plan is not paid off by the maturity date, the creditor will extend the maturity date of the plan and require the consumer to make minimum payments until the outstanding balance is repaid. In this example, the creditor must disclose the length of the plan as 20 years, the draw period as 10 years and the repayment period as 10 years, even though in some cases the maturity date of the plan may be extended in the future.

ii. If the plan does not have a maturity date and the length of the repayment period cannot be determined at the time the disclosures required by § 226.5b(b) must be given because the length of the plan and the length of the repayment period depend on the balance outstanding at the beginning of the repayment period or the balance at the time of the last advance during the draw period, the creditor must state that the length of the plan and the length of the repayment period is determined by the size of the balance outstanding at the beginning of the repayment period or the balance at the time of the last advance during the draw period, as applicable. The following examples illustrate this rule:

A. Assume the plan has no maturity date, the draw period is 10 years, and the minimum payment during the repayment period is 1.5 percent of the outstanding balance at the time of the last advance during the draw period. In this example, the creditor would disclose that the lengths of the plan and the repayment period are determined by the size of the outstanding balance at the time of the last advance during the draw period.

B. Assume the length of the draw period is 10 years and the length of the repayment period will be 15 years if the balance at the beginning of the repayment period is less than $ 20,000 and 30 years if the balance is $ 20,000 or more. In this example, the creditor must disclose that the length of the plan will be 25 or 40 years depending on the outstanding balance at the beginning of the repayment period. In addition, the creditor must disclose that the repayment period will be 15 years if the balance is less than $ 20,000 and 30 years if the balance is $ 20,000 or more. The creditor may not simply disclose that the repayment period is determined by the size of the balance. See Sample G-14(E) for guidance on ***how*** to disclose this information.

iii. If the length of the plan is indefinite (for example, because there is no time limit on the period during which the consumer can take advances), the creditor must state that fact.

2. *Renewal provisions*. If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension--regardless of its likelihood--should be ignored for purposes of the disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years.

3. *Format*. Under § 226.5b(c)(9)(i), if the length of the plan is definite, a creditor must disclose the length of the plan, the length of the draw period and the length of any repayment period in a format substantially similar to the format used in any of the applicable tables found in Samples G-14(C) and G-14(D). (See comment 5b(c)(9)(i)-1 for guidance on determining whether the length of the plan is definite.) Sample G-14(D) ***shows*** the format a creditor must use for plans that have a definite length and have a draw period but no repayment period. Sample G-14(C) ***shows*** the format a creditor must use for plans that have a definite length and have a draw period and a repayment period. For example, in Sample G-14(C), the length of a plan is 20 years, and the length of the draw period and repayment period are 10 years each. As ***shown*** in Sample G-14(C), the length of the plan must be disclosed as 20 years, along with a statement indicating that this period is divided into two periods. In this example, the length of the draw period must be disclosed as "Years (1-10)" and the length of the repayment period must be disclosed as "Years (11-20)." The length of the draw period and repayment period must be included with the headings "Borrowing Period" (for the draw period) and "Repayment Period" (for the repayment period), respectively, each time these headings are used. See § 226.5b(c)(9) for when the headings must be used.

4. *Length of the plan and the length of the draw period are the same*. If the length of the plan and the length of the draw period are the same, a creditor will be deemed to satisfy the requirement to disclose the length of plan by disclosing the length of the draw period.

Paragraph 5b(c)(9)(ii) [5b(d)(5)(ii)].

1. *Determination of the minimum periodic payment*. This disclosure [must reflect] of ***how*** the minimum periodic payment is determined [, but] must [need only] describe only the principal and interest components of the payment. Other charges that may be part of the payment (as well as the balance computation method) must not be [may, but need not, be] described under this provision. In addition, this disclosure must not include a description of any floor payment amount, where the payment will not go below this amount.

2. *Multiple payment plans*. If a creditor only offers two payment plans (other than fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), both of those payment options must be disclosed in the table required by § 226.5b(b). If a creditor offers more than two payment options (other than fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), the creditor pursuant to § 226.5b(c)(9)(ii)(B) must only disclose two of the payment plans in the table required by § 226.5b(b). The following would be considered two payment plans: The draw period is 10 years and the consumer has the choice between two repayment periods--10 and 20 years. The two payment plans would be (1) a 10 year draw period and a 10 year repayment period, and (2) a 10 year draw period and a 20 year repayment period.

3. *Statement about additional payment plans not disclosed in table*. Section 226.5b(c)(9)(ii)(B) provides that if a creditor offers more than the two payment plans described in the table required by § 226.5b(b)(2)(i) (other than fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), the creditor must disclose that other payment plans are available, and the consumer should ***ask*** the creditor for additional details about these other payment plans. This disclosure is required only if the creditor offers additional payment plans available to that consumer. If the only other payment plans available are employee preferred-rate plans, for example, the creditor must provide this statement only if the consumer would qualify for the employee preferred-rate plans.

[2. *Fixed rate and term payment options during draw period*. If the home-equity plan permits the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period, this feature must be disclosed. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay all or a portion of the balance over a three-year period at a fixed rate. The creditor must disclose the rules relating to this feature including the period during which the option can be selected, the length of time over which repayment can occur, any fees imposed for such a feature, and the specific rate or a description of the index and margin that will apply upon exercise of this choice. For example, the index and margin disclosure might state: "If you choose to convert any portion of ***your*** balance to a fixed rate, the rate will be the highest prime rate published in the 'Wall Street Journal' that is in effect at the date of conversion plus a margin." If the fixed rate is to be determined according to an index, it must be one that is outside the creditor's control and is publicly available in accordance with § 226.5b(f)(1). The effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example required in § 226.5b(d)(12)(xi).1

(3] 4. *Balloon payments*. See comments 5b(c)(9)-1 through -3 for guidance on disclosing balloon payments under § 226.5b(c)(9)(ii). [In programs where the occurrence of a balloon payment is possible, the creditor must disclose the possibility of a balloon payment even if such a payment is uncertain or unlikely. In such cases, the disclosure might read, "***Your*** minimum payments may not be sufficient to fully repay the principal that is outstanding on ***your*** line. If they are not, you will be required to pay the entire outstanding balance in a single payment." In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that fact. For example, the disclosure might read, "***Your*** minimum payments will not repay the principal that is outstanding on ***your*** line. You will be required to pay the entire outstanding balance in a single payment." In making this disclosure, the creditor is not required to use the term "balloon payment." The creditor also is not required to disclose the amount of the balloon payment. (See, however, the requirement under § 226.5b(d)(5)(iii).) The balloon payment disclosure does not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration. The creditor also need not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan.]

5. *Consumer's request for additional information on other payment plans*. If the creditor offers any other payment plans than the two payment plans disclosed in the table required under § 226.5b(b) (except for fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), and a consumer requests additional information about this other plan prior to account opening, the creditor must disclose an additional table under § 226.5b(b) to the consumer with the terms of the other payment plan described in the table. If the creditor offers multiple payment plans that were not disclosed in the table required under § 226.5b(b), only one payment plan may be disclosed on each additional table given to the consumer. For example, if a creditor offers two payment plans that were not disclosed in the table required under § 226.5b(b), the creditor must provide the consumer, upon request, two additional tables--one table for each payment plan. See comment 5b(c)-2 regarding ***how*** soon after the consumer's request the creditor must disclose this information to the consumer.

6. *Reverse mortgages*. Reverse mortgages, also known as reverse annuity or home-equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

i. If the reverse mortgage has a specified period for advances and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the line at the time the borrowing period and our payments to you end. As provided in ***your*** agreement, ***your*** repayment may be required at a different time." The single payment should be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The examples of the minimum payment under § 226.5b(c)(9)(iii) should assume the consumer borrows the full credit line (as disclosed in § 226.5b(c)(17)) at the beginning of the draw period.

ii. If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

iii. In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by ***your*** agreement."

iv. Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing ***how*** the creditor's share will be determined, any limitations, and when the feature may be exercised.

Paragraph 5b(c)(9)(iii) [5b(d)(5)(iii)].

1. *Minimum periodic payment examples*. A creditor must provide examples for each payment option disclosed in the table pursuant to § 226.5b(c)(9)(ii). In calculating the payment examples, a creditor must take into account any significant terms related to each payment option, such as any payment caps or payment floor amounts. (A creditor must take payment floor amounts into account when calculating the payment examples even though the creditor may not disclose that payment floor in the table when describing ***how*** minimum payments will be calculated. See comment 5b(c)(9)(ii)-1.) For example, assume that under a payment plan, the monthly payment for the draw period will be calculated as the interest accrued during that month, or $ 50, whichever is greater. In the table described in § 226.5b(b), a creditor must disclose that the minimum monthly payment during the draw period only covers interest. The creditor must not disclose in the table the payment floor of $ 50. Nonetheless, the creditor must take into account this $ 50 payment floor in calculating the disclosures ***shown*** as part of the payment examples. In disclosing the payment examples, the creditor must assume that the consumer borrows the full credit line (as disclosed in § 226.5b(c)(17)) at the beginning of the draw period and that this advance is reduced according to the terms of the plan. The creditor must not assume that an additional advance is taken at any time, including at the beginning of any repayment period. A creditor must assume that the annual percentage rate used to calculate each payment example required by § 226.5b(c)(9)(iii) will remain the same during the draw period and any repayment period as specified in § 226.5b(c)(9)(iii)(A)(3) even if that annual percentage rate is a variable rate under the plan. [may assume that the credit limit as well as the outstanding balance is $ 10,000 if such an assumption is relevant to calculating payments. (If the creditor only offers lines of credit for less than $ 10,000, the creditor may assume an outstanding balance of $ 5,000 instead of $ 10,000 in making this disclosure.)] The examples should reflect the payment comprised only of principal and interest. The sample payments in the table ***showing*** the first minimum periodic payment for the draw period and any repayment period, and the balance outstanding at the beginning of any repayment period, must be rounded to the nearest whole dollar. [Creditors may provide an additional example reflecting other charges that may be included in the payment, such as credit insurance premiums.] Creditors may assume that all months have an equal number of days, that payments are collected in whole cents, and that payments will fall on a business day even though they may be due on a non-business day. [For variable-rate plans, the example must be based on the last rate in the historical example required in § 226.5b(d)(12)(xi), or a more recent rate. In cases where the last rate ***shown*** in the historical example is different from the index value and margin (for example, due to a rate cap), creditors should calculate the rate by using the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.]

[2. *Representative examples*. In plans with multiple payment options within the draw period or within any repayment period, the creditor may provide representative examples as an alternative to providing examples for each payment option. The creditor may elect to provide representative payment examples based on three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges (*interest* *only* plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2% of the balance or 1/180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories even if other features exist, such as varying lengths of a draw or repayment period, required payment of past due amounts, late charges, and minimum dollar amounts. The creditor may use a single example within each category to represent the payment options in that category. For example, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the example required under § 226.5b(d)(5)(iii) for that option alone.

The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. (See the commentary to § 226.5b(d)(12) (x) and (xi) for a discussion of the use of representative examples for making those disclosures. Creditors using a representative example within each category must use the same example for purposes of the disclosures under § 226.5b(d)(5)(iii) and (d)(12)(x) and (xi).) Creditors may use representative examples under § 226.5b(d)(5) only with respect to the payment example required under paragraph (d)(5)(iii). Creditors must provide a full narrative description of all payment options under § 226.5b(d)(5)(i) and (ii).

3. *Examples for draw and repayment periods*. Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods. In setting forth payment examples for any repayment period under this section (and the historical example under § 226.5b(d)(12)(xi)), creditors should assume a $ 10,000 advance is taken at the beginning of the draw period and is reduced according to the terms of the plan. Creditors should not assume an additional advance is taken at any time, including at the beginning of any repayment period.]

2. *Balloon payments*. See comments 5b(c)(9)-1 through -3 for guidance on disclosing balloon payments under § 226.5b(c)(9)(iii)(D).

3. [4.] *Reverse mortgages*. See comment 5b(c)(9)(ii)-6 for guidance on providing the payment examples required under § 226.5b(c)(9)(iii) for reverse mortgages. [Reverse mortgages, also known as reverse annuity or home-equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

i. If the reverse mortgage has a specified period for advances and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the line at the time the draw period and our payments to you end. As provided in ***your*** agreement, ***your*** repayment may be required at a different time." The single payment should be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under § 226.5b(d)(5)(iii) should assume a single $ 10,000 draw.

ii. If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

iii. In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by ***your*** agreement."

iv. Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing ***how*** the creditor's share will be determined, any limitations, and when the feature may be exercised.]

5b(c)(10) [5b(d)(6)] Annual Percentage Rate.

1. *Rates disclosed*. The only rates that may be disclosed in the table required by § 226.5b(b) are annual percentage rates determined under § 226.14(b). Periodic rates must not be disclosed in the table.

2. *Rate changes set forth in initial agreement*. This paragraph requires disclosure of the rate changes set forth in the initial agreement, as discussed in § 226.5b(f)(3)(i), that are applicable to the payment plans disclosed pursuant to § 226.5b(c)(9). For example, this paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. The creditor must disclose the preferred rate that applies to the plan, and the rate that would apply if the event is triggered, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. If the preferred rate and the rate that would apply if the event is triggered are variable rates, the creditor must disclose those rates based on the applicable index or formula, and disclose other information required by § 226.5b(c)(10)(i).

3. *Rates applicable to payment plans disclosed*. A creditor is only required to disclose the rates applicable to the payment plans that are disclosed in § 226.5b(c)(9). If the creditor offers other payment plans than the ones disclosed in the table required under § 226.5b(b), and a consumer requests additional information about those other plans, the creditor must disclose the annual percentage rates applicable to those other plans (as well as other information) when disclosing those other payment plans to the consumer. See comment 5b(c)(9)(ii)-5 and comment 5b(c)(18)-2 for the information a creditor must provide to a consumer that requests additional information about other payment plans offered by the creditor.

[1. *Preferred-rate plans*. If a creditor offers a preferential fixed-rate plan in which the rate will increase a specified amount upon the occurrence of a specified event, the creditor must disclose the specific amount the rate will increase.]

Paragraph 5b(c)(10)(i) Disclosures for Variable-rate Plans.

1. *Variable-rate accounts--definition*. For purposes of § 226.5b(c)(10)(i), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to § 226.6(a)(4)(ii)-1 for examples of variable-rate plans.)

2. *Variable-rate accounts--fact that the rate varies and* ***how*** *the rate will be determined*. In describing ***how*** the applicable rate will be determined, the creditor must identify in the table described in § 226.5b(b) the type of index used and the amount of any margin. In describing the index, a creditor may not include in the table details about the index. For example, if a creditor uses a prime rate, the creditor must disclose the rate as a "prime rate" and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. Except as permitted by § 226.5b(c)(10)(i)(A)(6), a creditor may not disclose in the table the current value of the index (such as

that the prime rate is currently 7.5 percent). See Samples G-14(C), G-14(D) and G-14(E) for guidance on ***how*** to disclose the fact that the applicable rate varies and ***how*** it is determined.

3. *Rate during any repayment period*. If a creditor uses an index to determine the rate that will apply at the time of conversion to the repayment phase--even if the rate will thereafter be fixed--the creditor must provide the information in § 226.5b(c)(10)(i), as applicable.

4. *Limitations on increases in rates*. The creditor must disclose in the table required by § 226.5b(b) any limitations on increases in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed under each payment plan disclosed under § 226.5b(c)(9)(ii). For example, a creditor must disclose any rate limitations that occur every two years, annually or on less than an annual basis. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation must be treated as an annual cap. Rate limitations imposed on more or less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a rate limitation for a six-month time period. If the creditor does not impose annual or other periodic limitations on rate increases, the fact must be stated in the table described in § 226.5b(b).

5. *Maximum limitations on increases in rates*. The maximum annual percentage rate that may be imposed under each payment option disclosed under § 226.5b(c)(9)(ii) over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided in the table described in § 226.5b(b). If separate overall limitations apply to rate increases resulting from events such as leaving the creditor's employ, those limitations also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

6. *Sample forms*. Samples G-14(C), G-14(D) and G-14(E) provide illustrative guidance on the variable-rate rules.

Paragraph 5b(c)(10)(ii) Introductory Initial Rate.

1. *Preferred rates*. If a creditor offers a preferred rate that will increase a specified amount upon the occurrence of a specified event other than the expiration of a specific time period, such as the borrower-employee leaving the creditor's employ, the preferred rate is not an introductory rate under § 226.5b(C)(10)(ii), but must be disclosed in accordance with § 226.5b(C)(10). See comment 5b(C)(10)-2.

2. *Immediate proximity*. i. *In general*. If the term "introductory" is in the same phrase as the introductory rate, it will be deemed to be in immediate proximity of the listing. For example, a creditor that uses the phrase "introductory APR X percent" has used the word "introductory" within the same phrase as the rate. (See. Samples G-14(C) and G-14(E) for guidance on ***how*** to disclose clearly and conspicuously the expiration date of the introductory rate and the rate that will apply after the introductory rate expires, if an introductory rate is disclosed in the table.)

ii. *More than one introductory rate*. If more than one introductory rate may apply to a particular balance in succeeding periods, the term "introductory" need only be used to describe the first introductory rate. For example, if a creditor offers an introductory rate of 8.99% on the plan for six months, and an introductory rate of 10.99% for the following six months, the term "introductory" need only be used to describe the 8.99% rate.

3. *Rate that applies after introductory rate expires*. If the initial rate is an introductory rate, the creditor must disclose the introductory rate, ***how*** long the introductory rate will remain in effect, and the rate that would otherwise apply to the plan. Where the rate that would otherwise apply is fixed, the creditor must disclose the rate that will apply after the introductory rate expires. Where the rate that would otherwise apply is variable, the creditor must disclose the rate based on the applicable index or formula, and disclose the other variable-rate disclosures required under § 226.5b(c)(10)(i).

5b(c)(11) [5b(d)(7)] Fees Imposed by Creditor and Third Parties to Open the Plan.

1. *Applicability*. Section 226.5b(c)(11) applies only to one-time fees imposed by the creditor or third parties to open the plan. The fees referred to in § 226.5b(c)(11) include items such as application fees, points, appraisal or other property valuation fees, credit report fees, government agency fees, and attorneys' fees. Annual fees or other periodic fees that may be imposed for the availability of the plan would not be disclosed under § 226.5b(c)(11), but must be disclosed under § 226.5b(c)(12). A creditor must not state the amount of any property insurance premiums in the table, even in cases where property insurance is required by the creditor. [The fees referred to in section 226.5b(d)(7) include items such as application fees, points, annual fees, transaction fees, fees to obtain checks to access the plan, and fees imposed for converting to a repayment phase that is provided for in the original agreement. This disclosure includes any fees that are imposed by the creditor to use or maintain the plan, whether the fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be specifically stated. Third party fees to open the plan that are initially paid by the consumer to the creditor may be included in this disclosure or in the disclosure under § 226.5b(d)(8).]

2. *Manner of describing itemized fees*. Section 226.5b(d)(11) provides that if the dollar amount of a one-time account opening fee is not known at the time the disclosures under § 226.5b(b) are delivered or mailed, a creditor must provide a range for such fee. If a range is ***shown***, the highest amount of the fee in that range must assume that the consumer will borrow the full credit line at account opening. The lowest amount of the fee in the range must be the lowest amount of the fee that may be imposed. [Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. The creditor may provide a stepped fee schedule in which a fee will increase a specified amount at a specified date. (See the discussion contained in the commentary to § 226.5b(f)(3)(i).)]

3. *Fees not required to be disclosed*. Fees that are not imposed to open [, use, or maintain] a plan, such as fees for researching an account, photocopying, paying late, stopping payment, having a check returned, exceeding the credit limit, or closing out an account, do not have to be disclosed under this section. Credit report and property valuation [appraisal] fees imposed to investigate whether a condition permitting a freeze continues to exist--as discussed in 226.5b(g)(3)(iv) and accompanying commentary [the commentary to § 226.5b(f)(3)(vi)]--are not required to be disclosed under this section [or § 226.5b(d)(8)].

4. *Rebates of account opening fees [closing costs]*. If one-time fees for account opening [closing costs] are imposed they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of any interest paid during the first year of the plan).

[5. *Terms used in disclosure*. Creditors need not use the terms finance charge or other charge in describing the fees imposed by the creditor under this section or those imposed by third parties, as applicable, under section 226.5b(d)(8).]

5. *Disclosure of itemized list of fees to open a plan*. A creditor will be deemed to provide the itemization of the account-opening fees clearly and conspicuously if the creditor provides this information in a bullet format as ***shown*** in Samples G-14(C), G-14(D) and G-14(E).

5(b)(c)(12) Fees Imposed by the Creditor for Availability of the Plan.

1. Fee to obtain access devices. The fees referred to in § 226.5b(c)(12) include fees to obtain access devices, such as fees to obtain checks or credit cards to access the plan. For example, a fee to obtain checks or a credit card on the account must be disclosed in the table as a fee for issuance or availability under § 226.5b(c)(12). This fee must be disclosed even if the fee is optional; that is, if the fee is charged only if the consumer requests checks or a credit card.

2. *Fees kept by third party*. The fees referred to in § 226.5b(c)(12) include any fees that are imposed by the creditor for the availability of the plan, whether the fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be disclosed under § 226.5b(c)(12).

3. *Waived or reduced fees*. If fees required to be disclosed under § 226.5b(c)(12) are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in the table in addition to the required fees if the creditor also discloses ***how*** long the reduced fees or waivers will remain in effect.

5b(c)(13) Fees Imposed by the Creditor for Early Termination of the Plan by the Consumer.

1. *Applicability*. This disclosure applies to fees (such as penalty or prepayment fees) that the creditor imposes if the consumer terminates the plan prior to its scheduled maturity. This disclosure includes waived account-opening fees for the plan, if the creditor will impose those costs on the consumer if the consumer terminates the plan within a certain amount of time after account opening. The disclosure does not apply to fees that the creditor may impose in lieu of termination under comment 5b(f)(2)-2. The disclosure also does not apply to fees that are imposed when the plan expires in accordance with the agreement or that are associated with collection of the debt if the creditor terminates the plan, such as attorneys' fees and court costs.

5b(c)(14) Statement about Other Fees.

1. *Disclosure of additional information upon request*. A creditor generally must include in the table required by § 226.5b(b) a statement that the consumer may receive, upon request, additional information about fees applicable to the plan. Alternatively, a creditor may provide additional information about fees applicable to the plan along with the table required by § 226.5b(b). In that case, the creditor must disclose in the table that is required by § 226.5b(b) that additional information about fees applicable to the plan is enclosed with the table. In providing additional information about fees to a consumer upon the consumer's request prior to account opening (or along with the table required under § 226.5b(b)), a creditor must disclose the penalty and transaction fees that are required to be disclosed under § 226.6(a)(2)(x) through (xiv) and a statement that other fees may apply. A creditor must use a tabular format to disclose the additional information about fees that is provided upon request or provided with the table required by § 226.5b(b). See comment 5b(c)-2 regarding ***how*** soon after the consumer's request the creditor must disclose this information to the consumer.-411

[*5b(d)(8) Fees Imposed by Third Parties to Open a Plan*.

1. *Applicability*. Section 226.5b(d)(8) applies only to fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorneys' fees. In cases where property insurance is required by the creditor, the creditor either may disclose the amount of the premium or may state that property insurance is required. For example, the disclosure might state, "You must carry insurance on the property that secures this plan."

2. *Itemization of third-party fees*. In all cases creditors must state the total of third-party fees as a single dollar amount or a range except that the total need not include costs for property insurance if the creditor discloses that such insurance is required. A creditor has two options with regard to providing the more detailed information about third party fees. Creditors may provide a statement that the consumer may request more specific cost information about third party fees from the creditor. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures. Any itemization provided upon the consumer's request need not include a disclosure about property insurance.

3. *Manner of describing fees*. A good faith estimate of the amount of fees must be provided. Creditors may provide, based on a typical or representative amount of credit, a range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis, for example, $ 5 per $ 1,000 of credit.

4. *Rebates of third party fees*. Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(d)(7).)]

5b(c)(15) 5b(d)(9)] Negative Amortization.

1. *Disclosure required*. In transactions where the minimum payment will not or may not be sufficient to cover the interest that accrues on the outstanding balance, the creditor must disclose that negative amortization will or may occur. This disclosure is required whether or not the unpaid interest is added to the outstanding balance upon which interest is computed. A disclosure is not required merely because a loan calls for non-amortizing or partially amortizing payments. A creditor will be deemed to meet the requirements of § 226.5b(c)(15) by providing the following disclosure, as applicable: "***Your*** minimum payment may cover/ covers only part of the interest you owe each month and none of the principal. The unpaid interest will be added to ***your*** loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in ***your*** home."

5b(c)(16) [5b(d)(10)] Transaction Requirements.

1. *Applicability*. A limitation on automated teller machine usage need not be disclosed under this paragraph unless that is the only means by which the consumer can obtain funds.

5b(c)(18) Statements About Fixed-Rate and -Term Payment Plans.

1. *Disclosure of fixed-rate and -term payment plans in the table*. See comment 5b(c)-4 regarding disclosure of terms relating to fixed-rate and -term payment plans during the draw period in the table required by § 226.5b(b).

2. Disclosure of additional information upon request. A creditor generally must disclose in the table required by § 226.5b(b) a statement that the consumer may receive, upon request, further details about the fixed-rate and -term payment plans. Alternatively, a creditor may provide additional detail about the fixed-rate and -term payment plans with the table required by § 226.5b(b). In that case, the creditor must state that information about the fixed-rate and -term payment plans are provided along with the table required by § 226.5b(b). In disclosing additional information about the fixed-rate and -term payment plans upon a consumer's request prior to account opening (or along with the table required by § 226.5b(b)), a creditor must disclose in the form of a table (1) the information described by § 226.5b(c) applicable to the fixed-rate and -term payment plans, and (2) any fees imposed related to the use of the fixed-rate and -term payment plans, such as fees to exercise the fixed-rate and -term payment plans or to convert a balance under a fixed-rate and -term payment feature to a variable-rate feature under the HELOC plan. See comment 5b(c)-2 regarding ***how*** soon after the consumer's request the creditor must disclose this information to the consumer.

5b(c)(19) Required Insurance, Debt Cancellation, or Debt Suspension Coverage.

1. *Content*. See Samples G-14(D) and G-14(E) for guidance on ***how*** to comply with the requirements in § 226.5b(c)(19).

[*5b(d)(12) Disclosures for Variable-Rate Plans*.

1. *Variable-rate provisions*. Sample forms in appendix G-14 provide illustrative guidance on the variable-rate rules.

Paragraph 5b(d)(12)(iv).

1. *Determination of annual percentage rate*. If the creditor adjusts its index through the addition of a margin, the disclosure might read, "***Your*** annual percentage rate is based on the index plus a margin." The creditor is not required to disclose a specific value for the margin.

Paragraph 5b(d)(12)(viii).

1. *Preferred-rate provisions*. This paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor.

2. *Provisions on conversion to fixed rates*. The commentary to § 226.5b(d)(5)(ii) discusses the disclosure requirements for options permitting the consumer to convert from a variable rate to a fixed rate.

Paragraph 5b(d)(12)(ix).

1. *Periodic limitations on increases in rates*. The creditor must disclose any annual limitations on increases in the annual percentage rate. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation should be treated as an annual cap. Rate limitations imposed on less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a rate limitation for a six-month time period. If the creditor does not impose periodic limitations (annual or shorter) on rate increases, the fact that there are no annual rate limitations must be stated.

2. *Maximum limitations on increases in rates*. The maximum annual percentage rate that may be imposed under each payment option over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided. The creditor may disclose this rate as a specific number (for example 18%) or as a specific amount above the initial rate. For example, this disclosure might read, "The maximum annual percentage rate that can apply to ***your*** line will be 5 percentage points above ***your*** initial rate." If the creditor states the maximum rate as a specific amount above the initial rate, the creditor must include a statement that the consumer should inquire about the rate limitations that are currently available. If an initial discount is not taken into account in applying maximum rate limitations, that fact must be disclosed. If separate overall limitations apply to rate increases resulting from events such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitations also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

3. *Form of disclosures*. The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest periodic and maximum rate limitations that may be applicable to the creditor's home-equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

Paragraph 5b(d)(12)(x).

1. *Maximum rate payment example*. In calculating the payment creditors should assume the maximum rate is in effect. Any discounted or premium initial rates or periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclose the maximum cap under § 226.5b(d)(12)(ix), the highest rate in the range must be used for the disclosure under this paragraph. As an alternative to making disclosures based on each payment option, the creditor may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the commentary to § 226.5b(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods. Creditors should calculate the example for the repayment period based on an assumed $ 10,000 balance. (See the commentary to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

2. *Time the maximum rate could be reached*. In stating the date or time when the maximum rate could be reached, creditors should assume the rate increases as rapidly as possible under the plan. In calculating the date or time, creditors should factor in any discounted or premium initial rates and periodic rate limitations. This disclosure must be provided for the draw phase and any repayment phase. Creditors should assume the index and margin ***shown*** in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

Paragraph 5b(d)(12)(xi).

1. *Index movement*. Index values and annual percentage rates must be ***shown*** for the entire 15 years of the historical example and must be based on the most recent 15 years. The example must be updated annually to reflect the most recent 15 years of index values as soon as reasonably possible after the new index value becomes available. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available and may start the historical example at the year for which values are first available.

2. *Selection of index values*. The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages must be used in the example, but if an index value as of a particular date is used, a single index value must be ***shown***. The creditor is required to assume one date (or one period, if an average is used) within a year on which to base the history of index values. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the example. Only one index value per year need be ***shown***, even if the plan provides for adjustments to the annual percentage rate or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the annual percentage rate and payment.

3. *Selection of margin*. A value for the margin must be assumed in order to prepare the example. A creditor may select a representative margin that it has used with the index during the six months preceding preparation of the disclosures and state that the margin is one that it has used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values.

4. *Amount of discount or premium*. In reflecting any discounted or premium initial rate, the creditor may select a discount or premium that it has used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. The creditor may assume that a discount or premium that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example.

5. *Rate limitations*. Limitations on both periodic and maximum rates must be reflected in the historical example. If ranges of rate limitations are provided under § 226.5b(d)(12)(ix), the highest rates provided in those ranges must be used in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2% annual cap.

6. *Assumed advances*. The creditor should assume that the $ 10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. As discussed in the commentary to § 226.5b(d)(5), creditors should not assume an additional advance is taken at the beginning of any repayment period. If applicable, the creditor may assume the $ 10,000 is both the advance and the credit limit. (See the commentary to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

7. *Representative payment options*. The creditor need not provide an historical example for all of its various payment options, but may select a representative payment option within each of the three categories of payments upon which to base its disclosure. (See the commentary to § 226.5b(d)(5).)

8. *Payment information*. The payment figures in the historical example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted initial rate, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have applied to the plan. The historical example should include payments for as much of the length of the plan as would occur during a 15-year period. For example:

. If the draw period is 10 years and the repayment period is 15 years, the example should illustrate the entire 10-year draw period and the first 5 years of the repayment period.

. If the length of the draw period is 15 years and there is a 15-year repayment phase, the historical example must reflect the payments for the 15-year draw period and would not ***show*** any of the repayment period. No additional historical example would be required to reflect payments for the repayment period.

. If the length of the plan is less than 15 years, payments in the historical example need only be ***shown*** for the number of years in the term. In such cases, however, the creditor must ***show*** the index values, margin and annual percentage rates and continue to reflect all significant plan terms such as rate limitations for the entire 15 years.

A creditor need ***show*** only a single payment per year in the example, even though payments may vary during a year. The calculations should be based on the actual payment computation formula, although the creditor may assume that all months have an equal number of days. The creditor may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date, but must be consistent in the manner in which the period used to illustrate payment information is selected. Information about balloon payments and remaining balance may, but need not, be reflected in the example.

9. *Disclosures for repayment period*. The historical example must reflect all features of the repayment period, including the appropriate index values, margin, rate limitations, length of the repayment period, and payments. For example, if different indices are used during the draw and repayment periods, the index values for that portion of the 15 years that reflect the repayment period must be the values for the appropriate index.

10. *Reverse mortgages*. The historical example for reverse mortgages should reflect 15 years of index values and annual percentage rates, but the payment column should be blank until the year that the single payment will be made, assuming that payment is estimated to occur within 15 years. (See the commentary to § 226.5b(d)(5) for a discussion of reverse mortgages.)

5b(e) Brochure

1. *Substitutes*. A brochure is a suitable substitute for the Board's home-equity brochure if it is, at a minimum, comparable to the Board's brochure in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Board's brochure.

2. *Effect of third-party delivery of brochure*. If a creditor determines that a third party has provided a consumer with the required brochure pursuant to section 226.5b(c), the creditor need not give the consumer a second brochure.]

5b[(g)] (d) Refund of Fees

1. *Refund of fees required*. If any disclosed term, including any term provided upon request pursuant to section 226.5b (c) [(d)], changes between the time the early disclosures are provided to the consumer and the time the plan is opened, and the consumer [as a result] decides to not enter into the plan, a creditor must refund all fees paid by the consumer [in connection with the application]. All fees, including credit-report fees and appraisal fees, must be refunded whether such fees are paid to the creditor or directly to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under section 226.5b(c)(4)(i) [(d)(2)(i)].

2. *Variable-rate plans*. The right to a refund of fees does not apply to changes in the annual percentage rate resulting from fluctuations in the index value in a variable-rate plan. Also, if the maximum annual percentage rate is [expressed as] an amount over the initial rate, the right to refund of fees would not apply to changes in the cap resulting from fluctuations in the index value.

3. *Changes in terms*. If a term, such as a fee [the maximum rate], is stated as a range in the early disclosures required under § 226.5b(b), and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of 6 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could elect to not enter into the agreement and would be entitled to a refund of fees. [On the other hand, if fees imposed by third parties are disclosed as estimates and those fees change, the consumer is not entitled to a

refund of fees paid in connection with the application. Creditors must, however, use the best information reasonably available in providing disclosures about such fees.]

4. *Timing of refunds and relation to other provisions*. The refund of fees must be made as soon as reasonably possible after the creditor is notified, after a term has changed, that the consumer is not entering into the plan [because of the changed term,] or that the consumer wants a refund of fees. The fact that an application fee may be refunded to some applicants under this provision does not render such fees finance charges under section 226.4(c)(1) of the regulation.

5b[(h)] (e) Imposition of Nonrefundable Fees

1. *Collection of fees after consumer receives disclosures*. A fee may be collected after the consumer receives the disclosures required under this section [and brochure] and before the expiration of three business days, although the fee must be refunded if, within three business days of receiving the required information, the consumer decides not to enter into the agreement. In such a case, the consumer must be notified that the fee is refundable for three business days. The notice must be clear and conspicuous and in writing, and must [may] be included with the disclosures required under § 226.5b[(d)] (b) [or as an attachment to them]. If disclosures required under § 226.5b(b) [and brochure] are mailed to the consumer, § 226.5b(e) [footnote 10d] of the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing.

2. *Collection of fees before consumer receives disclosures*. An application fee may be collected before the consumer receives the disclosures required under § 226.5b(b) [and brochure] (for example, when an application contained in a magazine is mailed in with an application fee) provided that [it] the fee remains refundable until three business days after the consumer receives the section 226.5b (b) disclosures. No other fees except a refundable membership fee may be collected until after the consumer receives the disclosures required under section 226.5b (b).

3. *Relation to other provisions*. A fee collected before disclosures required under § 226.5b(b) are provided may become nonrefundable except that, under section 226.5b[(g)] (d), it must be refunded if a term changes and the consumer elects not to enter into the plan [because of a change in terms]. (Of course, all fees must be refunded if the consumer later rescinds under section 226.15.)

4. *Definition of "Business Day"*. For purposes § 226.5b(e), the more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) under § 226.2(a)(6) applies. See comment 2(a)(6)-2.

5b(f) Limitations on home-equity plans.

Paragraph 5b(f)(2)(ii).

1. Under this paragraph, a creditor may not terminate and accelerate a home-equity plan, or take the lesser actions of permanently suspending advances or reducing the credit limit, imposing a penalty rate of interest, or adding or increasing a fee (as permitted under comment 5b(f)(2)-2, unless the consumer's required minimum payment is not received by the creditor within 30 days after the due date for that payment. This paragraph does not prohibit a creditor from imposing a late-payment fee disclosed in the agreement, or from temporarily suspending advances or reducing the credit limit for a "default of any material obligation" (as permitted under § 226.5b(f)(3)(vi)(C)), for a delinquency of 30 days or fewer.

2. A creditor may not take any action under this paragraph unless the creditor complies with notice requirements under § 226.9(j)(3), which requires notice of the action taken and the reasons for the action and, if applicable, notice of an increased annual percentage rate (under § 226.9(*i*)(1)) or notice of any other change in terms, such as the addition or increase of a fee (under § 226.9(c)(1)). This section does not override any state or other law that requires a right to cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.

[1. Failure to meet repayment terms. A creditor may terminate a plan and accelerate the balance when the consumer fails to meet the repayment terms provided for in the agreement. However, a creditor may terminate and accelerate under this provision only if the consumer actually fails to make payments. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. This section does not override any state or other law that requires a right to cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.]

* * * *

Paragraph 5b(f)(2)(iv)

1. "Federal law" under this provision is limited to any federal statute, its implementing regulation, and official interpretations issued by the regulatory agency with authority to implement the statute or regulation.

* * * *

Paragraph 5b(f)(3).

1. *Scope of provision*. In general, a creditor may not change the terms of a plan after it is opened. For example, a creditor may not increase any fee or impose a new fee once the plan has been opened, even if the fee is charged by a third party, such as a credit reporting agency, for a service. The change-of-terms prohibition applies to all features of a plan, not only those required to be disclosed under this section. [For example, this provision applies to charges imposed for late payment, although this fee is not required to be disclosed under § 226.5b(d)(7).]

2. [*Charges not covered*] *Certain tax and insurance charges*. [There are three charges not covered by this provision.] A creditor may pass on increases in taxes since such charges are imposed by a governmental body and are beyond the control of the creditor. In addition, a creditor may pass on increases in premiums for property insurance that are excluded from the finance charge under § 226.4(d)(2), since such insurance provides a benefit to the consumer independent of the use of the line and is often maintained notwithstanding the line. A creditor also may pass on increases in premiums for credit insurance that are excluded from the finance charge under § 226.4(d)(1), since the insurance is voluntary and provides a benefit to the consumer.

3. *Certain default-related charges*. This provision does not prohibit a creditor from passing on to the consumer bona fide and reasonable costs incurred by the creditor for collection activity after default, to protect the creditor's interest in the property securing the plan, or to foreclose on the securing property. These costs might include, among others, attorneys' fees, court costs, property repairs, payment of overdue taxes, or paying sums secured by a lien with priority over the lien securing the home-equity plan. The requirement that these costs be "bona fide and reasonable" means that the creditor must actually incur the costs and that the amount of the costs must be reasonably related to the services related to debt collection, collateral protection or foreclosure. A creditor may pass these costs on to the consumer only if the creditor incurs these costs due to the consumer's default on an obligation under the agreement for the plan.

Paragraph 5b(f)(3)(i).

1. *Changes provided for in agreement*. A creditor may provide in the initial agreement that further advances may be prohibited or the credit line reduced during any period in which the maximum annual percentage rate is reached. A creditor may provide for other specific changes to take place upon the occurrence of specific events. Both the triggering event and the resulting modification must be stated with specificity. For example, in home-equity plans for employees, the agreement could provide that a specified higher rate or margin will apply if the borrower's employment with the creditor ends, or upon the occurrence of some other triggering event. However, the agreement would not be permitted to provide for a rate or margin higher than the one that would have been available to the consumer in the absence of special circumstances such as employment with the creditor (unless the triggering event is a circumstance that would permit the rate to be increased as a penalty under § 226.5b(f)(2) and comment

5b(f)(2)-2)). A contract could contain a stepped-rate or stepped-fee schedule providing for specified changes in the rate or the fees on certain dates or after a specified period of time. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific appreciation share and the specific circumstances which require the payment of it are set forth. A contract may permit a consumer to switch among minimum-payment options during the plan.

* * * *

Paragraph 5b(f)(3)(iv).

1. *Beneficial changes*. After a plan is opened, a creditor may make changes that unequivocally benefit the consumer. Under this provision, a creditor may offer more options to consumers, as long as existing options remain. For example, a creditor may offer the consumer the option of making lower monthly payments or could increase the credit limit. Similarly, a creditor wishing to extend the length of the plan on the same terms may do so. Creditors are permitted to temporarily reduce the rate or fees charged during the plan (though change-in-terms notice would [may] be required under § 226.9(c) (1) when the rate or fees are returned to their original level unless these features are explained on the account-opening disclosure statement required under § 226.6 (including an explanation of the terms upon resumption). Also, as long as the 45-day advance notice timing requirement of § 226.9(c)(1) is met, notice of the increase in the rate or fees may be included with a notice to the consumer that the rate or fees are being reduced. Creditors also may offer an additional means of access to the line, even if fees are associated with using the device, provided the consumer retains the ability to use prior access devices on the original terms.

Paragraph 5b(f)(3)(v).

1. *Insignificant changes*. A creditor is permitted to make insignificant changes after a plan is opened. This rule accommodates operational and similar problems, such as changing the address of the creditor for purposes of sending payments. It does not permit a creditor to change a term such as a fee charged for late payments.

2. *Examples of insignificant changes*. Creditors may make minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are measured to determine changes to the rate for variable-rate plans. A creditor also may change its rounding practice in accordance with the tolerance rules set forth in § 226.14 (for example, stating an exact APR is 14.3333 percent as 14.3 percent, even if it had previously been stated as 14.33 percent.) A creditor may change the balance computation method it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the average-daily-balance method (including new transactions) to the daily balance method (including new transactions). A creditor may also eliminate a means of access to the line, as long as one or more access devices available at account opening remain available to the consumer on the original terms. For example, a creditor could eliminate the option of accessing a plan via credit card, but only if the creditor originally offered access to the plan via check or a credit card, and the option of accessing the account via check remains, based on the terms in the initial agreement. A creditor may not change the original terms on which an existing access device is available under this provision, although such change may be permitted as a "beneficial change" under § 226.5b(f)(3)(iv).

Paragraph 5b(f)(3)(vi).

1. *Suspension of credit or reduction of credit limit*. A creditor may prohibit additional extensions of credit or reduce the credit limit in the circumstances specified in this section of the regulation. In addition, as discussed under § 226.5b(f)(3)(i), a creditor may contractually reserve the right to take such actions when the maximum annual percentage rate is reached. A creditor may not take these actions under other circumstances, unless the creditor would be permitted to terminate the line and accelerate the balance as described in section 226.5b(f)(2). The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment.

[2. *Temporary nature of suspension or reduction*. Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, credit privileges must be reinstated, assuming that no other circumstance permitting such action exists at that time.]

[3. *Imposition of fees*. If not prohibited by state law, a creditor may collect only bona fide and reasonable appraisal and credit-report fees if such fees are actually incurred in investigating whether the condition permitting the freeze continues to exist. A creditor may not, in any circumstances, charge a fee to reinstate a credit line that has been suspended or reduced once the condition has been determined not to exist.]

[4. *Reinstatement of credit privileges*. Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. One way a creditor can meet this responsibility is to monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges by providing a notice in accordance with § 226.9(c)(3). A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under § 226.9(c)(3). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.]

[5.] 2. *Suspension of credit privileges following request by consumer*. A creditor may honor a specific request by a consumer to suspend credit privileges or reduce the credit limit. If the consumer later requests that the creditor reinstate credit privileges, the creditor must do so provided no other circumstance justifying a suspension or credit limit reduction exists at that time. If a circumstance justifying a suspension or credit limit reduction exists at that time and the creditor therefore does not reinstate credit privileges, the creditor must comply with the notice requirements of § 226.9(j)(1) or (j)(3), as applicable. If two or more consumers are obligated under a plan and each has the ability to take advances, the agreement may permit any of the consumers to direct the creditor not to make further advances or to reduce the credit limit. A creditor may require that all persons obligated under a plan request reinstatement.

[6.] 4. *Significant decline defined--safe harbors*. What constitutes a significant decline for purposes of § 226.5b(f)(3)(vi)(A) will vary according to individual circumstances. At a minimum, this means that compliance with this provision requires the creditor to assess the value of the property based on specific characteristics of the property. For plans with a combined loan-to-value ratio at origination of 90 percent or higher, a five (5) percent reduction in the property value would constitute a significant decline under § 226.5b(f)(3)(vi)(A). For plans with a combined loan-to-value ratio at origination of under 90 percent, a decline in value would be significant under § 226.5b(f)(3)(vi)(A) if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's [appraised] value for purposes of the plan) is reduced, by 50 percent. For example, assume that a house with a first mortgage of $ 50,000 is [appraised] valued at origination at $ 100,000 and the credit limit is $ 30,000. The difference between the credit limit and the available equity is $ 20,000, half of which is $ 10,000. The creditor could prohibit further advances or reduce the credit limit if the value of the property declines from $ 100,000 to $ 90,000. [This provision does not require a creditor to obtain an appraisal before suspending credit privileges, although a significant decline must occur before suspension can occur.]

5. *Property valuation tools*. Section 226.5b(f)(3)(vi)(A) does not require a creditor to obtain an appraisal before suspending credit privileges or reducing the credit limit, although a significant decline must occur before a creditor suspends advances or reduces the credit limit. If not prohibited by state law, property valuation methods other than an appraisal that may be appropriate to use under this provision include, but are not limited to, automated valuation models, tax assessment valuations, and broker price opinions. Any property valuation method must, however, consider specific characteristics of the property, such as square footage and number of rooms, and not merely estimate the value based on property values or re-sale prices generally in a particular geographic area.

[7.] 6. *Material change in financial circumstances*. Two conditions must be met for § 226.5b(f)(3)(vi)(B) to apply. First, there must be a "material change" in the consumer's financial circumstances[, such as a significant decrease in the consumer's income]. Ways in which this first condition may be met include, but are not limited to, demonstration of a significant decrease in the consumer's income, or credit report information ***showing*** late payments or nonpayments on the part of the consumer, such as delinquencies, defaults, or derogatory collections or public records related to the consumer's failure to pay other obligations according to their terms. Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. In all cases, the creditor must have a basis to support the creditor's reasonable belief that the consumer will be unable to fulfill the repayment obligations of the plan. A creditor may[, but does not have to,] rely on, for example, the consumer's failure to pay other debts, such as significant delinquencies, defaults, or derogatory collections or public records [specific evidence (such as the failure to pay other debts)] in concluding that the second part of the test has been met. However, late payments of 30 days or fewer, by themselves, would not be sufficient to satisfy the second part of the test. The payment failures that may serve as evidence under either prong of the two-part test must have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance. In all cases, a payment failure will be deemed to have occurred within a reasonable time from the date of the creditor's review if it occurred within six months of the creditor's suspending advances or reducing the credit limit, and the consumer has not brought the account or other obligation current as of the time of the review. A creditor may prohibit further advances or reduce the credit limit under this section if a consumer files for or is placed in bankruptcy.

[8.] *7. Default of a material obligation*. Creditors must [may] specify events that would qualify as a default of a material obligation under § 226.5b(f)(3)(vi)(C). For example, a creditor may provide that default of a material obligation will exist if the consumer moves out of the dwelling or permits an intervening lien to be filed that would take priority over future advances made by the creditor.

[9.] 8. *Government limits on the annual percentage rate*. Under § 226.5b(f)(3)(vi)(D), a creditor may prohibit further advances or reduce the credit limit if, for example, a state usury law is enacted which prohibits a creditor from imposing the agreed-upon annual percentage rate.

9. *Suspensions and credit limit reductions required by federal law*. "Federal law" under this provision is limited to any federal statute, its implementing regulation, and official interpretations issued by the regulatory agency with authority to implement the statute or regulation. A creditor may prohibit either a single advance or multiple advances, depending on what the applicable federal law requires.

5b(g) Reinstatement of Credit Privileges.

1. *Temporary nature of suspension or reduction*. Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit under § 226.5b(f)(3)(i) and (f)(3)(vi) only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, the creditor must reinstate the consumer's credit privileges, assuming that no other circumstance permitting the creditor's action exists at that time.

2. *Imposition of fees to reinstate a credit line*. A creditor may not, in any circumstances, charge a fee to reinstate a credit line that has been suspended or reduced under paragraphs 226.5b(f)(3)(i) or (f)(3)(vi) once [the] no condition permitting the suspension or reduction [has been determined not to] exists.

Paragraph 5b(g)(1).

1. *Creditor responsibility for restoring credit privileges*. Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist and no other condition permitting a freeze or credit limit reduction exists at that time. One way in which a creditor can meet this obligation is to monitor the line on an ongoing basis to determine when the condition permitting the freeze or credit limit reduction ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze or credit limit reduction continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific

condition permitting the freeze. As an alternative to [such] ongoing monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges. [A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under § 226.9(c)(3). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.]

Paragraph 5b(g)(2)(i).

1. *Disclosure of consumer obligation to request reinstatement*. The creditor may shift the duty to the consumer to request reinstatement if, pursuant to § 226.9(j)(1), the creditor discloses that the consumer must request reinstatement.

Paragraph 5b(g)(2)(ii).

1. *Creditor responsibility to investigate reinstatement requests*. Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the [freeze continues to] suspension or credit limit reduction exists. The investigation should verify that the information on which the creditor relied to take action in fact pertained to the specific property securing the affected plan (as with a property valuation) or to the specific consumer (as with a credit report). To investigate whether a significant decline in property value exists under § 226.5b(f)(3)(vi)(A), the creditor should reassess the value of the property securing the line based on an updated property valuation meeting the standards in comment 5b(f)(3)(vi)-5. To investigate whether a material change in the consumer's financial circumstances exists under § 226.5b(f)(3)(vi)(B), the creditor should obtain and evaluate information sufficient to assess whether the original finding on which action was based was accurate or, if accurate, remains current.

Paragraph 5b(g)(3).

1. *Duty to provide documentation of property value*. The creditor has a duty to provide to the consumer, upon request, a copy of documentation supporting the property value on which the creditor relied to suspend advances or reduce the credit limit due to a significant decline in the value of the property securing the line under § 226.5b(f)(vi)(A), or to continue suspension or reduction of an account due to a significant decline in the property value under § 226.5b(f)(vi)(A).

2. *Appropriate documentation of property value*. Appropriate documentation supporting the property value on which the action was based under this paragraph would include, as applicable, a copy of the appraisal report or a copy of any written evidence of an automated valuation model, tax assessment value, broker price opinion, or other valuation method used that clearly and conspicuously ***<u>shows</u>*** the property value specific to the subject property and factors considered to obtain the value.

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[5b(g)] 5b[(d)]

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[5b(h)] 5b[(e)]

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§ 226.6--Account-opening Disclosures.

6(a) Rules affecting home-equity plans.

1. *Fixed-rate and -term payment plans during draw period*. Under some home-equity plans, a creditor will permit the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year

draw period to repay all or a portion of the balance over a three-year period at a fixed rate. A creditor generally may not disclose the terms applicable to this feature in the account-opening table required under § 226.6(a)(2), except as required under § 226.6(a)(2)(xix). A creditor must, however, disclose fixed-rate and -term payment features in the account-opening table if they are the only payment plans offered during the draw period of the plan. (See § 226.6(a)(2).) Even though a creditor generally may not disclose the terms of fixed-rate and -term payment plans in the account-opening table, the creditor must disclose information about these payment plans as required by § 226.6(a)(3), (a)(4) and (a)(5). For example, a creditor must disclose fee and rate information related to these features under § 226.6(a)(3) and (a)(4), and information about payment and other terms related to these features under § 226.6(a)(5)(v).

2. *Disclosures for the repayment period*. The creditor must provide the disclosures under § 226.6 for both the draw and repayment phases when giving the disclosures under § 226.6. To the extent required disclosures are the same for the draw and repayment phases, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

6(a)(1) Form of disclosures; tabular format.

1. *Relation to tabular disclosures required under § 226.5b(b)*. The commentary to § 226.5b(b) and (c) regarding format and content requirements are also applicable to disclosures required by § 226.6(a)(2), except for the following:

i. A creditor may not disclose above the account-opening table a statement that the consumer has applied for a home-equity line of credit.

ii. A creditor may not disclose below the account-opening table an identification of any disclosed term that is subject to change prior to opening the plan.

iii. A creditor may not disclose in the account-opening table a statement about the right to a refund of fees pursuant to § 226.5b(d) and (e).

iv. A creditor must disclose the account number as part of the identification information required by § 226.6(a)(2)(i)(A).

v. With respect to the statements about the conditions under which the creditor may take certain actions, such as terminating the plan, a creditor must indicate in the account-opening table that information about the conditions is provided in the account-opening disclosures or agreement, as applicable.

vi. A creditor must disclose in the account-opening table the payment terms applicable to the plan that will apply to the consumer at account opening (and may not disclose payment terms for two possible payment plans as allowed under § 226.5b(c)(9)(ii)(B)).

viii. A creditor must disclose in the account-opening table the total of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose the highest amount of possible fees as allowed under § 226.5b(c)(11). In addition, a creditor must disclose in the account-opening table an itemization of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose a range for those fees, as otherwise allowed under § 226.5b(c)(11). A creditor also must include in the account-opening table a cross-reference from the disclosure of the total of one-time fees for opening an account, indicating that the itemization of the fees is located elsewhere in the table.

ix. A creditor must include in the account-opening table the following fees (that are not required to be disclosed in the table under § 226.5b(b)): Late-payment fees; over-the-limit fees; transaction charges; returned-payment fees; and fees for failure to comply with transaction limitations.

x. A creditor must include in the account-opening table a statement that other fees are located elsewhere in the table, and a statement that information about other fees is included in the account-opening disclosures or agreement, as applicable.

xi. A creditor must include in the account-opening table a statement that information about the fixed-rate and -term payment plans is disclosed in the account-opening disclosures or agreement, as applicable.

xii. A creditor must include below the account-opening table an explanation of whether or not a grace period exists for all features on the account.

xiii. A creditor must include below the account-opening table the name of the balance computation method used for each feature of the account and state that an explanation of the balance computation method(s) is provided in the account-opening disclosures or agreement, as applicable.

xiv. A creditor must state below the account-opening table that consumers' billing rights are provided in the account-opening disclosures or agreement, as applicable.

xv. A creditor may not disclose below the account-opening table a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan; and a cross reference to the "Fees" section in the table described in paragraph (b)(2)(i) of this section.

xvi. A creditor must disclose below the account-opening table a statement that the consumer should confirm that the terms disclosed in the table are the same terms for which the consumer applied.

xvii. The applicable forms providing safe harbors for account-opening tables are under Appendix G-15 to part 226.

2. *Clear and conspicuous standard*. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to § 226.6(a) disclosures.

3. *Terminology*. Section 226.6(a)(1)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in appendix G-15 to part 226; but see § 226.5(a)(2) for terminology requirements applicable to disclosures provided pursuant to § 226.6(a).

6(a)(2) Required disclosures for account-opening table for home-equity plans.

1. *Fixed-rate and -term payment plans*. See comment 6(a)-1 for guidance on disclosing information related to fixed-rate and -term payment plans.

Paragraph 6(a)(2)(vii) Fees imposed by the creditor and third parties to open the plan.

1. *Manner of disclosure*. A creditor must disclose in the account-opening table the total of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose the highest amount of possible fees as allowed under § 226.5b(c)(11) for the disclosure table required under § 226.5b(b). In addition, a creditor must disclose in the account-opening table an itemization of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose a range for those fees, as otherwise allowed under § 226.5b(c)(11) for the disclosure table required under § 226.5b(b).

Paragraph 6(a)(2)(x) Late-payment fee.

1. *Applicability*. The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to § 226.4(c)(2) for additional guidance on late-payment fees. See Samples G-15(B), G-15(C) and G-15(D) for guidance on ***how*** to disclose clearly and conspicuously the late-payment fee.)

Paragraph 6(a)(2)(xi) Over-the-limit fee.

1. *Applicability*. The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. (But see § 226.9(j)(2) for limitations on these fees.) See Samples G-15(B), G-15(C), and G-15(D) for guidance on ***how*** to disclose clearly and conspicuously the over-the-limit fee.

Paragraph 6(a)(2)(xii) Transaction charges.

1. *Charges imposed by person other than creditor*. Charges imposed by a third party, such as a seller of goods, shall not be disclosed in the table under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

2. *Foreign transaction fees*. A transaction charge imposed by the creditor for use of the home-equity plan includes any fee imposed by the creditor for transactions in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)-4 for guidance on when a foreign transaction fee is considered charged by the creditor.) See Sample G-15(D) for guidance on ***how*** to disclose a foreign transaction fee for use of a credit card where the same foreign transaction fee applies for purchases and cash advances in a foreign currency, or that take place outside the United States or with a foreign merchant.

Paragraph 6(a)(2)(xxi) Grace period.

1. *Grace period*. Creditors must state any conditions on the applicability of the grace period. A creditor that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: "***Your*** due date is [at least] days after the close of each billing cycle. We will not charge you interest on ***your*** account if you pay ***your*** entire balance by the due date each month."

2. *No grace period*. Creditors may use the following language to describe that no grace period is offered, as applicable: "We will begin charging interest on [applicable transactions] on the date the transaction is posted to ***your*** account."

Paragraph 6(b)(2)(xxii) Balance computation method.

1. Form of disclosure. In cases where the creditor uses a balance computation method that is identified by name in the regulation, the creditor must disclose below the table only the name of the method. In cases where the creditor uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance computation methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(a)(4)(i)(D). (See the commentary to § 226.5a(g) for guidance on particular methods.)

2. *Content*. See Samples G-15(B), G-15(C) and G-15(D) for guidance on ***how*** to disclose the balance computation method where the same method is used for all features on the account.

6(a)(3) Disclosure of charges imposed as part of home-equity plans [6(a)(1) Finance charge.]

1. *Fixed-rate and -term payment plans*. See comment 6(a)-1 for guidance on disclosing information related to fixed-rate and -term payment plans.

[Paragraph 6(a)(1)(i).]

2. [1.] *When finance charges accrue*. Creditors are not required to disclose a specific date when a cost that is a finance charge under § 226.4 [finance charges] will begin to accrue. [Creditors may provide a general explanation

such as that the consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on the account.]

3. [2.] *Grace periods*. In disclosing in the account agreement or disclosure statement whether or not a grace period exists, the creditor need not use ["free period," "free-ride period," "grace period" or] any [other] particular descriptive phrase or term. However, the descriptive phrase or term must be sufficiently similar to the disclosures provided pursuant to § 226.6(a)(2)(xxi) to satisfy a creditor's duty to provide consistent terminology under § 226.5(a)(2). [For example, a statement that "the finance charge begins on the date the transaction is posted to ***your*** account" adequately discloses that no grace period exists. In the same fashion, a statement that "finance charges will be imposed on any new purchases only if they are not paid in full within 25 days after the close of the billing cycle" indicates that a grace period exists in the interim.]

4. *No finance charge imposed below certain balance*. Creditors are not required to disclose under § 226.6(a)(3) the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

Paragraph 6(a)(3)(ii).

1. *Failure to use the plan as agreed*. Late-payment fees, over-the-limit fees, and fees for payments returned unpaid are examples of charges resulting from consumers' failure to use the plan as agreed.

2. *Examples of fees that affect the plan*. Examples of charges the payment, or nonpayment, of which affects the consumer's account are:

i. *Access to the plan*. Fees for using a credit card at the creditor's ATM to obtain a cash advance, fees to obtain additional checks or credit cards including replacements for lost or stolen cards, fees to expedite delivery of checks or credit cards or other credit devices, application and membership fees, and annual or other participation fees identified in § 226.4(c)(4).

ii. *Amount of credit extended*. Fees for increasing the credit limit on the account, whether at the consumer's request or unilaterally by the creditor.

iii. *Timing or method of billing or payment*. Fees to pay by telephone or via the Internet.

3. *Threshold test*. If the creditor is unsure whether a particular charge is a cost imposed as part of the plan, the creditor may at its option consider such charges as a cost imposed as part of the plan for purposes of the Truth in Lending Act.

Paragraph 6(a)(3)(iii)(B).

1. *Fees for package of services*. A fee to join a credit union is an example of a fee for a package of services that is not imposed as part of the plan, even if the consumer must join the credit union to apply for credit. In contrast, a membership fee is an example of a fee for a package of services that is considered to be imposed as part of a plan where the primary benefit of membership in the organization is the opportunity to apply for credit, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature.

6(a)(4) Disclosure of rates for home-equity plans.

1. *Fixed-rate and -term payment plans*. See comment 6(a)-1 for guidance on disclosing information related to fixed-rate and -term payment plans.

Paragraph 6(a)(4)(1)(B). [Paragraph 6(a)(1)(ii)]

1. *Range of balances*. Creditors are not required to disclose the range of balances [The range of balances disclosure is inapplicable]:

i. If only one periodic interest rate may be applied to the entire account balance.

ii. If only one periodic interest rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic interest rate on purchase balances of $ 0-$ 500, and a 1% periodic interest rate for balances above $ 500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

Paragraph 6(a)(4)(i)(D).

1. *Explanation of balance computation method*. Creditors do not provide a sufficient explanation of a balance computation method by using a shorthand phrase such as "previous balance method" or the name of a balance computation method listed in § 226.5a(g). (See Model Clauses G-1 in appendix G to part 226. See § 226.6(a)(2)(xxii) regarding balance computation descriptions required to be disclosed below the account-opening table required by § 226.6(a)(1).)

2. *Allocation of payments*. Creditors may, but need not, explain ***how*** payments and other credits are allocated to outstanding balances.

Paragraph 6(a)(4)(ii) Variable-rate accounts.

1. [2.] *Variable-rate disclosures-coverage*.

i. *Examples*. This section covers open-end credit plans under which rate changes are specifically set forth in the account agreement and are tied to an index or formula. A creditor would use variable-rate disclosures for plans involving rate changes such as the following:

A. Rate changes that are tied to Treasury bill rates [the rate the creditor pays on its six-month certificates of deposit].

B. Rate changes that are tied to the prime rate [Treasury bill rates].

C. Rate changes that are tied to the Federal Reserve discount rate. [changes in the creditor's commercial lending rate.]

ii. The following is an example of open-end plans that permit the rate to change and are not considered variable rate: Rate changes that are triggered by a specific event such as and [An] open-end credit plan in which the employee receives a lower rate contingent upon employment, and the rate increases upon termination of employment. [(that is, with the rate to be increased upon termination of employment) is not a variable-rate plan.]

[3. *Variable-rate plan--rate(s) in effect*. In disclosing the rate(s) in effect at the time of the account-opening disclosures (as is required by § 226.6(a)(1)(ii)), the creditor may use an insert ***showing*** the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under § 226.5(c).

4. *Variable-rate plan--additional disclosures required*. In addition to disclosing the rates in effect at the time of the account-opening disclosures, the disclosures under § 226.6(a)(1)(ii) also must be made.

5. *Variable-rate plan--index*. The index to be used must be clearly identified; the creditor need not give, however, an explanation of ***how*** the index is determined or provide instructions for obtaining it.]

2. [6.] *Variable-rate plan--circumstances for increase*.

i. The following are examples that comply with the requirement to disclose circumstances under which the rate(s) may increase: [Circumstances under which the rate(s) may increase include, for example:]

A. "The Treasury bill rate increases." [An increase in the Treasury bill rate.]

B. "The prime rate increases." [An increase in the Federal Reserve discount rate.]

ii. Disclosing the frequency with which the rate may increase includes disclosing when the increase will take effect; for example: [The creditor must disclose when the increase will take effect; for example:]

A. "An increase will take effect on the day that the Treasury bill rate increases." [or]

B. "An increase in the prime rate [Federal Reserve discount rate] will take effect on the first day of the creditor's billing cycle."

3. [7.] *Variable-rate plan--limitations on increase*. In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. [When there are no limitations, the creditor may, but need not, disclose that fact. (A maximum interest rate must be included in dwelling-secured open-end credit plans under which the interest rate may be changed. See § 226.30 and the commentary to that section.)] Legal limits such as usury or rate ceilings under State or Federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. "The rate on the plan will not exceed 25% annual percentage rate."

ii. "Not more than 1/2% increase in the annual percentage rate per year will occur."

4. [8.] *Variable-rate plan--effects of increase*. Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

[9. *Variable-rate plan--change-in-terms notice not required*. No notice of a change in terms is required for a rate increase under a variable-rate plan as defined in comment 6(a)(1)(ii)-2.]

5. [10.] *Discounted variable-rate plans*. In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors disclose in the account-opening disclosures an [use an] initial rate that is not calculated using the index or formula for later rate adjustments, the [account-opening] disclosure [statement] should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of ***how*** long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required in § 226.6(a)(4)(ii). [§ 226.6(a)(1)(ii).]

Paragraph 6(a)(4)(iii) Rate changes not due to index or formula.

1. *Events that cause the initial rate to change*.

i. *Changes based on expiration of time period*. If the initial rate will change at the expiration of a time period, creditors must identify the expiration date and the fact that the initial rate will end at that time.

ii. *Changes based on specified contract terms*. If the account agreement provides that the creditor may change the initial rate upon the occurrence of specified event or events, the creditor must identify the event or events. Examples include imposing a penalty rate in lieu of terminating the account, as allowed under comment 5b(f)(2)-2, or the termination of an employee preferred rate when the employment relationship is terminated.

2. *Rate that will apply after initial rate changes*.

i. *Increased margins*. If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. *Risk-based pricing*. In some plans, the amount of the rate change depends on ***how*** the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. For example, a creditor may specify that a penalty rate may apply in lieu of termination of the account, as allowed under comment 5b(f)(2)-2. In these cases, a creditor must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or state only the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as "until you make three timely payments," or if there is no limitation, the fact that the increased rate may remain indefinitely.

3. *Effect of rate change on balances*. Creditors must disclose information to consumers about the balance to which the new rate will apply and the balance to which the current rate at the time of the change will apply.

[iii. In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(1)(ii)-3.

11. *Increased penalty rates*. If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must disclose the index and the margin. The creditor must also disclose the specific event or events that may result in the increased rate, such as "22% APR, if 60 days late." If the penalty rate cannot be determined at the time disclosures are given, the creditor must provide an explanation of the specific event or events that may result in the increased rate. At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect, such as "until you make three timely payments." The creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

Paragraph 6(a)(1)(iii).

1. *Explanation of balance computation method*. A shorthand phrase such as "previous balance method" does not suffice in explaining the balance computation method. (See Model Clauses G-1 [and G-1(A)] to part 226.)

2. *Allocation of payments*. Creditors may, but need not, explain ***how*** payments and other credits are allocated to outstanding balances. For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (See comment 7-1 for definition of multifeatured plan.)

Paragraph 6(a)(1)(iv).

1. *Finance charges*. In addition to disclosing the periodic rate(s) under § 226.6(a)(1)(ii), creditors must disclose any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees (unless excluded from the finance charge under § 226.4(c)(7)). Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

6(a)(2) Other charges.

1. *General; examples of other charges*. Under § 226.6(a)(2), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

i. Late-payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under § 226.13 (billing error resolution).

iii. Charges imposed in connection with residential mortgage transactions or real estate transactions such as title, appraisal, and credit-report fees (see § 226.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances (See the commentary to § 226.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an "other charge," even if membership is required to apply for credit. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature, the membership fee would be disclosed as an "other charge."

vi. Charges imposed for the termination of an open-end credit plan.

2. *Exclusions*. The following are examples of charges that are not "other charges"

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under § 226.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (See commentary to § 226.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (See also comment 7(a)(2)-2.)

viii. Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer's request (regardless of ***how*** frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.]

6(a)(5) Additional disclosures for home-equity plans. [6(a)(3) Home-equity plan information.]

Paragraph 6(a)(5)(i) Voluntary credit insurance, debt cancellation or debt suspension.

1. *Timing*. Under § 226.4(d), disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge must be provided before the consumer agrees to the purchase of the insurance or coverage. Creditors comply with § 226.6(a)(5)(i) if they provide those disclosures in accordance with § 226.4(d). For example, if the disclosures required by § 226.4(d) are provided at application, creditors need not repeat those disclosures at account opening.

[1. *Additional disclosures required*. For home-equity plans, creditors must provide several of the disclosures set forth in § 226.5b(d) along with the disclosures required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (See comment 5b(d)(4)(iii)-1.)

2. *Form of disclosures*. The home-equity disclosures provided under this section must be in a form the consumer can keep, and are governed by § 226.5(a)(1). The segregation standard set forth in § 226.5b(a) does not apply to home-equity disclosures provided under § 226.6.

3. *Disclosure of payment and variable-rate examples*. i. The payment-example disclosure in § 226.5b(d)(5)(iii) and the variable-rate information in § 226.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii) need not be provided with the disclosures under § 226.6 if the disclosures under § 226.5b(d) were provided in a form the consumer could keep; and the disclosures of the payment example under § 226.5b(d)(5)(iii), the maximum-payment example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.

ii. For example, if a creditor offers three payment options (one for each of the categories described in the commentary to § 226.5b(d)(5)), describes all three options in its early disclosures, and provides all of the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or (d)(12) disclosures again when the account is opened. If the creditor ***showed*** only one of the three options in the early disclosures (which would be the case with a separate disclosure form rather than a combined form, as discussed under § 226.5b(a)), the disclosures under § 226.5b(d)(5)(iii), (d)(12)(viii), (d)(12)(x), (d)(12)(xi) and (d)(12)(xii) must be given to any consumer who chooses one of the other two options. If the § 226.5b(d)(5)(iii) and (d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. *Disclosures for the repayment period*. The creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under § 226.6. Specifically, the creditor must make the disclosures in § 226.6(a)(3), state the corresponding annual percentage rate, and provide the variable-rate information required in § 226.6(a)(1)(ii) for the repayment phase. To the extent the corresponding annual percentage rate, the information in § 226.6(a)(1)(ii), and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.]

Paragraph 6(a)(5)(ii) [6(a)(4)] Security interests.

1. *General*. Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.

2. *Identification of property*. Creditors sufficiently identify collateral by type by stating, for example, ***your*** home. [*motor vehicle or household appliances*. (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.)] The creditor may, at its option, provide a more specific identification (for example, the address of property securing the line of credit. [a model and serial number.)]

3. *Spreader clause*. If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as "spreader" or "dragnet" clauses, or as "cross-collateralization" clauses.) The creditor need not specifically identify the collateral; a reminder such as "collateral

securing other loans with us may also secure this loan" is sufficient. At the creditor's option, a more specific description of the property involved may be given.

[4. *Additional collateral*. If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $ 1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $ 1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $ 1,000, and the creditor must provide a change-in-terms notice under § 226.9(c) at the time the security is taken. (See comment 6(a)(4)-2.)

5. *Collateral from third party*. Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.]

Paragraph 6(a)(5) (iii) Statement of billing rights.

1. *Model forms*. See the commentary to Model Forms G-3 and G-4 [G-3, G-3(A), G-4, and G-4(A)].

Paragraph 6(a)(5)(iv) Possible creditor actions.

1. *Disclosure*. Creditors must disclose under § 226.6(a)(5)(iv) a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (See comment 5b(c)(7)(i).)

Paragraph 6(a)(5)(v) Additional information on fixed-rate and -term payment plans.

1. *Fixed-rate and -term payment plans*. See comment 6(a)-1 for guidance on disclosing information related to fixed-rate and -term payment plans.
* * * *

§ 226.7-Periodic Statement.

7(a) Rules affecting home-equity plans.

7(a)(1) Previous balance.

1. *Credit balances*. If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans*. In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments*. Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

7(a)(2) Identification of transactions.

1. *Multifeatured plans*. [In identifying transactions under § 226.7(a)(2) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.] Creditors may, but are not required to, arrange transactions by feature (such as disclosing purchase transactions separately from cash advance transactions). Pursuant to § 226.7(a)(6), however, creditors

must group all fees and all interest separately from transactions and may not disclose any fees or interest charges with transactions.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems*. A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system, and included by the terminal-operating institution in the amount of the transaction, need not be separately disclosed on the periodic statement.

7(a)(3) Credits.

1. *Identification--sufficiency*. The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)--"credit" would suffice--except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to § 226.13(e) and (f).) Credits may be distinguished from transactions in any way that is clear and conspicuous, for example, by use of debit and credit columns or by use of plus signs and/or minus signs.

2. *Format*. A creditor may list credits relating to credit extensions made to the consumer under the plan (such as payments or rebates[, etc.]) together with other types of credits (such as deposits to a checking account), as long as the entries are identified so as to inform the consumer which type of credit each entry represents.

3. *Date*. If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

4. *Totals*. A total of amounts credited during the billing cycle is not required.

7(a)(4) Periodic rates.

1. *Disclosure of periodic interest rates--whether or not actually applied*. Except as provided in § 226.7(a)(4)(ii), any periodic interest rate that may be used to compute finance charges [(and its corresponding annual percentage rate)], expressed as and labeled "Annual Percentage Rate," must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the annual percentage rate for each, even if the consumer only makes purchases (or cash advances) on the account during the billing cycle.

ii. If the annual percentage rate varies (such as when it is tied to a particular index), the creditor must disclose each annual percentage rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic interest rates required only if imposition possible*. [With regard to the periodic rate disclosure (and its corresponding annual percentage rate), only rates] With regard to disclosure of periodic rates (expressed as annual percentage rates), only annual percentage rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing annual percentage rates effective during the next billing cycle (because of a variable-rate plan), the annual percentage rates required to be disclosed under § 226.7(a)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the annual percentage [monthly] rate applied during May was [1.5] 8.0%, but the creditor will increase the rate to [1.8%] 11.0% effective June 1, [1.5%] 8.0% [(and its corresponding annual percentage rate)] is the only required disclosure under § 226.7(a)(4) for the periodic statement reflecting the May account activity.

ii. If annual percentage rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates--same transaction*. If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the [finance] interest charge consists of a monthly periodic interest rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), creditors must disclose the periodic interest rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to the credit life insurance component must be disclosed as a fee under § 226.7(a)(6)(iii). (*See* comment 7(a)(6)-2.) [the creditor may do either of the following:

i. Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each. (For example, 1.5% monthly, 18% annual percentage rate; 0.1% monthly, 1.2% annual percentage rate.)

ii. Disclose one composite periodic rate (that is, 1.6% per month) along with the applicable range of balances and the corresponding annual percentage rate.

4. *Corresponding annual percentage rate*. In disclosing the annual percentage rate that corresponds to each periodic rate, the creditor may use "corresponding annual percentage rate," "nominal annual percentage rate," "corresponding nominal annual percentage rate," or similar phrases.

5. *Rate same as actual annual percentage rate*. When the corresponding rate is the same as the annual percentage rate disclosed under § 226.7(a)(7), the creditor need disclose only one annual percentage rate, but must use the phrase "annual percentage rate."]

4. *Fees*. Creditors that identify fees in accordance with § 226.7(a)(6)(iii) need not identify the periodic rate at which a fee would accrue if the fee remains unpaid. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.

[6] 5. *Range of balances*. See comment 6(a)(4)(i)(B)-1 [6(a)(1)(ii)-1]. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

7(a)(5) Balance on which finance charge computed.

[1. *Limitation to periodic rates*. Section 226.7(a)(5) only requires disclosure of the balance(s) to which a periodic rate was applied and does not apply to balances on which other kinds of finance charges (such as transaction charges) were imposed. For example, if a consumer obtains a $ 1,500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor need only disclose the balance subject to the monthly rate (which might include portions of earlier cash advances not paid off in previous cycles).]

[2] 1. *Split rates applied to balance ranges*. If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $ 700 for purchases even though a monthly periodic rate of 1.5% applied to the first $ 500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the [finance] interest charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(a)(5)-4.)

[3] 2. *Monthly rate on average daily balance*. Creditors may apply a monthly periodic rate to an average daily balance.

[4] 3. *Multifeatured plans*. In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect ***how*** many balances the creditor must disclose--or may disclose--within each feature. (See, for example, comments 7(a)(5)-4 and 7(a)(4)-5.)

[5] 4. *Daily rate on daily balances*. i. If the finance charge is computed on the balance each day by application of one or more daily periodic interest rates, the balance on which the [finance] interest charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic interest rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor [shall] may, at its option, explain 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] interest.

iii. If two or more daily periodic interest rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic interest rates imposed for the time that those rates were in effect. [, as long as the creditor] The creditor may, at its option, explain[s] that [the finance charge] interest is or may be determined by [*(1)*] multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), [*(2)*] multiplying each of the results by the applicable daily periodic rate, and [*(3)*] adding these products together.

[6. *Explanation of balance computation method*. See the commentary to 6(a)(1)(iii).]

[7] 5. *Information to compute balance*. In connection with disclosing the [finance] interest charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

[8] 6. *Non-deduction of credits*. The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not, deducted is accomplished by, listing the credits (§ 226.7(a)(3)) and indicating which credits will not be deducted in determining the balance (for example, "credits after the 15th of the month are not deducted in computing the [finance] interest charge.").

[9] 7. *Use of one balance computation method explanation when multiple balances disclosed*. Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a

single identification of the name (as permitted under § 226.7(a)(5)) of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(a)(5)-2. In these cases, one explanation or a single identification of the name (as permitted under § 226.7(a)(5)) of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

[*7(a)(6) Amount of finance charge and other charges*.

Paragraph 7(a)(6)(i).

1. *Total*. A total finance charge amount for the plan is not required.

2. *Itemization--types of finance charges*. Each type of finance charge (such as periodic rates, transaction charges, and minimum charges) imposed during the cycle must be separately itemized; for example, disclosure of only a combined finance charge attributable to both a minimum charge and transaction charges would not be permissible. Finance charges of the same type may be disclosed, however, individually or as a total. For example, five transaction charges of $ 1 may be listed separately or as $ 5.]

3. *Itemization--different periodic rates*. Whether different periodic rates are applicable to different types of transactions or to different balance ranges, the creditor may give the finance charge attributable to each rate or may give a total finance charge amount. For example, if a creditor charges 1.5% per month on the first $ 500 of a balance and 1% per month on amounts over $ 500, the creditor may itemize the two components ($ 7.50 and $ 1.00) of the $ 8.50 charge, or may disclose $ 8.50.

4. *Multifeatured plans*. In a multifeatured plan, in disclosing the amount of the finance charge attributable to the application of periodic rates no total periodic rate disclosure for the entire plan need be given.

5. *Finance charges not added to account*. A finance charge that is not included in the new balance because it is payable to a third party (such as required life insurance) must still be ***shown*** on the periodic statement as a finance charge.

6. *Finance charges other than periodic rates*. See comment 6(a)(1)(iv)-1 for examples.

7. *Accrued finance charges allocated from payments*. Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, no disclosure is required of finance charges that have accrued since the last payment.

8. *Start-up fees*. Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (See § 226.14(c)(3).)

Paragraph 7(a)(6)(ii).

1. *Identification*. In identifying any other charges actually imposed during the billing cycle, the type is adequately described as *late charge or membership fee*, for example. Similarly, *closing costs* or *settlement costs*, for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under § 226.4(c)(7), if the same term (such as *closing costs*) was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. Even though the taxes and filing or notary fees excluded from the finance charge under § 226.4(e) are not required to be disclosed as *other charges* under § 226.6(a)(2), these charges may be included in the amount ***shown*** as *closing costs or settlement*

costs on the periodic statement, if the charges were itemized and disclosed as part of the *closing costs or settlement costs* on the initial disclosure statement. (See comment 6(a)(2)-1 for examples of *other charges*.)

2. *Date*. The date of imposing or debiting *other charges* need not be disclosed.

3. *Total*. Disclosure of the total amount of other charges is optional.

4. *Itemization--types of other charges*. Each type of *other charge* (such as late-payment charges, over-the-credit-limit charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of *other charges* attributable to both an over-the-credit-limit charge and a late-payment charge would not be permissible. *Other charges* of the same type may be disclosed, however, individually or as a total. For example, three fees of $ 3 for providing copies related to the resolution of a billing error could be listed separately or as $ 9.

7(a)(7) Annual percentage rate.

1. *Plans subject to the requirements of § 226.5b*. For home-equity plans subject to the requirements of § 226.5b, creditors are not required to disclose an effective annual percentage rate. Creditors that state an annualized rate in addition to the corresponding annual percentage rate required by § 226.7(a)(4) must calculate that rate in accordance with § 226.14(c).

2. *Labels*. Creditors that choose to disclose an annual percentage rate calculated under § 226.14(c) and label the figure as "annual percentage rate" must label the periodic rate expressed as an annualized rate as the "corresponding APR," "nominal APR," or a similar phrase as provided in comment 7(a)(4)-4. Creditors also comply with the label requirement if the rate calculated under § 226.14(c) is described as the "effective APR" or something similar. For those creditors, the periodic rate expressed as an annualized rate could be labeled "annual percentage rate," consistent with the requirement under § 226.7(b)(4). If the two rates represent different values, creditors must label the rates differently to meet the clear and conspicuous standard under § 226.5(a)(1).]

7(a)(6) Charges imposed.

1. *Examples of charges*. See commentary to § 226.6(a)(3).

2. *Fees*. Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer obtains credit life insurance that is calculated at 0.1% per month on an outstanding balance and a monthly interest rate of 1.5% applies to the same balance, the creditor must disclose the dollar cost attributable to interest as an "interest charge" and the credit insurance cost as a "fee."

3. *Total fees for calendar year to date*.

i. *Monthly statements*. Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011, through January 9, 2012, may disclose the year-to-date total for fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, ***showing*** the year-to-date total for fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering

November 10, 2011, through December 9, 2011, may disclose the year-to-date total for fees imposed from December 10, 2010, through December 9, 2011.

ii. *Quarterly statements*. Creditors issuing quarterly statements may apply the guidance set forth for monthly statements to comply with the requirement to provide calendar year-to-date totals on quarterly statements.

4. *Minimum charge in lieu of interest*. A minimum charge imposed if a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum must be disclosed as a fee. For example, assume a creditor imposes a minimum charge of $ 1.50 in lieu of interest if the calculated interest for a billing period is less than that minimum charge. If the interest calculated on a consumer's account for a particular billing period is 50 cents, the minimum charge of $ 1.50 would apply. In this case, the entire $ 1.50 would be disclosed as a fee; the periodic statement would reflect the $ 1.50 as a fee, and $ 0 in interest.

5. *Adjustments to year-to-date totals*. In some cases, a creditor may provide a statement for the current period reflecting that fees or interest charges imposed during a previous period were waived or reversed and credited to the account. Creditors may, but are not required to, reflect the adjustment in the year-to-date totals. If an adjustment is made, creditors are not required to provide an explanation about the reason for the adjustment. Such adjustments would not affect the total fees or interest charges imposed for the current statement period.

6. *Acquired accounts*. An institution that acquires an account or plan must include, as applicable, fees and charges imposed on the account or plan prior to the acquisition in the aggregate disclosures provided under § 226.7(a)(6) for the acquired account or plan. Alternatively, the institution may provide separate totals reflecting activity prior and subsequent to the account or plan acquisition. For example, a creditor that acquires an account or plan on August 12 of a given calendar year may provide one total for the period from January 1 to August 11 and a separate total for the period beginning on August 12.

7. *Account replacement*. A creditor that replaces a consumer's plan with another home equity line of credit plan with the consumer must include, as applicable, fees and charges imposed for that portion of the calendar year prior to the replacement in the aggregate disclosures provided pursuant to § 226.7(a)(6) for the new plan. For example, assume a consumer has incurred $ 125 in fees for the calendar year to date for a plan, which is then replaced by a home equity line of credit plan also provided by the creditor. In this case, the creditor must reflect the $ 125 in fees incurred prior to the replacement in the calendar year-to-date totals provided for the new home equity line of credit plan. Alternatively, the institution may provide two separate totals reflecting activity prior and subsequent to the replacement of the plan.

7(a)(7) Change-in-terms and increased penalty rate summary.

1. *Location of summary tables*. If a change-in-terms notice required by § 226.9(c)(1) is provided on or with a periodic statement, a tabular summary of key changes must appear on the front of any page of the statement. Similarly, if a notice of a rate increase due to delinquency or default or as a penalty required by § 226.9(i) is provided on or with a periodic statement, information required to be provided about the increase, presented in a table, must appear on the front of any page of the statement.

7(a)(8) Grace period.

1. *Terminology*. [Although the creditor is required to indicate any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the account-opening disclosure statement. For example, "To ***avoid*** additional finance charges, pay the new balance before " would suffice.] In describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement. (See §§ 226.5(a)(2)(i) and 226.6(a)(2)(xxi))

7(a)(9) Address for notice of billing errors.

1. *Terminology*. The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number*. A telephone number, e-mail address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

7(a)(10) Closing date of billing cycle; new balance.

1. *Credit balances*. See comment 7(a)(1)-1.

2. *Multifeatured plans*. In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments*. Some plans, provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.
* * * *

§ 226.9--Subsequent Disclosure Requirements.
* * * *

9(c) Change in terms.

9(c)(1) Rules affecting home-equity plans.

1. *Changes initially disclosed*. Except as provided in § 226.9(i), no [No] notice of a change in terms need be given if the specific change is set forth initially, such as[:] a rate increase[s] under a properly disclosed variable-rate plan[, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum]. The rules in § 226.5b(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues*. Examples of issues not addressed by § 226.9(c) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (But see § 226.5b(f).)

ii. ***<u>How</u>*** changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle*. Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change [either] affects any of the terms required to be disclosed under § 226.6(a) [or increases the minimum payment], unless an exception under § 226.9(c)(1)[(ii)] (iv) applies[; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change].

9(c)(1)(i) Written notice required.

1. *Affected consumers*. Change-in-terms notices need only go to those consumers who may be affected by the change. [For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.] For example, a change in the balance computation method, from average-daily-balance to daily-balance (permissible under § 226.5b(f)(3)(v) as an "insignificant change") need not be disclosed to consumers for whose accounts the balance computation method will not change. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Timing--effective date of change*. The rule that the notice of the change in terms be provided at least [15] 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as [the imposition of a transaction fee] increasing the credit limit or extending the length of the plan. Any change in the balance computation method, in contrast, would need to be disclosed at least [15] 45 days prior to the billing cycle in which the change is to be implemented.

3. *Timing--advance notice not required*. Advance notice of [15] 45 days is not necessary--that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change [--in two circumstances:

i. If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.

ii. If] if the consumer agrees to the particular change. This provision is intended solely for use in the unusual instance [when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or] when the consumer and the creditor specifically agree to the change in writing before the effective date of the change, as permitted under § 226.5b(f)(3)(iii), such as on paying an increased minimum payment amount. [Therefore, the following are not "agreements" between the consumer and the creditor for purposes of § 226.9(c)(1)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.]

4. *Form of change-in-terms notice*. Except if the tabular format requirement under § 226.9(c)(1)(iii) applies, a [A] complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(1)(i) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

[5. *Security interest change--form of notice*. A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.]

5 [6]. *Changes to home-equity plans[entered into on or after November 7, 1989]*. Section 226.9(c)(1) applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home-equity plan [--entered into on or after November 7, 1989--] at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

i. If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by § 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by § 226.5b(c)(9)(iii) and (c)(10)(i)(A)(6), unless these disclosures are unchanged from those given earlier.

ii. If the minimum payment requirement is changed, the creditor must include the disclosures required by § 226.5b(c)(9)(iii) (and, in variable-rate plans, the disclosures required by § 226.5b(c)(10)(i)(A)*(6)*). [unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. (See the commentary to § 226.5b(c)(9)(iii) and (c)(10)(i)(A)(6) for a discussion of representative examples.)]

iii. When the terms are changed pursuant to a written agreement as described in § 226.5b(f)(3)(iii), the advance-notice requirement does not apply.

9(c)(1)(ii) *Charges not covered by § 226.6(a)(1) and (a)(2)*.

1. *Applicability*. Generally, if a creditor increases any component of a charge, or introduces a new charge (assuming in either case that such action is permitted under § 226.5b(f)), that is imposed as part of the plan under § 226.6(a)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(a)(2), the creditor may either, at its option, provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(1)(i), or provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (See the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(a)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(a)(2). If a creditor adds expedited delivery of a credit card as a new service, the new service and the accompanying fee would be permissible under § 226.5b(f)(3)(iv) as a beneficial change. In these circumstances, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (See comment 5(b)(1)(ii)-1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

9(c)(1)(iii) *Disclosure requirements*.

9(c)(1)(iii)(A) *Changes to terms described in account-opening table*.

1. *Changing margin for calculating a variable rate*. If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 226.9(c)(1)(iii)(B), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

2. *Changing index for calculating a variable rate*. If the creditor is changing the index pursuant to § 226.5b(f)(3)(ii), the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and the ***how*** the rate is determined, as explained in § 226.6(a)(2)(vi)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. *Changing from a variable rate to a non-variable rate*. If a creditor is changing from a variable rate to a non-variable rate, the creditor must disclose the amount of the new rate (that is, the non-variable rate) in the table. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

4. *Changing from a non-variable rate to a variable rate*. If a creditor is changing from a non-variable rate to a variable rate, the creditor must disclose the amount of the new rate (the variable rate using the index and margin), and indicate that the rate varies with the market based on the index used, such as the prime rate or the LIBOR. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

5. *Changes in the penalty rate, the triggers for the penalty rate, or* ***how*** *long the penalty rate applies*. If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about ***how*** long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and

information about ***how*** long the penalty rate applies. If a creditor is changing ***how*** long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

6. *Changes in fees*. If a creditor is changing part of ***how*** a fee that is disclosed in a tabular format under § 226.6(a)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of "Either $ 5 or 3% of the transaction amount, whichever is greater. (Max: $ 100)," and the creditor is only changing the minimum dollar amount from $ 5 to $ 10, the issuer must redisclose the other information related to ***how*** the fee is determined. The creditor in this example would disclose the following: "Either $ 10 or 3% of the transaction amount, whichever is greater. (Max: $ 100)." (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

7. *Combining a notice described in § 226.9(c)(1)(iii) with a notice described in § 226.9(i)*. If a creditor is required to provide a notice described in § 226.9(c)(1)(iii) and a notice described in § 226.9(i) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

8. *Content*. Sample G-25 contains an example of ***how*** to comply with the requirements in § 226.9(c)(1)(iii) when the following terms are being changed: (i) the balance computation method is being changed from average-daily-balance to daily-balance; and (ii) the credit limit is being increased.

9. *Clear and conspicuous standard*. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(1)(iii)(A)(1).

10. *Terminology*. See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(c)(1)(iii)(A)(1).

11. *Opt-out disclosure*. If a consumer has a right to opt out of one change (such as an increase in the credit limit), but not another being made at the same time (such as a change in the balance computation method), the notice should indicate that the consumer has "the right to opt out of some of these changes," and refer to additional information specifying which change the opt-out right applies to.

[9(c)(1)(iii) Notice to restrict credit.

1. *Written request for reinstatement*. If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under § 226.9(c)(1)(iii) must state that fact.

2. *Notice not required*. A creditor need not provide a notice under this paragraph if, pursuant to the commentary to § 226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.]

9(c)(1) (iv) [(ii)] *Notice not required*.

1. *Changes not requiring notice*. The following are examples of changes that do not require a change-in-terms notice:

[i. A change in the consumer's credit limit.]

i. [ii.] A change in the name of the home equity credit [credit card or credit card] plan.

ii. [iii.] The substitution of one insurer for another.

[iv. A termination or suspension of credit privileges. (But see § 226.5b(f).)]

iii [v.] Changes arising merely by operation of law[; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car].

iv. Suspension of credit privileges, reduction of a credit limit under §§ 226.5b(f)(2), 226.5b(f)(3)(i), or 226.5b(f)(3)(vi), or termination of an account under § 226.5b(f)(2) do not require notice under paragraph (c)(1)(i) of this section, but must be disclosed pursuant to paragraph (j) of this section.

2. *Skip features*. If a home-equity plan allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges (permissible as beneficial changes under § 226.5b(f)(3)(iv)), no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the account-opening opening [initial] disclosure statement (including an explanation of the terms upon resumption). [For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation.] Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip ***your*** October payment," or "We will waive ***your*** finance charges for January," may serve as the change-in-terms notice. However, a creditor offering a temporary reduction in an interest rate must provide a notice in accordance with the timing requirements of § 226.9(c)(1)(i) and the content and format requirements of § 226.9(c)(1)(iii)(A) and (B) prior to resuming the original rate.

3. *Changing from a variable rate to a non-variable rate*. If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c)(1) even if the variable rate at the time of the change is higher than the non-variable rate. (See comment 9(c)(1)(iii)(A)-3.) (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

4. *Changing from a non-variable rate to a variable rate*. If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c)(1) even if the non-variable rate is higher than the variable rate at the time of the change. (See comment 9(c)(1)(iii)(A)-4.) (See § 226.5b(f) for restrictions on a creditor's right to change terms.)
* * * *

9(g) Increase in rates due to delinquency or default or as a penalty--rules affecting open-end (not home-secured) plans.
* * * *

9(i) Increase in rates due to delinquency or default or as a penalty--rules affecting home-equity plans.

1. *Affected consumers*. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Combining a notice described in § 226.9(i)(1) with a notice described in § 226.9(c)(1)*. If a creditor is required to provide notices pursuant to both § 226.9(c)(1) and (*i*)(1) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

3. *Content*. Model Clause G-26 contains an example of ***how*** to comply with the requirements in § 226.9(*i*)(3)(i) when the rate on a consumer's account is being increased to a penalty rate as described in § 226.9(*i*)(1)(ii). (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

4. *Clear and conspicuous standard*. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(*i*).

5. *Terminology*. See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(*i*).
* * * *

9(j) Notices of Action Taken for Home-equity Plans

Paragraph 9(j)(1)

1. *Statement of action taken*. The notice under § 226.9(j)(1) must state the specific action taken, such as whether the creditor suspended advances or reduced the credit limit. If the creditor reduced the credit limit, the notice must state the new credit limit. The statement of action taken under this section must include the date the action taken was effective.

2. *Statement of specific reasons for action taken*. A creditor must disclose the principal reasons for prohibiting additional extensions of credit or reducing the credit limit for a home-equity plan under § 226.5b(f)(3)(i) or (f)(3)(vi). In addition to any information specified in comments 9(j)(1)-3, -4, and -5, as applicable, compliance with this provision requires stating the reason under the regulation permitting the action, such as that the maximum annual percentage has been reached, the property securing the plan has declined significantly, or the consumer's financial circumstances have materially changed.

3. *Disclosure of specific reasons for action taken based on a significant decline in property value*. When a creditor prohibits credit extensions or reduces a credit limit because the value of the property securing the plan has significantly declined under § 226. 5b(f)(3)(vi)(A), compliance with the requirement to disclose the specific reasons for the action taken is met by disclosing--

i. the value of the property obtained by the creditor;

ii. the type of valuation method used to obtain the property value; and

iii. a statement that the consumer has a right to a copy of documentation. supporting the property value on which the action was based.

4. *Disclosure of specific reasons for action taken based on a material change in the consumer's financial circumstances*. When a creditor prohibits credit extensions or reduces a credit limit because the consumer's financial circumstances have materially changed such that the creditor has a reasonable belief that the consumer will be unable to meet the repayment obligations of the plan under § 226.5b(f)(3)(vi)(B), compliance with the requirement to disclose the specific reasons for the action taken is met by disclosing the type of information concerning the consumer's financial circumstances on which the creditor relied, such as information about the consumer's income, credit report information, or some other indicia of the consumer's financial circumstances, as applicable.

5. *Specific reasons in other cases*. When a creditor takes action due to a consumer's default of a material obligation under § 226.5b(f)(3)(vi)(C), compliance with the requirement to disclose the specific reasons for the action taken is met by disclosing the material obligation under the agreement on which the consumer defaulted. When a creditor takes action under § 226.5b(f)(3)(vi)(D) through (G), the creditor need disclose only the regulatory reason for the action. For example, if action was taken because a federal law required the action (pursuant to proposed § 226.5b(f)(3)(vi)(G)), the creditor need disclose only that the line action was taken because federal law required the action.

6. *Method of request for reinstatement*. If a creditor requires the consumer to request reinstatement of credit privileges under § 226.5b(g)(1)(ii), the notice under § 226.9(j)(1) must state the method or methods by which the consumer may request reinstatement. For example, if a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under § 226.9(j)(1) must state that fact. The notice must also state the address to which the consumer should send the written request.

7. *Timing of notice*. The creditor must mail or deliver the notice required under § 226.9(j)(1) within three business days after the action is taken. The general definition of "business day" in § 226.2(a)(6)--a day on which the

creditor's offices are open to the public for carrying on substantially all of its business functions--is used for purposes of § 226.9(j)(1). See comment 2(a)(6)-1.

Paragraph 9(j)(2)

1. *Imposition of fees*. If a creditor reduces the credit limit under §§ 226.5b(f)(3)(i) or (f)(3)(vi), the creditor may not charge the consumer a fee for exceeding the new credit limit until after the consumer has received notice of the action taken under § 226.9(j)(1). Similarly, if a creditor suspends future advances on the account, the creditor may not charge the consumer a fee for any advances that the creditor denies until after the consumer has received notice of the action taken under § 226.9(j)(1). These limitations apply to fees disclosed in the original agreement for the plan. Imposing denied advance fees or over-the-limit fees not disclosed in the original agreement would be permitted only if an exception to the general limitations on changing home-equity plan terms under § 226.5b(f) applies.

2. *Receipt of notice*. For purposes of when a creditor may impose a fee for a denied advance or exceeding the credit limit after suspending advances on a line or reducing the credit limit, the consumer will be deemed to have received a notice required under § 226.9(j)(1) mailed by the creditor after midnight on the third business day following mailing of the notice. The more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) applies. *See* comment 2(a)(6)-2.

Paragraph 9(j)(3)

1. *Statement of action taken*. The notice under § 226.9(j)(3) must disclose whether the creditor has terminated the plan and is accelerating the balance, and, if so, the date on which payment of the balance is due. If, pursuant to comment 5b(f)(2)-2, the creditor has suspended advances or reduced the credit limit, the notice must state this fact. If the creditor is reducing the credit limit, the notice must disclose the new credit limit. In all cases, the notice must include the date on which the action taken was effective.

2. *Statement of specific reasons for action taken*.

i. A creditor must disclose the principal reasons for action taken on a home-equity plan under § 226.5b(f)(2). In addition to any information specified in comments 9(j)(3)-2.ii, as applicable, compliance with the requirement to disclose the specific reasons for the action requires stating the reason under the regulation permitting the action, such as that the consumer failed to make a required minimum payment within 30 days after the due date for that payment (pursuant to § 226.5b(f)(2)(ii)).

ii. When a creditor takes action due to fraud or material misrepresentation by the consumer under § 226.5b(f)(2)(i), the creditor need only disclose that the action was taken due to either, as applicable, fraud or misrepresentation by the consumer; the creditor is not required to specify in the notice the nature of the fraud or misrepresentation. When a creditor takes action due to the consumer's action or inaction that adversely affects the creditor's interest in the property securing the plan under § 226.5b(f)(2)(iii), the creditor should include in the notice the consumer's action or inaction that jeopardizes the creditor's interest in the property securing the account, such as failing to pay property taxes or allowing a new superior lien on the property.

3. *Timing of notice*. The creditor must mail or deliver the notice required under § 226.9(j)(3) within three business days after the action is taken. The general definition of "business day" in § 226.2(a)(6)--a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions--is used for purposes of § 226.9(j)(3). See comment 2(a)(6)-1.

Paragraph 9(j)(4)

1. *Notice of action taken under 226.5b(f)(2) other than termination and acceleration, suspension, and reduction*. If, pursuant to comment 5b(f)(2)-2, a creditor takes action under § 226.5b(f)(2) other than termination and

acceleration, suspension of advances, or reduction of the credit limit, such as imposing fees or raising the interest rate applicable to the account, the creditor must comply with the notice requirements of § 226.9(c)(1) (for fee changes) or (*i*) (for rate changes), as applicable.

* * * *

§ 226.14 Determination of Annual Percentage Rate.

14(a) General rule.

1. *Tolerance*. The tolerance of 1/8th of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in §§ 226.5a, 226.5b, 226.6, 226.7, 226.9, 226.15, 226.16, and 226.26.

2. *Rounding*. The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within the 1/8th of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14 1/4%; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.

3. *Periodic rates*. No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equivalent is within the tolerance permitted by § 226.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.

4. *Finance charges*. The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.

5. *Good faith reliance on faulty calculation tools*. The regulation relieves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the safe harbor from liability is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

14(b) Annual percentage rate--in general.

1. *Corresponding annual percentage rate computation*. For [purposes of §§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16, and 226.26,] open-end credit under Subpart B of Regulation Z, the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. [This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance.]

[*14(c) Optional effective annual percentage rate for periodic statements for creditors offering open-end plans subject to the requirements of § 226.5b*.

1. *General rule*. The periodic statement may reflect (under § 226.7(a)(7)) the annualized equivalent of the rate actually applied during a particular cycle; this rate may differ from the corresponding annual percentage rate because of the inclusion of, for example, fixed, minimum, or transaction charges. Sections 226.14(c)(1) through (c)(4) state the computation rules for the effective rate.

2. *Charges related to opening, renewing, or continuing an account*. Sections 226.14(c)(2) and (c)(3) exclude from the calculation of the effective annual percentage rate finance charges that are imposed during the billing cycle such as a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account. The

charges involved here do not relate to a specific transaction or to specific activity on the account, but relate solely to the opening, renewing, or continuing of the account. For example, an annual fee to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under § 226.4(c)(4). (See comment 4(c)(4)-2.) This rule applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

3. *Classification of charges*. If the finance charge includes a charge not due to the application of a periodic rate, the creditor must use the annual percentage rate computation method that corresponds to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3 percent of the amount of each transaction), then the method in § 226.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in § 226.14(c)(2) is appropriate.

4. *Small finance charges*. Section 226.14(c)(4) gives the creditor an alternative to § 226.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $ 20 would produce an annual percentage rate of 30 percent under the rule in § 226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1 1/2 percent per month.

5. *Prior-cycle adjustments*. i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)-5.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accordance with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

14(c)(1) Solely periodic rates imposed.

1. *Periodic rates*. Section 226.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:

i. By multiplying each periodic rate by the number of periods in the year; or

ii. By the "quotient" method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of 1 1/2 percent on balances up to $ 500, and 1 percent on balances over $ 500. If, in a given cycle, the consumer has a balance of $ 800, the finance charge would consist of $ 7.50 (500 x .015) plus $ 3.00 (300 x .01), for a total finance charge of $ 10.50. The annual percentage rate for this period may be disclosed either as 18% on $ 500 and 12 percent on $ 300, or as 15.75 percent on a balance of $ 800 (the quotient of $ 10.50 divided by $ 800, multiplied by 12).

14(c)(2) Minimum or fixed charge, but not transaction charge, imposed.

1. *Certain charges not based on periodic rates*. Section 226.14(c)(2) specifies use of the quotient method to determine the annual percentage rate if the finance charge imposed includes a certain charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $ 1 finance charge on all balances below $ 50, and the consumer's balance was $ 40 in a particular cycle, the creditor would disclose an annual percentage rate of 30 percent (1/40 x 12).

2. *No balance*. If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under § 226.14(c)(2). This could occur not only when minimum charges are imposed on an account with no balance, but also when a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

14(c)(3) Transaction charge imposed.

1. *Transaction charges*. i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $ 10 imposed on a particular advance.

B. A charge of 3 percent of the amount of each transaction.

ii. The reference to ***avoiding*** duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the "other amounts on which a finance charge was imposed" figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable basis for the distinctions. For further explanation and examples of ***how*** to determine the components of this formula, see Appendix F to part 226.

2. *Daily rate with specific transaction charge*. Section 226.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in Appendix F to part 226 in calculating the annual percentage rate, especially the provision in the introductory section of Appendix F which addresses the daily rate/transaction charge situation by providing that the "average of daily balances" shall be used instead of the "sum of the balances."

14(d) Calculations where daily periodic rate applied.

1. *Quotient method*. Section 226.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in § 226.14(c)(1)(ii) and (c)(2) cannot be used when a daily rate is being applied to a series of daily balances, § 226.14(d) provides two alternative ways to calculate the annual percentage rate--either of which satisfies the provisions of § 226.7(a)(7).

2. *Daily rate with specific transaction charge*. If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)-2 for guidance on an appropriate calculation method.)

* * * *

Appendix F [--Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5b]

[Reserved]

[1. *Daily rate with specific transaction charge*. If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)-2 for guidance on an appropriate calculation method.]

Appendices G and H--Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes*. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. [, except] However, formatting changes may not be made to the following model forms, model clauses, and samples in Appendices G and H: G-2[(A)], G-3[(A)], G-4[(A)], G-10(A)-(E), G-14(A)-(E), G-15(A)-(D), G-17(A)-(D), G-18(A) (except as permitted pursuant to § 226.7(b)(2)), G-18(B)-(C), G-19, G-20, [and] G-21, G-22(A)-(B), G-23(A)-(B), G-24(A) (except as permitted pursuant to § 226.7(a)(2)), G-25, and G-26; and H-4(B) through H-4(L), H-17(A) through (D), H-19(A)-(I), and H-20 through H-22. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state "plain English" requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms for transactions not secured by real property or a dwelling.)

[vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.]

* * * *

Appendix G-Open-End Model Forms and Clauses

1. *Model[s] G-1 [and G-1(A)]*. The model disclosures in G-1 [and G-1(A)] (different balance computation methods) may be used in both the account-opening disclosures under § 226.6 and the periodic disclosures under § 226.7. As is clear from the models given, "shorthand" descriptions of the balance computation methods are not sufficient, except where § 226.7(b)(5) applies. [For creditors using model G-1, the phrase "a portion of" the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate.] If unpaid interest or finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. [Only model G-1(b) contains a final sentence appearing in brackets, which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in model G-1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in model G-1(b).) (See the commentary to § 226.7(a)(5) and (b)(5).) For open-end plans subject to the requirements of § 226.5b, creditors may, at their option, use the clauses in G-1 or G-1(A).]

2. *Model[s] G-2 [and G-2(A)]*. This [These] model[s] contains the notice of liability for unauthorized use of a credit card. [For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G-2 or G-2(A). For open-end plans not subject to the requirements of § 226.5b, creditors properly use G-2(A).]

3. *Models G-3[, G-3(A),] and G-4 [and G-4(A)]*.

i. These set out models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. [For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G-3 or G-3(A), and for creditors that use the short form, G-4 or G-4(A). For open-end (not home-secured) plans that not subject to the requirements of § 226.5b, creditors properly use G-3(A) and G-4(A).] Creditors must provide the billing-error rights statements in a form substantially similar to the models in order to comply with the regulation. The model billing-rights statements may be modified in any of the ways set forth in the first paragraph to the commentary on appendices G and H. The models may, furthermore, be modified by deleting inapplicable information, such as:

A. The paragraph concerning stopping a debit in relation to a disputed amount, if the creditor does not have the ability to debit automatically the consumer's savings or checking account for payment.

B. The rights stated in the special rule for credit card purchases and any limitations on those rights.

ii. The model billing rights statements also contain optional language that creditors may use. For example, the creditor may:

A. Include a statement to the effect that notice of a billing error must be submitted on something other than the payment ticket or other material accompanying the periodic disclosures.

B. Insert its address or refer to the address that appears elsewhere on the bill.

C. Include instructions for consumers, at the consumer's option, to communicate with the creditor electronically or in writing.

iii. Additional information may be included on the statements as long as it does not detract from the required disclosures. For instance, information concerning the reporting of errors in connection with a checking account may be included on a combined statement as long as the disclosures required by the regulation remain clear and conspicuous.

* * * *

12. *Models G-22(A) and G-22(B)*. These model clauses illustrate the disclosures required under § 226.5b(g)(2)(v). They inform the consumer that the consumer's reinstatement request has been received and that the creditor has investigated the request. They contain sample language for explaining the results of a reinstatement investigation in which the creditor found that a reason for suspension of advances or reduction of the credit limit still exists. Clauses in Model G-22(A) illustrate ***how*** a notice may explain that the same reason or reasons originally supporting the suspension or reduction still exist. Clauses in Model G-22(B) illustrate ***how*** a creditor may explain that a new reason or reasons for account suspension or reduction exist. Models G-22(A) and G-22(B) do not contain sample clauses for all reasons in which a creditor may temporarily suspend or reduce a home-equity plan. A creditor may comply with the disclosure requirements of § 226.5b(g)(2)(v) by using language substantially similar to the language in the model clauses or by substituting applicable reasons for the action not represented in these model clauses, as long as the information required to be disclosed is clear and conspicuous.

13. *Models G-23(A) and G-23(B)*. These model clauses illustrate the disclosures required under § 226.9(j)(1) and (j)(3).

i. Clauses in Model G-23(A) contain information regarding information required by § 226.9(j)(1) regarding the nature of the action taken on the home-equity plan under § 226.5b(f)(3)(i) and (f)(3)(vi) and the specific reasons for the action taken. In particular, they illustrate language for a notice in which the creditor temporarily suspends advances or reduces a credit limit due to a significant decline in the value of the property securing the plan under § 226.5b(f)(3)(vi)(A); a material change in the consumer's financial circumstances such that the creditor has a reasonable belief that the consumer will be unable to meet the repayment terms of the plan under § 226.5b(f)(3)(vi)(B)); and the consumer's default of a material obligation under the plan under § 226.5b(f)(3)(vi)(C)). Model G-23(A) clauses also contain information regarding the consumer's rights when the creditor requires the consumer to request reinstatement under § 226.5b(g)(1)(ii).

ii. Clauses in Model G-23(B) contain information required under § 226.9(j)(3) regarding the nature of the action taken on the account under § 226.5b(f)(2) and the specific reasons for the action taken. In particular, they illustrate language for a notice in which the creditor takes action on an account due to the consumer's failure to meet the repayment terms of the plan under § 226.5b(f)(2)(ii) and the consumer's action or inaction that adversely affected the creditor's interest in the property securing the plan under § 226.5b(f)(2)(iii). Model clauses for the notice when a creditor takes action due to a consumer's fraud or material misrepresentation under § 226.5b(f)(2)(i) are not included because a creditor need disclose only that the consumer's fraud or misrepresentation is the reason for the action; if the creditor does not include this information.

iii. A creditor may comply with the disclosure requirements of § 226.9(j)(1) and (j)(3) by using language substantially similar to the language in the model clauses or by substituting applicable reasons for the action not represented in these model clauses, as long as the information required to be disclosed is clear and conspicuous.

14. *Models G-14(A) and G-14(B), Samples G-14(C), G-14(D), and G-14(E), Model G-15(A), and Samples G-15(B), G-15(C), and G-15(D)*.

i. Models G-14(A) and G-14(B) and Samples G-14(C), G-14(D), and G-14(E) illustrate, in the tabular format, the disclosures required under § 226.5b to be provided within three business days after a consumer makes an application for a home equity line of credit (HELOC). Model G-15(A) and Samples G-15(B), G-15(C), and G-15(D) illustrate, in the tabular format, the disclosures required under § 226.6(a)(1) and (a)(2) for HELOC account-opening disclosures.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Models G-14(A), G-14(B), and G-15(A). While proper use of the model forms will be deemed in compliance with the regulation, creditors offering HELOCs are permitted to use headings other than those in the forms if they are clear and concise and are substantially similar to the headings contained in model forms, except that the terms "Borrowing Period," "Repayment Period," "Balloon Payment," and "Annual Percentage Rate" (or "APR"), must be used as applicable. In addition, in relation to required insurance, or debt cancellation or suspension coverage, if applicable, the term "Required" and the name of the product must be used, and for headings that must be used to describe the grace period, or lack of grace period, the terms "Paying Interest" or "***How*** to ***Avoid*** Paying Interest" must be used, as applicable.

iii. Model G-14(A) and Sample G-14(C) provide guidance for creditors that offer two or more HELOC plans and that, accordingly, are required under § 226.5b to disclose two HELOC plans and, if the creditor offers more than two plans, a statement that the consumer should ***ask*** for details about other plans that the creditor offers. Sample G-14(C) illustrates two plans, one ("Plan B") with a balloon payment at the end of the repayment period and the other ("Plan A") with no balloon payment, and ***shows*** the required disclosures about the balloon payment, as well as the required disclosures stating which plan results in the lesser and which results in the greater amount of interest.

iv. Model G-14(B) and Samples G-14(D) and G-14(E) provide guidance for creditors that offer only one HELOC plan. Sample G-14(D) illustrates a plan with an interest-only draw period of 10 years, no repayment period (*i.e*., the consumer is required to pay the outstanding balance in full in a single payment at the end of the draw period), and a balloon payment. Sample G-14(E) illustrates a plan in which the length of the repayment period depends upon the outstanding balance at the end of the draw period, and in which no balloon payment will occur.

v. Among the account-opening disclosure samples, Sample G-15(B) corresponds to early disclosure Sample G-14(C), and illustrates the situation where the consumer has chosen Plan B (the plan with a balloon payment) ***shown*** in Sample G-14(C). Account-opening disclosure Sample G-15(C) corresponds to early disclosure Sample G-14(D), ***showing*** the plan with an interest-only draw period, no repayment period, and a balloon payment. Account-opening disclosure Sample G-15(D) corresponds to early disclosure Sample G-14(E), ***showing*** the plan in which the length of the repayment period depends upon the outstanding balance at the end of the draw period, and in which no balloon payment will occur.

vi. Samples G-14(C), G-14(E), G-15(B), and G-15(D) illustrate plans with discounted introductory APRs, and ***show*** the required use of the term "introductory" ("intro" is also permissible, but is not ***shown*** in the samples) in immediate proximity to the term "APR." Samples G-14(D) and G-15(C) illustrate plans without discounted introductory APRs. All of the samples illustrate plans with variable-rate APRs, and ***show*** required use of the term "variable rate" in underlined text.

vii. The samples do not contain all possible required disclosures. For example, the models ***show*** the format for disclosure of limits on number of credit transactions, limits on amount of credit borrowed, minimum APR, payment limitations, and negative amortization, but the samples do not ***show*** this information. Also, the account-opening disclosure samples ***show*** certain account-opening, penalty, and transaction fees in the table detailing fees, but the fees ***shown*** in the samples do not constitute an exhaustive list of all the fees in these categories that may have to be disclosed.

viii. Although creditors are not required to use a certain ***paper*** size in disclosing the §§ 226.5b or 226.6(a)(1) and (2) disclosures, Samples G-14(C), G-14(D), G-14(E), G-15(B), G-15-(C), and G-15(D) are each designed to be printed on two 8 1/2 x 14 inch sheets of ***paper***. A creditor may use a smaller sheet of ***paper***, such as an 8 1/2 x 11 inch sheet of ***paper***. A creditor must disclose the table on consecutive pages and may not include any intervening information between portions of the table. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style, except for annual percentage rates ***shown*** in 16-point type).

B. Sufficient spacing between lines of the text.

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type.

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

F. Sufficient contrast between the text and the background. Generally, black text was used on white ***paper***.

ix. While the Board is not requiring creditors to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font requirement), the Board encourages creditors to consider these techniques when deciding ***how*** to disclose information in the table, to ensure that the information is presented in a readable format.

x. Creditors are allowed to use color, shading and similar graphic techniques with respect to the table, so long as the table remains substantially similar to the model and sample forms in Appendix G.

15. *Samples G-24(A), G-24(B), G-24(C), G-25, and G-26*. Samples G-24(A), G-24(B), and G-24(C) are intended as a compliance aid to illustrate front sides of a periodic statement, and ***how*** periodic statements for HELOC plans might be designed to comply with the requirements of § 226.7. The samples contain information that is not required by Regulation Z. The samples also present information in additional formats that are not required by Regulation Z.

i. Creditors are not required to use a certain ***paper*** size in disclosing the § 226.7 disclosures. However, Samples G-24(B) and G-24(C) are designed to be printed on two 8 x 14 inch sheets of ***paper***.

ii. The summary of account activity presented on Samples G-24(B) and G-24(C) is not itself a required disclosure, although the previous balance and the new balance, presented in the summary, must be disclosed in a clear and conspicuous manner on periodic statements.

iii. Additional information not required by Regulation Z may be presented on the statement. The information need not be located in any particular place or be segregated from disclosures required by Regulation Z. Any additional information must be presented consistent with the creditor's obligation to provide required disclosures in a clear and conspicuous manner.

iv. Samples G-24(B) and G-24(C) demonstrate two examples of ways in which transactions could be presented on the periodic statement. Sample G-24(B) presents transactions grouped by type and Sample G-24(C) presents transactions in a list in chronological order. Neither of these approaches to presenting transactions is required; a creditor may present transactions differently, such as in a list grouped by authorized user or other means.

v. Samples G-24(B) and G-24(C) also illustrate ***how*** change-in-terms notices and rate increases notices would be required to appear, if given on a periodic statement. Sample G-24(B) provides an example of a rate increase notice on a periodic statement; Sample G-24(C) provides an example of a change-in-terms notice on a periodic statement. Change-in-terms notices and rate increase notices may alternatively be given separately from periodic statements, provided the formatting requirements of § 226.9(c)(1) and (I) are followed; Sample G-25 provides an example of a change-in-terms notice, and Sample G-26 provides an example of a rate increase notice.

By order of the Board of Governors of the Federal Reserve System, July 24, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

Note: The following appendix will not appear in the Code of Federal Regulations.

Attachment A

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Key Questions to *Ask* About Home Equity Lines of Credit

When you are shopping for a home equity line of credit, consider the questions below. Lines of credit can have risky features that could make it difficult for you to repay ***your*** balance. As a result, you could lose ***your*** home. ***Ask*** ***your*** lender about other loan products, such as a traditional home equity loan. For more information, go to: *www.frb.gov*.

1 Can my interest rate increase?

Lines of credit usually have a variable interest rate, which means that the rate can increase or decrease from time to time. A lender may offer you a lower initial interest rate for a short time. However, after this period ends the rate will usually increase.

2 Can my minimum payment increase?

Yes, ***your*** minimum payment can increase based on several factors, such as when ***your*** variable interest rate increases or you borrow more money.

3 When can I borrow money?

You can borrow money only for a specified time, starting when you open ***your*** account. During this time, known as the "borrowing period," you can borrow money and you must make minimum payments. When the borrowing period ends, you will no longer be able to borrow money from ***your*** line of credit.

4 *How* soon do I have to pay off my balance?

After the borrowing period ends, under some plans you may be required to pay off ***your*** balance immediately in one payment. Under other plans you will have a certain amount of time to pay down ***your*** balance. During this time, known as the "repayment period," you will not be able to borrow additional amounts and will have to make larger minimum payments than during the borrowing period.

5 Will I owe a balloon payment?

Under some plans, if you make only the minimum payments you will not pay off ***your*** entire balance by the end of the term. At that point, you will have to pay the remaining balance as a single lump-sum, known as a "balloon payment." If you cannot get another loan to repay this amount, or pay it off using ***your*** savings, you could lose ***your*** home.

6 Do I have to pay any fees?

In addition to an application fee, you may be required to pay four (4) types of fees for ***your*** line of credit: (i) fees to open ***your*** account, such as loan origination or property appraisal fees; (ii) fees to maintain ***your*** account, such as an annual fee; (iii) fees to use ***your*** account, such as a cash advance fee; and (iv) penalty fees, such as late payment or over-the-credit limit fees.

7 Should I get a home equity loan instead of a line of credit?

With a home equity loan, you can borrow a fixed amount of money at a fixed interest rate. This means that ***your*** interest rate and minimum payment will stay the same over time. Consider a home equity loan if you plan to borrow a fixed amount of money at one time and want to know the exact amount of ***your*** minimum payment. Consider a home equity line of credit if you plan to borrow different amounts of money over time and can afford higher payments, even if the interest rate on ***your*** line of credit reaches its maximum.

EXECUTIVE SUMMARY

BACKGROUND AND DESCRIPTION OF PROJECT

In 1968, Congress enacted the Truth in Lending Act (TILA) to protect consumers by requiring lenders to provide key pieces of information to consumers at various points in time. Congress assigned the Federal Reserve Board (the "Board") the responsibility of implementing TILA, and the Board currently does so through Regulation Z.

In 2004, the Board began the process of reviewing Regulation Z to determine whether revisions were necessary. In January 2009, the Board finalized amendments to Regulation Z rules applicable to open-end (not home secured) credit (e.g., general purpose credit cards, merchant-specific credit plans, and overdraft lines of credit). [1] The Board is currently in the process of reviewing disclosures under Regulation Z related to home-secured open-end credit--namely, home equity lines of credit, and closed-end mortgage disclosures. This report is related to the Board's review of disclosures for closed-end mortgage loans. One of the goals of this review is to ensure that the amended regulations lead to improved disclosures that consumers would most likely pay attention to, understand, and be able to use in their decision-making.

This report addresses to the Board's review of disclosures related to HELOCs. One of the goals of this review is to ensure that the regulations lead to disclosures that consumers would most likely pay attention to, understand, and be able to use in their decision-making.

Under Regulation Z, HELOC borrowers must receive the following three types of disclosures, in addition to others:

. **Application Disclosure**: The regulation currently requires that an application disclosure be provided to potential borrowers at the time an application for a HELOC is provided. This disclosure provides details about the lender's

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[1] As of the writing of this report, the Board is in the process of revising these rules in light of legislation passed by Congress in May 2009.

HELOC plan, including the length of the draw and repayment periods; ***how*** the minimum required payment is calculated; payment examples; and what fees are charged by the lender to open, use, or maintain the plan. Because this disclosure is provided before underwriting takes place, this disclosure does not include information that is dependent upon a borrower's creditworthiness, such as the annual percentage rate ("APR") that the lender will offer.

. **"What You Need to Know About Home Equity Lines of Credit" Brochure**: This booklet (the "HELOC brochure") is produced by the Board and has no transaction-or program-specific information. It provides consumers with general information about HELOCs and ***how*** they work, as well as a glossary of relevant terms, and a description of various features that can apply to HELOCs. The Board currently requires lenders to provide this brochure to consumers at the same time as the application disclosure.

. **Account-Opening Disclosure**: The regulation currently requires that an account-openingdisclosure be provided to potential borrowers before they commit to opening a HELOC. This disclosure includes detailed transaction-specific information, including the APR and fees that will be charged.

In December 2008, the Board contracted with ICF Macro to assist the Board with its review and revision of these disclosure forms. ICF Macro is a research and evaluation company with expertise in the design and cognitive testing of effectiveconsumer communication materials. ICF Macro worked with the Board on its review of credit card disclosures and is currently contributing to its review of Regulation Z rules for closed-endmortgagedisclosures.

Since December 2008, ICF Macro has conducted five rounds of one-on-one cognitive interviews with a total of 50 participants. For each round, ICF Macro developed a set of model disclosure forms to be tested. Interview participants were ***asked*** to review model forms and provide their reactions, and were then ***asked*** a series of questions designed to test their understanding of the content. Data were collected on which elements and features of each form were most successful in providing information clearly and effectively. The findings from each round of interviews were incorporated in revisions to the model forms for the following round of testing.

The findings from the consumertesting informed the Board's proposed revisions to Regulation Z rules for HELOCs, which the Board will publish for public comment in July 2009, together with the model forms.

SUMMARY OF METHODOLOGY

Five rounds of testing were conducted, each consisting of 10 interviews of approximately 90 minutes in length. In each interview, the participant was ***shown*** several mock disclosure documents and ***asked*** to review them just as they normally would for their own account. They were ***asked*** to "think aloud" while doing so--in other words, to describe what they were thinking as they read, and to indicate if they saw anything that they found interesting, surprising, or confusing. When the participant indicated whether he or she was finished, the interviewer ***asked*** a series of follow-up questions to test the participant's understanding of the document.

Participants in each location were recruited by telephone using a structured screening instrument to ensure the selection of a range of participants in terms of gender, age, and ethnicity. Most participants had HELOCs while some considered getting a HELOC but opted instead for a home equity loan. A few participants did not have a home equity loan or HELOC, but had considered a HELOC in the past five years.

SUMMARY OF KEY FINDINGS

The following is a summary of key findings from the cognitive testing and the most significant design decisions that were made based on key findings. Some of the research focused on very specific aspects of the content or format of these forms, but this summary focuses primarily on the larger issues diagnosed and addressed during the testing process.

Findings Related to Application and Account-Opening Disclosures

Timing of Application Disclosure/Creation of "Early" Disclosure

. Several participants in the first two rounds of testing became confused when reviewing the application disclosure because they could not find their interest rate, and were surprised when told that the rate was not on the form. Other participants incorrectly assumed that one of the rates ***shown*** in a payment example on the application disclosure was being offered to them, when in fact that rate was used only for illustrative purposes.

. ICF Macro's testing of closed-endmortgagedisclosures [2] conducted during the same time period had ***shown*** that participants strongly disliked a disclosure form that lacked specific terms and features because such general information was not useful to them. Participants in closed-endtesting were ***shown*** an initial adjustable-rate mortgage ("ARM") program disclosure which, like the HELOC application disclosure, is provided with the application and does not provide transaction-specific information. Overwhelmingly, participants indicated that because of its lack of specificity, they would not find the initial ARM program disclosure useful and would be unlikely to read it. While participants in HELOC testing were not as vocal in their dislike of the application disclosure, some of the same sentiment was apparent.. Based on the results from the first two rounds of testing and similar findings from the closed-endtesting, Board staff had concerns about the usefulness of the application disclosure for participants. To address this issue, Board staff decided to test a new type of disclosure: an "early" disclosure of transaction-specific information that would be provided not later than three business days after application (similar to an early TILA disclosure for closed-end loans). The content of this new HELOC disclosure would be similar to the application disclosure, except that it would include information specific to the consumer based on initial underwriting--most notably, the specific APR and credit limit. Model forms for the early disclosure were tested for the first time in Round 3 and participants overwhelmingly indicated that they would prefer to receive a transaction-specific disclosure soon after application, even if it meant that they would not receive a disclosure of generic terms before they applied. As a result, the remaining two rounds of testing focused on developing, testing and refining an early transaction-specific disclosure, rather than a generic application disclosure of the type that is currently required.

General Structure of Disclosures

. Participants in the first two rounds of testing were ***shown*** an application disclosure based on a sample disclosure conforming to the existing application disclosure samples in Regulation Z and currently in use by a financial institution. This form provided required information in a mostly narrative format. Participants found this form difficult to read and understand, and their responses to follow-up questions ***showed*** that it was also difficult for them to identify information in the text. When the same information was presented in a tabular format, participants commented that the information was easier to understand and had more success answering comprehension questions. As a result, after Round 2 of testing the decision was made to use a tabular format for all model disclosure forms.

Annual Percentage Rate (APR)

. Most disclosures that were used in early rounds of testing included a statement that the APR on a HELOC does not include costs other than interest, as currently required by Regulation Z. The purpose of this requirement is to make clear to consumers that an APR on a HELOC cannot be directly compared to an APR on a closed-end loan, which includes most fees. However, many participants misunderstood this sentence; for example, some incorrectly thought they would not be charged any fees. Just as important, no participants understood the purpose of this

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[2] ICF Macro will submit findings related to its design andtesting of closed-end mortgage disclosures to the Board under separate cover; this report will be published with the Board's proposed revisions to Regulation Z in July 2009.

statement, or ***how*** they could use the information when applying for a home equity product. Different versions of this statement were tested in several rounds to attempt to improve comprehension, but all versions were unsuccessful in communicating to consumers the statement's intended purpose. As a result, this statement was eventually removed from the disclosures.

. Some disclosures that were tested did not describe exactly ***how*** the APR for the line of credit would be determined; for example, one form in Round 4 indicated only that the APR "would vary monthly with the Prime Rate." However, participants consistently indicated that they preferred to be ***shown*** more detailed information about ***how*** their APR would be determined over time. Therefore, the final model early disclosure forms include the specific margin added to the index to calculate the APR.

Fees

. All of the application and early disclosure forms that participants were ***shown*** included a range of the total of one-time fees that the borrower could be charged for opening the account. Some forms also provided a breakdown of account-opening fees into four categories (loan origination, loan discount, underwriting, and appraisal). Participants consistently said that they preferred to have the more detailed breakdown of fees to help them understand what they would be paying. As a result, this level of detail was included in the final model early disclosure form.

. In several rounds of testing, participants were ***shown*** versions of a table that itemized account-opening fees, penalty fees and transaction fees. Participants were ***asked*** which of these fees were most important for them to know as part of the early disclosure. Most participants indicated that it was most important for them to be provided an itemization of the fees required to open the account in the early disclosure so that they could better understand the costs of opening the HELOC plan. As a result, the total of the account-opening fees and their itemization (as discussed above) were included in the final model early disclosure form, but transaction fees and penalty fees were not included. Several participants indicated that they would also want to know if they would be charged any fees if they were to open an account, not make any advances and close it within a year. Since several participants indicated that they opened up a HELOC as a "safety blanket," with an intent not to borrow any funds unless there was an emergency or a job loss, Board staff felt that for such consumers it would be important to disclose upfront all fees to open, cancel, and maintain an account. As a result, the early disclosure that the Board is proposing also ***shows*** fees imposed by the creditor for the availability of the plan (e.g., annual fee), fees for early termination of the plan by the consumer, and fees for required credit insurance or debt cancellation or suspensioncoverage.

. The final model account-openingdisclosure that the Board is proposing includes all fees ***shown*** on the early disclosure, as well as a breakdown of penalty and transaction fees. Participants who were ***shown*** this disclosure during testing indicated that they found this list sufficient, and could not identify any additional types of fees that they would want disclosed to them.

. Some of the forms that were tested included a statement that other types of fees not listed on the form may apply; other forms did not include this statement. Most participants who saw forms without this reference incorrectly assumed that all fees were listed on the account-openingdisclosure and that no other fees would apply. As a result, this statement is included on the final model forms.

Draw and Repayment Periods

. The forms that participants were ***shown*** in Round 1 included information about the "draw" and "repayment" periods associated with the line of credit. Most participants in this round indicated that the term "draw period" was unclear to them, so in Round 2 two alternate terms were tested: "borrowing period" and "withdrawal period." Participants in that round strongly preferred the term "borrowing period," so all subsequent model forms used this phrase.

. Forms in Round 2 also referred to the "payoff period" as an alternate term for the "repayment period," which had caused some confusion among participants in Round 1. However, ICF Macro and Board staff were concerned that this phrase might imply to consumers that they would be fully paying off their balance over this period, when in fact a sizable balloon payment could be due at the end of the HELOC term. Since there was no evidence that the phrase "payoff period" was any more understandable than the original term "repayment period," and some consumers indicated that the term "payoff" would imply paying off the balance in full, all subsequent forms referred to the "repayment" period.

. Participants in early rounds had a great deal of difficulty understanding the timing of the draw (or borrowing) and repayment periods. For example, several incorrectly thought that the two periods ran concurrently, or that the repayment period began as soon as money was borrowed. Revised disclosure forms clarified the relationship between these two periods by highlighting the distinctions between them and by including information about the timing of the periods (e.g., "Years 1-10") in sample payment tables. These revisions were effective; participants in later rounds understood that the two periods would run subsequently and that the repayment period would begin at the end of the borrowing period.

Historical Example Table

. In Rounds 1 through 3, many participants misunderstood the information provided in the historical payment example table currently required by Regulation Z to be included in the application disclosure. In reviewing versions of both application disclosures and early disclosures containing the required historical payment example table, a large group of participants did not understand that the information in this table was based on the actual historical behavior of interest rates; they instead assumed that the data ***shown*** was a hypothetical example, and dismissed it as not very useful because it did not apply to their HELOC. Even after the meaning of the table was explained to them, many participants indicated that, because these numbers were based on what had happened to the interest rate in the past 15 years, the table did not contain any valuable information that would inform their decision making about the HELOC for which they were applying. More significantly, an even larger group of participants concluded that the rate and payment information ***shown*** in the historical example table would apply to their HELOC and erroneously indicated that the table ***showed*** their exact monthly payments. When the numbers in the table were explained to them, most of these participants concluded that the information presented in the table was not useful as it led them to believe that those numbers would apply to their HELOC, when in fact they represented just an example of ***how*** rates and payments had fluctuated in the past. A few participants indicated that the table did not offer any new information not already described in some form elsewhere in the disclosure, such as the variable rate nature of HELOCs. As a result, the historical example table was removed from the disclosures and a statement about the rate and payment fluctuations was instead tested in subsequent rounds, as discussed below.

. When reviewing the historical example table, some participants indicated that they found it helpful to know ***how*** the index had behaved in the past, so that they could know ***how*** much it had changed over time. Some participants found the range of the index useful in determining the likelihood of the interest rate reaching its maximum. As a result, a statement was added to the model forms under the heading Historical Changes in Interest Rate to indicate the range of the value of the index over a 15-year historical period. The intent of this change was to provide the most important information from the historical example table in a simple and efficient way.

Description of Payment Plans

. Beginning in Round 3, the early disclosures that were tested included information about two payment plans. Over the following two rounds, multiple formats were tested explaining the distinctions between plans and the relative advantages of each Some described the plans in narrative form, while others used a more structured tabular format. The final model early disclosure uses a bulleted format to provide information on ***how*** payments are determined in both the borrowing and repayment periods under both payment plans, and to allow information about the two plans to be compared easily.

. The final model early disclosure also includes a section labeled "Plan A vs. Plan B" that directly compares the two plans in terms of their overall cost over time and the amount of a balloon payment, if any, because some consumers were unable to determine from the sample payment table (discussed below) which plan would be less costly over time.

Sample Payments

. One aspect of the forms that varied throughout the testing was the hypothetical balance used to calculate sample payments. Current Regulation Z requires that payment examples be based on, a $ 10,000 balance. However, Board staff learned through its outreach efforts and confirmed through consumertesting that it is important for consumers to know what their monthly payments would be under the "worst case scenario," namely if they borrowed the maximum amount under the credit line. The model forms tested in early rounds were based on a $ 10,000 balance and a balance based on the maximum credit limit drawn. Some consumers were able to multiply the payment amounts in the $ 10,000 example to determine what their payments would be if they were to borrow $ 40,000 or $ 50,000 instead. However, a number of consumers preferred a payment example based on the maximum credit limit, indicating that they would like to know what would be the highest payment they would have to make if they borrowed the entire credit limit.

. Recognizing that consumers often borrow an initial amount when they first open their HELOC and make additional draws during the borrowing period, another hypothetical example was introduced in Round 5 based on the assumption that $ 10,000 was borrowed on the first day of the borrowing period and an additional $ 10,000 borrowed on the last day of the borrowing period. However, this confused participants, who indicated that they would prefer a simpler hypothetical scenario. Some participants thought that they would be required to take an additional $ 10,000 before the borrowing period expired based on this payment example. Several participants were concerned that the payment table was telling them ***how*** much they would have to borrow during the borrowing period, and were unsure whether they could borrow more or less over time As a result, the decision was made to ***show*** monthly payments based on either a $ 10,000 balance or the entire credit limit drawn. Due to concerns that payments based on a $ 10,000 balance might make the sample payments unrealistically low for most consumers, especially if required minimum payments included only interest; as well as outreach and consumertesting indicating a preference for payment examples based on the full credit line; the final model forms use a hypothetical balance equal to the full credit limit.

. Because minimum required payments could potentially change over time as the principal is paid down, most of the forms in early rounds of testing ***showed*** a range of payments. For example, one form in Round 2 indicated that payments during the repayment period would be "$ 200.00 decreasing to $ 34.12," while another stated that the payment would be "up to $ 200.00." Given the two choices, participants strongly preferred the first phrasing, which was used in several subsequent forms, but almost all participants were confused with the range of payments and especially why payments would decrease over time. As a result, prior to Round 4, Board staff became concerned that providing the range of payments could result in "information overload" for consumers, especially because a number of participants spent a considerable time analyzing the range of payments at the expense of not focusing on other pertinent information on the form. Subsequently, all forms used in Rounds 4 and 5--and the final model forms to be released with the Board's July 2009 proposal--listed only the first payment in each period rather than the entire range. Based upon the assumptions used in calculating the payment examples, the first payment in each period would be the highest payment of each period.

. The final model forms ***show*** payment examples for two different interest rates--the current rate and the maximum rate under the plan. Forms used in Round 2 listed payments for four different rates, rather than two. However, the decision was made that the marginal benefit of ***showing*** two additional rates was small, compared to the risk of overwhelming consumers with too many dollar figures.

Information about Risks

. The final model forms include a section labeled "Risks," which includes information about the security interest, possible creditor actions such as account termination or suspension, and tax deductibility of interest, as currently required by Regulation Z. Grouping this information in a single section and labeling that section "Risks" made it more noticeable to participants and easier for them to review the information quickly and efficiently.

. Some versions of application and early disclosures that were tested displayed the "Risks" section at the top of the form, and others at the bottom. In Round 1, a model account-openingdisclosure was tested with "Risks" on page 1 but at the very bottom of the page. Participants were split regarding whether they preferred that information presented at the top of the form or at the bottom. For some participants, the information was more noticeable if located at the top of the disclosure, where it immediately caught their eye. Others did not pay much attention to that information once they realized that it did not contain any specific terms and rate that would apply to their HELOC. Those participants preferred to see "Risks" at the bottom of the form, which enabled them to get to specific terms and features being offered at the very beginning of the form. Regardless of the placement of the "Risks" section in the table, most participants noticed and understood the disclosure about the risk of loss of the home in case of default and the disclosure about a creditor's right to terminate the plan in certain circumstances. In the Board staff's outreach, neither industry nor consumer group representatives indicated a preference for either placement. Consumer advocates suggested that for most consumers the placement of "Risks" at the bottom of the form would have as much benefit as its placement at the top of the form, and emphasized the importance of highlighting key terms, such as the APR. As a result of the testing and the outreach efforts, the model early disclosure forms and the model account-opening form place "Risks" at the bottom of the form.

Findings Related to the HELOC Brochure and Key Questions Document

. Participants who were ***shown*** the HELOC brochure generally indicated that they found the document useful and thought the information it contained was important--particularly for consumers with little experience with home equity products. An almost universal criticism among participants about the HELOC brochure was that it was too long. As a result, several participants indicated they would be unlikely to read it Several participants indicated that they would be more likely to read a shorter and more concise disclosure.

. Following Round 1, ICF Macro developed a one-page disclosure titled "Key Questions to ***Ask*** About Home Equity Lines of Credit." The goal was to summarize the most important information in the HELOC brochure in a shorter, more consumer-friendly format. The Key Questions disclosure tested extremely well with participants; all indicated that they would find it useful, and most found it very clear and easy to read. As a result, the Board is proposing to require lenders to provide the Key Questions document to prospective borrowers instead of the HELOC brochure. While several different questions were tested in different rounds, the questions listed and answered on the final proposed version are:

. Can my interest rate increase?

. Can my minimum payment increase?

. When can I borrow money?

. ***How*** soon do I have to pay off my balance?

. Will I owe a balloon payment?

. Do I have to pay any fees?

. Should I get a home equity loan instead of a line of credit?

CHAPTER I: INTRODUCTION

BACKGROUND

In 1968, Congress enacted the Truth in Lending Act (TILA) to protect consumers by requiring lenders to provide key pieces of information to consumers at various points in time Congress assigned the Federal Reserve Board (the "Board") the responsibility of implementing TILA, and the Board currently does so through Regulation Z.

In 2004, the Board began the process of reviewing Regulation Z to determine whether revisions were necessary. In January 2009, the Board finalized amendments to Regulation Z rules applicable to open-end (not home secured) credit (e.g., general purpose credit cards, merchant-specific credit plans, and overdraft lines of credit). [3] The Board is currently in the process of reviewing disclosures under Regulation Z related to home-secured open-end credit--namely, home equity lines of credit, and closed-end mortgage disclosures. This report is related to the Board's review of disclosures for closed-end mortgage loans. One of the goals of this review is to ensure that the amended regulations lead to improved disclosures that consumers would most likely pay attention to, understand, and be able to use in their decision-making.

This report addresses to the Board's review of disclosures related to HELOCs. One of the goals of this review is to ensure that the regulations lead to disclosures that consumers would most likely pay attention to, understand, and be able to use in their decision-making.

Under Regulation Z, HELOC borrowers must receive the following three types of disclosures, in addition to others:

. **Application Disclosure**: The regulation currently requires that an application disclosure be provided to potential borrowers at the time an application for a HELOC is provided. This disclosure provides details about the lender's HELOC plan, including the length of the draw and repayment periods; ***how*** the minimum required payment is calculated; payment examples; and what fees are charged by the lender to open, use, or maintain the plan. Because this disclosure is provided before underwriting takes place, this disclosure does not include information that is dependent upon a borrower's creditworthiness, such as the annual percentage rate ("APR") that the lender will offer.

. **"What You Need to Know About Home Equity Lines of Credit" Brochure**: This booklet (the "HELOC brochure") is produced by the Board and has no transaction-or program-specific information. It provides consumers with general information about HELOCs and ***how*** they work, as well as a glossary of relevant terms, and a description of various features that can apply to HELOCs. The Board currently requires lenders to provide this brochure to consumers at the same time as the application disclosure.

. **Account-Opening Disclosure**: The regulation currently requires that an account-openingdisclosure be provided to potential borrowers before they commit to opening a HELOC. This disclosure includes detailed transaction-specific information, including the APR and fees that will be charged.

In December 2008, the Board contracted with ICF Macro to assist the Board with its review and revision of these disclosure forms. ICF Macro is a research and evaluation company with expertise in the design and cognitive testing of effectiveconsumer communication materials. ICF Macro worked with the Board on its review of credit card disclosures and is currently contributing to its review of Regulation Z rules for closed-endmortgagedisclosures.

Since December 2008, ICF Macro has conducted five rounds of one-on-one cognitive interviews with a total of 50 participants. For each round, ICF Macro developed a set of model disclosure forms to be tested. Interview

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[3] As of the writing of this report, the Board is in the process of revising these rules in light of legislation passed by Congress in May 2009.

participants were ***asked*** to review model forms and provide their reactions, and were then ***asked*** a series of questions designed to test their understanding of the content. Data were collected on which elements and features of each form were most successful in providing information clearly and effectively. The findings from each round of interviews were incorporated in revisions to the model forms for the following round of testing.

The findings from the consumertesting informed the Board's proposed revisions to Regulation Z rules for HELOCs, which the Board will publish for public comment in July 2009, together with the model forms.

METHODOLOGY

Testing of the model forms was carried out through five rounds of interviews, as ***shown*** in Table 1. Before each round of interviews, ICF Macro developed model disclosures for testing. In most cases, multiple versions of each type of disclosure were developed so that the impact of varying language or format could be studied. The Board staff attended all rounds of testing. After each round, ICF Macro briefed Board staff on key findings, as well as their implications for form design and layout. These results were then used to create revised forms for use in the next round of testing.

Table 1: Timeline of Cognitive Testing

	Location	**Dates**	**Number of Interviews**
Round 1	Bethesda, MD	December 17-18, 2008	10
Round 2	Los Angeles, CA	February 11-12. 2009	10
Round 3	Chicago, IL	March 24-25, 2009	10
Round 4	Denver, CO	April 14-15, 2009	10
Round 5	Bethesda, MD	May 5-6, 2009	10

Participants in each of the four locations were recruited by telephone using a structured screening instrument in order to ensure the selection of a range of participants in terms of gender, age, and ethnicity. Most participants had HELOCs, while some considered getting a HELOC but opted instead for a home equity loan. A few participants did not have a home equity loan or HELOC, but had considered a HELOC in the past five years. Participants were screened out if they worked for a bank or other financial institution, or if they worked in the real estate or mortgage industry. The screening criteria that were used were essentially the same in each location, although the recruiting quotas changed slightly in each round to provide for a diverse and representative participant pool. A sample recruitment screening instrument is included as Appendix A, and a summary of participants' background and demographic information can be found in Appendix B.

Interviews in each location were approximately 90 minutes long. While the interview guide varied between rounds, the general structure of these interviews was very similar. Participants were given a disclosure form and ***asked*** to "think aloud" while they went through the document, indicating whenever they found something surprising, interesting, or confusing. Following this "think aloud" process, each respondent was ***asked*** specific questions about the information on the disclosure to determine ***how*** well he or she could find and interpret the content. The participant would then be given another disclosure form--either a new version of the same disclosure type, or a new type altogether--and the interviewer would take them through the same process.

Variations in the interview protocol, as well as a description of the forms that were ***shown*** to participants, is provided in the description of each round of findings in Chapter III.

CHAPTER II: GUIDING PRINCIPLES FOR DISCLOSURE DESIGN

Much of ICF Macro's design of revised disclosures was based directly on findings from cognitive testing. This reliance on direct consumer research is an important strategy for ensuring that disclosure forms are useful and understandable to their intended audiences. At the same time, there are a number of general principles to which ICF Macro's designers try to adhere whenever engaged in this or similar projects. These principals include:

. **Use plain language**. Jargon and technical language should be ***avoided*** whenever possible, and replaced with words that are more easily understood by consumers. The use of simple language is particularly important in the context of disclosures, because consumers at the greatest risk of being taken advantage of are often those with lower literacy levels. While readability metrics (such as the "grade level" of the writing) can be useful in this respect, the best way to determine whether language is truly understandable is through direct consumer testing.

. **Prioritize information, and structure disclosures so that the most important information for consumers is easiest for them to find**. Consumers frequently do not read disclosures carefully; those who do look at them often skim them quickly to look for a few key pieces of information. If consumers cannot quickly find the information they are looking for, they are likely to become frustrated and give up. Therefore, before any design work can begin there must be some discussion to identify the most important pieces of information on the form. Those should be located most prominently on the disclosure, to increase the likelihood that even consumers who skim the form quickly can find and understand that information.

. **Provide information in a format that makes it easy to compare terms between disclosures**. One purpose of HELOC disclosures--particularly early disclosures--is to serve as a tool to help consumers compare products from different lenders. Narrative text is often difficult to compare in this way, because consumers cannot always identify the equivalent information between forms. Providing information in more structured formats, such as tables with consistent labels and headings, facilitates this kind of shopping comparison.

. **Keep language and design elements consistent between forms so that information can be tracked over time**. In a disclosure regime like that currently in place for HELOCs, consumers get information about the product for which they are applying at multiple points in time One goal of these disclosures is to help consumers track the terms of their line of credit at each stage in the process (from application to closing, for example) to make sure nothing changes without their knowledge. To facilitate this, the structure and formatting of disclosure elements, as well as the language that is used to describe various aspects of the product, should be made consistent between disclosures whenever possible.

. **Use headings and titles to make documents more navigable, and to help consumers find the information they are looking for**. When large amounts of text are included, plain language headings should be used to distinguish sections on different topics. In tables, rows and columns should have short, easy-to-read titles that accurately describe the information that is provided. This allows consumers to find information that they are looking for quickly and efficiently, and decreases the likelihood that they will become distracted by unrelated text.

. **Group related concepts and figures**. HELOC disclosures contain a great deal of disparate information about a complex financial product. Consumers are likely to find it easier to absorb and make sense of the information if it is grouped in a logical way so they do not have to constantly shift their mindset as they read. For example, the revised HELOC disclosures groups several pieces of information about potential risks into the same section of the form, whereas in most disclosures that are currently in use these references appear in multiple places.

. **Build off of prior research whenever possible**. While each type of disclosure is different, findings from cognitive testing can often translate between different documents. The applicability of a disclosure format in a new context should always be confirmed through cognitive testing, but it often provides a useful starting point. For example, the tabular structure of revised early and account-opening forms--as well as some of the wording of information related to APRs--was originally developed in a project ICF Macro conducted for the Board related to credit card disclosures.

CHAPTER III: TESTING OF REVISED DISCLOSURE FORMS

INTERVIEWS IN BETHESDA, MARYLAND (DECEMBER 17-18, 2008)

Objectives and Methodology

The first round of 10 cognitive interviews was conducted in Bethesda, Maryland on December 17 and 18, 2008. The primary focus of this round was to test consumer comprehension of two different formats for a home equity line of credit disclosure form--a text-based form similar to those currently in use, and a form using less text and a more structured tabular framework.

Four forms were tested in Bethesda:

. An application disclosure in primarily narrative form, designed to be representative of disclosure documents currently in use;

. A new account-opening disclosure in tabular form, developed by ICF Macro to present more specific information about HELOC terms being offered;

. A page providing information about sample payments, titled "Payment Examples"; and

. The Federal Reserve Board brochure "What You Should Know About Home Equity Lines of Credit" (referred to in this report as the "HELOC brochure").

The first three forms can be found in Appendix C to this report. The HELOC brochure can be found at http://www.federalreserve.gov/Pubs/equity/homeequity.pdf.

The interview protocol included the following sections:

. Interview participants were ***asked*** to review the application disclosure that is very similar to forms currently in use, and a new account-opening disclosure developed by ICF Macro. They were ***shown*** these two forms in a rotating order, to minimize learning effects. After reviewing each disclosure, participants were ***asked*** a series of questions designed to test their comprehension of the content.

. Next, participants were ***shown*** a page containing information about sample payments. The goal of this section of the interview was to understand what participants understood about the page, as well as to gather data on what type of payment information would be most useful to them.

. Finally, participants were presented with the Federal Reserve Board brochure "What You Should Know About Home Equity Lines of Credit" (the "HELOC brochure") and ***asked*** to assess its usefulness and clarity.

Key interview Findings

Previous Experience with HELOCs

. Nine of the 10 participants had obtained HELOCs in the past, while one had opted for a home equity loan because he found that interest rates were lower on that product.

. Of the 9 who had HELOCs, only 1 participant had considered getting a home equity loan instead. Others indicated that they had not, because they did not know ***how*** much money they were going to need when they opened their line of credit. A number of participants, however, were unclear about the difference between a HELOC and home equity loan until the distinction was explained to them. Some of these participants did not fully understand whether they had a home equity loan or a HELOC. Only one participant had ever heard the acronym "HELOC" prior to being recruited for this project.

. Almost all participants said that their HELOCs were originated either by their original mortgage provider, a prior lender, or through a bank with which they had an existing banking relationship. Only one participant indicated that he actively shopped among lenders for a HELOC; he eventually decided against getting a HELOC because the fees were too high.

. Few of the participants indicated that they had conducted research on HELOCs before applying for one. Among those who did, most said that they gathered information by talking to family and friends, or by talking to their primary mortgage lender.

. When participants were ***asked*** what advice they would give to a friend or family member who was interested in getting a HELOC, the most common response was to use a lender that was trustworthy. Only one participant mentioned shopping among lenders when ***asked*** this question.

Application Disclosure

Initial Reactions

. On Day 1, when the application disclosure form was the first form reviewed, all 5 participants were extremely confused by the form.

. All 10 participants had difficulty reading the application disclosure form, and most did not read all the way to the end.

. On Day 2, when the application disclosure was the second form reviewed, participants were slightly less confused by the form because they had seen the tabular format of the account-opening form first, and therefore had some idea about what type of information the application disclosure form was attempting to convey.

. Despite the fact that participants on Day 2 saw the tabular account-opening form prior to seeing the application disclosure form, all 5 of them still had difficulty understanding the application disclosure.

. Two of the participants said that they would not read such a document if it was given to them, because it was so difficult to read.

. When ***asked*** to compare the text-based application disclosure with the tabular account-opening disclosure, 8 of the 10 respondents said that they preferred the tabular format because the tables made it easier to find information. The remaining two participants stated that they prefer the textual format of the application disclosure because it appeared to provide more information.

Information about Interest Rates

. Most of the participants appeared to have a general understanding of what the term "index" meant. Most were also able to identify the Prime Rate as the index for the loan being described in the form.

. Two participants were confused by the statement that the interest rate would be based on the Prime Rate "as published in the Wall Street Journal." One commented that he did not know why this would be relevant to him, while the other mistakenly thought this meant he would have to subscribe to the Wall Street Journal in order to know what his interest rate was.

. Fewer participants understood the term "margin" as it was used in the form. About half generally understood that it was an additional percentage that would be added to the index by the lender.

. Most participants understood that the rate was variable. Most got this information from the text of the disclosure, while one got it from the Historical Example table at the end of the form.

. All but one of the participants correctly identified the maximum rate as 24.99%. However, most of them felt that it was very unlikely the rate would ever get this high.

Fees

. Everyone understood that fees would be charged, and that they would total between $ 0 and $ 1,000 (the amounts ***shown*** on the form).

Draw and Repayment Periods

. When reading the application form, participants were very confused by the distinction between a "draw period" and a "repayment period." Almost none of them could explain what a "draw period" was; no one had heard of this term before.

. Because they had not been exposed to this concept previously, participants had a great deal of difficulty understanding the timing of the draw and repayment periods. Some assumed that the draw and repayment periods ran concurrently, while others indicated that the repayment period began when one first withdrew money from the account. Even after considerable review and questioning from the interviewer, only a few participants eventually understood that the repayment period began when the draw period ended.

. Several of the participants confused the repayment period with the option to extend the draw period.

Balloon Payment

. After their review of the application disclosure, most participants understood that they could owe a balloon payment. However, three participants could not explain what a balloon payment was, or in what situation they would owe one.

Information about Potential Risks

. All participants understood that they could lose their home if they did not meet their loan obligations. This understanding was based on prior knowledge, however, rather than on the "Security Interest" statement they read on the form. In fact, several skipped the "Security Interest" statement when reading the disclosure.

. One participant suggested that this section of the form be given a clearer title, such as "Risk of Home Loss." This, he felt, would increase the likelihood that potential borrowers would pay attention to it.

Historical Example Table

. Many participants understood that the purpose of the historical payment example was to provide information to the consumer about ***how*** interest rates could change over time. However, several did not realize that the information in the table was based upon actual historical rates. These participants instead thought that the table provided a hypothetical example of what could happen in the future--despite the fact that the table referred to the years 1991 to 2005. Some participants concluded that the information in the table represented what their monthly payments would be if they were to open a HELOC account.

. Almost all participants understood that their payment would be lower when the rate was lower. However, based on responses to other questions it is likely that participants understood this fact even before reading the form.

. None of the participants on Day 1 understood that the reason payments were higher during the repayment period than during the draw period was because the payment calculation method changed (i.e., payments during the draw period included interest only whereas payments during the repayment period included principal and interest). Comprehension was higher on Day 2, because of learning effects from the account-opening disclosure that was ***shown*** first on Day 2.

Account-Opening Disclosure

Initial Reactions

Participants on Day 1 felt very positively about this form, since most had struggled to understand the application disclosure. Several commented that they found the account-opening disclosure much easier to read and understand.

. One participant commented that he liked having the credit limit and interest rate information in bold, large print so that it stands out from the rest of the text.

Information about Interest Rates

. All participants were able to identify the initial APR easily. Everyone also understood that the interest rate would change, and that it would change depending on the Prime Rate.

. Almost all participants understood that the maximum rate was 24.99%. One mistakenly thought that 24.99% represented the highest the Prime Rate could go, and assumed that the maximum rate for the HELOC would be 26.99% (i.e., 24.99% plus 2% margin).

. Most participants understood the meaning of the sentence, "The APR on a HELOC does not include costs other than interest." However, a few misinterpreted this information; for example, one participant thought this statement was indicating that he would be charged no fees for opening a line of credit. Even those who did understand what the statement meant could not indicate why this information would be on the form, or ***how*** they would use this information. Participants did not understand that the purpose of this statement was to make clear to participants that APRs on these products cannot be directly compared to those of closed-end loans, which do include fees.

Fees

. Almost all participants understood that there would be fees associated with opening a HELOC, and could also identify the amount of the fees.

. One participant suggested that the fees should be called "closing costs" rather than "account opening costs," because that term was more familiar to her.

. All participants understood that if they closed the account before the end of the first three years, an early termination fee would apply.

Draw and Repayment Periods

. As with the application disclosure form, there was considerable confusion about the timing of the draw period and the repayment period. Several individuals mistakenly thought that the two periods occurred concurrently.

. One participant mistakenly thought that no money would need to be repaid during the draw period, and that all payments would take place during the repayment period.

. One participant suggested that information about the draw and repayment periods be provided in a chart, to make it easier to see the differences between them. Another recommended including a timeline on the form to explain the timing of the two periods.

Balloon Payment

. Most participants understood that they would owe a balloon payment, just as they did when looking at the application disclosure. However, participants' comprehension of the concept of a balloon payment seemed to be higher when they were looking at the account-opening disclosure.

Information about Potential Risks

. All participants also understood that the bank had the right to terminate the loan early, but several objected to this and said they would "not be interested" in a loan that carried that condition. Almost none of the participants had noticed this information in the application disclosure.

Minimum Loan Amount

. While most participants understood intuitively that the "minimum draw" referred to the smallest amount that could be taken out at a given time, one woman initially interpreted this to mean that this was the minimum draw per month, rather than per transaction.

Review of Payment Example

Initial Reactions

. Several participants looked immediately at the chart, without first reading the explanatory text at the top. "There is so much written at the top that you feel like you want to jump down to here [tables]," said one man.

. Only a few of the participants realized that the minimum payments during the draw period included interest only and no principal.

. Several participants were confused by the numbers of payments that were provided on the page. For example, about half struggled to understand why the 20-year repayment period was listed as "239 payments" (with the last payment ***shown*** as a separate balloon payment), while others were unable to calculate the term of the HELOC from the number of payments.

. One participant commented that the tables were trying to convey too many variables at once (i.e., the impact on payments of varying interest rates, draw vs. repayment period, and size of balance). He suggested that payment examples could be better provided through an interactive website.

Understanding of Payment Information

. All participants understood the difference between the two columns of payments ***shown***--that is, that the payment would vary based on the interest rate.

. Those participants who skipped directly to the table without reading the explanatory text first were completely confused as to why the payments listed for the draw and repayment periods had such different payment amounts. Once they were directed to read the text, many eventually understood that the difference in payments was due to the fact that the payments during the draw period were interest-only, although some understood this only with great difficulty.

. None of the participants understood why a range of payments was listed for the repayment period in the first column. This was intended to ***show*** the fact that payments would decrease over time as the principal was paid off, but no participants could ascertain this from the form. Most participants incorrectly assumed that the range of payments reflected a fluctuation in interest rates over that time period. Many participants also commented that the range should be listed from lowest to highest.

. When ***asked*** what their minimum monthly payment would be for a $ 30,000 balance, almost all participants were able to multiply by three the amounts ***shown*** for a $ 10,000 balance, while one divided by two the amounts ***shown*** in the $ 80,000 table and then assumed the payment on $ 30,000 would be "a little less." At least one participant did not have any idea ***how*** to estimate what the payments would be on $ 30,000 since the table ***showed*** payments based on a $ 10,000 balance and an $ 80,000 balance.

Balloon Payment

. Participants were much more likely to understand from this form that a balloon payment would be owed at the end of the repayment period than they were after reading the application disclosure. However, this was likely due, at least in part, to learning effects, since all participants saw the application disclosure before the Payment Examples page.

. Several participants expressed surprise that they might owe thousands of dollars at the end of the repayment period, even if they made minimum payments throughout.

Review of HELOC Brochure

. None of the participants remembered having ever seen the HELOC brochure before, even those who had previously opened HELOCs.

. The reaction to the brochure was generally favorable. One participant said that it was a "good first step" to providing the information that consumers needed. Several said that the brochure would be particularly useful for people who were considering opening their first HELOC. One participant, however, called the document "dry and boring."

. Several participants commented that while the content of the HELOC brochure was useful, they probably would not read it if they received it from a lender. The two most common reasons given were that the document was too long and would take too much time to read, and that they felt they already knew whatever they needed about the product. The sentiment about the HELOC brochure being too long was shared even by many participants who otherwise viewed the brochure very favorably.

. Most participants said that the glossary was particularly useful to them--especially the definitions of those terms, like index and margin, which they had struggled to understand on the disclosure forms they were ***shown***. Several participants were specifically looking for definitions of draw and repayment periods, and, when they were unable to find them, commented that the glossary should define these two terms since they are not intuitive.

. The "shopping worksheet" in the brochure received mixed responses. Some said that the worksheet would be useful and that they would definitely use it, while others said they probably would not. Participants' enthusiasm for the worksheet was generally dampened by the fact that few seemed to believe it was important to shop between different lenders.

Subsequent Design Decisions

General Structure of the Application Disclosure

. Participants had a great deal of difficulty comprehending the application disclosure, largely because the document was so text-heavy. Participants also expressed a preference for a tabular format, such as was used in the account-opening disclosure. In addition, the use of a tabular format seemed to improve participants' understanding of several aspects of the forms, such as the balloon payment. For these reasons, the decision was made to develop a tabular application disclosure to be tested in the next round of interviews as an alternative to the current text-based version.

information about Interest Rates

. All participants were unsure ***how*** to use the statement that "The APR on a HELOC does not include costs other than interest." Since this statement is currently required by Regulation Z and the statute, a decision was made to test it with more context in the next round to provide a framework that would increase consumer comprehension.

Draw and Repayment Periods

. Because several participants had difficulty understanding the distinction between the draw and repayment periods, these periods were renamed in forms for the next round. The "repayment period" was renamed the "payoff period" and two new labels for the "draw period" were tested in the next round: "withdrawal period" and "borrowing period."

. When looking at the Payment Examples page, participants had a great deal of trouble distinguishing the draw and repayment periods. One of the primary goals of the forms developed for the next round was to better describe ***how*** these two periods are distinct, and the impact of each on the required monthly payments.

. Several participants did not understand from reading the forms that the draw and repayment periods were consecutive, rather than concurrent. Forms for the next round highlighted the start and end dates of these two periods to emphasize the fact that they are distinct and do not overlap.

. Because the word "draw" was not intuitively understood by participants i.e., as in "Minimum Draw"), this word was replaced with "loan."

Information about Payments

. Because it was not clear that participants needed to be ***shown*** payment examples for two different balances, and because almost all participants were able to estimate payments for different balances from sample payments on $ 10,000, forms for the next round only provided sample payments for a single hypothetical balance of $ 10,000.

. Almost all participants were confused by the fact that the payment during the repayment period was listed as a range. Two different ways of addressing this issue were tested in the next round. Some forms indicated that the payment was decreasing over time (e.g., "$ 100.00 decreasing to $ 30.48"). Other forms simply said that the payment during that period would be "up to $ 100.00."

. Several participants had difficulty interpreting the numbers of payments provided in the Payment Examples page. For example, they were not able to easily add up the number of payments to calculate the term of the HELOC. Because it was unclear that this information would be useful to consumers, the number of payments was not included on subsequent forms.

. In order to provide participants with more information about ***how*** their payment might vary based on changes in their interest rate, the forms used in the next round of testing ***showed*** sample payments for four different interest rates (including the minimum and maximum rates under the plan), rather than two.

Information about Potential Risks

. To make it easier to read for consumers, most of the information provided in the "Other Important Information" section of the account-opening disclosure was restructured into a section labeled "Risks." This section was also included in the tabular version of the application disclosure that was tested in the next round.

. Because some participants had difficulty understanding the section of text labeled "Our Right to Terminate or Reduce ***Your*** Line of Credit," the information in this section was bulleted in all subsequent forms.

Historical Example Table

. A significant number of participants in this round had difficulty understanding the Historical Example table. For example, several did not even understand that this table was providing historical information about rates. Because of this confusion, some of the forms tested in the next round did not include this table.

HELOC Brochure

. Because several of the participants in this round commented that they might not read the HELOC brochure because of its length, the decision was made to develop a new, shorter early disclosure highlighting important features of HELOCs. This new disclosure was tested in the following round of interviews.

INTERVIEWS IN LOS ANGELES, CA (FEBRUARY 11-12, 2009)

Objectives and Methodology

The second round of 10 cognitive interviews was conducted in Los Angeles, California on February 11 and 12, 2009. The primary focus of this round was to test consumer comprehension of an array of home equity line of credit disclosure forms. The goal was to supplement first round findings in regards to basic formatting and to experiment with different approaches to disclosing more complex features of HELOCs, such as payment examples and the difference between draw and repayment periods. This round also included the testing of a new one-page early disclosure form about HELOCs.

Eight forms were tested in Los Angeles, all of which are provided in Appendix C:

. An application disclosure form similar to that used in the first round of testing, designed to be representative of disclosure documents currently in use (AD-1);

. Two application disclosure forms that included similar information to AD-1, but in a new tabular format (AD-2A and AD-2B); n4

. Two other application disclosure forms similar to Forms 2A and 2B except that several statutorily required requirements were relaxed (AD-3A and AD-3B);

. Account-opening forms in two different formats (AO-A and AO-B); and

. A new disclosure titled "6 Key Questions to ***Ask*** About Home Equity Lines of Credit," that was designed to be provided to consumers with an application.

The interview protocol included the following sections:

. Each interview participant was ***asked*** to review AD-1 and one of the two AD-2 forms. They were ***shown*** these two forms in a rotating order, to minimize learning effects. The goal of this portion of the interview was to assess whether the new tabular format improved participants' comprehension of this information.

. Next, participants were ***shown*** one of the AD-3 forms. The differences between AD-2 and AD-3 were pointed out to participants, who were ***asked*** to compare each aspect of the two forms in terms of their usefulness.

. Participants were then ***shown*** both Forms AO-A and AO-B. In addition to answering questions testing their comprehension of the information, participants were also ***asked*** to comment on the differences in format between the two forms.

. Finally, participants were presented with a new one-page early disclosure titled "6 Key Questions to ***Ask*** About Home Equity Lines of Credit" (the "Key Questions" disclosure). After being ***shown*** this new disclosure, participants were ***asked*** questions to test their understanding of the content and solicit feedback on the document's usefulness.

Key Interview Findings

Previous Experience with HELOCs

. During the initial portion of the interview, it was clear that several participants did not understand the difference between a home equity loan and a HELOC. For example, one person initially indicated that she had a home equity loan, but after the difference was explained to her she realized that she actually had a HELOC.

. Of the eight participants who had previously obtained a HELOC, only one had talked to several lenders before opening the line of credit. The rest either used the same lender who had financed their first mortgage, or a lender with whom they had a prior business relationship. The one participant who had shopped for a HELOC chose the lender who offered the lowest interest rate.

. Of the eight participants who had obtained HELOCs, none had considered instead getting a closed-end home equity loan. Most indicated that a closed-end loan would not have been appropriate for them, because they did not know in advance ***how*** much money they were going to need to access. Two participants who had used "piggy-back" HELOCs to purchase a house indicated that they had not been given a choice by their lenders whether to instead get a second mortgage.

Application Disclosures (AD-9 and AD-2)

Information about Interest Rates

. Four of the 10 participants incorrectly thought that AD-1 identified a specific interest rate for their line of credit. [5] Two thought that their interest rate would be 24.99%, the maximum rate listed. Two others thought that their rate

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[5] Because AD-1 was an applicationdisclosure that would have been provided before any underwriting had taken place, the disclosure did not indicate what the interest rate would be, consistent with the current Regulation Z requirements.

would be 8.5% because this figure was used in the minimum payment example ***shown*** on the form. When reviewing AD-2, however, all 10 participants were able to correctly identify the range of interest rates they might be offered if they applied.. Only three of the 10 participants understood after reading AD-1 that their interest rate would be determined based on an index plus a margin. When ***asked*** to find this information on the form, most participants were unsure in which section of text to look.

. All but one of the participants understood from AD-2 that the interest rate would be determined by the Prime Rate plus a margin. All but one also understood that the size of the margin would be determined by their creditworthiness.

. Eight of the 10 participants understood that the loan described in AD-1 had a variable interest rate. All 10 participants understood from form AD-2 that the interest rate would be variable.

. Six of the 10 participants were able to find the maximum interest rate on AD-1 without assistance from the interviewer, compared to eight of 10 who were looking at AD-2.

. AD-2 included a statement that the APR "does not include fees other than interest (unlike the APRs for traditional mortgages and home equity loans, which include some closing costs)." Most participants generally understood that this statement meant that the APR represented the costs associated with interest. However, none understood the text in parentheses relating to the APRs for closed-end products. None were also able to articulate why this statement might be on the form or ***how*** the information might be useful to them.

Information about Payments

. All participants were able to identify the initial monthly payment for a balance of $ 10,000 and an interest rate of 6.0%, regardless of whether they were looking at AD-1 or AD-2. All answered the question either by looking at the Historical Example or Minimum Monthly Payment tables.

Fees

. All 10 participants understood that they would have to pay fees to take out a line of credit, and could identify what the amount of the fees might be. Both AD-1 and AD-2 appeared to provide this information equally clearly.

. A few participants commented that they would like a more detailed breakdown of account-opening fees at the application stage, rather than an aggregate amount.

Withdrawal/Borrowing and Payoff Periods

. Of the five participants who saw AD-1 first, only two understood that they would have 10 years to borrow from their line of credit and an additional 10 years to pay it off. One participant knew that each period was 10 years long, but thought that they might run concurrently.

. Of the five participants who saw AD-2 first, again only two understood the exact timing of the withdrawal/borrowing and payoff periods. One did not see any reference to the payoff period, while another mistakenly thought that the line would have to be paid off before the payoff period began.

. When looking at AD-2, several participants had difficulty determining ***how*** long the two periods were because they were ***shown*** as ranges of years (e.g., 2009-2018) as opposed to a time frame (e.g., 10 years).

. Few participants understood that the minimum payments during the withdrawal/borrowing period would cover only interest and no principal. Only one of five participants who saw AD-1 first understood this fact, as did two of five who saw AD-2 first.

. With both AD-1 and AD-2, seven of the 10 participants understood that they would not be able to withdraw funds during the payoff period. Neither form appeared to be noticeably more effective at communicating this information.

. Only three of the 10 participants understood that a range of minimum payments was ***shown*** during the payoff period because the payment would change as the principal was paid off. Most incorrectly thought that the reason a range of payments was provided was that the payment might vary based on changes in interest rates.

Balloon Payment

. Most participants understood what a balloon payment was, and why it would be due at the end of the HELOC term. Participants' comprehension of balloon payment did not seem to depend on whether they were looking at AD-1 or AD-2.

. Only a few participants realized that the loan described in AD-1 could have a balloon payment at the end. When reading AD-2, however, most understood that there could be a balloon payment.

Information about Potential Risks [6]. Three of the five participants who were ***shown*** AD-1 first understood that they could lose their home if they did not make the minimum payments, compared to four of the five who were ***shown*** AD-2 first.

. Seven participants understood from form AD-1 that the bank had the right to terminate the line of credit early. Comprehension of AD-2 appeared to be slightly better; all participants but one could identify this information on this form.

. Several participants commented that they would want to know the specific circumstances under which the bank could end their line of credit. One participant suggested that the text be made even clearer; she suggested rephrasing the sentence as, "The bank can call in ***your*** loan."

Historical Example Table

. When ***asked*** to explain in their own words what the Historical Example Table ***showed***, most participants said that it reiterated to them that the rate could change, and that if the rate changed their payment would change. However, as in the previous round several participants did not understand that the information in the Historical Example table was based on actual historical information; they assumed that the figures ***shown*** were hypothetical.

. When reviewing the Historical Example Table, a few participants commented that they found it useful to know ***how*** much the Prime Rate varied over time. One reason they felt this information was important was because it helped them assess the likelihood that the interest rate would reach its maximum.

. When ***asked*** ***how*** they would use the information in the Historical Example Table when evaluating a HELOC, several said they would not. Most others were unable to explain exactly ***how*** they would use the information, or why it would be useful to them.

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[6] AD-2 and AD-3 provided information about potential risks in a separate section labeled "Risks." In AD-1, this information was provided in various places throughout the text.

Minimum Loan Amount

. Almost all participants could identify the minimum loan amount for this line of credit, regardless of whether they were ***shown*** AD-1 or AD-2.

Comparison of AD-2 and AD-3

. Forms AD-2 and AD-3 used different phrasing to indicate that the payments during the repayment period would vary over time, due to the fact that the principal was being paid off. For example, AD-2 stated that at an interest rate of 6%, minimum payments during the payoff period would be "$ 200.00 decreasing to $ 34.12," while AD-3 indicated that the payments would be "up to $ 200.00." Six of the 10 participants indicated that they preferred the former wording because it was more precise; two went so far as to call the "up to" language "suspicious." One said that she liked the latter wording because she did not understand what "decreasing to" meant, while the other participants did not have a preference. It should be noted, however, that understanding of this range of payments was very low regardless of ***how*** it was phrased (see above).

. The first page of the AD-2 forms listed information about risks first, and terms of the line of credit (i.e., credit limit, APR, etc.) below. This order was reversed on the AD-3 forms. Seven of the 10 participants preferred having the risk information at the top; one thought it was "good information to lead with," while another said that it "makes you more cautious." Three participants preferring having information about the credit limit and APR above the risks. One thought this was a more logical order for the information, while another described it as getting "the sweet before the sour."

Comparison of AO-A and AO-B

. AO-A used the term "borrowing period" to describe the initial period of time when money could be borrowed, while AO-B used the phrase "withdrawal period." Participants overwhelmingly preferred the term "borrowing period," because they felt it more accurately described ***how*** a line of credit worked.

. Forms AO-A and AO-B described the APR in two different ways. AO-A explained that the rate would be equal to the "Prime Rate + 2%," while AO-B merely said that the interest rate would "vary with the market monthly based on the Prime Rate." Seven of the 10 participants indicated that they preferred the wording used in AO-A, because it was more precise and gave more information. The remaining three participants did not express a preference between the two versions.

. In the section of the account-openingdisclosure that described the borrowing and payoff periods and provided sample minimum payments, AO-A provided information about the two periods first, with payment information below. AO-B first provided a table of sample payments, and below the table explained the differences between the two periods. Five of the participants preferred the order of information in AO-A because they felt the description of the two periods helped them interpret the numbers below. Two participants preferred the format of AO-B because it seemed more logical to them to start with the numbers and then provide the explanation. The remaining participants did not have a strong preference between the two formats.

. AO-A included estimated balloon payments in a separate column in the Minimum Monthly Payments table, while AO-B stated only that the balloon payment could be "up to" a certain amount. About half of the participants preferred to see the column of balloon payments (the format used in AO-A), while none preferred the AO-B format. The other half of participants had no preference, in some cases because they did not understand what was meant by a "balloon payment" in either format.

. AO-A provided minimum monthly payment examples for a balance of $ 10,000, while AO-B provided examples for a balance of $ 50,000. Participants were split as to which they preferred; four said that they would prefer to receive examples based on a $ 10,000 balance because it would be easy to use these figures to estimate a payment for a larger balance, while three thought payments on a balance of $ 50,000 would be more realistic for consumers. One participant suggested that payment examples should be based on an assumption that the full credit limit has been accessed, so that borrowers would see the "worst case scenario."

. While participants were split in terms of their preference, payments based on $ 10,000 appeared to be more useful for them. All five participants who were ***asked*** were able to accurately estimate what their payments would be for a $ 50,000 balance by multiplying the payments in AO-A by five. However, only two of five were able to divide the payments ***shown*** in AO-B by five to estimate what their payments would be on $ 10,000.

Key Questions Disclosure

. The one-page Key Questions disclosure was rated very highly by all participants. All said that they would find the form useful. Several commented that it was easy-to-read, and that it ***asked*** and answered important questions.

. Participants generally understood the content of the disclosure and could explain to the interviewer what each of the questions and answers meant.

. In several cases, the Key Questions disclosure helped clarify concepts with which participants had previously struggled. For example, one participant who had not understood balloon payments on the previous documents said that she found the explanation on this form clear on the Key Questions document. Another participant indicated that the explanation of borrowing and withdrawal periods helped her to understand that concept, which she had found confusing while reading the other documents.

. One participant commented that "everyone knows they will have to pay fees" to borrow money, and therefore recommended that this question be replaced with another that would be more informative to consumers.

Subsequent Design Decisions

Information about Interest Rates

. Participants continued to be confused by the text indicating that, unlike the APRs for traditional mortgages and home equity loans, the APR for a HELOC does not include fees other than interest. Therefore, in forms for the next round this text was separated into its own row labeled "Comparing APRs" to try to indicate to consumers ***how*** they could use this information.

Withdrawal/Borrowing and Payoff Periods

. Because most participants strongly preferred the term "borrowing period" to "withdrawal period," this phrase was used in all subsequent forms.

. The use of the term "payoff period" instead of "repayment period" did not have any noticeable effect on participants' understanding of this concept. In addition, following this round Board staff became concerned that the term "payoff period" could imply to consumers that the balance would be paid off over time--when in fact paying off the line of credit might require a sizable balloon payment. Therefore, all subsequent forms used the original term, "repayment period."

. In order to conserve space on the form, the format in which the differences between the two periods were described was significantly revised for the next round. Rather than providing this information in a table on the second page, the distinctions between the borrowing and repayment periods were illustrated in a section on the first page titled "Borrowing and Repayment Terms."

. Participants in this round continued to have difficulty understanding the timing of the two loan periods. To address this problem, forms for the next round indicated a section on the first page labeled "Duration of Line of Credit" that indicated the overall term of the HELOC, as well as the timing of the borrowing ("Years 1 to 10") and repayment ("Years 11 to 20") periods.

Information about Payments

. Because of concerns that using a $ 10,000 hypothetical balance to calculate sample payments may lead to misleadingly low payment amounts, the account-openingdisclosure tested in the next round ***showed*** payments for both $ 10,000 and $ 80,000 balances (based on an $ 80,000 credit limit).

. Because most participants preferred the phrasing of AD-2 ("$ 200.00 decreasing to $ 34.12) to that of AD-3 ("up to $ 200.00") as a description of payments during the repayment period, forms for the next round used this wording.

. To emphasize the difference in ***how*** payments are calculated in the borrowing and repayment periods (particularly the fact that the borrowing period payments are interest-only), a short description of the calculation methods was added to the title of the columns in the Sample Payments table.

. Because it was unclear that providing sample payments for four different interest rates increased the usefulness of the disclosure, and because of concerns that the number of dollar figures being ***shown*** on the form was confusing participants, all subsequent forms ***showed*** sample payments for only two rates--the current APR and the maximum APR under the plan.

. Because participants' awareness of the presence of a balloon payment was greater when this payment was included as a column in the sample payment table (as in AO-A), this format was used in forms for the next round.

Historical Example Table

. As in the previous round, several participants continued to have difficulty understanding the Historical Example Table. Because of this, and because some participants indicated that they would not use the information it provided, this table was removed from forms for the next round of testing, and tested as a separate stand-alone document so that more detailed information could be collected about what participants take away from the table, and ***how*** useful they find the information.

. Although participants continued to have difficulty understanding the Historical Example table, one piece of information that some participants did find useful was the extent to which the index had varied over the past 15 years. Therefore, in the next round this information was highlighted on the first page of all disclosures, under the heading "Historical Changes to Prime Rate." This new section also included an estimate of ***how*** much their payment would have varied over that same time period.

Key Questions Disclosure

. Because participants responded so positively to the Key Questions disclosure, this form was revised and tested again in subsequent rounds.

INTERVIEWS IN CHICAGO, ILLINOIS (MARCH 24-25, 2009)

Objectives and Methodology

The third round of 10 cognitive interviews was conducted in Chicago, Illinois on March 24th and 25th, 2009. As in previous rounds, the goal of this round of testing was to assess participants' understanding of revised disclosure forms, and to ***ask*** participants to compare different variations and indicate which they found clearer.

Prior to the Chicago round of interviews, Board staff had some concerns about the usefulness of the application disclosures for participants. ICF Macro's testing of closed-endmortgagedisclosures [7] conducted during the same time period had ***shown*** that participants strongly disliked a disclosure form that lacked specific terms and features because such general information was not useful to them. Participants in closed-endtesting were ***shown*** an initial adjustable-rate mortgage ("ARM") program disclosure which, like the HELOC application disclosure, is provided with the application and does not provide transaction-specific information. Overwhelmingly, participants indicated that because of its lack of specificity, they would not find the initial ARM program disclosure useful and would be unlikely to read it. While participants in HELOC testing were not as vocal in their dislike of the application disclosure, some of the same sentiment was apparent.To address this issue, Board staff decided to test a new type of disclosure: an "early disclosure" of transaction-specific information that would be provided no later than three business days after application (similar to an early TILA disclosure for closed-end loans). The content of this disclosure would be similar to the application disclosure, except that it would include information specific to the consumer based on initial underwriting--most notably, the specific APR and credit limit. Model forms for the early disclosure were tested for the first time in this round.

In addition to the shift from an application disclosure to an early disclosure of transaction-specific information, another significant change in the forms for this round was that the early disclosures included information about multiple payment plan options. In the first two rounds, application forms had only provided information about one payment plan.

Five forms were tested in Chicago, all of which are provided in Appendix C:

. Two new early disclosures (ID-1 & ID-2);

. A revised account-openingdisclosure (AO-2);

. A separate page displaying an Historical Example Table; and

. A revised version of the Key Questions disclosure.

The interview protocol included the following sections:

. Interview participants were first ***asked*** to review one of the two early disclosure forms, and were ***asked*** a series of questions designed to test their comprehension of the content. They were then ***shown*** the other version of the early disclosure, and ***asked*** to compare the usefulness and clarity of several aspects of the two forms. Participants were ***shown*** these two forms in a rotating order, to minimize learning effects.

. Next, participants were ***shown*** the account openingdisclosure (form AO-2). Again, after reviewing this page they were ***asked*** a series of questions designed to test comprehension.

. Participants were ***shown*** the Historical Example Table and were ***asked*** a series of questions designed to assess the usefulness and clarity of the information.

. Finally, as in the previous round participants were ***shown*** the revised Key Questions document and ***asked*** to assess its usefulness and clarity.

Key Interview Findings

Timing of Early Disclosure

[7] ICF Macro will submit findings related to its design andtesting of closed-end mortgage disclosures to the Board under separate cover; this report will be published with the Board's proposed revisions to Regulation Z in July 2009.

. When ***asked*** what kind of information they would want from a potential lender, all 10 participants said that they would want to know what their interest rate would be.

. In order to evaluate whether participants would find an application disclosure or an early transaction-specific disclosure given soon after more useful, they were ***asked*** whether they would prefer to get more general information about their HELOC before they applied, or more specific information (including interest rate) after application. All 10 participants said that they would prefer to receive a more specific disclosure soon after application even if it meant that they received no official disclosure of terms before they applied. Participants indicated that their decision would be the same even if they had to pay an application fee and submit to a credit check in order to get this more specific disclosure.

Early Disclosures (ID-1 and ID-2)

Information about Interest Rates

. Most participants were able to identify the initial interest rate on their line of credit. Three, however, mistakenly thought that the rate ***shown*** (5.25%) did not include the margin.

. All participants were able to identify the maximum APR, as well as ***how*** often their rate could change.

. None of the participants understood the meaning of the statement under the heading "Comparing APRs" (i.e., "The APR on a HELOC does not include fees other than interest. However, APR's for traditional mortgages and home equity loans include some fees.") Some people interpreted this statement to mean that they would not be charged any fees, and were therefore confused when they subsequently read the information on the form about fees. None understood after reading the statement ***how*** the APRs for closed-end loans and HELOCs differed.

Fees

. All participants were able to identify the amount of fees that they could be charged if they opened a line of credit.

. As in the previous round, several participants commented that they would like a more detailed breakdown of their account-opening fees, rather than an aggregate amount.

. None of the participants noticed the information at the top of the disclosure indicating that they might be entitled to a refund of fees that they had paid if they decided not to open the account. Several were surprised when this text was pointed out to them.

Borrowing and Repayment Periods

. All participants clearly understood that the period of the line of credit was for twenty years, and that the recipient had 10 years in which to borrow the money, and then an additional 10 years to pay it off. This was a clear improvement over previous rounds, when participants had significant difficulty understanding the timing of the borrowing and repayment periods.

. All participants understood that they could only borrow money during the borrowing period, and that they would have to make payments during both the borrowing and repayment periods. Again, this was the first round in which this was consistently understood by participants.

Payment Plans/Plan Comparison

. All participants understood that the purpose of the Payment Plans section was to provide borrowers with a choice about ***how*** they would pay off their loans.

. All but one of the participants were able to explain the relative advantages of Plans A and B--that is, that Plan B offered lower payments during the borrowing period, but that Plan A did not require a balloon payment and had a lower total of payments.

. Most participants were also able to explain that the reason that payments during the borrowing period were lower under Plan B was that these payments included only interest and no principal.

. Nine of the 10 participants said that they would choose Plan A over Plan B. In most cases this was because they did not want to owe a balloon payment, although those who were ***shown*** ID-1 also considered the information in the "Total of All Payments" column of the sample payments table (information about the total of payments was not ***shown*** on ID-2).

. The five participants who saw ID-1 said that the information "Total of All Payments" column was very important to them in choosing Plan A over Plan B.

Balloon Payment

. Almost all participants understood that the balloon payment would be owed at the end of the repayment period. Although all participants saw the reference to balloon payments on the disclosure forms, only half could explain exactly what a balloon payment was. Of the remaining participants, one indicated that it was "a penalty of some kind," while another that a balloon payment was made up of interest that had not yet been paid. Others said that they did not know what a balloon payment was, although all agreed that they would want to ***avoid*** paying one if possible. About half of the participants understood that under Plan B, the balloon payment could be ***avoided*** by paying more than the minimum payment earlier in the loan term. Other participants were unsure whether this balloon payment could be ***avoided***.

"Risks" Section

. All participants understood based on their review of the early disclosure that the bank had the right to terminate their line of credit.

Fixed-Rate Loan Option

. All of the participants understood from the form that they had the option to borrow up to $ 40,000 at a fixed rate. Several, however, were unsure whether or not this $ 40,000 was in addition to their $ 80,000 credit limit.

. Two participants were surprised by the fixed-rate option, because they did not know that borrowers could have this option under a line of credit.

Minimum Loan Amount

. All participants were able to identify the minimum loan amount based on their review of the early disclosure form.

Comparison of ID-1 and ID-2

. Most participants indicated that the Risks section should be located at the top of the first page (as in ID-1), rather than the bottom of the page (as in ID-2). Only one said that she wanted the APR and credit line information first because "I have good credit and I want to know what I can get."

. The comparison of the two payment plans was presented very differently in the two early disclosure forms. ID-1 described the two plans in narrative form, while ID-2 included a table that compared various features of the two plans. When ***asked*** which format they found clearer, participants were mixed. Several said that they preferred the tabular format used in ID-2 because it required less reading. At the same time, other participants commented that they found the narrative format in ID-1 easier to understand. Most participants were in agreement, however, that they liked the fact that ID-1 directly compared the plans in a section labeled "Plan A vs. Plan B."

. The Plan Comparison tables, which provided sample payments, were also organized differently on the two forms. All participants indicated that they preferred the organization of the table in ID-2, in which all sample payments under a given payment plan were grouped together.

. The Plan Comparison table in ID-1 included a column labeled "Total of All Payments," which was not provided on form ID-2. Participants strongly preferred that this column be included in the table, and several participants who saw ID-1 used this information when choosing between the two payment plans.

Account-Opening Disclosure (AO-2)

Initial Reactions

. Participants were generally very comfortable with the account-openingdisclosure used in this round. This appeared to be in large part because it was so similar in format and content with the early disclosures that participants were ***shown*** first. Several participants even commented that the disclosure looked very similar to the one that was ***shown*** to them previously.

Information about Payments

. All participants understood that if their interest rate went up, their payment would also increase.

. All participants understood that their minimum required payment would stay the same during the borrowing period, but would increase at the beginning of the repayment period.

. Unlike in previous rounds, almost all participants understood why the payment during the repayment period would decrease over time. This increase in comprehension was due to the fact that AO-2 explained this decrease in the text above the Sample Payments table.

. Almost all participants were able to estimate what their minimum payments would be on a $ 40,000 balance from the information on the form. About half multiplied the payments for $ 10,000 by four, while others divided the payments for $ 80,000 by two. Only one participant did not know ***how*** to estimate what payments would be on a $ 40,000 balance.

Fees

. Participants were ***asked*** which of the fees ***shown*** on the second page of the account-openingdisclosure they would consider most important. Most indicated that they would be most interested in the breakdown of the account-opening fees, because these were the largest. Several participants also commented that they would want to understand these fees so that

. When ***asked*** whether there were any additional types of fees that were not listed on the form that they would want disclosed to them, participants did not identify any.

Historical Example Table

. Most participants understood that the Historical Example Table ***showed*** ***how*** their rate could change over time. As in previous rounds, however, only about half understood that the information in the table was based on actual historical data.

. When it was pointed out to them that the Historical Example Table provides historical information, a few participants commented that they felt it might be unreliable to make financial decisions based on what has happened in the past. One specifically pointed to the instability in the current economy as an indicator that financial conditions can change quickly.

. Participants were ***asked*** whether the Historical Example Table included any important information that was not in the "Historical Changes to Prime Rate" section of the early and account-openingdisclosures. Most participants indicated that the "Historical Changes to Prime Rate" section covered the most important content from the Historical Example Table.

Key Questions Disclosure

. As in the previous round, participants reacted very positively to the Key Questions disclosure. Several participants indicated that it clarified some concepts that they had difficulty understanding from the other disclosure forms--particularly the definition of "balloon payment" and the differences between borrowing and repayment periods.

. Comprehension of the Key Questions document was very strong; participants were able to explain in their own words all of the questions and answers. Participants indicated that they found the language used in this disclosure to be very clear and easy to read.

. One participant suggested that Question 1 ("Can my interest rate increase?") and Question 2 ("Can my minimum monthly payment increase?") could be combined. The same participant suggested defining the terms "APR," "index," "margin," as was done for "balloon payment" in Question 4.

. As in the previous round, one participant indicated that Question 5 ("Do I have to pay any fees to have a line of credit?") was unnecessary, since most people would already know this information.

Subsequent Design Decisions

Timing of Application/Early Disclosure

. Findings from this round validated the Board staff's decision to develop and test an early transaction-specific disclosure that would be given soon after application. Participants overwhelmingly indicated that they would prefer to be given a disclosure after application that provides more transaction-specific information, as opposed to a more general application disclosure. As a result, all subsequent rounds focused on testing this type of early disclosure.

Information about Interest Rates

. Participants continued to be confused by the statement that, unlike APRs for closed-end loans, APRs for HELOCs do not include fees. Therefore, this statement was not included in any subsequent forms.

Fees

. Because participants in previous rounds consistently indicated that they would like a more detailed breakdown of their account-opening fees as early as possible in the process, some versions of the early disclosure tested in subsequent rounds provided this breakdown.

Borrowing and Repayment Periods

. Because participants' understanding of both the distinction between the borrowing and repayment periods and the timing of these periods was significantly better this round than in previous rounds, the Borrowing and Repayment Terms section was retained on all subsequent forms with only small changes in wording.

Payment Plans/Plan Comparison

. Because participants were split as to whether they liked the narrative (ID-1) or tabular (ID-2) comparison between the two payment plans, both formats were tested again in the next round of interviews.

. Participants indicated that they liked the "Plan A vs. Plan B" section of ID-1 that explicitly compared the two payment plans being offered. As a result, all subsequent early disclosures included a section that made this direct comparison.

. Because most participants preferred the format of the Plan Comparison table on ID-2 to that of ID-1, this format was retained in forms for the next round.

. In order to prevent "information overload" for consumers, rather than displaying the total of payments for each payment plan at each interest rate, early disclosures for the next round simply stated that "with Loan A, you will pay less over time" and "with Loan B, you will pay more over time." The goal of this change was to allow participants to continue to use this term to compare plans without overwhelming them with numbers.

Information about Payments

. Because of concerns about "information overload" for consumers, forms for the next round did not ***show*** ***how*** payments would change over time as the principal was paid off. Instead, these forms only ***showed*** the initial payment of the borrowing and repayment periods, which based on the assumptions used to calculate the payment examples would have been the highest payment a consumer would make during those periods. One form simplified the table even further, and provided only a single sample payment for each interest rate--the initial payment of the borrowing period.

. Again because of concerns about "information overload" for consumers, information about balloon payments was removed from the sample payment table. Instead, an explanatory note was added near the table indicating whether or not a balloon payment would be due.

Fixed-Rate Loan Option

. Because some participants mistakenly thought that under the fixed-rate option they would be able to borrow $ 40,000 in addition to their $ 80,000 credit line, the wording of this text was clarified in the next round.

Historical Example Table

. Because many participants in all rounds of testing misunderstood the information in the Historical Example Table, and those who did understand it indicated that this information was not important to them, none of the forms for subsequent rounds of testing included this table.

Key Questions Disclosure

. Although understanding of the difference between the borrowing and repayment periods was much stronger than in previous rounds, several participants who currently had HELOCs indicated they had never realized that this distinction existed. For this reason, the decision was made to give this topic per more prominence on the Key Questions disclosure by having separate questions address the borrowing and repayment periods ("When can I borrow money?" and "***How*** soon do I have to pay off my balance?", respectively). The last question, which addressed the lender's right to lower the credit limit, was removed from the form.

INTERVIEWS IN DENVER COLORADO (APRIL 4-15, 2009)

Objectives and Methodology

The fourth round of 10 cognitive interviews was conducted in Denver, Colorado on April 14 and 15, 2009. The primary focus of this round was to test consumer comprehension of two versions of the early disclosure. The primary difference between these two forms was that one provided more detail about sample payments, and that one contained several disclosures that are currently required by statute while the other did not.

Four forms were tested in Denver, all of which are provided in Appendix C:

. Two early disclosure forms (ID-3 & ID-4);

. A revised account-opening form (AO-3); and

. A revised version of the Key Questions disclosure.

The interview protocol included the following sections:

. Interview participants were first ***asked*** to review one of the two early disclosure forms, and were ***asked*** a series of questions designed to test their comprehension of the content. They were then ***shown*** the other version of the early disclosure, and ***asked*** to compare the usefulness and clarity of several aspects of the two forms. Participants were ***shown*** these two forms in a rotating order, to minimize learning effects.

. Next, participants were ***shown*** the account-opening form (AO-3). As in previous rounds, after reviewing this page they were ***asked*** a series of questions designed to test comprehension.

. Finally, as in the previous round participants were ***shown*** the Key Questions disclosure and ***asked*** to assess its usefulness and clarity.

Key Interview Findings

Previous Experience with HELOCs

. As in previous rounds, participants' comments during the opening discussion about their borrowing history ***showed*** that a few did not understand the difference between HELOCs and home equity loans.

Early Disclosure Forms (ID-3 and ID-4)

Information about Interest Rates

All but one of the participants were able to identify the initial and maximum APRs without difficulty. All but one also understood that the rate would vary monthly. [8]About half of participants understood the content of the Historical

[8] One of the participants in thisround had little understanding of HELOCs in general, and had difficulty answering most of the interview questions.

Changes to Prime Rate row; others were confused as to what this row meant. Some of those that did understand the information indicated that they might use it to better estimate what their future interest rates could be. Others, however, said that they would be unlikely to use the information because they did not think that historical data could necessarily be used to anticipate what would happen to the interest rate in the future.

Fees

. All participants understood that they would be charged fees for opening a line or credit, and all but one identified the amount of those fees without difficulty.

. ID-3 included a reference that "other fees may apply," while ID-4 did not. This reference appeared to be effective; three of the five participants who saw ID-4 incorrectly assumed that no fees would be charged other than those on ***shown*** on the form, compared to only one participant who was ***shown*** ID-3. When ***shown*** both forms, most participants believed it was important to include the reference to other fees.

. ID-3 provided a breakdown of account opening fees, while ID-4 simply indicated that an itemized list was available upon request. All participants said that preferred to have the breakdown ***shown*** on the form.

. All participants except one understood that they could have their fees refunded if they decided within three days of receiving the early disclosure not to open the line of credit. Forms ID-3 and ID-4 provided this information in two different locations. Participants who saw ID-3, which displayed this information at the top of the first page, were able to find it slightly more easily.

. Only a few participants realized that they could have their fees refunded even after three days, if they decided not to open an account because the terms (other than the APR) changed. Variations in the location of this information between the two early disclosure forms had no noticeable impact on understanding.

Borrowing and Repayment Periods

. All participants read and appeared to understand the description of the borrowing and repayment periods that was provided on the forms. For example, all understood that they would only be able to borrow money during the borrowing period, and that they would have to make payments during both periods.

. Most participants had difficulty translating what they had read about the borrowing and repayment periods to their reading of the Plan Comparison table. Several seemed to forget the distinction between the two periods, and as a result were confused by the fact that the payment was different. One participant suggested ***showing*** the duration of the two periods (i.e., Years 1 to 10, Years 11 to 20) in the headings of the columns in the Payment Plans and Plan Comparison sections.

Payment Plans/Plan Comparison

. Everyone understood that the purpose of the Payment Plans section was to provide the borrower information about different payment plan options.

. As in the previous round, one of the forms (ID-3) compared the two payment plans in a tabular format, while the other (ID-4) provided narrative descriptions of the two plans. Again, participants' preferences between the two were mixed; about half felt that the tabular format was clearer and easier to read, while the other half preferred the narrative descriptions.

. Nine of the 10 participants said that they would choose Plan A over Plan B because it would allow them to ***avoid*** a balloon payment and they would pay less over time. All participants who saw ID-3 also understood that the time it would take to pay off their balance would also be shorter under Plan A.

. All participants understood that Plan B would allow them to make lower payments during the borrowing period. Several participants, however, did not realize that this was because these lower payments did not include any principal. This confusion was sometimes due to the fact that participants did not realize that the payment calculation formula could be different during the borrowing and repayment periods.

. While ID-3 presented the first monthly payment for both the borrowing and repayment periods, ID-4 ***showed*** only the first monthly payment for the whole term of the account (i.e., for the borrowing period.) This led to several significant misconceptions on the part of participants, some of whom assumed that if the interest rate did not change, the payment would stay constant throughout the entire term. Others stated that they did not know ***how*** or if the payment might change over time. Some realized from the Payment Plans section that the payment calculation method would change from the borrowing to the repayment period, and commented that the impact of this on the payment was not ***shown***. One, for example, called this form "incomplete" because it ***showed*** "only half of ***your*** program."

Balloon Payment

. Everyone had a basic understanding of the term "balloon payment," and that, if they opted for Plan B, they might owe a balloon payment at the end of the loan term. In fact, most cited this as one of the reasons they would opt for Plan A.

. Most participants understood that paying larger payments up front could help them ***avoid*** paying balloon payments. However, two participants were unsure whether they would be allowed to make larger payments if they chose Plan B.

"Risks" Section

. All but one of the participants understood that the bank had the right to terminate their line of credit.

Fixed-Rate Loan Option

. All participants understood that they would have the option of borrowing a sum of money at a fixed rate. Unlike in the previous round, participants generally understood that any money they borrowed at a fixed rate would apply toward the credit limit for their line of credit.

Minimum Loan

. All participants understood that they would have to borrow $ 10,000 upon opening the account.

Account-Opening Disclosure (AO-3)

Initial Reactions

. As in the previous round, overall reaction to the account-opening form was very positive and comprehension was generally high. Again, it appeared that participants' understanding was helped by the fact that the account-opening form was so similar in format and content to the early disclosures they had read earlier.

Fees

. All participants were able to identify the fee they would be charged for going over their credit limit.

. As in the previous round, most participants indicated that information about the account-opening and penalty fees was more important to them than information about transaction fees. The least important fee to most participants was the foreign transaction fee; most indicated they did not believe this fee would ever apply to them.

. When ***asked*** whether there were any additional types of fees that they would want disclosed that were not ***shown*** on the form, all participants indicated that there were not.

Information about Payments

. All participants understood that if the interest rate remained the same and no additional money was borrowed, the minimum monthly payment would stay the same during the borrowing period.

. All but one participant understood that the payment would increase from the borrowing to the repayment periods; the remaining participant assumed that his payment would remain constant throughout the term of the loan.

. All participants understood that if their interest rate went up, their monthly payments would go up.

. All participants were able to estimate what their payments would be if they were to borrow $ 40,000 rather than the $ 10,000 or $ 80,000 balances used in the examples. Most estimated by multiplying the payments for $ 10,000 by four; three participants divided the payments for $ 80,000 by two.

Importance of Disclosure Statements

. Near the end of the interview, participants were directed to read several statements on the account-opening form. They were then ***asked*** to indicate ***how*** important the statement was to them, and whether it was necessary to include on the form.

. Eight of the 10 participants indicated that it was important that the form disclose that there is no limit to ***how*** much their rate could increase in a year.

. Participants were divided about whether or not the form needed to state that the maximum rate could be reached as early as the first month. While some indicated this information was very important, others felt that the statement was not necessary because it was extremely unlikely that the rate would actually increase that quickly.

. About half of participants indicated that it was important that the form state that "***your*** monthly statement will tell you each time ***your*** rate changes." Other participants did not feel this was important, because even in the absence of this statement they would assume that they would be notified of rate changes on their statement.

. Only two participants thought it was important that the form state that the Prime Rate was published in the Wall Street Journal. One thought it made the offer of credit "more credible," while the other thought it was important to know "***how*** the APR is derived."

Key Questions Disclosure

. As in previous rounds, participants were very positive about the Key Questions disclosure. Most commented that the document would be very helpful, particularly for people with no prior experience with HELOCs.

. Participants' comprehension of the information in the Key Questions document was very high; almost all were able to explain all of the questions and answers in their own words.

Subsequent Design Decisions

Fees

. Because most participants did not fully understand the circumstances under which they would be entitled to have their fees refunded, two alternative formats for providing this information on early disclosures were tested in the next round.

Payment Plans/Plan Comparison

. The Duration of Line of Credit section continued to be effective in disclosing to participants the differences between the borrowing and repayment periods. Therefore, a parallel format was used in forms for the next round to illustrate the difference in ***how*** minimum payments would be calculated during each of the two periods.

. Because of concerns that a $ 10,000 hypothetical balance could make sample payments misleadingly low, in the next round sample payments on the account-openingdisclosure were based on a balance of $ 80,000--the credit line listed in the disclosure. On the early disclosures two different methods were used to calculate sample payments; these methods are explained in the next section.

. Because some participants who saw ID-4 mistakenly thought that their payment would not change during the repayment period, the decision was made that the Plan Comparison section should ***show*** the first payment for both the borrowing and repayment periods.

. Although participants responded positively to the "Time to Pay Off Balance" information provided for both payment plans, ICF Macro and Board staff were concerned that the length of repayment would not always be an accurate measure of which payment plan was better for consumers. Therefore, this information was not included in subsequent forms.

Other Statements on Form

. Because participants indicated that the reference that the Prime Rate could be found in the Wall Street Journal would not be useful to them, this disclosure was not included in any subsequent forms.

Key Questions Disclosure

. Because of concerns that some consumers in this and previous rounds did not fully understand the difference between a home equity loan and a HELOC until it was explained to them, a question about the differences between these two products was added to the Key Questions document for the final round of testing. A new disclosure was also developed that described these differences in more detail; this document was also tested in the next round.

INTERVIEWS IN BETHESDA, MARYLAND (MAY 5-6, 2009)

Objectives and Methodology

The fifth round of 10 cognitive interviews was conducted in Bethesda, Maryland on May 5 and 6, 2009. Because this was the final round of testing before the Board was to release its proposed rules for HELOC disclosures, the goals of this round were to validate previous design decisions that had been made and to gather data on design issues that were still under discussion. Participants in this round were also ***shown*** a new disclosure that described the differences between home equity loans and HELOCs.

Five forms were tested in Bethesda, all of which are provided in Appendix C:

. Two early disclosure forms (ID-5 & ID-6);

. A revised account-opening form (AO-4);

. A revised version of the Key Questions disclosure; and

. A new one-page early disclosure titled "Home Equity Loan vs. Line of Credit." Like the Key Questions disclosure, this form would be given to consumers with application.

The interview protocol included the following sections:

. Interview participants were first ***asked*** to review one of the two early disclosure forms, and were ***asked*** a series of questions, designed to test their comprehension of the content. They were then ***shown*** the other version of the early disclosure, and ***asked*** to compare the usefulness and clarity of several aspects of the two forms. Participants were ***shown*** these two forms in a rotating order, to minimize learning effects.

. Next, participants were ***shown*** the account-opening form (AO-4). As in previous rounds, after reviewing this page they were ***asked*** a series of questions designed to test comprehension.

. Next, participants were ***shown*** the Key Questions disclosure and ***asked*** to assess its usefulness and clarity.

. Finally, participants were ***shown*** the new disclosure comparing HELOCs to home equity loans. The goals of this portion of the interview were to assess participants' understanding of the information, and to evaluate whether this disclosure provided any additional value to participants over the Key Questions document.

Key Interview Findings

Early Disclosures (ID-5 and ID-6)

Information about Interest Rates

. All of the participants were able to easily identify the initial and maximum APRs for the line of credit.

. All five participants who saw ID-5 understood that their rate could change monthly, and that their rate would be the Prime Rate plus 1%. ID-6 did not include either of these pieces of information; it only stated that the APR "will vary with the market based on the Prime Rate."

. Participants strongly preferred the description of ***how*** their APR would be calculated used in ID-5 to that used in ID-6. Several commented that ID-6 did not provide enough information, and one went so far as to call it "misleading."

. As in the previous round, about half of the participants who saw a form that included the Historical Changes to Prime Rate row understood the information it provided. [9] Participants who understood the information generally felt it would be useful to them in estimating what their future interest rate might be--although as in the previous round, they cautioned that there was no guarantee that the Prime Rate would behave in the future as it had in the past.*Fees*

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[9] ID-5 included this row, while ID-6 did not.

. All but one of the participants correctly identified the amount of fees that they would have to pay to take out a line of credit.

. ID-5 provided a breakdown of account-opening fees, while ID-6 did not. When ***shown*** both forms, all participants indicated that they preferred to have the breakdown ***shown*** on the form--although none of the participants who saw ID-6 first specifically ***asked*** for this information until they were ***shown*** ID-5.

. ID-5 included a reference that "other fees may apply," while ID-6 did not. As in the previous round, this reference appeared to be effective; all five participants who saw ID-6 incorrectly assumed that no fees would be charged other than those on ***shown*** on the form. All participants who were ***shown*** ID-5 understood that other fees could be charged.

. ID-5 displayed information about the refundability of fees at the top of the first page, while ID-6 ***showed*** it in the Fees section, under the heading "Refundability of Fees." There was some evidence that the latter placement was more effective; three of five participants who saw ID-6 first were able to locate this information, compared to none of those who saw ID-5 first.

Borrowing and Payoff Periods

. All but one of the participants understood the timing of the borrowing and repayment periods. They also understood that they could only borrow money during the borrowing period, and that payments would be due during both periods.

Payment Plans/Plan Comparison

. All participants were able to explain the relative advantages of both Plans A and B--that is, that Plan B offered lower monthly payments during the borrowing period and Plan A offered no balloon payment and a lower total cost.

. All participants said that they would choose Plan A over Plan B; as in previous rounds, this decision was based on the fact that no balloon payment would be due under Plan A, and that this plan costs less over the entire term of the loan.

. Despite the fact that the early disclosures stated that other plans might be available in addition to the two being described on the form, seven of the 10 participants incorrectly assumed that no other plans were available.

. Sample payments that were ***shown*** in the Plan Comparison section were calculated differently on ID-5 and ID-6. ID-6 payments were based on a balance of $ 80,000 (the amount of the credit line being offered), borrowed when the account was opened. Payments on ID-5, on the other hand, were based on an assumption that $ 10,000 was borrowed when the account was opened, and an additional $ 10,000 was borrowed on the last day of the borrowing period. However, only one of the participants who saw ID-5 understood the scenario on which these payments were based--even after extensive prompting by the interviewer.

. When participants were ***shown*** both forms and this difference in payment calculation was explained, all participants indicated that they preferred the approach used in ID-6. Several felt that the assumptions made in ID-5 were too complex, and others liked the fact that ID-6 ***showed*** the "worst case scenario" of borrowing the entire credit limit.

. One participant in this round suggested using the heading "An Example of Payments" rather than "Sample Payments" in the Plan Comparison section, to clarify that the numbers provided do not represent actual payment amounts and are provided only as an estimate.

Balloon Payment

. Seven of the 10 participants were able to define what a balloon payment was; the other three indicated that they would want to ***avoid*** a balloon payment but were unsure what it was.

"Risks" Section

. Almost all participants understood that they would lose their home if they did not make the required monthly payments.

. Seven of the 10 participants understood from the form that the bank could end their line of credit early.

. Most participants indicated that they preferred to have the Risks section displayed at the top of the first page, because of the importance of the information. A few preferred to have the Risks section at the bottom of the page because they were more interested in the specific terms of their line of credit.

Minimum Loan

. As in the previous round, all participants understood that they would have to borrow $ 10,000 upon opening the account.

Account Opening Disclosure (AO-4)

Information about Payments

. All participants understood that if the interest rate remained the same and no additional money was borrowed, the minimum monthly payment would stay the same during the borrowing period.

. All but one participant understood that the payment would increase from the borrowing to the repayment periods; the remaining participant assumed that his payment would remain constant throughout the term of the loan.

. All participants understood that if their interest rate went up, their monthly payments would go up.

. While a few participants had difficulty, most were able to estimate what their minimum payment would be if they borrowed $ 40,000 instead of the $ 80,000 ***shown*** in the table.

Fees

. Unlike in the previous round, a few participants were unable to identify the fee that they would be charged for going over their credit limit. Most, however, were able to find this fee easily.

. As in previous rounds, participants indicated that of the fees listed on the form, they would be most interested in detailed information about the account-opening fees.

Importance of Disclosure Statements

. As in the previous round, participants were again directed to read several statements on the account-opening form. As before, they were ***asked*** to indicate ***how*** important the statement was to them, and whether it was necessary to include on the form.

. Almost all participants in this round indicated that the statement "***Your*** monthly statement will ***show*** ***your*** rate changes" could be removed from the form. Participants generally felt that this was not important information, and would not affect their decision-making or behavior in any way.

. About half of the participants felt that it was important to include the statement, "There is no limit on ***how*** much the rate can change in one year."

. Most participants indicated that it was unnecessary to state that the maximum rate could be reached in the first month; while this was theoretically true, they felt it was so unlikely that this statement was not useful.

Key Questions Disclosure

. As in previous rounds, the Key Questions disclosure was received very favorably by all participants. Several commented that it was easy to read, and that it ***asked*** and answered important questions about HELOCs.

. Participants in this round were ***asked*** to focus specifically on a new seventh Key Question that had been added: "Should I get a home equity loan instead of a line of credit?" This section of the disclosure described the relative advantages and disadvantages of the two products. All participants indicated that the wording of this section was clear, and after reading it most were able to describe in their own words the differences between the two products.

. One participant who had been planning to get a HELOC said that after reading this form he thought a home equity loan might be more appropriate for him. Two others commented that they wished they had received information about home equity loans before taking out their HELOCs.

Home Equity Loan vs. Line of Credit Disclosure

. Participants responded positively to this form, and said that it contained useful information. There were no comprehension issues with the document; participants seemed to understand all of the content.

. Participants were ***asked*** to compare this disclosure form to the seventh Key Question, which also provided a comparison of these two products. All of the participants indicated that the content of the two was very similar; none identified any important information that appeared on the new disclosure but not in the Key Questions.

Subsequent Design Decisions

Information about Interest Rates

. Because participants felt strongly that it was important for them to know exactly ***how*** their APR was determined, the final form requires disclosure of the margin that will be used, as well as ***how*** frequently the rate could change.

. Because participants who were knowledgeable about financial issues said that the Historical Example paragraph gave them valuable information about ***how*** much the Prime Rate was likely to fluctuate, the decision was made to include this information on both the early and account-openingdisclosures.

Fees

. Because participants in several rounds of interviews indicated that an itemized breakdown of account-opening fees would be useful to have as early in the process as possible, the decision was made to include such a breakdown on both the early and account-openingdisclosures.

. Following this round, the decision was made to include a statement of the early disclosure that other fees could also be charged in addition to those ***shown*** on the form. This disclosure will be required because in its absence, a large percentage of participants incorrectly assumed that no other fees would be charged.

. Because participants in this round were more likely to notice and understand information about the refundability of fees when it was provided in the "Fees" section of the early disclosure, this location was retained in the final model form. In order to ensure that participants are aware that fees paid may be refundable in some cases, another reference to this information was also added at the end of the form.

Payment Plans/Plan Comparison

. Because participants in this round had a strong understanding of the two payment plans, the format in which these plans were described was retained in the final model early disclosure form.

. Participants strongly preferred to be ***shown*** payment examples based on a loan equal to their credit limit (as in ID-6), rather than payments based on a more complex set of assumptions (as in ID-5). Therefore, this method of calculating sample payments was used in the model early disclosure form.

"Risks" Section

. As noted above, participants were divided as to whether the Risks section should be at the top or the bottom of the form. Regardless of the placement of the section, most participants noticed and understood the disclosures about the risk of loss of the home in case of default and the disclosure about a creditor's right to terminate the plan in certain circumstances. In the Board staffs outreach, neither industry nor consumer group representatives indicated a preference for either placement. Consumer group representatives did, however, emphasize the importance of highlighting key terms such as the APR. Therefore, the model early disclosure forms and account-opening form place the Risks section at the bottom of the form.

Other Statements on Form

. Because a large portion of participants in the last two rounds indicated that they did not provide important information, the decision was made to remove from the final model form references to the fact that rate changes will be ***shown*** on the monthly statement and that the maximum APR could be reached as early as the first month. However, because several participants indicated that they found the statement "There is no limit on ***how*** much the rate can change in one year" to be important, this information was retained on the model form.

Key Questions Disclosure

. Because the new question comparing HELOCs to home equity loans was considered so important by participants in this round, it was retained in the final disclosure.

. Because participants indicated that the new one-page disclosure about HELOCs and home equity loans was largely redundant with the Key Questions disclosure, the decision was made not to require that the stand-alone form be provided to consumers.

CHAPTER IV: SUMMARY

This report summarizes work conducted by ICF Macro from December 2008 through June 2009 in support of the Board's efforts to revise Regulation Z rules pertaining to disclosures for home equity lines of credit. The outcomes of this work include the development of:

. A new "early" disclosure, that provides transaction-specific information no more than three business days after an application for a home equity line of credit is submitted. This disclosure describes:

. A description of potential risks, including possible termination or suspension of the line of credit by the lender;

. ***How*** the interest rate for the line of credit will be determined;

. The total amount of account-opening fees that will be charged, as well as a summary breakdown of those fees, and certain other fees such as the annual fee;

. The credit limit;

. Minimum transaction and minimum balance requirements;

. The distinction between the borrowing and repayment periods for the line of credit, as well as the timing of both of the periods;

. Two payment plans available to borrowers, along with sample payments for each; and

. Information about the timing and size of any balloon payments that might be owed.

. A revised account-openingdisclosure that mirrors the content and tabular format of the early disclosure and provides additional detail about penalty and transaction fees; and

. A new document titled "Key Questions to ***Ask*** About Home Equity Lines of Credit," a concise and easy-to read disclosure for potential borrowers that provides guidance on what questions they should ***ask*** their lenders.

The results of the interviews described in this report will inform the Board's proposed revisions to Regulation Z, which are scheduled for release in July 2009. The disclosure forms developed through iterative testing will be released with the proposal as model forms. By relying heavily on direct consumertesting in the development of these forms, the Board hopes to ensure that its new regulations will lead to financial disclosures that will be easy for consumers to read and understand, and as a result will help them make well-informed financial decisions.

APPENDIX A: Sample Recruitment Protocol

Participant Screener for Federal Reserve Board In-Depth Interviews Bethesda, MD

May 5th and 6th, 2009

General Information and Recruiting Specifications

. Interviews will be held at 9:00 a.m., 11:00 p.m., 1:00 p.m., 3:00 p.m., and 5:00 p.m. each day

. INTERVIEWERS: ***Ask*** all participants to bring their reading glasses if necessary, because they will be ***asked*** to read several sample mortgage documents as part of the interview or focus group.

Recruiting Script

Hello, I am calling on behalf of the United States Federal Reserve Board. The Federal Reserve Board is sponsoring a series of consumer interviews in ***your*** area so that we can learn more about ***how*** people make financial decisions. We will use what we learn from these interviews to help make sure that the information that banks provide to consumers about various financial products is useful and easy to understand.

Q1: Do you currently own a home?

[] Yes --> Continue

[] No --> *Thank respondent politely and end call*.

Q2: Have you ever taken out a loan against equity in ***your*** home to pull money out for some purpose, either as a second mortgage at the time you purchased ***your*** home, or for home improvements, debt consolidation or to cover other expenses?

[] Yes --> Continue
[] No --> Skip to Q7

Q3: Was this mortgage related to a property for ***your*** own use, or a property you purchased solely as an investment?

[] Own Use --> Continue

[] Investment --> *Thank respondent politely and end call*.

Q4: There are at least two ways in which a consumer can borrow money against equity in his or her home. One is a traditional mortgage where you borrow a fixed sum of money at once and pay it back over time The other is a home equity line of credit (also known as a "HELOC") which allows you to draw money when you need it. At any point in the past five years, have you had a home equity line of credit (or "HELOC")?

[] Yes --> Participant qualifies in Group A; skip to after Q7 (but ***ask*** Q8 & Q8b)
[] No --> Continue

Q5: At any point in the past five years have you had a second mortgage on ***your*** home, or a mortgage that you obtained after paying off the original mortgage on ***your*** home?

Note to Interviewer: Be sure that participant understands that this question is ***asking*** *about a traditional loan, not a HELOC*.

[] Yes --> Continue
[] No --> Skip to Q7

Q6: At the time you obtained this loan, did you consider instead getting a home equity line of credit?

[] Yes --> Participant qualifies in Group B; skip to after Q8
[] No --> Continue

Q7: Have you considered obtaining a home equity line of credit at any time in the last five years?

[] Yes --> Participant qualifies in Group C; Continue after Q8

[] No --> *Thank respondent politely and end call*.

Great. We will be holding interviews in Bethesda on May 5th and 6th. I was wondering if you would be interested in attending.

[] Yes --> Continue to screening questions

[] No --> *Record reason (not interested, not available on that date, etc.). If unavailable on that date, retain their information because we may do additional rounds of testing in the future. Thank them politely and end call*.

That's great. I just need to ***ask*** you a few more questions to see if you qualify for one of our interviews.

Q8: Were you the person in ***your*** household who was responsible for making the decision to get this home equity line of credit or home equity loan?

[] Yes --> Continue
[] Yes, in cooperation with my [spouse, partner, etc.] --> Continue

[] No --> ***Ask*** *the respondent whether the primary decision maker is available to join the call. If not, thank respondent politely and end call*.

Q9: Do you work, or have you ever worked, for a bank or other financial institution, or in the real estate or mortgage industry?

[] Yes --> *Thank respondent politely and end call*.
[] No --> Continue

Q10: ARTICULATION QUESTION: In a few sentences, could you explain why you decided to take out a line of credit/home equity loan?

[] If respondent gives a thoughtful, articulate answer --> Continue

[] If respondent does not give a thoughtful, articulate answer --> *Thank respondent politely and end call*.

Recruiting Quotas	Screening Criteria
	. At least seven participant must be in Group A. . At least three participant must be in Group B. . Group C is a back-up in case not enough participants are recruited for groups A and B.
Q11a: Have you experienced any of the following financial hardships in the past 7 years: bankruptcy, foreclosure, repossession, or a tax lien? a) Yes b) No	At least three (but no more than five) recruits must answer: . "a" to Q11a; or
Q11b: ***How*** would you rate ***your*** credit? a) Excellent b) Good c) Fair d) Poor	. "c" or "d" to Q11b.
Q12: Do you currently have an outstanding balance on ***your*** HELOC? [] Yes [] No	
Q12b: What is the current outstanding balance on ***your*** HELOC?	At least three (but no more than six) recruits should answer

Recruiting Quotas	Screening Criteria
[] $ 70,000+	"Yes" to Q12
[] $ 30,000 - $ 70,000	
[] $ 10,000 - $ 30,000	
[] Less than $ 10,000	
Q13: What is ***your*** age?	
a) 18 to 35 b) 36 or above	At least 2 recruits should respond "a"
Q14: Which of the following categories best reflects ***your*** race or ethnicity? You can choose more than one category. [Respondents who wish to choose more than one category should be counted as minorities, even if one race mentioned is White.]	
a) White b) Black or African-American c) Hispanic or Latino d) Asian or Pacific Islander e) Native American or Alaska Native	At least 4 recruits should respond "c", "d", "b" or "e"
Q15: What is the highest level that you reached in school? a) High school degree or less b) Some college work c) College graduate	. At least 2 recruits should respond "a" . At least 3 recruits should respond "b"
Q16: Gender	At least 3 recruits of each gender

If participant qualifies: Based on ***your*** responses, we would like to invite you to participate in an interview, which will be held at Shugoll Research in Bethesda, MD. The interview will last about 90 minutes. We will be ***showing*** you some sample financial documents for you to refer to, <u>so if you use reading glasses please be sure that you bring them</u>.

APPENDIX B:

Participant Demographi and Background Information

	Bethesda, MD (Dec. '08 Interviews)	**Los Angeles, CA (Feb. '09 Interviews)**	**Chicago, IL (March '09 Interviews)**	**Denver, CO (April '09 Interviews)**

	Bethesda, MD (Dec. '08 Interviews)	Los Angeles, CA (Feb. '09 Interviews)	Chicago, IL (March '09 Interviews)	Denver, CO (April '09 Interviews)
Male	5	4	2	5
Female	5	6	8	5
18-35	4	3	2	0
36+	6	7	8	10
Caucasian	6	4	7	3
African-American	2	2	1	2
Hispanic	0	3	1	5
Asian	2	1	1	0
High school or less	1	2	0	1
Some college	0	4	3	5
College graduate	9	4	7	4

	Bethesda, MD (May '09 Interviews)	Total
Male	4	20 (40%
Female	6	30 (60%
18-35	1	10 (20%
36+	9	40 (80%
Caucasian	3	23 (46%
African-American	6	13 (26%
Hispanic	1	10 (20%
Asian	0	4(8%)
High school or less	3	7 (14%)
Some college	3	15 (30%
College graduate	4	28 (56%

	Bethesda, MD (Dec. '08 Interviews)	Los Angeles, CA (Feb. '09 Interviews)
Yes	2	2
No	8	8
Excellent	8	4
Good	1	3
Fair	1	3
Poor	0	0
Had a HELOC in past 5 years?	8	5
Had home equity loan in past 5 years; considered HELOC as an alternative?	2	3
No HELOC or home equity loan in past 5 years; but considered HELOC?	0	2

Chicago, IL	Denver, CO

		(March '09 Interviews)	(April '09 Interviews)
	Yes	2	2
	No	8	8
	Excellent	5	4
	Good	2	3
	Fair	2	2
	Poor	1	1
Had a HELOC in past 5 years?		7	9
Had home equity loan in past 5 years; considered HELOC as an alternative?		2	1
No HELOC or home equity loan in past 5 years; but considered HELOC?		1	0

		Bethesda, MD (May '09 Interviews)	Total
	Yes	2	10(20%)
	No	8	40(80%)
	Excellent	2	23 (46%
	Good	5	14 (28%
	Fair	2	10 (20%
	Poor	1	3(6%)
Had a HELOC in past 5 years?		8	37 (74%
Had home equity loan in past 5 years; considered HELOC as an alternative?		1	9 (18%)
No HELOC or home equity loan in past 5 years; but considered HELOC?		1	4 (8%)

		Bethesda, MD (Dec. '08 Interviews)	Los Angeles, CA (Feb. '09 Interviews)	Chicago, IL (March '09 Interviews)
	Yes	N/A	N/A	N/A
	No	N/A	N/A	N/A
Not Applicable		N/A	N/A	N/A

		Denver, CO (April '09 Interviews)	Bethesda, MD (May '09 Interviews)	Total
	Yes	4	6	10 (50%
	No	5	2	7(35%)
Not Applicable		1	2	3(15%)

APPENDIX C: Disclosure Forms Used in Testing

Round 1: Bethesda, MD

December 17-18, 2008

. Current Application Disclosure

. New Account-Opening Disclosure

. Payment Example Form

THINGS YOU SHOULD KNOW BEFORE APPLYING FOR A HOME EQUITY LINE OF CREDIT (HELOC)

Home Equity Line of Credit Program Disclosure

This disclosure contains important information about our Home Equity Line of Credit (HELOC). Please read it carefully and keep a copy for ***your*** records.

Availability of Terms

All of the terms described below are subject to change. If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you paid to us or anyone else in connection with ***your*** application.

Security Interest

ABC Bank will take a mortgage on ***your*** home, so you could lose ***your*** home if you do not meet the obligations in ***your*** agreement with us.

Possible Actions

Under certain circumstances, ABC Bank can terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; refuse to make additional extensions of credit; reduce the credit limit; and, as specified in the credit agreement, make certain changes in the plan. If you ***ask***, we will give you specific information concerning when we can take these actions.

Requesting an Advance

You may request an advance by writing HELOC checks that ABC Bank has given to you for this purpose, by transferring funds via telephone or internet, or authorizing ABC Bank to move funds into ***your*** transaction account. The minimum advance amount is $ 250.

Minimum Payment Requirements

You can obtain credit advances for 10 years (the "draw period"). At the end of 10 years, you may have the option to renew the "draw period," subject to our consent. During the draw period, payments will be due monthly. ***Your*** minimum monthly payment will equal the amount of earned fees and charges and the amount of accrued interest on the last day of the billing cycle. The minimum monthly payments during the draw period will not reduce the principal that is outstanding on ***your*** line. After the draw period ends, you will no longer be able to obtain credit advances and must pay the outstanding balance on ***your*** account (the "repayment period").

The length of the repayment period is 10 years. During the repayment period, payments will be due monthly. ***Your*** minimum monthly payment will equal the amount of earned fees and charges, the amount of accrued interest on the last day of the billing cycle plus 1.500% of the loan account balance, which is principal plus accrued interest. There is no minimum finance charge. The minimum monthly payments may not be sufficient to fully repay the principal on ***your*** line by the end of the draw and repayment periods. If they are not, you will then be required to pay the entire balance in a single payment at maturity.

Minimum Payment Example

If you made only the minimum monthly payment and took no other credit advances, it would take 20 year(s) to pay off a credit advance of $ 10,000 at an ANNUAL PERCENTAGE RATE of 8.5%. During that period, you would make 120 payment(s) of $ 70.83 followed by 120 payment(s) varying between $ 221.90 and $ 36.82, with a final payment of $ 1609.63.

Fees and Charges

You must pay certain fees to third parties to open the plan. These fees generally total between $ 0.00 and $ 1,000.00. If you ***ask***, we will give you an itemization of the fees you will have to pay to third parties. There is no annual fee for the first year of the program, provided ***your*** account remains open through the first year. If you close ***your*** account within the first year, there will be an early termination fee of $ 250. There is an annual $ 50 fee in subsequent years.

Tax Deductibility

You should consult a tax advisor regarding the deductibility of interest and charges for the plan.

Variable Rate Features

This plan has a variable rate feature and the annual percentage rate (corresponding to the periodic rate) and the minimum monthly payment can change as a result. The annual percentage rate includes only interest and not other costs. The annual percentage rate is based on the value of an index. The index is The Wall Street Journal Prime Rate as published in The Wall Street Journal. To determine the annual percentage rate that will apply to ***your*** account, ABC Bank adds a margin to the value of the index. The initial annual percentage rate may be determined by ABC Bank and may not necessarily be based on the index and margin used to make later rate adjustments. This discounted initial rate will be in effect for the first year ***your*** plan is open. ***Ask*** us for the current index value, margin, discount, and annual percentage rate.

Rate Changes

The annual percentage rate can change daily. There is no limit on the amount by which the rate can change in a one-year period. The maximum annual percentage rate that can apply during the plan is 24.990%, or the maximum annual percentage rate allowed by applicable law, whichever is less. Rate change information will be included in ***your*** monthly statement.

Maximum Rate and Payment Examples

If you had an outstanding balance of $ 10,000 at the beginning of the draw period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 24.990% would be $ 208.25. The maximum annual percentage rate during the draw period could be reached in the first month. If you had an outstanding balance of $ 10,000 at the beginning of the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 24.990% would be $ 361.37. The maximum annual percentage rate during the repayment period could be reached in the first month.

Historical Example

The following table ***shows*** ***how*** the annual percentage rate and the minimum payments for a single $ 10,000 credit advance would have changed based on changes in the index over the last 15 years. The index values are from the first business day of January. While only one payment amount per year is ***shown***, payments would have varied during each year. The table assumes that no additional credit advances were taken, that only the minimum payment was made, and that the rate remained constant during each year. It does not necessarily indicate ***how*** the index or ***your*** payments would change in the future.

Historical Example Assuming a $ 10,000 Balance

	Index	Margin	Annual Percentage Rate (APR)	Minimum Monthly Payment
1991	10.000 %	0.000 %	10.000 %	$ 83.33
1992	6.500 %	0.000 %	6.500 %	$ 54.17
1993	6.000 %	0.000 %	6.000 %	$ 50.00
1994	6.000 %	0.000 %	6.000 %	$ 50.00
1995	8.500 %	0.000 %	8.500 %	$ 70.83
1996	8.500 %	0.000 %	8.500 %	$ 70.83
1997	8.250 %	0.000 %	8.250 %	$ 68.75
1998	8.500 %	0.000 %	8.500 %	$ 70.83
1999	7.750 %	0.000 %	7.750 %	$ 64.58
2000	8.500 %	0.000 %	8.500 %	$ 70.83
2001	9.000 %	0.000 %	9.000 %	$ 226.13
2002	4.750 %	0.000 %	4.350 %	$ 158.42
2003	4.250 %	0.000 %	4.250 %	$ 129.11
2004	5.250 %	0.000 %	5.250 %	$ 112.52
2005	5.250 %	0.000 %	5.250 %	$ 93.72

HOME EQUITY LINE OF CREDIT (HELOC) STATEMENT of TERMS

BORROWER: Joe Smith & Jane Doe

COLLATERAL: 1234 Main Street

Anytown, ST 12345

DATE: September 23, 2008

LENDER: ABC Bank

LOAN NUMBER: 123-12-1234-556

You have no obligation to accept this line of credit. Compare these credit terms to other credit offers. Confirm that these are the credit terms for which you applied. Know ***your*** rights as a borrower; visit www.frb.gov/consumers/HELOC.htm.

Credit Limit	$ 80,000
Annual Percentage Rate (APR)	4.00% introductory APR for the first six months. After that, ***your*** APR will be the Prime Rate + 2.00%. The Prime Rate, which is published daily in the Wall Street Journal, is currently 4.00%. The APR on a HELOC does not include costs other than interest.
Maximum APR	24.99%
Minimum Draw	$ 300.00
Draw Period	10 years. A minimum monthly payment will be required during this time.
Repayment Period	20 years, starting when the draw period ends. You will not be able to draw funds during the repayment period.
Balloon Payment	At the end of the repayment period, you may be required to pay any remaining balance in a lump sum.
Annual Fee	$ 50
Total Account Opening Fees	$ 1,740
Risk of Foreclosure	***Your*** line of credit is secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrowed.
Our Right to Terminate or Reduce ***Your*** Line of Credit	Under certain circumstances, we can terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; refuse to make additional extensions of credit; reduce the credit limit; and, as specified in ***your*** account agreement, make certain changes in the plan. For more

	information, please ***ask*** us or see ***your*** account agreement.
Billing Rights	Information on ***your*** rights to dispute transactions and ***how*** to exercise those rights is provided in ***your*** account agreement.
Tax Deductibility	Consult a tax advisor regarding deductibility of interest under this plan.
Loan Origination Fee	$ 350
Loan Discount Fee	$ 800
Underwriting Fee	$ 295
Appraisal	$ 295
TOTAL Account Opening Fees	$ 1,740
Late Payment	Either $ 15 or 5% of the minimum payment, whichever is greater. This fee is imposed 15 days after the payment due date.
Over-the-Credit Limit	$ 20 for each advance from the Credit Line that causes you to exceed ***your*** credit limit.
Returned Payment	$ 30
Early Termination	.125% of the credit limit or $ 500, whichever is greater, if you close the line of credit within three years.
Cash Advance	Either $ 2 or 2% of the amount of each advance, whichever is greater.
Wire Transfer	$ 20
Courier Service	$ 30 per transmittal of documents that you request we send by a delivery service.
Stop Payment	$ 20 when you request a stop payment on a check written from this account.

PAYMENT EXAMPLES

Minimum Monthly Payment

Your minimum monthly payment can vary each month, depending on a number of factors such as ***your*** balance and annual percentage rate (APR), or whether you pay both interest and principal or only the interest each month. The maximum APR that could apply to ***your*** loan is **24.99%**, and this APR can be reached as soon as the first month after you open ***your*** account.

Payments During Draw Period

During the draw period, ***your*** minimum monthly payments cover only the interest that you owe on the outstanding balance. If you make only the minimum payments during this period, you will not pay off any of ***your*** loan principal. ***Your*** draw period lasts 10 years.

Payments During Repayment Period

During the repayment period, ***your*** minimum monthly payments cover the greater of 1 % of the outstanding balance, or the interest you owe on the outstanding balance. The repayment period starts at the end of the draw period and lasts 20 years.

Balloon Payment

If you make only the minimum payments, you may not pay off all, or possibly any, of the amount you actually borrowed by the end of the loan term and may have to pay the outstanding balance in a single large payment. This is known as a **balloon payment. You should *ask* *your* lender under what circumstances you may owe a balloon payment**.

The tables below ***show*** examples of the minimum monthly and balloon payments you would have to make given different balances and different Annual Percentage Rates.

Sample Payments If You Borrowed $ 10,000

	Current APR **6.00%**	**Maximum APR** **24.99%**
Draw Period Minimum Payment 120 payments	$ 50.00	$ 208.25
Repayment Period Minimum Payment 239 payments	$ 100.00 to $ 30.48	$ 208.25
Balloon Payment Final payment due 1 payment	$ 3,048.32	$ 10,208.25

Sample Payments If You Borrowed $ 80,000

	Current APR **6.00%**	**Maximum APR** **24.99%**
Draw Period Minimum Payment 120 payments	$ 400.00	$ 1,666.00
Repayment Period Minimum Payment 239 payments	$ 800.00 to $ 243.84	$ 1,666.00
Balloon Payment Final payment due 1 payment	$ 24,386.56	$ 81,666.00

Round 2: Los Angeles, CA February 11-12, 2009

. Current Application Disclosure (AD-1)
. Revised Application Disclosure (AD-2A)
. Revised Application Disclosure (AD-2B)
. Revised Application Disclosure (AD-3A)
. Revised Application Disclosure (AD-3B)
. Account-Opening Disclosure (AO-A)
. Account-Opening Disclosure (AO-B)

. Key Questions Disclosure

THINGS YOU SHOULD KNOW BEFORE APPLYING FOR A HOME EQUITY LINE OF CREDIT (HELOC)

Home Equity Line of Credit Program Disclosure

This disclosure contains important information about our Home Equity Line of Credit (HELOC). Please read it carefully and keep a copy for ***your*** records.

Availability of Terms

All of the terms described below are subject to change. If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you paid to us or anyone else in connection with ***your*** application.

Security Interest

ABC Bank will take a mortgage on ***your*** home, so you could lose ***your*** home if you do not meet the obligations in ***your*** agreement with us.

Possible Actions

Under certain circumstances, ABC Bank can terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; refuse to make additional extensions of credit; reduce the credit limit; and, as specified in the credit agreement, make certain changes in the plan. If you ***ask***, we will give you specific information concerning when we can take these actions.

Requesting an Advance

You may request an advance by writing HELOC checks that ABC Bank has given to you for this purpose, by transferring funds via telephone or internet, or authorizing ABC Bank to move funds into ***your*** transaction account. The minimum advance amount is $ 250.

Minimum Payment Requirements

You can obtain credit advances for 10 years (the "borrowing period"). At the end of 10 years, you may have the option to renew the "borrowing period," subject to our consent. During the borrowing period, payments will be due monthly. ***Your*** minimum monthly payment will equal the amount of earned fees and charges and the amount of accrued interest on the last day of the billing cycle. The minimum monthly payments during the borrowing period will not reduce the principal that is outstanding on ***your*** line. After the borrowing period ends, you will no longer be able to obtain credit advances and must pay the outstanding balance on ***your*** account (the "payoff period").

The length of the payoff period is 10 years. During the payoff period, payments will be due monthly. ***Your*** minimum monthly payment will equal the amount of earned fees and charges, the amount of accrued interest on the last day of the billing cycle plus 1.500% of the loan account balance. There is no minimum finance charge. The minimum monthly payments may not be sufficient to fully repay the principal on ***your*** line by the end of the borrowing and payoff periods. If they are not, you will then be required to pay the entire balance in a single payment at maturity.

Minimum Payment Example

If you made only the minimum monthly payment and took no other credit advances, it would take 20 year(s) to pay off a credit advance of $ 10,000 at an ANNUAL PERCENTAGE RATE of 8.5%. During that period, you would make 120 payment(s) of $ 70.83 followed by 120 payment(s) varying between $ 221.90 and $ 36.82, with a final payment of $ 1,609.63.

Fees and Charges

You must pay certain fees to third parties to open the plan. These fees generally total between $ 0.00 and $ 1,000.00. If you ***ask***, we will give you an itemization of the fees you will have to pay to third parties. There is no annual fee for the first year of the program, provided ***your*** account remains open through the first year. If you close ***your*** account within the first year, there will be an early termination fee of $ 250. There is an annual $ 60 fee in subsequent years.

Tax Deductibility

If you borrow more than ***your*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. You should consult a tax advisor regarding the deductibility of interest and charges for the plan.

Variable Rate Features

This plan has a variable rate feature and the annual percentage rate (corresponding to the periodic rate) and the minimum monthly payment can change as a result. The annual percentage rate includes only interest and not other costs. The annual percentage rate is based on the value of an index. The index is The Wall Street Journal Prime Rate as published in The Wall Street Journal. To determine the annual percentage rate that will apply to ***your*** account, ABC Bank adds a margin to the value of the index. The initial annual percentage rate may be determined by ABC Bank and may not necessarily be based on the index and margin used to make later rate adjustments. This discounted initial rate will be in effect for the first year ***your*** plan is open. ***Ask*** us for the current index value, margin, discount, and annual percentage rate.

Rate Changes

The annual percentage rate can change monthly. There is no limit on the amount by which the rate can change in a one-year period. The maximum annual percentage rate that can apply during the plan is 24.990%, or the maximum annual percentage rate allowed by applicable law, whichever is less. Rate change information will be included in ***your*** monthly statement.

Maximum Rate and Payment Examples

If you had an outstanding balance of $ 10,000 at the beginning of the borrowing period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 24.990% would be $ 208.25. The maximum annual percentage rate during the borrowing period could be reached in the first month. If you had an outstanding balance of $ 10,000 at the beginning of the payoff period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 24.990% would be $ 361.37. The maximum annual percentage rate during the payoff period could be reached in the first month.

Historical Example

The following table ***shows*** ***how*** the annual percentage rate and the minimum payments for a single $ 10,000 credit advance would have changed based on changes in the index over the last 15 years. The index values are from the first business day of January. While only one payment amount per year is ***shown***, payments would have varied during each year. The table assumes that no additional credit advances were taken, that only the minimum payment was made, and that the rate remained constant during each year. It does not necessarily indicate ***how*** the index or ***your*** payments would change in the future.

Historical Example Assuming a $ 10,000 Balance

	Index	Margin	Annual Percentage Rate (APR)	Minimum Monthly Payment
1991	10.000%	0.000%	10.000%	$ 83.33
1992	6.500%	0.000%	6.500%	$ 54.17
1993	6.000%	0.000%	6.000%	$ 50.00
1994	6.000%	0.000%	6.000%	$ 50.00
1995	8.500%	0.000%	8.500%	$ 70.83
1996	8.500%	0.000%	8.500%	$ 70.83
1997	8.250%	0.000%	8.250%	$ 68.75
1998	8.500%	0.000%	8.500%	$ 70.83
1999	7.750%	0.000%	7.750%	$ 64.58
2000	8.500%	0.000%	8.500%	$ 70.83
2001	9.000%	0.000%	9.000%	$ 226.13
2002	4.750%	0.000%	4.750%	$ 158.42
2003	4.250%	0.000%	4.250%	$ 129.11
2004	5.250%	0.000%	5.250%	$ 112.52
2005	5.250%	0.000%	5.250%	$ 93.72

THINGS YOU SHOULD KNOW BEFORE APPLYING FOR A HOME EQUITY LINE OF CREDIT (HELOC)

This disclosure contains important information about our Home Equity Line of Credit (HELOC). Please read it carefully and keep a copy for ***your*** records.

These terms can change	All of the terms described below are subject to change. If these terms change (other than the Annual Percentage Rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you paid to us or anyone else in connection with ***your*** application.
You could lose ***your*** home	***Your*** line of credit will be secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrowed.
You may not be able to draw on ***your*** line of credit	Under certain circumstances, we can: . Terminate ***your*** line, require you to pay the outstanding balance in one payment,

	and charge you fees upon termination; . Refuse to make additional extensions of credit; .Reduce the credit limit; and . Make certain changes in the plan. If you ***ask***, we will give you specific information about when we can take these actions.
The interest you pay may not be tax deductible	If you borrow more than ***your*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest under this plan.
Credit Limit	***Your*** credit limit will be based on ***your*** creditworthiness and other factors.
Minimum Balance	You must keep a minimum balance of at least $ 500 at all times.
Minimum Loan	The minimum amount that you can borrow at any time is $ 300.
Minimum Initial Loan	You must borrow at least $ 10,000 when you open the account.
Annual Percentage Rate (APR)	4.00% to 9.00% when you open ***your*** line of credit, based on ***your*** creditworthiness. ***Your*** APR will be based on the Prime Rate plus a margin between 0.00% and 5.00%, and will vary monthly with the market. There is no limit on the amount by which the APR can change in a one-year period. Rate change information will be included in ***your*** monthly statement. This APR does not include fees other than interest (unlike the APRs for traditional mortgages and home equity loans, which include some closing costs).
Maximum APR	24.99%. The maximum APR could be reached as soon as the first month that ***your*** line of credit is open.
Annual Fee	$ 50

Total Account Opening Fees	Up to $ 1,700
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close the line of credit within three years.

	Borrowing Period 2009 - 2018
Can I borrow money during this period?	Yes
Is a monthly payment due during this period?	Yes
Does my minimum monthly payment during this period cover any principal?	No, the minimum payment covers only the interest owed and ***<u>your</u>*** loan balance will not decrease.

	Payoff Period 2019 - 2028
Can I borrow money during this period?	No
Is a monthly payment due during this period?	Yes
Does my minimum monthly payment during this period cover any principal?	Yes, the minimum payment covers interest and 1.5% of ***<u>your</u>*** principal balance, but you will not pay off the entire balance and will owe a "balloon payment" at the end of the loan term (see example below).

Interest Rate	**Minimum Payment during Borrowing Period**
4.00% (minimum under plan)	$ 33.33
6.00%	$ 50.00
12.00%	$ 100.00
24.99% (maximum under plan)	$ 208.25

Interest Rate	**Minimum Payment during Payoff Period**	**Final Balloon Payment**
4.00% (minimum under plan)	$ 183.33 decreasing to $ 31.28	$ 1,686.24

Interest Rate	Minimum Payment during Payoff Period	Final Balloon Payment
6.00%	$ 200.00 decreasing to $ 34.12	$ 1,689.05
12.00%	$ 250.00 decreasing to $ 42.66	$ 1,697.45
24.99% (maximum under plan)	$ 358.25 decreasing to $ 61.13	$ 1,715.64

Historical Example Assuming a $ 10,000 Balance

The following figures ***show*** ***how*** the annual percentage rate and the minimum payments for a single $ 10,000 credit advance would have changed based on changes in the index over the last 15 years. The index values are from the first business day of January. While only one payment amount per year is ***shown***, payments would have varied during each year. The table assumes that no additional credit advances were taken, that only the minimum payment was made, and that the rate remained constant during each year. It does not necessarily indicate ***how*** the index or ***your*** payments would change in the future.

	Index	Margin	Annual Percentage Rate (APR)
1991	10.000%	0.000 %	10.000%
1992	6.500 %	0.000 %	6.500 %
1993	6.000 %	0.000 %	6.000 %
1994	6.000 %	0.000 %	6.000 %
1995	8.500 %	0.000 %	8.500 %
1996	8.500 %	0.000 %	8.500 %
1997	8.250 %	0.000 %	8.250 %
1998	8.500 %	0.000 %	8.500 %
1999	7.750 %	0.000 %	7.750 %
2000	8.500 %	0.000 %	8.500 %
2001	9.000 %	0.000 %	9.000 %
2002	4.750 %	0.000 %	4.750 %
2003	4.250 %	0.000 %	4.250 %
2004	5.250 %	0.000 %	5.250 %
2005	5.250 %	0.000 %	5.250 %

	Minimum Monthly Payment
1991	$ 83.33
1992	$ 54.17
1993	$ 50.00
1994	$ 50.00
1995	$ 70.83
1996	$ 70.83
1997	$ 68.75
1998	$ 70.83
1999	$ 64.58
2000	$ 70.83
2001	$ 226.13

	Minimum Monthly Payment
2002	$ 158.42
2003	$ 129.11
2004	$ 112.52
2005	$ 93.72

This disclosure contains important information about our Home Equity Line of Credit (HELOC). Please read it carefully and keep a copy for ***your*** records.

These terms can change	All of the terms described below are subject to change. If these terms change (other than the Annual Percentage Rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you paid to us or anyone else in connection with ***your*** application.
Your could lose ***your*** home	***Your*** line of credit will be secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrowed.
You may not be able to draw on ***your*** line of credit	Under certain circumstances, we can: . Terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Refuse to make additional extensions of credit; . Reduce the credit limit; and . Make certain changes in the plan. If you ***ask***, we will give you specific information about when we can take these actions.
The interest you pay may not be tax deductible	If you borrow more than ***your*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest

	under this plan.
Credit Limit	***Your*** credit limit will be based on ***your*** creditworthiness and other factors.
Minimum Balance	You must keep a minimum balance of at least $ 500 at all times.
Minimum Withdrawal	The minimum amount that you can borrow at any time is $ 300.
Minimum Initial Withdrawal	You must borrow at least $ 10,000 when you open the account.
Annual Percentage Rate (APR)	4.00% to 9.00% when you open ***your*** line of credit, based on ***your*** creditworthiness. After that, ***your*** APR will vary monthly with the market based on the Prime Rate. There is no limit on the amount by which the APR can change in a one-year period. Rate change information will be included in ***your*** monthly statement. This APR does not include fees other than interest (unlike the APRs for traditional mortgages and home equity loans, which include some closing costs).
Maximum APR	24.99%. The maximum APR could be reached as soon as the first month that ***your*** line of credit is open.
Annual Fee	$ 50
Total Account Opening Fees	Up to $ 1,700
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close the line of credit within three years.

	Withdrawal Period	**Payoff Period**
	2009-2018	**2019-2028**
Interest Rate	**Minimum Monthly Payment**	**Minimum Monthly Payment**
4.00% (minimum under plan)	$ 33.33	$ 183.33 decreasing to $ 31.28
6.00%	$ 50.00	$ 200.00 decreasing to $ 34.12
12.00%	$ 100.00	$ 250.00 decreasing to $ 42.66
24.99% (maximum under plan)	$ 208.25	$ 358.25 decreasing

	Withdrawal Period	**Payoff Period**
	2009-2018	**2019-2028**
Interest Rate	**Minimum Monthly Payment**	**Minimum Monthly Payment** to $ 61.13
Are withdrawals allowed during this period?	Yes	No
Is a monthly payment due during this period?	Yes	Yes
Does my minimum monthly payment during this period cover any principal?	No, this minimum payment covers only the interest owed and will not decrease ***your*** loan balance.	Yes, the minimum payment covers interest and 1.5% of ***your*** principal balance.
Will I owe a balloon payment?		

Historical Example Assuming a $ 10,000 Balance

The following figures ***show*** ***how*** the annual percentage rate and the minimum payments for a single $ 10,000 credit advance would have changed based on changes in the index over the last 15 years. The index values are from the first business day of January. While only one payment amount per year is ***shown***, payments would have varied during each year. The table assumes that no additional credit advances were taken, that only the minimum payment was made, and that the rate remained constant during each year. It does not necessarily indicate ***how*** the index or ***your*** payments would change in the future.

	Index	**Margin**	**Annual Percentage Rate (APR)**
1991	10.000 %	0.000 %	10.000 %
1992	6.500 %	0.000 %	6.500 %
1993	6.000 %	0.000 %	6.000 %
1994	6.000 %	0.000 %	6.000 %

	Index	**Margin**	**Annual Percentage Rate (APR)**
1995	8.500 %	0.000 %	8.500 %
1996	8.500 %	0.000 %	8.500 %
1997	8.250 %	0.000 %	8.250 %
1998	8.500 %	0.000 %	8.500 %
1999	7.750 %	0.000 %	7.750 %
2000	8.500 %	0.000 %	8.500 %
2001	9.000 %	0.000 %	9.000 %
2002	4.750 %	0.000 %	4.750 %
2003	4.250 %	0.000 %	4.250 %
2004	5.250 %	0.000 %	5.250 %
2005	5.250 %	0.000 %	5.250 %

	Minimum Monthly Payment
1991	$ 83.33
1992	$ 54.17
1993	$ 50.00
1994	$ 50.00
1995	$ 70.83
1996	$ 70.83
1997	$ 68.75
1998	$ 70.83
1999	$ 64.58
2000	$ 70.83
2001	$ 226.13
2002	$ 158.42
2003	$ 129.11
2004	$ 112.52
2005	$ 93.72

These are the credit terms we offer on our home equity line of credit (HELOC). Compare these credit terms to other credit offers. Know ***your*** rights as a borrower; visit www.frb.gov/consumers/HELOC.htm.

Credit Limit	***Your*** credit limit will be based on ***your*** creditworthiness and other factors.
Minimum Balance	You must keep a minimum balance of at least $ 500 at all times.
Minimum Loan	The minimum amount that you can borrow at any time is $ 300.
Minimum Initial Loan	You must borrow at least $ 10,000 when you open the account.
Annual Percentage Rate (APR)	4.00% to 9.00% when you open ***your*** line of credit, based on ***your*** creditworthiness.

	Your APR will be based on the Prime Rate plus a margin between 0.00% and 5.00%, and will vary monthly with the market. This APR does not include fees other than interest (unlike the APRs for traditional mortgages and home equity loans, which include some closing costs).
Maximum APR	24.99%
Annual Fee	$ 50
Total Account Opening Fees	Up to $ 1,700
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close the line of credit within three years.
These terms can change	All of the terms described below are subject to change. If these terms change (other than the Annual Percentage Rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you paid to us or anyone else in connection with ***your*** application.
You could lose ***your*** home	***Your*** line of credit will be secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrowed.
You may not be able to borrow money	Under certain circumstances, we can: . Terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Refuse to make additional extensions of credit; . Reduce the credit limit; and . Make certain changes in the plan. If you ***ask***, we will give you specific information about when we can take these actions.

The interest you pay may not be tax deductible	If you borrow more than ***your*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest under this plan.

	Borrowing Period 2009 - 2018	**Payoff Period 2019 - 2028**
Can I borrow money during this period?	Yes	No
Is a monthly payment due during this period?	Yes	Yes
Does my minimum monthly payment during this period cover any principal?	No, the minimum payment covers only the interest owed and will not decrease ***your*** loan balance.	Yes, the minimum payment covers interest and some principal, but you will not pay off the entire balance and will owe a "balloon payment" at the end of the loan term (see example below).

Interest Rate	**Minimum Payment during Borrowing Period**
4.00% (minimum under plan)	$ 33.33
6.00%	$ 50.00
12.00%	$ 100.00
24.99% (maximum under plan)	$ 208.25

Interest Rate	**Minimum Payment during Payoff Period**	**Final Balloon Payment**
4.00% (minimum under plan)	Up to $ 233.33	$ 924.96
6.00%	Up to $ 250.00	$ 926.49
12.00%	Up to $ 300.00	$ 931.10
24.99% (maximum under plan)	Up to $ 408.25	$ 941.05

Late Payment	Either $ 15 or 5% of the minimum payment, whichever is greater. This fee is imposed 15 days after the payment due date.
Over-the-Credit Limit	$ 20 for each advance from the credit line that causes you to exceed ***your*** credit limit.
Returned Payment	$ 30
Wire Transfer	$ 20
Courier Service	$ 30 per transmittal of documents that you

	request by a delivery service.
Stop Payment	$ 20 when you request a stop payment on a check written from this account.

These are the credit terms we offer on our home equity line of credit (HELOC). Compare these credit terms to other credit offers. Know ***your*** rights as a borrower; visit www.frb.gov/consumers/HELOC.htm.

Credit Limit	***Your*** credit limit will be based on ***your*** creditworthiness and other factors.
Minimum Balance	You must keep a minimum balance of at least $ 500 at all times.
Minimum Loan	The minimum amount that you can borrow at any time is $ 300.
Minimum Initial Loan	You must borrow at least $ 10,000 when you open the account.
Annual Percentage Rate (APR)	4.00% to 9.00% when you open ***your*** line of credit, based on ***your*** creditworthiness. ***Your*** APR will be based on the Prime Rate plus a margin between 0.00% and 5.00%, and will vary monthly with the market. This APR does not include fees other than interest (unlike the APRs for traditional mortgages and home equity loans, which include some closing costs).
Maximum APR	24.99%
Annual Fee	$ 50
Total Account Opening Fees	Up to $ 1,700
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close the line of credit within three years.
These terms can change	All of the terms described below are subject to change. If these terms change (other than the Annual Percentage Rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you paid to us or anyone else in connection with ***your*** application.
You could lose ***your*** home	***Your*** line of credit will be secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you

	borrowed.
You may not be able to borrow money	Under certain circumstances, we can: . Terminate ***<u>your</u>*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Refuse to make additional extensions of credit; . Reduce the credit limit; and . Make certain changes in the plan. If you ***<u>ask</u>***, we will give you specific information about when we can take these actions.
The interest you pay may not be tax deductible	If you borrow more than ***<u>your</u>*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest under this plan.

	Withdrawal Period	**Payoff Period**
	2009 - 2018	**2019 - 2028**
Interest Rate	**Minimum Monthly Payment**	**Minimum Monthly Payment**
4.00% (minimum under plan)	$ 166.67	Up to $ 1,166.67
6.00%	$ 250.00	Up to $ 1,250.00
12.00%	$ 500.00	Up to $ 1,500.00
24.99% (maximum under plan)	$ 1,041.25	Up to $ 2,041.25
Product Features		
Are withdrawals allowed during this period?	Yes	
Is a monthly payment due during this period?	Yes	Yes
Does my minimum monthly payment during this period cover any principal?	No, this minimum payment covers only the interest owed and will not decrease ***<u>your</u>*** loan balance.	Yes, the minimum payment covers interest and some principal.
Will I owe a balloon payment?		

	Withdrawal Period	Payoff Period
	2009 - 2018	**2019 - 2028**
Interest Rate	**Minimum Monthly Payment**	**Minimum Monthly Payment**

Late Payment	Either $ 15 or 5% of the minimum payment, whichever is greater. This fee is imposed 15 days after the payment due date.
Over-the-Credit Limit	$ 20 for each advance from the credit line that causes you to exceed ***your*** credit limit
Returned Payment	$ 30
Wire Transfer	$ 20
Courier Service	$ 30 per transmittal of documents that you request by a delivery service.
Stop Payment	$ 20 when you request a stop payment on a check written from this account.

HOME EQUITY LINE OF CREDIT (HELOC) STATEMENT OF TERMS

BORROWER: Joe Smith & Jane Doe

COLLATERAL: 1234 Main Street

Anytown, ST 12345

DATE: February 7, 2009

LENDER: ABC Bank

LOAN NUMBER: 123-12-1234-556

Credit Limit	$ 80,000
Minimum Balance	You must keep a minimum balance of at least $ 500 at all times.
Minimum Loan	The minimum amount that you can borrow at any time is $ 300.
Minimum Initial Loan	You must borrow at least $ 10,000 when you open the account.
Annual Percentage Rate (APR)	4.00% introductory APR for the first six months. After that, ***your*** APR will vary monthly with the market based on the Prime Rate + 2.00%. Under this formula, ***your*** APR without

	any discounts would currently be 6.00% based on today's Prime Rate. This APR does not include fees other than interest (unlike the APRs for traditional mortgages and home equity loans, which include some closing costs).
Maximum APR	24.99%
Annual Fee	$ 50
Total Account Opening Fees	$ 1,740 (itemized on next page)
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close the line of credit within three years.
You could lose ***your*** home	***Your*** line of credit is secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrowed.
You may not be able to draw on ***your*** line of credit	Under the circumstances described in ***your*** account agreement, we can: . Terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Refuse to make additional extensions of credit; . Reduce the credit limit; and . Make certain changes in the plan.
The interest you pay may not be tax deductible	If you borrow more than ***your*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest under this plan.
You do not have to accept this line of credit	You are under no obligation to accept this line of credit or its terms. Know ***your*** rights before you sign this statement; visit www.frb.gov/consumers/HELOC.htm.
You can dispute transactions	***Your*** right to dispute transactions is specified in ***your*** account agreement.

Borrowing Period

	2009 -- 2018
Can I borrow money during this period?	Yes
Is a monthly payment due during this period?	Yes
Does my minimum monthly payment during this period cover any principal?	No, the minimum payment covers only the interest owed and will not decrease ***your*** loan balance.

	Payoff Period **2019 - 2028**
Can I borrow money during this period?	No
Is a monthly payment due during this period?	Yes
Does my minimum monthly payment during this period cover any principal?	Yes, the minimum payment covers interest and some principal, but you will not pay off the entire balance and will owe a "balloon payment" at the end of the loan term (see example below).

Interest Rate	**Minimum Payment during Borrowing Period**	**Minimum Payment during Payoff Period**
4.00% (minimum under plan)	$ 33.33	Up to $ 233.33
6.00%	$ 50.00	Up to $ 250.00
12.00%	$ 100.00	Up to $ 300.00
24.99% (maximum under plan)	$ 208.25	Up to $ 408.25

Interest Rate	**Final Balloon Payment**
4.00% (minimum under plan)	$ 924.96
6.00%	$ 926.49
12.00%	$ 931.10
24.99% (maximum under plan)	$ 941.05

Loan Origination	$ 350
Loan Discount	$ 800
Underwriting	$ 295
Appraisal	$ 295
Late Payment	Either $ 15 or 5% of the minimum payment, whichever is greater. This fee is imposed 15 days after the payment due date.
Over-the-Credit Limit	$ 20 for each advance from the credit

	line that causes you to exceed ***<u>your</u>*** credit limit.
Returned Payment	$ 30
Wire Transfer	$ 20
Courier Service	$ 30 per transmittal of documents that you request by a delivery service.
Stop Payment	$ 20 when you request a stop payment on a check written from this account.

HOME EQUITY LINE OF CREDIT (HELOC) STATEMENT OF TERMS

BORROWER: **Joe Smith & Jane Doe**

COLLATERAL: **1234 Main Street**

Anytown, ST 12345

DATE: **September 23, 2008**

LENDER: **ABC Bank**

LOAN NUMBER: **123-12-1234-556**

Credit Line	
Credit Limit	$ 80,000
Minimum Balance	You must keep a minimum balance of at least $ 500 at all times.
Minimum Withdrawal	The minimum amount that you can borrow at any time is $ 300.
Minimum Initial Withdrawal	You must borrow at least $ 10,000 when you open the account.
APR	
Annual Percentage Rate (APR)	4.00% introductory APR for the first six months.
	After that, ***<u>your</u>*** APR will be 6.00%. This APR will vary monthly with the market based on the Prime Rate.
	This APR does not include fees other than interest (unlike the APRs for traditional mortgages and home equity loans, which include some closing costs).
Maximum APR	24.99%
Annual Fee	$ 50
Total Account	$ 1,740 (itemized on next page)

Opening Fees	
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close the line of credit within three years.
Risks	
You could lose ***<u>your</u>*** home	***<u>Your</u>*** line of credit is secured by ***<u>your</u>*** home, which means that you could lose ***<u>your</u>*** home if you are unable to repay the money you borrowed.
You may not be able to draw on ***<u>your</u>*** line of credit	Under the circumstances described in ***<u>your</u>*** account agreement, we can: . Terminate ***<u>your</u>*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Refuse to make additional extensions of credit; . Reduce the credit limit; and . Make certain changes in the plan.
The interest you pay may not be tax deductible	If you borrow more than ***<u>your</u>*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest under this plan.
Rights	
You do not have to accept this line of credit	You are under no obligation to accept this line of credit or its terms. Know ***<u>your</u>*** rights before you sign this statement; visit www.frb.gov/consumers/HELOC.htm.
You can dispute transactions	***<u>Your</u>*** right to dispute transactions is specified in ***<u>your</u>*** account agreement.

	Withdrawal Period	**Payoff Period**
	2009 - 2018	**2019 - 2028**
Interest Rate	**Minimum Monthly Payment**	**Minimum Monthly Payment**
4.00% (minimum under plan)	$ 166.67	Up to $ 1,166.67
6.00%	$ 250.00	Up to $ 1,250.00
12.00%	$ 500.00	Up to $ 1,500.00
24.99% (maximum under plan	$ 1,041.25	Up to $ 2,041.25

	Withdrawal Period	Payoff Period
	2009 - 2018	**2019 - 2028**
Interest Rate	**Minimum Monthly Payment**	**Minimum Monthly Payment**
Product Features		
Are withdrawals allowed during this period?	Yes	No
Is a monthly payment due during this period?	Yes	Yes
Does my minimum monthly payment during this period cover any principal?	No, this minimum payment covers only the interest owed and will not decrease ***your*** loan balance.	Yes, the minimum payment covers payment covers interest and some principal.
Will I owe a balloon payment?		

Loan Origination	$ 350
Loan Discount	$ 800
Underwriting	$ 295
Appraisal	$ 295
Penalty Fees	
Late Payment	Either $ 15 or 5% of the minimum payment, whichever is greater. This fee is imposed 15 days after the payment due date.
Over-the-Credit Limit	$ 20 for each advance from the credit line that causes you to exceed ***your*** credit limit.
Returned Payment	$ 30
Transaction Fees	
Wire Transfer	$ 20
Courier Service	$ 30 per transmittal of documents that you request by a delivery service.
Stop Payment	$ 20 when you request a stop payment on a check written from this account.

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

6 Key Questions to *Ask* About Home Equity Lines of Credit

When you are shopping for a home equity line of credit, you should consider the six questions below. Lines of credit have risky features that could make it difficult for you to repay ***your*** balance. As a result, you could lose ***your*** home. If you are not comfortable with the risks associated with a line of credit, ***ask*** ***your*** lender about other loan products, such as a traditional home equity loan. For more information, go to *federalreserve.gov/shopwisely*.

For a list of counselors in ***your*** area, go to *www.HELP.gov*.

Can my interest rate increase?

1 Lines of credit usually have an adjustable interest rate, which means that the rate can increase or decrease each month. Some lenders offer a discounted interest rate that is fixed for an introductory period. However, after this introductory period the rate will usually increase.

Can my minimum monthly payment increase?

2 Yes, ***your*** minimum monthly payment can increase. This increase can be based on a number of factors, such as when ***your*** adjustable interest rate increases or you borrow more money.

What is the difference between the "borrowing" and "payoff" periods?

3 The borrowing period starts when you open ***your*** line of credit and lasts for a limited time. During the borrowing period, you can take out loans from ***your*** line of credit, and you may be required to make a minimum monthly payment. After the borrowing period ends, the payoff period begins. During the payoff period, you cannot borrow any more money from ***your*** line of credit, and you must make larger minimum payments than during the withdrawal period.

Will I owe a balloon payment?

4 If you make only the minimum payments each month, you may not pay off ***your*** entire balance by the end of the loan term. At that point,

you may be ***asked*** to pay the entire remaining balance as a single lump sum, or "balloon payment." If you cannot refinance the outstanding balance or

pay it off using ***your*** savings, you could lose ***your*** home.

Do I have to pay any fees to have a line of credit?

5

You may have to pay fees to open ***your*** line of credit. You may also be charged an annual fee. In addition, you may have to pay penalty fees for late or missed payments or if you do not carry a required minimum balance. You may also be charged an early termination fee if you decide to

pay off or refinance ***your*** balance early.

Once I open a line of credit, can my lender change the amount of money that I can borrow?

6

If the value of ***your*** home declines or if ***your***

financial situation changes, ***your*** lender can lower

your credit limit or prevent you from borrowing any more money. Keep this in mind as you make financial plans for the future.

Round 3:

Chicago, IL

March 24-25, 2009

. Early Disclosure (ID-1)

. Early Disclosure (ID-2)

. Account-Opening Disclosure (AO-2)

. Historical Example Table

. Key Questions Disclosure

HOME EQUITY LINE OF CREDIT (HELOC) STATEMENT of TERMS

The terms described below could change at any time before you open a line of credit with us. If terms other than the Annual Percentage Rate (APR) change and you decide not to open the account, you are entitled to a refund of any fees that you paid to us or anyone else in connection with ***your*** application.

You Could Lose ***Your*** Home	***Your*** line of credit will be secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrowed.
You May Not Be Able To Borrow From ***Your*** Line Of Credit	Under certain circumstances, we can: . Terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Refuse to make additional extensions of credit; . Reduce the credit limit; and . Make certain changes in the plan. If you ***ask***, we will give you specific information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest paid.
Annual Percentage Rate (APR)	5.25% currently. ***Your*** APR will vary monthly based on the Prime Rate plus a margin of 1.00%. ***Your*** monthly statement will tell you each time ***your*** APR changes. There is no limit on ***how*** much the APR can change in one year.
Maximum APR	24.99%. The maximum APR could be reached as soon as the first month

	that ***your*** line of credit is open.
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%. If you borrowed $ 10,000 on this line of credit 15 years ago, ***your*** minimum monthly payment could have varied by $ 200 a month during that time.
Comparing APRs	The APR on a HELOC does not include fees other than interest. However, APRs for traditional mortgages and home equity loans include some fees.
Annual Fee	$ 50
Total Account Opening Fees	Up to $ 1,700 (If you ***ask***, we will give you an itemized list)
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close the line of credit within three years.
Credit Limit	$ 80,000
Minimum Initial Loan	You must borrow at least $ 10,000 when you open the account.
Minimum Loan	The minimum amount that you can borrow at any time is $ 300.
Minimum Balance	You must keep a minimum balance of at least $ 500 at all times.
Duration of Line of Credit	20 years consisting of: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money. You must make a minimum monthly payment during both periods.
Balloon Payment	If you make only the minimum monthly payment, you may owe a balloon payment at the end of the loan. See Payment Plans below for more details.

Payment Plans

Before you open this account you will choose a payment plan. Two choices are described below. Other payment choices may be available to you; ***ask*** us for details.

Plan A	During the borrowing period each month you would pay the interest plus 1.5% of the principal balance. During the repayment period each month you would pay enough principal to pay off ***your*** entire balance by the end of the loan.
Plan B	During the borrowing period, each month you would pay only interest and ***your*** balance would remain the same. During the repayment period each month you would pay interest plus 1% of the principal balance, but would owe a balloon payment at the end of the loan.
Plan A vs. Plan B	With Plan B, you would have lower monthly payments during the borrowing period, but would owe a balloon payment at the end of the loan. With Plan A, you would have higher monthly payments than with Plan B, but would not owe any money at the end of the loan.

Plan Comparison: Sample Payments on a $ 10,000 Balance

This table ***shows*** the payments you would make under each plan if you borrowed $ 10,000. Because principal balance and interest owed each month decrease as ***your*** principal balance is paid down, some plans ***show*** a payment "decreasing to" a lower payment over time.

	Minimum monthly payment during Borrowing Period	**Minimum monthly payment during Repayment Period**
Plan A	$ 193.75 decreasing to $ 32.07	$ 20.72 decreasing to $ 13.65
Plan B	$ 43.75	$ 143.75 decreasing to $ 43.47
Plan A	$ 358.25 decreasing to $ 59.31	$ 47.55 decreasing to $ 13.87
Plan B	$ 208.25	$ 308.25 decreasing to $ 93.22

	Final Balloon Payment	**Total of All Payments**
Plan A	$ 0	$ 11,963.09
Plan B	$ 2,993.80	$ 15,321.41

	Final Balloon Payment	**Total of All Payments**
Plan A	$ 0	$ 21,983.00
Plan B	$ 2,993.80	$ 46,586.60

Fixed-Rate Loan Option

You may have an option to borrow up to $ 40,000 at a fixed interest rate equal to the Prime Rate plus a margin between 3.00% and 7.00%. ***Ask*** us for more details.

HOME EQUITY LINE OF CREDIT (HELOC) STATEMENT of TERMS

The terms described below could change at any time before you open a line of credit with us. If terms other than the Annual Percentage Rate (APR) change and you decide not to open the account, you are entitled to a refund of any fees that you paid to us or anyone else in connection with ***your*** application.

Annual Percentage Rate (APR)	5.25% currently. ***Your*** APR will vary monthly based on the Prime Rate plus a margin of 1.00%. ***Your*** monthly statement will tell you each time ***your*** APR changes. There is no limit on ***how*** much the APR can change in one year.
Maximum APR	24.99%. The maximum APR could be reached as soon as the first month that ***your*** line of credit is open.
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%. If you borrowed $ 10,000 on this line of credit 15 years ago, ***your*** minimum monthly payment could have varied by $ 200 a month during that time.
Comparing APRs	The APR on a HELOC does not include fees other than interest. However, APRs for traditional mortgages and home equity loans include some fees.
Annual Fee	$ 50
Total Account Opening Fees	Up to $ 1,700 (If you ***ask***, we

	will give you an itemized list)
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close the line of credit within three years.
Credit Limit	$ 80,000
Minimum Initial Loan	You must borrow at least $ 10,000 when you open the account.
Minimum Loan	The minimum amount that you can borrow at any time is $ 300.
Minimum Balance	You must keep a minimum balance of at least $ 500 at all times.
You Could Lose ***Your*** Home	***Your*** line of credit will be secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrowed.
You May Not Be Able To Borrow From ***Your*** Line Of Credit	Under certain circumstances, we can: . Terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Refuse to make additional extensions of credit; . Reduce the credit limit; and . Make certain changes in the plan. If you ***ask***, we will give you specific information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest paid.
Duration of Line of Credit	20 years consisting of: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money.

	You must make a minimum monthly payment during both periods.
Balloon Payment	If you make only the minimum monthly payment, you may owe a balloon payment at the end of the loan. See Payment Plans below for more details.

Payment Plans

Before you open this account you will choose a payment plan. The plans use different formulas for calculating ***your*** minimum payments. Plans with lower monthly payments generally have higher balloon payments due at loan end. This table ***shows*** the formulas for calculating minimum payments for two plans that we offer. Other payment choices may be available to you; ***ask*** us for details.

	Minimum Payment Formula for Borrowing Period
Plan A	Interest + 1.5% of principal
Plan B	Interest only

	Minimum Payment Formula for Repayment Period	**Has a Balloon Payment?**
Plan A	Interest + all principal	No
Plan B	Interest + 1% of principal	Yes

Plan Comparison: Sample Payments on a $ 10,000 Balance

This table ***shows*** the payments you would make under each plan if you borrowed $ 10,000. Because principal balance and interest owed each month decrease as ***your*** principal balance is paid down, some plan periods ***show*** a payment "decreasing to" a lower payment over time.

APR	**Minimum monthly payment during Borrowing Period**
5.25% (current)	$ 193.75 decreasing to $ 32.07
24.99% (max.)	$ 358.25 decreasing to $ 59.31$
APR	Minimum monthly payment during Borrowing Period
5.25% (current).	$ 43.75
24.99% (max.)	$ 208.25

APR	**Minimum monthly payment during Repayment Period**	**Final Balloon Payment**
5.25% (current)	$ 20.72 decreasing to $ 13.65	$ 0
24.99% (max.)	$ 47.55 decreasing to $ 13.87	$ 0
APR	Minimum monthly payment during	Final Balloon

APR	**Minimum monthly payment during Repayment Period**	**Final Balloon Payment**
	Repayment Period	Payment
5.25% (current).	$ 143.75 decreasing to $ 43.47	$ 2,993.80
24.99% (max.)	$ 308.25 decreasing to $ 93.22	$ 2,993.80

Fixed-Rate Loan Option

You may have an option to borrow up to $ 40,000 at a fixed interest rate equal to the Prime Rate plus a margin between 3.00% and 7.00%. ***Ask*** us for more details.

Annual Percentage Rate (APR)	5.25% currently. ***Your*** APR will vary monthly based on the Prime Rate plus a margin of 1.00%. ***Your*** monthly statement will tell you each time ***your*** APR changes. There is no limit on ***how*** much the APR can change in one year.
Maximum APR	24.99%. The maximum APR could be reached as soon as the first month that ***your*** line of credit is open.
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%. If you borrowed $ 10,000 on this line of credit 15 years ago, ***your*** minimum monthly payment could have varied by $ 200 a month during that time.
Comparing APRs	The APR on a HELOC does not include fees other than interest. However, APRs for traditional mortgages and home equity loans include some fees.
Paying Interest	We will begin charging interest on each loan transaction on the date the transaction is posted to ***your*** account.
Annual Fee	$ 50
Total Account Opening Fees	$ 1,700 (itemized below)
Early Termination Fee	.125% of the credit limit

	or $ 500, whichever is greater, if you close the line of credit within three years.
Credit Limit	$ 80,000
Minimum Initial Loan	You must borrow at least $ 10,000 when you open the account.
Minimum Loan	The minimum amount that you can borrow at any time is $ 300.
Minimum Balance	You must keep a minimum balance of at least $ 500 at all times.
Duration of Line of Credit	20 years consisting of: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money. You must make a minimum payment during both periods.
Balloon Payment	If you make only the minimum monthly payment, you will owe a balloon payment at the end of the loan. See Sample Payments section for more details.

How _Your_ Minimum Payments Will Be Determined

During the borrowing period ***your*** minimum monthly payment will cover only interest. If you make only the minimum monthly payment ***your*** balance will remain the same. During the repayment period ***your*** minimum payment will cover interest plus 1% of the principal balance.

Sample Payments

This table ***shows*** the payments you would make if you borrowed $ 10,000 or 380,000 at two sample APRs. During the repayment period, ***your*** minimum monthly payment will decrease over time as ***your*** principal balance is paid down.

APR	**Minimum payment during Borrowing Period (Interest-Only)**
5.25% (current)	$ 43.75
24.99% (max.)	$ 208.25
5.25% (current)	$ 350.00
24.99% (max.)	$ 1,666.00

APR	Minimum payment during Repayment Period (Interest + 1% of Principal)	Minimum payment Final Balloon Payment
5.25% (current)	$ 143.75 decreasing to $ 43.47	$ 2,993.80
24.99% (max.)	$ 308.25 decreasing to $ 93.22	$ 2,993.80
5.25% (current)	$ 1,150.00 decreasing to $ 347.76	$ 23,950.40
24.99% (max.)	$ 2,466.00 decreasing to $ 745.76	$ 23,950.40

Fixed-Rate Loan Option

You may have an option to borrow up to $ 40,000 at a fixed interest rate equal to the Prime Rate plus a margin between 3.00% and 7.00%. ***Ask*** us for more details.

Loan Origination	$ 350
Loan Discount	$ 800
Underwriting	$ 295
Appraisal	$ 295
Late Payment	Either $ 15 or 5% of the minimum payment, whichever is greater. This fee is imposed 15 days after the payment due date.
Over-the-Credit Limit	$ 20 for each loan that causes you to exceed ***your*** credit limit.
Balance Below $ 500	$ 25 if ***your*** balance falls below $ 500.
Returned Payment	$ 30
Wire Transfer	$ 20 for each loan transaction that you initiate by wire transfer.
Transaction less than $ 300	4% of each loan transaction that is less than $ 300. This fee does not apply to credit card transactions.
Cash advance using a credit card	Either $ 2 or 2% of the amount of each cash advance, whichever is greater.
Foreign transaction using a credit card	1% of each transaction in U.S. dollars.
You Could Lose ***Your*** Home	***Your*** line of credit will be secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrowed.
You May Not Be Able To Borrow From ***Your*** Line Of Credit	Under certain circumstances, we can: . Terminate ***your*** line, require you to pay the outstanding balance in one

payment, and charge you fees upon termination;

. Refuse to make additional extensions of credit;

. Reduce the credit limit; and

. Make certain changes in the plan.

See ***your*** account agreement for details.

The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the excess amount is not deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest paid.

How **We Will Calculate** ***Your*** **Balance**: We use a method called "average daily balance (including new purchases)." See ***your*** account agreement for more details.

Billing Rights: Information on ***your*** rights to dispute transactions and ***how*** to exercise those rights is provided in ***your*** account agreement.

Historical Example

The following table ***shows*** ***how*** the annual percentage rate and the minimum payments for a single $ 10,000 credit advance would have changed based on changes in the index over the last 15 years. The index values are from the first business day of January. While only one payment amount per year is ***shown***, payments would have varied during each year. The table assumes that no additional credit advances were taken, that only the minimum payment was made, and that the rate remained constant during each year. It does not necessarily indicate ***how*** the index or ***your*** payments would change in the future.

Historical Example Assuming a $ 10,000 Balance

	Index	Margin	Annual Percentage Rate (APR)	Minimum Monthly Payment
1991	10.000 %	0.000 %	10.000 %	$ 83.33
1992	6.500 %	0.000 %	6.500 %	$ 54.17
1993	6.000 %	0.000 %	6.000 %	$ 50.00
1994	6.000 %	0.000 %	6.000 %	$ 50.00
1995	8.500 %	0.000 %	8.500 %	$ 70.83
1996	8.500 %	0.000 %	8.500 %	$ 70.83
1997	8.250 %	0.000 %	8.250 %	$ 68.75
1998	8.500 %	0.000 %	8.500 %	$ 70.83
1999	7.750 %	0.000 %	7.750 %	$ 64.58

	Index	Margin	Annual Percentage Rate (APR)	Minimum Monthly Payment
2000	8.500 %	0.000 %	8.500 %	$ 70.83
2001	9.000 %	0.000 %	9.000 %	$ 226.13
2002	4.750 %	0.000 %	4.750 %	$ 158.42
2003	4.250 %	0.000 %	4.250 %	$ 129.11
2004	5.250 %	0.000 %	5.250 %	$ 112.52
2005	5.250 %	0.000 %	5.250 %	$ 93.72

Key Questions to *Ask* About Home Equity Lines of Credit

When you are shopping for a home equity line of credit, consider the questions below. Lines of credit have risky features that could make it difficult for you to repay ***your*** balance. As a result, you could lose ***your*** home. ***Ask your*** lender about availability and terms of other loan products, such as a traditional home equity loan. For more information, go to *federalreserve.gov/shopwisely*. For a list of counselors in ***your*** area, go to *www.HELP.gov*.

1 Can my interest rate increase?

Lines of credit usually have a variable interest rate, which means that the rate can increase or decrease from time to time. A lender may offer you a discounted interest rate that is fixed for an introductory period. However, after this introductory period the rate will usually increase.

2 Can my minimum monthly payment increase?

Yes, ***your*** minimum monthly payment can increase based on a number of factors, such as if ***your*** adjustable interest rate increases or you borrow more money.

3 What is the difference between "borrowing" and "repayment" periods?

The borrowing period starts when you open ***your*** line of credit and lasts for a limited time. During the borrowing period, you can borrow money and may be required to make a minimum monthly payment. After the borrowing period ends, the repayment period begins. During the repayment period, you cannot borrow any more money and you must make larger minimum payments than during the withdrawal period.

4 Will I owe a balloon payment?

If you make only the minimum monthly payments you may not pay off ***your*** entire balance by the end of the loan term. At that point, you may have to pay the remaining balance as a single lump sum, known as a "balloon payment." If you cannot refinance the outstanding balance or pay it off using ***your*** savings, you could lose ***your*** home.

5 Do I have to pay any fees to have a line of credit?

You may have to pay fees to open ***your*** line of credit. You may also be charged an annual or maintenance fee. In addition, you may have to pay penalty fees for late or missed payments or if you carry less than the required minimum balance. You may also be charged an early termination fee if you decide to pay off or refinance ***your*** balance early.

6 Once I open a line of credit, can my lender change the amount of money that I can borrow?

If the value of ***your*** home declines or if ***your*** financial situation changes, ***your*** lender can lower ***your*** credit limit or prevent you from borrowing more money. Keep this in mind as you make financial plans for the future.

Round 4: Denver, CO

April 14-1 5, 2009

. Early Disclosure (ID-3)
. Early Disclosure (ID-4)
. Account-Opening Disclosure (AO-3
. Key Questions Disclosure

HOME EQUITY LINE OF CREDIT (HELOC) TERMS

BORROWER: **Joe Smith & Jane Doe**

COLLATERAL: **1234 Main Street**

Anytown, ST 12345

DATE: **March 17, 2009**

LENDER: **ABC Bank**

LOAN NUMBER: **123-12-1234-556**

You are under no obligation to accept these terms. If you let us know within three (3) business days after you receive these terms that you decided not to open the account, we will refund all fees you paid.

These terms could change before we open *your* account. If terms other than the Annual Percentage Rate (APR) change and you decide not to open the account, let us know and we will refund all fees you paid.

You Could Lose ***Your*** Home	***Your*** line of credit will be secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrow.
You May Not Be Able to	Under certain circumstances, we can:

Borrow From ***Your*** Line of Credit	. Terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Not allow you to borrow any additional money even if it is available under ***your*** credit limit; . Reduce the credit limit; and . Make certain changes in the plan. Information about when we can take these actions will be specified in ***your*** account agreement. You can also ***ask*** us for this information.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest paid.
Annual Percentage Rate (APR)	5.25%. This is a variable rate and will vary monthly based on the Prime Rate (as published in the Wall Street Journal) plus 1.00%. ***Your*** monthly statement will tell you each time ***your*** rate changes. There is no limit on ***how*** much the rate can change in one year.
Maximum APR	24.99%. The maximum rate could be reached as soon as the first month that ***your*** account is open.
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and Prime Rate 10.00%. If you borrowed $ 10,000 on this line of credit 15 years ago, ***your*** minimum monthly payment would have been as low as $ 50 and as high as $ 250.
Annual Fee	$ 50
Total Account Opening	Up to $ 1,740, for the following:

Fees	. $ 350 for loan origination . $ 800 for loan discount . $ 295 for underwriting . $ 200 - $ 295 for appraisal
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close ***your*** account within three (3) years.
Other Fees	Other fees will apply, such as fees to make transactions on the account, and penalty fees. ***Ask*** us for a complete list of fees.
Credit Limit	$ 80,000
Minimum Initial Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300
Minimum Balance You	must keep a minimum balance of at least $ 500.
Duration of Line of Credit	20 years consisting of: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money. You must make a minimum monthly payment during both periods.
Payment Plans	Depending on the payment plan you choose, if you make only the minimum payment each month you may not pay off ***your*** entire balance by the end of the term. If this happens, you will be required to pay the remaining balance in a single payment, known as a "balloon payment."

	Borrowing Period Minimum Payment	**Repayment Period Minimum Payment**	**Has A Final Balloon Payment?**
Plan A	Interest + 1.5% of principal (but not less than $ 50)	Interest + principal (but not less than $ 50)	No
Plan B	Interest only	Interest + 1% of principal	Yes

Borrowing Period	**Repayment Period**

APR	First Payment	First Payment	Time to pay off balance
5.25% (current)	$ 193.75	$ 50.00	15 years
24.99% (max.)	$ 358.25	$ 50.00	15 years
APR	Borrowing Period First Payment	Repayment Period First Payment	Time to pay off balance
5.25% (current)	$ 43.75	$ 143.75	20 years
24.99% (max.)	$ 208.25	$ 308.25	20 years

Fixed-Rate Loan Option

Regardless of which payment plan you choose, you have the option to have a fixed interest rate on a balance of up to $ 40,000 (of ***your*** $ 80,000 credit line). ***Ask*** us for details.

HOME EQUITY LINE OF CREDIT (HELOC) TERMS

BORRWER: Joe Smith & Jane Doe
COLLATERAL: 1234 Main Street

Anytown, ST 12345

DATE: March 17, 2009

LENDER: ABC Bank

LOAN NUMBER: 123-12-1234-556

You Could Lose ***Your*** Home	***Your*** line of credit will be secured by ***your*** home, which means that you could lose ***your*** home if you are unable to repay the money you borrow.
You May Not Be Able to Borrow From ***Your*** Line of Credit	Under certain circumstances, we can: . Terminate ***your*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Not allow you to borrow any additional money even if it is available under ***your*** credit limit; . Reduce the credit limit; and . Make certain changes in the plan. Information about when we can take these actions will be specified in ***your*** account agreement. You can also

	ask us for this information.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest paid.
Terms May Change	These terms could change before we open ***your*** account. If terms other than the Annual Percentage Rate (APR) change and you decide not to open the account, let us know and we will refund all fees you paid.
Annual Percentage Rate (APR)	5.25%. This is a variable rate and will vary monthly based on the Prime Rate.
Maximum APR	24.99%
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%. If you borrowed $ 10,000 on this line of credit 15 years ago, ***your*** minimum monthly payment would have been as low as $ 50 and as high as $ 250.
Refundability of Fees	If you let us know within three (3) business days after you receive these terms that you do not want to open the account, we will refund all fees you paid.
Annual Fee	$ 50
Total Account Opening Fees	Up to $ 1,740 (If you ***ask***, we will give you an itemized list)
Early Termination Fee	.125% of the credit limit or $ 500, whichever is greater, if you close ***your*** account within three (3) years.
Credit Limit	$ 80,000
Minimum Initial Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300
Minimum Balance	You must keep a minimum balance of at least $ 500.

Duration of Line of Credit	20 years consisting of: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money. You must make a minimum monthly payment during both periods.
Balloon Payment	Depending on the payment plan you choose, if you make only the minimum payment each month you may not pay off ***your*** entire balance by the end of the term. If this happens, you will be required, to pay the remaining balance in a single payment, known as a "balloon payment."
Plan A	During the borrowing period, ***your*** minimum monthly payment covers interest plus 1.5% of the principal balance. During the repayment period, ***your*** minimum monthly payment covers interest plus enough principal to pay off ***your*** entire balance by the end of the term and you would not owe a balloon payment. ***Your*** payments will never be less than $ 50.
Plan B	During the borrowing period, ***your*** minimum monthly payment covers only interest and you would not pay down ***your*** balance. During the repayment period, ***your*** minimum monthly payment covers interest plus 1% of the principal balance and you would owe a balloon payment at the end of the term.

APR	First Monthly Payment
5.25% (current)	$ 193.75
24.99% (max.)	$ 358.25

APR	First Monthly Payment
5.25% (current)	$ 43.75
24.99% (max.)	$ 208.25

Fixed-Rate Loan Option

Regardless of which payment plan you choose, you have the option to have a fixed interest rate on an amount up to ***your*** available credit. ***Ask*** us for details.

HOME EQUITY LINE OF CREDIT (HELOC) TERMS

BORROWER: Joe Smith & Jane Doe
COLLATERAL: 1234 Main Street
Anytown, ST 12345

DATE: March 27, 2009

LENDER: ABC Bank

LOAN NUMBER: 123-12-1234-556

You are entitled to a refund of any fees that you paid to open this account, if you tell us in writing that you want to cancel this account for any reason within three (3) business days after you receive these terms.

Annual Percentage Rate (APR)	5.25%. This is a variable rate and will vary monthly based on the Prime Rate (as published in the Wall Street Journal) plus 1.00%. ***Your*** monthly statement will tell you each time ***your*** rate changes. There is no limit on ***how*** much the rate can change in one year.
Maximum APR	24.99%. The maximum rate could be reached as soon as the first month that ***your*** account is open.
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%. If you borrowed $ 10,000 on this line of credit 15 years ago, ***your*** minimum monthly payment would have been as low as $ 50 and as high as $ 250.
Paying Interest	We will begin charging interest on each transaction on the date the transaction is posted to ***your*** account.
Total Account Opening Fees	$ 1,740 (itemized below)
Annual Fee	$ 50
Early Termination Fee	.125% of the credit limit or $ 500,

	whichever is greater, if you close ***your*** account within three (3) years.
Credit Line	$ 80,000
Minimum Initial Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Balance	After the initial transaction, each transaction you make must be at least $ 300.
Minimum Transaction	You must keep a minimum balance of at least $ 500.
Duration of Line of Credit	20 years consisting of:
	. Borrowing Period (Years 1-10): During this time you can borrow money.
	. Repayment Period (Years 11-20): During this time you cannot borrow money.
	You must make a minimum monthly payment during both periods.
Balloon Payment	If you make only the minimum
	monthly payment you will not pay off ***your*** entire balance by the end of the term and will have to pay the remaining balance in a single payment, known as a "balloon payment." See "Sample Payments" on next page for details.

How ***Your*** **Minimum Monthly Payments Will Be Determined**

During the borrowing period, ***your*** minimum monthly payment covers only interest and will not pay down ***your*** balance. During the repayment period, ***your*** minimum monthly payment covers interest plus 1% of the principal balance.

Fixed-Rate Option

You have the option to have a fixed interest rate on a balance of up to $ 40,000 (of ***your*** $ 80,000 credit line). ***Ask*** us for details.

	Borrowing Period	Repayment Period
APR	First Monthly Payment (Interest-Only)	First Monthly Payment (Interest + 1% of Principal)
5.25% (current)	$ 43.75	$ 143.75

	Borrowing Period	Repayment Period
APR	**First Monthly Payment**	**First Monthly Payment**
	(Interest-Only)	**(Interest + 1% of Principal)**
24.99% (max.)	$ 208.25	$ 308.25
5.25% (current)	$ 350.00	$ 1,150.00
24.99% (max.)	$ 1,666.00	$ 2,466.00

Loan Origination	$ 350
Loan Discount	$ 800
Underwriting	$ 295
Appraisal	$ 295
Late Payment	This fee is charged if ***<u>your</u>*** payment is received 15 days after the due date.
Over-the-Credit Limit	$ 20
Balance below $ 500	$ 25 if ***<u>your</u>*** balance falls below $ 500.
Returned Payment	$ 30
Transaction less than $ 300	4% of each transaction that is less than $ 300. This fee does not apply to credit card transactions.
Cash Advance Using a Credit Card	Either $ 2 or 2% of the amount of each cash advance, whichever is greater.
Foreign Transaction Using a Credit Card	1% of each transaction in U.S. dollars.
You Could Lose ***<u>Your</u>*** Home	***<u>Your</u>*** line of credit will be secured by ***<u>your</u>*** home, which means that you could lose ***<u>your</u>*** home if you are unable to repay the money you borrow.
You May Not Be Able to Borrow From ***<u>Your</u>*** Line of Credit	Under certain circumstances, we can: . Terminate ***<u>your</u>*** line, require you to pay the outstanding balance in one payment, and charge you fees upon termination; . Not allow you to borrow additional money even if it is available under ***<u>your</u>*** credit limit; . Reduce the credit limit; and . Make certain changes in the plan. See ***<u>your</u>*** account agreement for details.

The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor regarding the deductibility of interest paid.

How **We Will Calculate** ***Your*** **Balance**: We use a method called "average daily balance (including new purchases)." See ***your*** account agreement for more details.

Billing Rights: Information on ***your*** rights to dispute transactions and ***how*** to exercise those rights is provided in ***your*** account agreement.

When you are shopping for a home equity line of credit, consider the questions below. Lines of credit can have risky features that could make it difficult for you to repay ***your*** balance. As a result, you could lose ***your*** home. ***Ask*** ***your*** lender about other loan products, such as a traditional home equity loan. For more information, go to *www.federalreserve.gov/shopwisely*.

1 Can my interest rate increase?

Lines of credit usually have a variable interest rate, which means that the rate can increase or decrease from time to time. A lender may offer you a lower initial interest rate for a short time. However, after this period ends the rate will usually increase.

2 Can my minimum payment increase?

Yes, ***your*** minimum payment can increase based on several factors, such as when ***your*** variable interest rate increases or you borrow more money.

3 When can I borrow money?

You can borrow money only for a specified time, starting when you open ***your*** account. During this time, known as the "borrowing period," you can borrow money and you must make minimum payments. When the borrowing period ends, you will no longer be able to borrow money from ***your*** line of credit.

4 ***How*** soon do I have to pay off my balance?

After the borrowing period ends, under some plans you may be required to pay off ***your*** balance immediately in one payment. Under other plans you will have a certain amount of time to pay down ***your*** balance. During this time, known as the "repayment period," you will not be able to borrow additional amounts and will have to make larger minimum payments than during the borrowing period.

5 Will I owe a balloon payment?

Under some plans, if you make only the minimum payments you will not pay off ***your*** entire balance by the end of the term. At that point, you will have to pay the remaining balance as a single lump-sum, known as a "balloon payment." If you cannot get another loan to repay this amount, or pay it off using ***your*** savings, you could lose ***your*** home.

6 Do I have to pay any fees?

In addition to an application fee, you may be required to pay four (4) types of fees for ***your*** line of credit: (i) fees to open ***your*** account, such as loan origination or property appraisal fees; (ii) fees to maintain ***your*** account, such as an annual fee; (iii) fees to use ***your*** account, such as a cash advance fee; and (iv) penalty fees, such as late payment or over-the-credit limit fees.

Round 5: Bethesda, MD May 5-6, 2009

. Early Disclosure (ID-5)

. Early Disclosure (ID-6)

. Account-Opening Disclosure (AO-4)

. Key Questions Disclosure

. "Home Equity Loan vs. Line of Credit" Disclosure

TRUTH IN LENDING STATEMENT

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

February 26, 2009

ABC Bank

Loan Officer: 12345 1234

Loan Number: 123-12-1234-556

You have applied for a home equity line of credit. You should have received with ***your*** application "Key Questions to ***Ask*** About Home Equity Lines of Credit," a disclosure that explains home equity lines of credit. If you did not, ***ask*** us for a copy.

You do not have to accept these terms. These terms could change before we open *your* account. We will refund all fees you paid if you tell us that you do not want to open an account:

. for any reason within three business days after you receive this statement; or

. any time before ***your*** account is opened if any of these terms (other than the APR) changes.

You Could Lose ***Your*** Home	***Your*** line of credit will be secured by ***your*** home. This means you could lose ***your*** home if you cannot repay the money you borrow.
You May Not Be Able to Borrow From ***Your*** Line of Credit	Under certain circumstances, we can: . Terminate ***your*** line of credit and make you pay the outstanding balance in one payment; . Not allow you to borrow any more money, even if it is available under ***your*** credit limit; . Lower ***your*** credit limit; and . Make other changes to the plan. ***Ask*** us for more specific information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax

	advisor to find out whether the interest you pay is deductible.
Credit Limit	$ 80,000
Minimum Initial Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300.
Minimum Balance	You must keep a minimum balance of at least $ 500.
Annual Percentage Rate (APR)	5.25%. This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. ***Your*** monthly statement will ***show*** ***your*** rate changes. There is no limit on ***how*** much the rate can change in one year.
Maximum APR	24.99%. The maximum rate could be reached as soon as the first month that ***your*** account is open.
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%. If you borrowed $ 10,000 from this line of credit 15 years ago, ***your*** minimum monthly payment would have been as low as $ 50 and as high as $ 250.
Total Account Opening Fees	Up to $ 1,740, for the following: . $ 350 for loan origination . $ 800 for loan discount . $ 295 for underwriting . $ 200 - $ 295 for appraisal
Annual Fee	$ 50
Early Termination Fee	$ 500 or .125% of the credit limit, whichever is greater, if you close ***your*** account within three years.
Other Fees	Other fees will apply, such as penalty fees and fees to make transactions on the

account. ***Ask*** us for a complete list of fees.

Borrowing and Repayment Terms

Duration of Line of Credit	20 years, divided into two periods: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money. You must make a minimum monthly payment during both periods.
Balloon Payment	Depending on the terms of ***your*** payment plan, if you make only the minimum monthly payment you may not pay off ***your*** entire balance by the end of the repayment period. If this happens, you will have to pay the remaining balance in a single payment, known as a "balloon payment."

Payment Plans

This table ***shows*** ***how*** we determine minimum monthly payments for two plans that we offer. Other payment plans may be available. ***Ask*** us for details.

Plan A	. Borrowing Period (Years 1-10): ***Your*** minimum monthly payment would cover interest plus 1.5% of the principal balance. . Repayment Period (Years 11-20): ***Your*** minimum monthly payment would cover interest plus enough principal to pay off ***your*** entire balance by the end of the repayment period. You would not owe a balloon payment.
Plan B	. Borrowing Period (Years 1-10): ***Your*** minimum monthly payment would cover only interest and you would not pay down ***your*** principal balance.

. Repayment Period (Years 11-20): ***Your*** minimum monthly payment would cover interest plus 1% of the principal balance.

You would owe a balloon payment.

Plan Comparison: Sample Payments

The table below ***shows*** sample first monthly payments under each plan. These payments are based on the current and maximum APRs if you borrow **$ 10,000** when you open ***your*** account and an **additional $ 10,000** at the end of the borrowing period.

These are not *your* actual payments. ***Your*** actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

Sample Payments under Plan A

APR	Borrowing Period (Years 1-10)	Repayment Period (Years 11-20)
	First Payment	**First Payment**
5.25% (current)	$ 193.75	$ 121.52
24.99% (max.)	$ 358.25	$ 264.51

Sample Payments under Plan B

APR	Borrowing Period (Years 1-10)	Repayment Period (Years 11-20)
	First Payment	**First Payment**
5.25% (current)	$ 43.75	$ 287.50
24.99% (max.)	$ 208.25	$ 616.50

Plan A vs. Plan B

. Under Plan A, you would pay **less** over time and **would not** owe a balloon payment.

. Under Plan B, you would pay more over time and **would** owe a balloon payment if you make only the minimum monthly payments. In the example above, the balloon payment would be $ 5,987.61.

Fixed-Rate Loan Option

During the borrowing period under either payment plan, you have the option to borrow at a fixed interest rate an amount up to ***your*** available credit limit. ***Ask*** us for details.

You have applied for a home equity line of credit. You should have received with ***your*** application "Key Questions to ***Ask*** About Home Equity Lines of Credit," a disclosure that explains home equity lines of credit. If you did not, ***ask*** us for a copy.

You do not have to accept these terms. These terms could change before we open *your* account. You may be entitled to a refund of all fees you paid if you decide not to open an account. See "Fees" section below for more details.

Credit Limit	$ 80,000
Minimum Initial Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300.
Minimum Balance	You must keep a minimum balance of at least $ 500.
Annual Percentage Rate (APR)	5.25%. This APR will vary with the market based on the Prime Rate.
Maximum APR	24.99%.
Refundability of Fees	We will refund all fees you paid if you tell us that you do not want to open an account: . for any reason within three business days after you receive this statement; or . any time before ***your*** account is opened if any of these terms (other than the APR) changes.
Total Account Opening Fees	Up to $ 1,740 (if you ***ask***, we will give you an itemized list)
Annual Fee	$ 50
Early Termination Fee	$ 500 or .125% of the credit limit, whichever is greater, if you close ***your*** account within three years.
Duration of Line of Credit	20 years, divided into two periods: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money. You must make a minimum monthly

payment during both periods.

Balloon Payment

Depending on ***your*** payment plan, if you make only the minimum monthly payment you

may not pay off ***your*** entire balance by the end of the repayment period. If this happens, you will have to pay the remaining balance in a single payment, known as a "balloon payment."

Fixed-Rate Loan Option

During the borrowing period under either payment plan, you have the option to borrow at a fixed interest rate an amount up to ***your*** available credit limit. ***Ask*** us for details.

Plan A

. Borrowing Period (Years 1-10): ***Your*** minimum monthly payment would cover interest plus 1.5% of the principal balance.

. Repayment Period (Years 11-20): ***Your*** minimum monthly payment would cover interest plus enough principal to pay

off ***your*** entire balance by the end of the repayment period. You would not owe a balloon payment.

Plan B

. Borrowing Period (Years 1-10): ***Your*** minimum monthly payment would cover only interest and you would not pay

down ***your*** principal balance.

. Repayment Period (Years 11-20): ***Your*** minimum monthly payment would cover interest plus 1% of the principal balance. You would owe a balloon payment.

APR	Borrowing Period (Years 1-10) First Payment	Repayment Period (Years 11-20) First Payment
5.25% (current)	$ 1,550.00	$ 139.96
24.99% (max.)	$ 2,866.00	$ 296.67

APR	Borrowing Period (Years 1-10) First Payment	Repayment Period (Years 11-20) First Payment
5.25% (current)	$ 350.00	$ 1,150.00
24.99% (max.)	$ 1,666.00	$ 2,466.00

Risks

Risks	
You Could Lose ***<u>Your</u>*** Home	***<u>Your</u>*** line of credit will be secured by ***<u>your</u>*** home. This means you could lose ***<u>your</u>*** home if you cannot repay the money you borrow.
You May Not Be Able to Borrow From ***<u>Your</u>*** Line of Credit	Under certain circumstances, we can: . Terminate ***<u>your</u>*** line of credit and make you pay the outstanding balance in one payment; . Not allow you to borrow any more money, even if it is available under ***<u>your</u>*** credit limit; . Lower ***<u>your</u>*** credit limit; and . Make other changes to the plan. ***<u>Ask</u>*** us for more specific information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***<u>your</u>*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

TRUTH IN LENDING STATEMENT

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

February 26, 2009

ABC Bank

Loan Office: 12345 1234

Loan Number: 123-12-1234-556

Credit Line	
Credit Limit	$ 80,000
Minimum Initial Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction

Credit Line	
	you make must be at least $ 300.
Minimum Balance	You must keep a minimum balance of at least $ 500.
Annual Percentage Rate	
Annual Percentage Rate (APR)	5.25%. This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. ***Your*** monthly statement will ***show*** ***your*** rate changes. There is no limit on ***how*** much the rate can change in one year.
Maximum APR	24.99%. The maximum rate could be reached as soon as the first month that ***your*** account is open.
Fees	
Total Account Opening Fees	$ 1,740 (itemized below)
Annual Fee	$ 50
Early Termination Fee	$ 500 or .125% of the credit limit, whichever is greater, if you close ***your*** account within three years.
Other Fees	See below.
Duration of Line of Credit	20 years, divided into two periods: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money. You must make a minimum monthly payment during both periods.
Balloon Payment	If you make only the minimum payment each month you will not pay off ***your*** entire balance by the end of the repayment period. In this case, you will have to pay the remaining balance in a single payment, known as a "balloon payment." See "Sample Payments" below for details.

APR	Borrowing Period (Years 1-10) First Payment	Repayment Period (Years 11-20) First Payment

5.25% (current)	$ 350.00	$ 1,15000
24.99% (max.)	$ 1,666.00	$ 2,466.00

. Loan Origination	$ 350
. Loan Discount	$ 800
. Underwriting	$ 295
. Appraisal	$ 295
. Late Payment	Either $ 15 or 5% of the minimum monthly payment, whichever is greater. This fee is charged if ***your*** payment is received 15 days after the due date.
. Over-the-Credit Limit	$ 20
. Balance below $ 500	$ 25 if ***your*** balance falls below $ 500.
. Returned Payment	$ 30
. Transaction less than $ 300	4% of each transaction that is less than $ 300. This fee does not apply to credit card transactions.
. Cash Advance Using a Credit Card	Either $ 2 or 2% of the amount of each cash advance, whichever is greater.
. Foreign Transaction Using a Credit Card	1% of each transaction in U.S. dollars.
You Could Lose ***Your*** Home	***Your*** line of credit will be secured by ***your*** home. This means you could lose ***your*** home if you cannot repay the money you borrow.
You May Not Be Able to Borrow From ***Your*** Line of Credit	Under certain circumstances, we can: . Terminate ***your*** line of credit and make you pay the outstanding balance in one payment; . Not allow you to borrow any more money, even if it is available under

	your credit limit; . Lower ***your*** credit limit; and . Make other changes to the plan. See ***your*** account agreement for details.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

Fixed-Rate Option

During the borrowing period, you have the option to borrow at a fixed interest rate an amount up to ***your*** available credit limit. ***Ask*** us for details.

How **We Will Calculate** ***Your*** **Balance**: We use a method called "average daily balance (including new purchases)." See ***your*** account agreement for more details.

Paying Interest: We will begin charging interest on each transaction on the date the transaction is posted to ***your*** account.

Billing Rights: Information on ***your*** rights to dispute transactions and ***how*** to exercise those rights is provided in ***your*** account agreement.

Key Questions to ***Ask*** **About Home Equity Lines of Credit**

When you are shopping for a home equity line of credit, consider the questions below.

Lines of credit can have risky features that could make it difficult for you to repay ***your*** balance. As a result, you could lose ***your*** home. ***Ask*** ***your*** lender about other loan products, such as a traditional home equity loan. For more information, go to *www.federalreservegov/shopwisely*.

1 Can my interest rate increase?

Lines of credit usually have

a variable interest rate, which means that the rate can increase or decrease from time to time. A lender may offer you a lower initial interest rate for a short time. However, after this period ends the rate will usually increase.

2 Can my minimum payment increase?

Yes, ***your*** minimum payment can increase based on several factors, such as when ***your*** variable interest rate increases or you borrow more money.

3 When can I borrow money?

You can borrow money only for a specified time, starting when you open ***your*** account. During this time, known as the "borrowing period," you can borrow money and you must make minimum payments. When the borrowing period ends, you will no longer be able to borrow money from ***your*** line of credit.

4 ***How*** soon do I have to pay off my balance?

After the borrowing period ends, under some plans you may be required to pay off ***your*** balance immediately in one payment. Under other plans you will have a certain amount of time to pay down ***your*** balance. During this time, known as the "repayment period," you will not be able to borrow additional amounts and will have to make larger minimum payments than during the borrowing period.

5 Will I owe a balloon payment?

Under some plans, if you make only the minimum payments

you will not pay off ***your*** entire balance by the end of the term. At that point, you will have to pay the remaining balance as a single lump-sum, known as a "balloon payment." If you cannot get another loan to repay this amount, or pay it off

using ***your*** savings,

you could lose ***your*** home.

6 Do I have to pay any fees?

In addition to an application fee, you may be required to pay

four (4) types of fees for ***your*** line of credit: (i) fees to open

your account, such as loan origination or property appraisal fees;

(ii) fees to maintain ***your*** account, such as an annual fee; (iii)

fees to use ***your*** account, such as a cash advance fee; and (iv) penalty fees, such as late payment or over-the-credit limit fees.

7 Should I get a home equity loan instead of a line of credit?

With a home equity loan, you can borrow a fixed amount of money at a fixed interest rate. This

means that ***your*** interest rate and minimum payment will stay the same over time. Consider a home equity loan if you plan to borrow a fixed amount of money at one time and want to know

the exact amount of ***<u>your</u>*** minimum payment. Consider a home equity line of credit if you plan to borrow different amounts of money over time and can afford higher payments, even if the

interest rate on ***<u>your</u>*** line of credit reaches its maximum.

Which Home Equity Product is Right for You?

If you are looking for a loan and have equity in ***<u>your</u>*** home, there are at least two types of credit that may be available to you: a home equity **loan** and a home equity **line of credit**. If you are considering either of these products, be sure you understand the differences between them.

Home Equity Loan	**Home Equity Line of Credit**
<u>How</u> it works:	***<u>How</u>*** it works:
You borrow a fixed amount of money and pay it back over time. Home equity loans usually have a fixed interest rate. This means that ***<u>your</u>*** interest rate and monthly payment stay the same over time.	You can borrow different amounts of money over time up to ***<u>your</u>*** available credit limit. Home equity lines of credit usually have a variable interest rate, which means that ***<u>your</u>*** interest rate and monthly payment can change even if you don't borrow more money.
Consider a home equity loan if:	Consider a home equity line of credit if:
. You plan to borrow a fixed amount of money and no additional money later; and	. You like to be able to borrow different amounts of money when you need (up to ***<u>your</u>*** available credit limit); and
. You like paying the same amount	. You can afford higher monthly

Home Equity Loan	Home Equity Line of Credit
each month or might have trouble affording monthly payments that increase.	payments, even if the interest rate goes up to its maximum.

If you are considering a variable-rate home equity line of credit, remember that you may not be able to refinance into a fixed-rate home equity loan before *your* interest rate and monthly payment increase. You might not qualify for refinancing if the market value of ***your*** home goes down or ***your*** financial situation changes.

Where to Find Help

For more information about choosing between a home equity loan and a home equity line of credit, or for a list of licensed housing counselors in ***your*** area who can help you decide, visit www.frb.gov.

G-14(A) Early Disclosure Model Form (Home-equity Plans)

[Loan Applicant's Name]

[Loan Applicant's Address]

[Date]

[Name of Creditor]

[Loan Originator's Unique Identifier]

[Statement that the consumer has applied for a home-equity line of credit]

Credit Limit	[Disclosure of credit limit]
First Transaction	[Description of any minimum draw requirements at account opening]
Minimum Transaction	[Description of any minimum draw requirements after account opening]
Minimum Balance	[Description of any minimum outstanding balance requirement]
Limits on Number of Credit Transactions	[Description of any limitations on the number of extensions of credit]
Limits on Amount of Credit Borrowed	[Description of any limitations on the amount of credit that may be obtained during any time period]
Annual Percentage Rate (APR)	[APR(s) applicable to the payment plans disclosed in the table, including introductory APR

	information] [For variable APRs, the following (1) description that the APR varies, (2) ***how*** the APR is determined, (3) the frequency of changes in the APR, (4) description of any limitations on changes in the APR (except for minimum and maximum APRs) or a statement that no annual limitation exists, as applicable, and (5) description of any rules relating to changes in the index value and the APR, including preferred rate provisions and rate carryover provisions, if any]
Maximum APR	[Maximum APR(s) applicable to the payment plans disclosed in the table]
Minimum APR	[Minimum APR(s) applicable to the payment plans disclosed in the table]
Historical Changes to Prime Rate	[Description of the lowest and highest value of the index in the past 15 years]
Refundability of Fees	[Description of a consumers rights to refund of fees]
Total Account Opening Fees	[Description of total one-time account opening fees] [Description of itemized one-time account opening fees]
[Annual Fee/Monthly Fees]	[Description of fees imposed by the creditor for availability of the plan]
Early Termination Fee	[Description of fees imposed by the creditor for early termination of the plan by the consumer]
Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plan] [Cross reference to additional information]

Other Fees	[Statements about other fees]
Length of Credit Plan	[Disclosures of length of plan, length of draw period, and length of any repayment period] [If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full] [A statement that the consumer can borrow money during the draw period] [If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period] [A statement indicating whether minimum payments are due in the draw period and any repayment period]
Balloon Payment	[Statement that paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan] [Statement that a balloon payment may result or will result, as applicable]
Plan A	[Explanation of ***how*** the minimum periodic payment will be determined and the timing of the payments for this plan] [Statement about balloon payment for this plan] [Statement about payment limitations] [Statement about negative amortization]
Plan B	[Explanation of ***how*** the minimum periodic payment will be determined and the timing of the

payments for this plan]
[Statement about balloon payment for this plan]
[Statement about payment limitations]
[Statement about negative amortization]

APR	Borrowing Period (Yearsto) First Payment	[Balance at Start of Repayment Period]
% (current)	$	[$]
% (max.)	$	[$]

APR	Borrowing Period (Yearsto) First Payment	[Balance at Start of Repayment Period]
% (current)	$	[$]
% (max.)	$	[$]

APR	[Repayment Period (Yearsto) First Payment]
% (current)	[$]
% (max.)	[$]

APR	[Repayment Period (Yearsto) First Payment]
% (current)	[$]
% (max.)	[$]

[Fixed Interest Rate Option]

[Statements about fixed-rate and-term payment plans] [Statement that consumer should ***<u>ask</u>*** creditor for details about fixed-rate and-term payment plans]

You Could Lose ***Your*** Home	[Statements about security interest in the consumer's dwelling and risk to home]
You May Not Be Able to Borrow From ***Your*** Line of Credit	[Statements about possible actions by creditor on HELOC plan]
The Interest You Pay May Not Be Tax-Deductible	[Statements about tax implications]

-> [Statement that the consumer has no obligation to accept the terms disclosed in the table] [Identification of any disclosed term that is subject to change prior to opening the plan, or a statement that all terms disclosed could change before the plan is opened, as applicable]

-> [Statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan] [Cross reference to the "Fees" section in the table]

-> [Statement about ***asking*** questions]

-> [Statement about Board's website]

[If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement]

[
Borrower's SignatureDate]

G-14(B) Early Disclosure Model Form (Home-equity Plans)

[Loan Applicant's Name]
[Loan Applicant's Address]

[Date]

[Name of Creditor]

[Loan Originator's Unique Identifier]

[Statement that the consumer has applied for a home-equity line of credit]

Credit Limit	[Disclosure of credit limit]
First Transaction	[Description of any minimum draw requirements at account opening]
Minimum Transaction	[Description of any minimum draw requirements after account opening]
Minimum Balance	[Description of any minimum outstanding balance requirement]
Limits on Number of Credit Transactions	[Description of any limitations on the number of extensions of credit]
Limits on Amount of Credit Borrowed	[Description of any limitations on the amount of credit that may be obtained during any time period]
Annual Percentage Rate (APR)	[APR(s) applicable to the payment plans disclosed in the table, including introductory APR information] [For variable APRs, the following (1) description that the APR varies, (2) ***how*** the APR is determined, (3) the frequency of changes in the APR, (4) description of any limitations on changes in

	the APR (except for minimum and maximum APRs) or a statement that no annual limitation exists, as applicable, and (5) description of any rules relating to changes in the index value and the APR, including preferred rate provisions and rate carryover provisions, if any]
Maximum APR	[Maximum APR(s) applicable to the payment plans disclosed in the table]
Minimum APR	[Minimum APR(s) applicable to the payment plans disclosed in the table]
Historical Changes to Prime Rate	[Description of the lowest and highest value of the index in the past 15 years]
Refundability of Fees	[Description of a consumer's rights to refund of fees]
Total Account Opening Fees	[Description of total one-time account opening fees]
	[Description of itemized one-time account opening fees]
[Annual Fee/Monthly Fees]	[Description of fees imposed by the creditor for availability of the plan]
Early Termination Fee	[Description of fees imposed by the creditor for early termination of the plan by the consumer
Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plan] [Cross reference to additional information]
Other Fees	[Statements about other fees]
Length of Credit Plan	[Disclosures of length of plan, length of draw period, and length of any repayment period] [If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full] [A statement that the consumer can borrow money during the draw period] [If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period]

	[A statement indicating whether minimum payments are due in the draw period and any repayment period]
Balloon Payment	[Statement that paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan]
	[Statement that a balloon payment may result or will result, as applicable]

How _Your_ Minimum Monthly Payments Are Calculated

[Explanation of ***how*** the minimum periodic payment will be determined and the timing of the payments for this plan]
[Statement about payment limitations]
[Statement about negative amortization]

Sample Payments on an $ (credit limit) Balance

[Statement that the sample payments ***show*** the first periodic payments if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money]
[Statements about balloon payment]
[Statement that the sample payments are not the consumer's actual payments]
[Statement that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period]

Sample Payments

APR	Borrowing Period (Yearsto) First Payment	[Balance at Start of Repayment Period]	[Repayment Period (Yearsto) First Payment]
% (current)	$	[$]	[$]
% (max.)	$	[$]	[$]

[Fixed Interest Rate Option]

[Statements about fixed-rate and -term payment plans] [Statement that consumer should ***ask*** creditor for details about fixed-rate and -term payment plans]

You Could Lose ***Your*** Home	[Statements about security interest in the consumers dwelling and risk to home]
You May Not Be Able to Borrow From ***Your***	[Statements about possible actions by creditor on HELOC plan]

Line of Credit

The Interest You Pay May Not Be Tax-Deductible	[Statements about tax implications]

-> [Statement that the consumer has no obligation to accept the terms disclosed in the table] [Identification of any disclosed term that is subject to change prior to opening the plan, or a statement that all terms disclosed could change before the plan is opened, as applicable]

-> [Statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan]
[Cross reference to the "Fees" section in the table]

-> [Statement about ***asking*** questions]

-> [Statement about Board's website]

[If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement]

[
Borrower's SignatureDate]

G-14(C) Early Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

December 20, 2011

XXX Bank

Loan Officer: 12345 1234

You have applied for a home equity line of credit.

Credit Limit	$ 80,000
First Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300.
Minimum Balance	You must keep a balance of at least $ 500.
Annual Percentage Rate (APR)	4.00%. introductory APR for the first six months.
	After that, ***your*** APR will be 5.25%. This is a variable rate that will change monthly based

	on the Prime Rate plus 1.00%. There is no limit on ***how*** much the rate can change in one year.
Maximum APR	24.99%
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.
Refundability of Fees	We will refund all fees you paid if you tell us that you do not want to open an account: . for any reason within three business days after you receive this statement; or . any time before ***your*** account is opened if any of these terms (other than the APR) changes.
Total Account Opening Fees	Up to $ 1,740, for the following: . $ 350 for loan origination . $ 800 for loan discount . $ 295 for underwriting . $ 200 - $ 295 for appraisal
Annual Fee	$ 50
Early Termination Fee	$ 500 or .125% of the credit limit, whichever is greater, if you close ***your*** account within three years.
Other Fees	Other fees will apply, such as penalty fees and fees to make transactions on the account. ***Ask*** us for additional information about other fees.
Length of Credit Plan	20 years, divided into two periods: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money. You must make a minimum monthly payment during both periods.
Balloon Payment	Depending on the terms of ***your*** payment plan, if you make only the minimum monthly payment you may not pay off ***your*** entire balance by the end of the repayment period. If this happens, you will have to pay the remaining balance in a single payment, known as a "balloon payment."
Plan A	. Borrowing Period (Years 1-10): ***Your*** minimum monthly payment would cover interest plus

1.5% of the balance.

. Repayment Period (Years 11-20):

Your minimum monthly payment would cover interest

plus enough principal to pay off ***your*** entire balance by the end of the repayment period. You would not owe a balloon payment.

Plan B

. Borrowing Period (Years 1-10): ***Your*** minimum monthly payment would cover only interest

and you would not pay down ***your*** balance.

. Repayment Period (Years 11-20):

Your minimum monthly payment would cover interest plus 1% of the balance.

You would owe a balloon payment.

Plan Comparison: Sample Payments on an $ 80,000 Balance

The table ***shows*** examples of ***your*** first monthly payments at the current and maximum APRs under each plan if you borrow **$ 80,000** when you open ***your*** account and do not borrow any more money.

These are not *your* actual payments. ***Your*** actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

APR	**Borrowing Period (Years 1-10) First Payment**	**Balance at Start of Repayment Period**	**Repayment Period (Years 11-20) First Payment**
5.25% (current)	$ 1,550.00	$ 13,045.00	$ 140.00
24.99% (max.)	$ 2,866.00	$ 13,045.00	$ 297.00

APR	Borrowing Period (Years 1-10) First Payment	Balance at Start of Repayment Period	Repayment Period (Years 11-20) First Payment
5.25% (current)	$ 350.00	$ 80,000.00	$ 1,150.00
24.99% (max.)	$ 1,666.00	$ 80,000.00	$ 2,466.00

Fixed Interest Rate Option

During the borrowing period under either payment plan, you have the option to borrow at a fixed interest rate an amount up to ***your*** available credit limit. ***Ask*** us for details.

You Could Lose ***Your*** Home	***Your*** credit plan will be secured by ***your*** home. This means you could lose ***your*** home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From ***Your*** Line of Credit	Under certain circumstances, we can: . Terminate ***your*** line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; . Not allow you to borrow any more money, even if you have borrowed less than ***your*** credit limit; . Lower ***your*** credit limit; and . Make other changes to the plan. ***Ask*** us for more information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

--> **You have no obligation to accept these terms. These terms could change before we open *your* account.**

--> **You may be entitled to a refund of all fees you paid if you decide not to open an account**. See "Fees" section above for more details.

--> ***Ask* questions if you do not understand any part of this form**.

--> **For more information, go to www.xxx.gov**.

By signing below, I acknowledge receipt of this form.

G-14(D) Early Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

December 20, 2011

XXX Bank

Loan Officer: 12345 1234

You have applied for a home equity line of credit.

Credit Limit	$ 80,000
First Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300.
Minimum Balance	You must keep a balance of at least $ 500.
Annual Percentage Rate (APR)	5.25%. This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on ***how*** much the rate can change in one year.
Maximum APR	24.99%
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.
Refundability of Fees	We will refund all fees you paid if you tell us that you do not want to open an account: . for any reason within three business days after you receive this statement; or . any time before ***your*** account is opened if any of these terms (other than the APR) changes.
Total Account Opening Fees	Up to $ 1,740, for the following: . $ 350 for loan origination . $ 800 for loan discount . $ 295 for underwriting . $ 200 - $ 295 for appraisal
Annual Fee	$ 50
Early Termination Fee	$ 500 or .125% of the credit limit, whichever is greater, if you close ***your*** account within

	three years.
Required Account Protector Plan	$ 0.79 per $ 100 of balance at the end of each statement period. See enclosed information for details.
Other Fees	Other fees will apply, such as penalty fees and fees to make transactions on the account. ***Ask*** us for additional information about other fees.
Length of Credit Plan	You can borrow money for 10 years and must make minimum monthly payments during that time. At the end of this period, you must repay the remaining balance in full.
Balloon Payment	If you make only the minimum monthly payment you will not pay off ***your*** entire balance by the end of the line of credit. At that time, will have to pay the remaining balance in a single payment, known as a "balloon payment."

How _Your_ Minimum Monthly Payments Are Determined

Your minimum monthly payment will cover only interest and will not pay down ***your*** balance.

Sample Payments on an $ 80,000 Balance

The table ***shows*** examples of ***your*** first monthly payments at the current and maximum APRs if you borrow **$ 80,000** when you open ***your*** account and do not borrow any more money. **No matter what _your_ rate is, you would owe a balloon payment of $ 80,000 if you made only minimum monthly payments**.

These are not _your_ actual payments. ***Your*** actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

APR	First Payment
5.25% (current)	$ 350.00
24.99% (max.)	$ 1,666.00

Fixed Interest Rate Option

You have the option to borrow at a fixed interest rate an amount up to ***your*** available credit limit. ***Ask*** us for details.

You Could Lose ***Your*** Home	***Your*** credit plan will be secured by ***your*** home.

	This means you could lose ***<u>your</u>*** home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From ***<u>Your</u>*** Line of Credit	Under certain circumstances, we can: . Terminate ***<u>your</u>*** line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; . Not allow you to borrow any more money, even if you have borrowed less than ***<u>your</u>*** credit limit; . Lower ***<u>your</u>*** credit limit; and . Make other changes to the plan. ***<u>Ask</u>*** us for more information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***<u>your</u>*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

--> **You have no obligation to accept these terms. These terms could change before we open *<u>your</u>* account**.

--> **You may be entitled to a refund of all fees you paid if you decide not to open an account**. See "Fees" section above for more details.

--> ***<u>Ask</u>*** **questions if you do not understand any part of this form**.

--> **For more information, go to <u>www.xxx.gov</u>**.

By signing below, I acknowledge receipt of this form.

Borrower's SignatureDate

<u>G-14(E) Early Disclosure Sample (Home-equity Plans)</u>

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

December 20, 2011

XXX Ban

Loan Officer: 12345 1234

You have applied for a home equity line of credit.

Credit Limit	$ 80,000
First Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300.
Minimum Balance	You must keep a balance of at least $ 500.
Annual Percentage Rate (APR)	4.00% introductory APR for the first six months. After that, ***<u>your</u>*** APR will be 5.25%. This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on ***<u>how</u>*** much the rate can change in one year.
Maximum APR	24.99%
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.
Refundability of Fees	We will refund all fees you paid if you tell us that you do not want to open an account: . for any reason within three business days after you receive this statement; or . any time before ***<u>your</u>*** account is opened if any of these terms (other than the APR) changes.
Total Account Opening Fees	Up to $ 1,740, for the following: . $ 350 for loan origination . $ 800 for loan discount . $ 295 for underwriting . $ 200 - $ 295 for appraisal
Annual Fee	$ 50
Early Termination Fee	$ 500 or .125% of the credit limit, whichever is greater, if you close ***<u>your</u>*** account

	within three years.
Required Account Protector Plan	$ 0.79 per $ 100 of balance at the end of each statement period. See enclosed information for details.
Other Fees	Other fees will apply, such as penalty fees and fees to make transactions on the account. ***Ask*** us for additional information about other fees.
Length of Credit Plan	25 or 40 years (depending on the balance at the beginning of the repayment period), divided into two periods: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (starts in Year 11): During this time you cannot borrow money. . If ***your*** balance at the beginning of the repayment period is less than $ 20,000, the length of the repayment period will be 15 years. . If ***your*** balance at the beginning of the repayment period is $ 20,000 or more, the length of the repayment period will be 30 years. You must make a minimum monthly payment during both periods.

How ***Your*** **Minimum Monthly Payments Are Calculated**

. **Borrowing Period (Years 1-10)**: ***Your*** minimum monthly payment will cover only interest and will not pay down ***your*** balance.

. **Repayment Period (starts in Year 11)**: ***Your*** minimum monthly payment will cover interest plus enough principal to pay off ***your*** entire balance by the end of the repayment period.

Sample Payments on an $ 80,000 Balance

The table ***shows*** examples of ***your*** first monthly payments at the current and maximum APRs if you borrow **$ 80,000** when you open ***your*** account and do not borrow any more money.

These are not *your* actual payments. ***Your*** actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

APR	Borrowing Period (Years 1-10) First Payment	Balance at Start of Repayment Period	Repayment Period (Years 11-40) First Payment
5.25% (current)	$ 350.00	$ 80,000.00	$ 442.00
24.99% (max.)	$ 1,666.00	$ 80,000.00	$ 1,667.00

Fixed Interest Rate Option

During the borrowing period, you have the option to borrow at a fixed interest rate an amount up to ***your*** available credit limit. ***Ask*** us for details.

You Could Lose ***Your*** Home	***Your*** credit plan will be secured by ***your*** home. This means you could lose ***your*** home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From ***Your*** Line of Credit	Under certain circumstances, we can: . Terminate ***your*** line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; . Not allow you to borrow any more money, even you have borrowed less than ***your*** credit limit; . Lower ***your*** credit limit; and . Make other changes to the plan. ***Ask*** us for more information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

-> **You have no obligation to accept these terms. These terms could change before we open *your* account**.

-> **You may be entitled to a refund of all fees you paid if you decide not to open an account**. See "Fess" section above for more details.

-> ***Ask* questions if you do not understand any part of this form**.

-> **For more information, go to www.xxx.gov**.

By signing below, I acknowledge receipt of this form.

G-15(A) Account-Opening Disclosure Model Form (Home-equity Plans)

[Loan Applicant's Name]
[Loan Applicant's Address]

[Date]

[Name of Creditor]

[Loan Originator's Unique Identifier]

[Loan number]

Credit Limit	[Disclosure of credit limit]
First Transaction	[Description of any minimum draw requirements at account opening]
Minimum Transaction	[Description of any minimum draw requirements after account opening]
Minimum Balance	[Description of any minimum outstanding balance requirement]
Limits on Number of Credit Transactions	[Description of any limitations on the number of extensions of credit]
Limits on Amount of Credit Borrowed	[Description of any limitations on the amount of credit that may be obtained during any time period]
Annual Percentage Rate (APR)	[APR(s) applicable to the payment plans disclosed in the table, including introductory APR information] [For variable APRs, the following (1) description that the APR varies, (2) ***how*** the APR is determined, (3) the frequency of changes in the APR, (4) description of any limitations on

	changes in the APR (except for minimum and maximum APRs) or a statement that no annual limitation exists, as applicable, and (5) description of any rules relating to changes in the index value and the APR, including preferred rate provisions and rate carryover provisions, if any]
Maximum APR	[Maximum APR(s) applicable to the payment plans disclosed in the table]
Minimum APR	[Minimum APR(s) applicable to the payment plans disclosed in the table]
Historical Changes to Prime Rate	[Description of the lowest and highest value of the index in the past 15 years]
Total Account Opening Fees	[Description of total one-time account opening fees] [Cross reference to itemization of one-time account opening fees below]
[Annual Fee/Monthly Fees]	[Description of fees imposed by the creditor for availability of the plan]
Early Termination Fee	[Description of fees imposed by the creditor for early termination of the plan by the consumer]
Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plan] [Cross reference to additional information]
Other Fees	[Cross reference to disclosure of fees below]

Length of Credit Plan	[Disclosures of length of plan, length of draw period, and length of any repayment period] [If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full] [A statement that the consumer can borrow money during the draw period] [If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period]

	[A statement indicating whether minimum payments are due in the draw period and any repayment period]
[Balloon Payment	[Statement that paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan] [Statement that a balloon payment may result or will result, as applicable]

***<u>How</u>* *<u>Your</u>* Minimum Monthly Payments Are Determined**

[Explanation of ***<u>how</u>*** the minimum periodic payment will be determined and the timing of the payments for this plan]

[Statement about payment limitations]

[Statement about negative amortization]

APR	Borrowing Period (Years to First Payment	[Balance at start of [Repayment Period]	[Repayment Period (Years to) First Payment]
% (current)	$	[$]	[$]
% (max.)	$	[$]	[$]

[itemization of one-time account opening fees]	
. Late Payment	[Description of late payment fee]
. Over-the-Credit Limit	[Description of over-the-credit-limit fee]
. Balance below $	[Description of any fees imposed by the creditor for a consumer's failure to comply with any minimum balance requirements]
. Returned Payment	[Description of returned payment fee]
. Exceeding Limits on Amount of Credit Borrowed	[Description of any fees imposed for a consumer's failure to comply with any limitations on the amount of credit that may be obtained during any time period]
. Transaction less than $	[Description of any fees imposed for a consumer's failure to comply with minimum draw requirements]
. Exceeding Limits on Number of Credit	[Description of any fees imposed for a consumer's failure to comply with any limitations on the number of extensions of credit]

Transactions [itemization of any transaction charges imposed by the creditor for use of the home-equity plan]

[Fixed Interest Rate Option]

[Statements about fixed-rate and -term payment plans] [Statement that consumer should ***ask*** creditor for details about fixed-rate and -term payment plans]

You Could Lose ***Your*** Home	[Statements about security interest in the consumer's dwelling and risk to home]
You May Not Be Able to Borrow From ***Your*** Line of Credit	[Statements about possible actions by creditor on HELOC plan]
The Interest You Pay May Not Be Tax-Deductible	[Statements about tax implications]

How **We Will Calculate** ***Your*** **Balance**: [Description of balance computation method]

[*How* to *Avoid* Paying Interest]/[Paying Interest]: [Description of grace period for purchases, cash advances, or any other credit extension or statement that no grace period applies]

Billing Rights: [Reference to account agreement for details on billing-error rights]

. [Statement that the consumer has no obligation to accept the terms disclosed in the table] [Statement that the consumer should use this form to confirm that these are the terms for which the consumer applied.]

. [Statement about ***asking*** questions]

. [Statement about Board's website]

[If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement)

[
Borrower's SignatureDate]

G-15(B) Account-Opening Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

January 9, 2012

XXX Bank

Loan Officer: 12345 1234

Loan Number: 123-12-1234-556

Credit Limit	$ 80,000
First Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300.
Minimum Balance	You must keep a balance of at least $ 500.
Annual Percentage Rate (APR)	4.00% introductory APR for the first six months.
	After that, ***your*** APR will be 5.25%. This is a variable rate that will change monthly based on the Prime Rate plus 1.00%.
	There is no limit on ***how*** much the rate can change in one year.
Maximum APR	24.99%
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.
Total Account Opening Fees	$ 1,740 (itemized below under "More Information about Fees")
Annual Fee	$ 50
Early Termination Fee	$ 500 or .125% of the credit limit, whichever is greater, if you close ***your*** account within three years.
Other Fees	See below under "More Information about Fees."
Length of Credit Plan	20 years, divided into two periods: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (Years 11-20): During this time you cannot borrow money. You must make a minimum monthly payment during both periods.
Balloon Payment	If you make only the minimum payment each month you will not pay off ***your*** entire balance by the end of the repayment period.

At that time, you will have to pay the remaining balance in a single payment, known as a "balloon payment."

How ***Your*** **Minimum Monthly Payments Are Determined**

. **Borrowing Period (Years 1-10)**: ***Your*** minimum monthly payment will cover only interest and will not pay down ***your*** balance.

. **Repayment Period (Years 11-20)**: ***Your*** minimum monthly payment will cover interest plus 1% of the balance.

Sample Payments

The table ***shows*** examples of ***your*** first monthly payments at the current and maximum APRs if you borrow **$ 80,000** when you open ***your*** account and do not borrow any more money. **No matter what *your* rate is, you would owe a balloon payment of $ 23,950.43 if you made only minimum monthly payments**.

These are not *your* actual payments. ***Your*** actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

APR	Borrowing Period (Years 1-10) First Payment	Balance at start of Repayment Period	Repayment Period (Years 11-20) First Payment
5.25% (current)	$ 350.00	$ 80,000.00	$ 1,150.00
24.99% (max.)	$ 1,666.00	$ 80,000.00	$ 2,466.00

. Loan Origination	$ 350
. Loan Discount	$ 800
. Underwriting	$ 295
. Appraisal	$ 295
. Late Payment	Either $ 15 or 5% of the minimum monthly payment, whichever is greater.
. Over-the-Credit Limit	$ 20
. Balance below $ 500	$ 25 if ***your*** balance falls below $ 500.
. Returned Payment	$ 30
. Transaction less than $ 300	4% of each transaction that is less than $ 300. This fee does not apply to credit card transactions.

Other fees may also apply; see ***your*** *account agreement for details*.

Fixed Interest Rate Option

During the borrowing period, you have the option to borrow at a fixed interest rate an amount up to ***your*** available credit limit. See account agreement for details.

You Could Lose ***Your*** Home	***Your*** credit plan will be secured by ***your*** home. This means you could lose ***your*** home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From ***Your*** Line of Credit	Under certain circumstances, we can: . Terminate ***your*** line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; . Not allow you to borrow any more money, even if you have borrowed less than ***your*** credit limit; . Lower ***your*** credit limit; and . Make other changes to the plan. See ***your*** account agreement for details.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

How **We Will Calculate** ***Your*** **Balance**: We use a method called "average daily balance (including new purchases)." See ***your*** account agreement for more details.

Paying Interest: We will begin charging interest on each transaction on the date the transaction is posted to ***your*** account.

Billing Rights: Information on ***your*** rights to dispute transactions and ***how*** to exercise those rights is provided in ***your*** account agreement.

- **You have no obligation to accept these terms**. Use this statement to confirm that these are the terms for which you applied.

- ***Ask*** **questions if you do not understand any part of this form**.

- **For more information, go to www.xxx.gov**.

By signing below, I acknowledge receipt of this form.

G-15(C) Account-Opening Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

January 9, 2012

XXX Bank

Loan Officer: 12345 1234

Loan Number: 123-12-1234-556

Credit Limit	$ 80,000
First Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300.
Minimum Balance	You must keep a balance of at least $ 500.
Annual Percentage Rate APR)	5.25%. This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on ***how*** much the rate can change in one year.
Maximum APR	24.99%
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.
Total Account Opening Fees	$ 1,740 (itemized below under "More Information about Fees")
Annual Fee	$ 50
Early Termination Fee	$ 500 or .125% of the credit limit, whichever is greater, if you close ***your*** account within three years.
Required Account Protector Plan	$ 0.79 per $ 100 of balance at the end of each statement period. See enclosed information for details.
Other Fees	See below under "More Information about Fees."
Length of Credit Plan	You can borrow money for 10 years and must

	make minimum monthly payments during that time. At the end of this period, you must repay the remaining balance in full.
Balloon Payment	If you make only the minimum payment each month you will not pay off ***your*** entire balance by the end of the line of credit. At that time, you will have to pay the remaining balance in a single payment, known as a "balloon payment."

How ***Your*** **Minimum Monthly Payments Are Determined**

Your minimum monthly payment will cover only interest and will not pay down ***your*** balance.

Sample Payments

The table ***shows*** examples of ***your*** first monthly payments at the current and maximum APRs if you borrow **$ 80,000** when you open ***your*** account and do not borrow any more money. **No matter what *your* rate is, you will owe a balloon payment of $ 80,000 if you made only minimum monthly payments**.

These are not *your* actual payments. ***Your*** actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

APR	**Borrowing Period (Years 1-10) First Payment**
5.25% (current)	$ 350.00
24.99% (max.)	$ 1,666.00

. Loan Origination	$ 350
. Loan Discount	$ 800
. Underwriting	$ 295
. Appraisal	$ 295
. Late Payment	Either $ 15 or 5% of the minimum monthly payment, whichever is greater.
. Over-the-Credit Limit	$ 20
. Balance below $ 500	$ 25 if ***your*** balance falls below $ 500.
. Returned Payment	$ 30
. Transaction less than $ 300	4% of each transaction that is less than $ 300. This fee does not apply to credit card transactions.

Fixed Interest Rate Option

You have the option to borrow at a fixed interest rate an amount up to ***your*** available credit limit. See account agreement for details.

You Could Lose ***Your*** Home	***Your*** credit plan will be secured by ***your*** home. This means you could lose ***your*** home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From ***Your*** Line of Credit	Under certain circumstances, we can: . Terminate ***your*** line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; . Not allow you to borrow any more money, even if it is available under ***your*** credit limit; . Lower ***your*** credit limit; and . Make other changes to the plan. See ***your*** account agreement for details.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

How **We Will Calculate** ***Your*** **Balance**: We use a method called "average daily balance (including new purchases)." See ***your*** account agreement for more details.

Paying Interest: We will begin charging interest on each transaction on the date the transaction is posted to ***your*** account.

Billing Rights: Information on ***your*** rights to dispute transactions and ***how*** to exercise those rights is provided in ***your*** account agreement.

- **You have no obligation to accept these terms**. Use this statement to confirm that these are the terms for which you applied.

- ***Ask*** **questions** if you do not understand any part of this form.

- For more information, go to www.xxx.gov.

By signing below, I acknowledge receipt of this form.

Borrower's SignatureDate

G-15(D) Account-Opening Disclosure Sample (Home-equity Plans)

Credit Limit	$ 80,000
First Transaction	You must borrow at least $ 10,000 when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least $ 300.
Minimum Balance	You must keep a minimum balance of at least $ 500.
Annual Percentage Rate (APR)	4.00% introductory APR for the first six months. After that, ***your*** APR will be 5.25%. This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on ***how*** much the rate can change in one year.
Maximum APR	24.99%
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.
Total Account Opening Fees	$ 1,740 (itemized below under "More Information about Fees")
Annual Fee	$ 50
Early Termination Fee	$ 500 or .125% of the credit limit, whichever is greater, if you close ***your*** account within three years.
Required Account Protector Plan	$ 0.79 per $ 100 of balance at the end of each statement period. See enclosed information for details.
Other Fees	See below under "More Information about Fees".
Length of Credit Plan	25 or 40 years (depending on the balance at the beginning of the repayment period), divided into two periods: . Borrowing Period (Years 1-10): During this time you can borrow money. . Repayment Period (starts in Year 11): During this time you cannot borrow money. . If ***your*** balance at the beginning of the repayment period is less than $ 20,000, the length of the repayment period will be 15 years. . If ***your*** balance at the beginning of the repayment period is $ 20,000 or more, the length of the repayment period will be 30 years. You must make a minimum monthly payment during both periods.

How _Your_ Minimum Monthly Payments Are Determined

. **Borrowing Period (Years 1-10)**: _**Your**_ minimum monthly payment will cover only interest and will not pay down _**your**_ balance.

. **Repayment Period (starts in Year 11)**: _**Your**_ minimum monthly payment will cover interest plus enough principal to pay off _**your**_ entire balance by the end of the repayment period.

Sample Payments

The table _**shows**_ examples of _**your**_ first monthly payments at the current and maximum APRs if you borrow $ 80,000 when you open _**your**_ account and do not borrow any more money.

These are not _your_ actual payments. _**Your**_ actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

APR	Borrowing Period (Years 1-10) First Payment	Balance at Start of Repayment Period	Repayment Period (Years 11-40) First Payment
5.25% (current)	$ 350.00	$ 80,000.00	$ 442.00
24.99% (max.)	$ 1,666.00	$ 80,000.00	$ 1,667.00

. Loan Origination	$ 350
. Loan Discount	$ 800
. Underwriting	$ 295
. Appraisal	$ 295
. Late Payment	Either $ 15 or 5% of the minimum monthly payment, whichever is greater.
. Over-the-Credit Limit	$ 20
. Balance below $ 500	$ 25 if _**your**_ balance falls below $ 500.
. Returned Payment	$ 30
. Transaction less than $ 300	4% of each transaction that is less than $ 300. This fee does not apply to credit card transactions.
. Cash Advance Using a Credit Card	Either $ 2 or 2% of the amount of each cash advance, whichever is greater.
. Foreign Transaction Using a Credit Card	1% of each transaction in U.S. dollars.

Fixed Interest Rate Option

During the borrowing period, you have the option to borrow at a fixed interest rate an amount up to _**your**_ available credit limit. See account agreement for details.

You Could Lose ***Your*** Home	***Your*** credit plan will be secured by ***your*** home. This means you could lose ***your*** home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From ***Your*** Line of Credit	Under certain circumstances, we can: . Terminate ***your*** line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; . Not allow you to borrow any more money, even if you have borrowed less than ***your*** credit limit; . Lower ***your*** credit limit; and . Make other changes to the plan. See ***your*** account agreement for details.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

How **We Will Calculate** ***Your*** **Balance**: We use a method called "average daily balance (including new purchases)." See ***your*** account agreement for more details.

Paying Interest: We will begin charging interest on each transaction on the date the transaction is posted to ***your*** account.

Billing Rights: Information on, ***your*** rights to dispute transactions and ***how*** to exercise those rights is provided in ***your*** account agreement.

--> **You have no obligation to accept these terms**. Use this statement to confirm that these are the terms for which you applied.

--> ***Ask*** **questions if you do not understand any part of this form**.

--> **For more information, go to www.xxx.gov**.

By signing below, I acknowledge receipt of this form.

G-24(A) Periodic Statement Transactions: Interest Charges: Fees Sample (Home-equity Plans)

Reference Number	Trans Date	Post Date

Reference Number	Trans Date	Post Date
5884186PS0388W6YM	2/22	2/23
0544400060ZLV72VL	2/24	2/25
854338203FS8000Z5	2/25	2/25
Fees		
9525156489SFD4545Q	2/23	2/23
56415615647QJSNDS	2/26	2/26
Interest Charged		

Reference Number	Description of Transaction or Credit	Amount
5884186PS0388W6YM	Variable Rate Advance	$ 3,000.00
0544400060ZLV72VL	Fixed Rate Advance	$ 5,000.00
854338203FS8000Z5	Pymt Thank You	$ 500.00
Fees		
9525156489SFD4545Q	Late Fee	$ 15.00
56415615647QJSNDS	Fixed Rate Advance Fee	S50.00
	TOTAL FEES FOR THIS PERIOD	$ 65.00
Interest Charged		
	Interest Charge on Variable Rate Advances	$ 122.51
	Interest Charge on Fixed Rate Advances	$ 26.82
	TOTAL INTEREST FOR THIS PERIOD	$ 149.33

2012 Totals Year-to-Date	
Total fees charged in 2012	$ 80.00
Total interest charged in 2012	$ 258.83

G-24(B) Periodic Statement Sample (Home-equity Plans)

XXX Bank Home Equity Line of Credit Account Statement

Account Number XXXX XXXX XXXX XXXX

February 21, 2012 to March 22, 2012

Previous Balance	$ 25,105.00
Payments	-$ 0.00
Other Credits	$ 0.00
Variable Rate Advances	+$ 2.500.00
Fixed Rate Advances	+$ 5,000.00
Fees Charged	+$ 65.00
Total Interest Charged	+$ 149.33
New Balance	$ 32,819.33
Credit Limit	$ 80,000.00
Available Credit	$ 47,180.67
Statement Closing Date	3/22/2012

Days in Billing Cycle	31
New Balance	$ 32,819.33
Minimum Payment Due	$ 149.33
Payment Due Date	4/20/12

QUESTIONS?

Call Customer Service1-XXX-XXX-XXXX

Lost or Stolen Credit Card1-XXX-XXX-XXXX

Please send biting inquiries and correspondence to:

PO Box XXXX, Anytown, Anystate XXXXX

Notice of Changes to *Your* Interest Rates

You have triggered the penalty APR of 24.99%. This change will impact ***your*** account as follows:

Transactions on ***your*** account (other than ***your*** fixed-rate loan): As of 5/10/12, the penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Fixed-rate loan: The current APR will continue to apply to this balance.

Reference Number	Trans Date	Post Date
Payments and Other Credits		
854338203FS8000Z5		
Advances		
5884186PS0388W6YM	2/22	2/23
0544400060ZLV72VL	2/24	2/25
Fees		
9525158489SFD4545Q	2/23	2/23
56415615647OJSNDS	3/22	3/22
Interest Charged		

Reference Number	Description of Transaction or Credit	Amount
Payments and Other Credits		
854338203FS8000Z5	No Pymt	$ 0.00
Advances		
5884186PS0388W6YM	Variable Rate Advance	$ 2,500.00
0544400060ZLV72VL	Fixed Rate Advance	$ 5,000.00
Fees		
9525158489SFD4545Q	Late Payment Fee	$ 15.00
56415615647OJSNDS	Fixed Rate Advance Fee	$ 50.00
	TOTAL FEES FOR THIS PERIOD	$ 65.00

Reference Number	Description of Transaction or Credit	Amount
Interest Charged		
	Interest Charge on Variable Rate Advances	$ 122.51
	Interest Charge on Fixed Rate Advances	$ 26.82
	TOTAL INTEREST FOR THIS PERIOD	$ 149.33

2012 Totals Year-to-Date

Total fees charged in 2012	$ 80.00
Total interest charged in 2012	$ 258.83

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

XXX Bank Home Equity Line of Credit Account Statement

Account Number XXXX XXXX XXXX XXXX

February 21, 2012 to March 22, 2012

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate
Variable Rate Advances	5.25%	$ 27,475.97
Fixed Rate Advances	7.25%	$ 4,354.84

Type of Balance	Interest Charge
Variable Rate Advances	$ 122.51
Fixed Rate Advances	$ 26.82

<u>G-24(C) Periodic Statement Sample (Home-equity Plans)</u>

XXX Bank Home Equity Line of Credit Account Statement

Account Number XXXX XXXX XXXX XXXX

February 21, 2012 to March 22, 2012

Previous Balance	$ 25,105.00
Payment	-$ 500.00
Other Credits	$ 0.00
Variable Rate Advances	+$ 3.000.00
Fixed Rate Advances	+$ 5.000.00
Fees Charged	+$ 65.00
Total Interest Charged	+ 149.33
New Balance	$ 32,819.33
Credit Limit	$ 80,000.00
Available Credit	$ 47,180.67
Statement Closing Date	3/22/2012
Days in Billing Cycle	31

New Balance	$ 32,819.33
Minimum Payment Due	$ 149.33
Payment Due Date	4/20/12

QUESTION?

Call Customer Service1-XXX-XXX-XXXX

Please send billing inquiries and correspondence to:

PO Box XXXX, Anytown, Anystate XXXXX

Important Changes to ***Your*** Account Terms

The following is a summary of changes that are being made to ***your*** account terms. You have the right to opt out of some of these changes. For more details, please refer to the information enclosed with this statement.

These changes will take effect on 5/10/12.

Revised Terms, as of 5/10/12

Credit Limit	$ 100.000
How We Will Calculate ***Your*** Balance	Daily Balance

Reference Number	Trans Date	Post Date
5884186PS0388W6YM	2/22	2/23
054440060ZLV72VL	2/24	2/25
854338203FS8OO0Z5	22/5	2/25
Fee		
9525256489SFD4545Q	2/23	2/23
56415615647OJSNDS	2/26	2/26

Interest Charged

Reference Number	Description of Transaction of Credit	Amount
5884186PS0388W6YM	Variable Rate Advance	$ 3,000.00
054440060ZLV72VL	Fixed Rate Advance	$ 5,000.00
854338203FS8OO0Z5	Pymt Thank You	$ 5.000
Fee		
9525256489SFD4545Q	Late Fee	$ 15.00
56415615647OJSNDS	Fixed Rate Advance Fee	$ 50.00
	TOTAL FEES FOR THIS PERIOD	$ 65.00
Interest Charged		
	Interest Charge on Variable Rate Advances	$ 122.51
	Interest Charge on Fixed Rate Advances	$ 26.82
	TOTAL FEES FOR THIS PERIOD	$ 149.33

2012 Total Year-to-Date

Total fees charged in 2012	$ 80.00

2012 Total Year-to-Date	
Total interest charged in 2012	$ 258.83

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

XXX Bank Home Equity Line of Credit Account Statement

Account Number XXXX XXXX XXXX XXXX

February 21, 2012 to March 22, 2012

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Variable Rate Advances	5.25%	$ 27,475.97	$ 122.51
Fixed Rate Advances	7.25%	$ 4,354.84	$ 26.82

G-25 Change-in-Terms Sample (Home-equity Plans)

Important Changes to ***Your*** Account Terms

The following is a summary of changes that are being made to ***your*** account terms. You have the right to opt out of some of these changes. For more details, please refer to the information enclosed with this statement.

These changes will take effect on 5/10/12.

Revised Terms, as of 5/10/12	
Credit Limit	$ 100,000
How We Will Calculate ***Your*** Balance	Daily Balance

G-26 Rate Increase Sample (Home-equity Plans)

Notice of Changes to ***Your*** Interest Rates

You have triggered the penalty APR of 24.99%. This change will impact ***your*** account as follows:

Transactions on ***your*** account (other than ***your*** fixed-rate loan): As of 5/10/12, the penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Fixed-rate loan: The current APR will continue to apply to this balance.

G-24(C) Periodic Statement Sample (Home-equity Plans)

XXX Bank Home Equity Line of Credit Account Statement

Account Number XXXX XXXX XXXX XXXX

February 21, 2012 to March 22, 2012

Previous Balance	$ 25,105.00
Payments	-$ 500.00
Other Credits	$ 0.00
Variable Rate Advances	+$ 3,000.00
Fixed Rate Advances	+$ 5,000.00
Fees Charged	+$ 65.00
Total Interest Charged	+$ 149.33
New Balance	$ 32,819.33
Credit Limit	$ 80,000.00
Available Credit	$ 47,180.67
Statement Closing Date	3/22/2012
Days in Billing Cycle	31

Payment Information	
New Balance	$ 32,819.33
Minimum Payment Due	$ 149.33
Payment Due Date	4/20/12

QUESTIONS?
Call Customer Service 1-XXX-XXX-XXXX

Please send billing inquiries and correspondence to: PO Box XXXX, Anytown, Anystate XXXXX

Important Changes to ***<u>Your</u>*** Account Terms

The following is a summary of changes that are being made to ***<u>your</u>*** account terms. You have the right to opt out of some of these changes. For more details, please refer to the information enclosed with this statement.

These changes will take effect on 5/10/12,

Revised Terms, as of 5/10/12	
Credit Limit	$ 100,000
<u>How</u> We Will Calculate ***<u>Your</u>*** Balance	Daily Balance

Transactions

Reference Number	Trans Date	Post Date
5884186PS0388W6YM	2/22	2/23
0544400060ZLV72VL	2/24	2/25
854338203FS8OO0Z5	2/25	2/25
9525156489SFD4545Q	2/23	2/23
56415615647OJSNDS	2/26	2/26

Transactions

Transactions

Reference Number	Description of Transaction or Credit	Amount
5884186PS0388W6YM	Variable Rate Advance	$ 3,000.00
0544400060ZLV72VL	Fixed Rate Advance	$ 5,000.00
854338203FS8OO0Z5	Pymt Thank You	$ 500.00-
	Fees	
9525156489SFD4545Q	Late Fee	$ 15.00
56415615647OJSNDS	Fixed Rate Advance Fee	$ 50.00
	TOTAL FEES FOR THIS PERIOD	$ 65.00
	Interest Charged	
	Interest Charge on variable Rate Advances	$ 122.51
	Interest Charge on Fixed Rate Advances	$ 26.82
	TOTAL INTEREST FOR THIS PERIOD	$ 149.33

2012 Totals Year-to-Date

Total fees charged in 2012	$ 80.00
Total interest charged in 2012	$ 258.83

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Please detach this portion and return with ***your*** payment to Insure proper credit. Retain upper portion for ***your*** records.

Account Number:	XXXX XXXX XXXX XXXX
New Balance	$ 32,819.33
Minimum Payment Due	$ 149.33
Payment Due Date	4/20/12
AMOUNT ENCLOSED: $	

Please indicate address change and additional requests on the reveres side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Home Equity Line of Credit Account Statement

Account Number XXXX XXXX XXXX XXXX

February 21, 2012 to March 22, 2012

Type of Balance	Annual Percentage	Balance Subject to Interest Rate	Interest Charge

	Rate (APR)		
Variable Rate Advances	5.25%	$ 27,475.97	$ 122.51
Fixed Rate Advances	7.25%	$ 4,354.84	$ 26.82

Federal Register

Wednesday,

August 26, 2009

Part II

Federal Reserve System

12 CFR Part 226

Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1366]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the staff commentary to the regulation, as part of a comprehensive review of TILA's rules for closed-end credit. This proposal would revise the rules for disclosures of closed-end credit secured by real property or a consumer's dwelling, except for rules regarding rescission and reverse mortgages, which the Board anticipates will be reviewed at a later date. Published elsewhere in today's Federal Register is the Board's proposal regarding rules for disclosures of open-end credit secured by a consumer's dwelling.

Disclosures provided at application would include a Board-published one-page *"Key Questions to **Ask** About **Your** Mortgage"* document that explains potentially risky loan features, and a Board-published one-page *"Fixed vs. Adjustable Rate Mortgages"* document. Transaction-specific disclosures required within three business days of application would summarize key loan terms. The calculation of the annual percentage rate and the finance charge would be revised to be more comprehensive, and their disclosures improved. Consumers would receive a "final" TILA disclosure at least three business days before consummation. Certain new post-consummation disclosures would be required. In addition, the proposed revisions would prohibit certain payments to mortgage brokers and loan officers that are based on the loan's terms or conditions, and prohibit steering consumers to transactions that are not in their interest to increase compensation received.

Rules regarding eligibility restrictions and disclosures for credit insurance and debt cancellation or debt suspension coverage would apply to all closed-end and open-end credit transactions.

DATES: Comments must be received on or before December 24, 2009.

ADDRESSES: You may submit comments, identified by Docket No. R-1366, by any of the following methods:

. *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

. *E-mail: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.

. *FAX*: (202) 452-3819 or (202) 452-3102.

. *Mail*: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, ***your*** comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in ***paper*** in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

Jamie Z. Goodson, Jelena McWilliams, Nikita M. Pastor, or Maureen C. Yap, Attorneys; Paul Mondor, Senior Attorney; or Kathleen C. Ryan, Senior Counsel. 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 on TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and ***avoid*** the uninformed use of credit.

TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, or administrative sanction.

II. Summary of Major Proposed Changes

The goal of the proposed amendments to Regulation Z is to improve the effectiveness of disclosures that creditors provide to consumers in connection with an application and throughout the life of a mortgage. The proposed changes are the result of the Board's review of the provisions that apply to closed-end mortgage transactions. The proposal would apply to all closed-end credit transactions secured by real property or a dwelling, and would not be limited to credit secured by the consumer's principal dwelling. The Board is proposing changes to the format, timing, and content of disclosures for the four main types of closed-end credit information governed by Regulation Z: (1) disclosures at application; (2) disclosures within three days after application; (3) disclosures three days before consummation; and (4) disclosures after consummation. In addition, the Board is proposing additional protections related to limits on loan originator compensation.

Disclosures at Application. The proposal contains new requirements and changes to the format and content of disclosures given at application, to make them more meaningful and easier for consumers to use. The proposed changes include:

. Providing a new one-page Board publication, entitled *"Key Questions to* ***Ask*** *About* ***Your*** *Mortgage,"* which would explain the potentially risky features of a loan.

. Providing a new one-page Board publication, entitled *"Fixed vs. Adjustable Rate Mortgages,"* which would explain the basic differences between such loans and would replace the lengthy Consumer Handbook on Adjustable-Rate Mortgages (CHARM booklet) currently required under Regulation Z.

. Revising the format and content of the current adjustable-rate mortgage (ARM) loan program disclosure, including: a requirement that the disclosure be in a tabular question and answer format, a streamlined plain-language disclosure of interest rate and payment information, and a new disclosure of potentially risky features, such as prepayment penalties.

Disclosures within Three Days after Application. The proposal also contains revisions to the TILA disclosures provided within three days after application (the "early TILA disclosure") to make the information clearer and more conspicuous. The proposed changes include:

. Revising the calculation of the finance charge and annual percentage rate (APR) so that they capture most fees and costs paid by consumers in connection with the credit transaction.

. Providing a graph that would ***show*** consumers ***how*** their APR compares to the APRs for borrowers with excellent credit and for borrowers with impaired credit.

. Summarizing key loan features, such as the loan term, amount, and type, and disclosing total settlement charges, as is currently required for the good faith estimate of settlement costs (GFE) under the Real Estate Settlement Procedures Act (RESPA) and Regulation X.

. Requiring disclosure of potential changes to the interest rate and monthly payment.

. Adopting new format requirements, including rules regarding: type size and use of boldface for certain terms, placement of information, and highlighting certain information in a tabular format.

Disclosures Three Days before Consummation. The proposal would require creditors to provide a "final" TILA disclosure that the consumer must receive at least three business days before consummation. In addition, two proposed alternatives regarding redisclosure of the "final" TILA disclosure include:

. *Alternative 1*: If any terms change after the "final" TILA disclosures are provided, then another final TILA disclosure would need to be provided so that the consumer receives it at least three business days before consummation.

. *Alternative 2*: If the APR exceeds a certain tolerance or an adjustable-rate feature is added after the "final" TILA disclosures are provided, then another final TILA disclosure would need to be provided so that the consumer receives it at least three business days before consummation. All other changes could be disclosed at consummation.

Disclosures after Consummation. The proposal would change the timing, content and types of notices provided after consummation. The proposed changes include:

. For ARMs, increasing advance notice of a payment change from 25 to 60 days, and revising the format and content of the ARM adjustment notice.

. For payment option loans with negative amortization, requiring a monthly statement to provide information about payment options that include the costs and effects of negatively-amortizing payments.

. For creditor-placed property insurance, requiring notice of the cost and coverage at least 45 days before imposing a charge for such insurance.

Loan Originator Compensation. The proposal contains new limits on originator compensation for all closed-end mortgages. The proposed changes include:

. Prohibiting certain payments to a mortgage broker or a loan officer that are based on the loan's terms and conditions.

. Prohibiting a mortgage broker or loan officer from "steering" consumers to transactions that are not in their interest in order to increase the mortgage broker's or loan officer's compensation.

III. The Board's Review of Closed-End Credit Rules

The Board has amended Regulation Z numerous times since TILA simplification in 1980. In 1987, the Board revised Regulation Z to require special disclosures for closed-end ARMs secured by the borrower's principal dwelling. 52 FR 48665; Dec. 24, 1987. In 1995, the Board revised Regulation Z to implement changes to TILA by the Home Ownership and Equity Protection Act (HOEPA). 60 FR 15463; Mar. 24, 1995. HOEPA requires special disclosures and substantive protections for home-equity loans and refinancings with APRs or points and fees above certain statutory thresholds. Numerous other amendments have been made over the years to address new mortgage products and other matters, such as abusive lending practices in the mortgage and home-equity markets.

The Board's current review of Regulation Z was initiated in December 2004 with an advance notice of proposed rulemaking. [1] 69 FR 70925; Dec. 8, 2004. At that time, the Board announced its intent to conduct its review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit card plans. In December 2008, the Board approved final rules for open-end credit that is not home-secured. 74 FR 5244; Jan. 29, 2009.

Beginning in 2007, the Board proposed revisions to the rules for closed-end credit in several phases:

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[1] The review was initiated pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1980, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. An advancenotice of proposed rulemaking is published to obtain preliminary information prior to issuing a proposed rule or, in some cases, deciding whether to issue a proposed rule.

. *HOEPA*. In 2007, the Board proposed rules under HOEPA for higher-priced mortgage loans (2007 HOEPA Proposed Rule). The final rules, approved in July 2008 (2008 HOEPA Final Rule), prohibited certain unfair or deceptive lending and servicing practices in connection with closed-end mortgages. The Board also approved revisions to advertising rules for both closed-end and open-end home-secured loans to ensure that advertisements contain accurate and balanced information and do not contain misleading or deceptive representations. The final rules also required creditors to provide consumers with transaction-specific disclosures early enough to use while shopping for a mortgage. 73 FR 44522; July 30, 2008.

. *Timing of Disclosures for Closed-End Mortgages*. On May 7, 2009, the Board approved final rules implementing the Mortgage Disclosure Improvement Act of 2008 (the MDIA). [2] The MDIA adds to the requirements of the 2008 HOEPA Final Rule regarding transaction-specific disclosures. Among other things, the MDIA and the final rules require early, transaction-specific disclosures for mortgage loans secured by dwellings even when the dwelling is not the consumer's principal dwelling, and requires waiting periods between the time when disclosures are given and consummation of the transaction. 74 FR 23289; May 19, 2009.

This proposal would revise the rules for disclosures for closed-end credit secured by real property or a consumer's dwelling. The Board anticipates reviewing the rules for rescission and reverse mortgages in the next phase of the Regulation Z review.

A. Coordination With Disclosures Required Under the Real Estate Settlement Procedures Act

The Board anticipates working with the Department of Housing and Urban Development (HUD) to ensure that TILA and Real Estate Settlement Procedures Act of 1974 (RESPA) disclosures are compatible and complementary, including potentially developing a single disclosure form that creditors could use to combine the initial disclosures required under TILA and RESPA. The two statutes have different purposes but have considerable overlap. Harmonizing the two disclosure schemes would ensure that consumers receive consistent information under both laws. It may also help reduce information overload by eliminating some duplicative disclosures. Consumer testing would be used to ensure consumers could understand and use the combined disclosures. In the meantime, the Board is proposing a revised model TILA form so that commenters can see ***how*** the Board's proposed revisions to Regulation Z might be applied in practice.

RESPA, which is implemented by HUD's Regulation X, seeks to ensure that consumers are provided with timely information about the nature and costs of the settlement process and are protected from unnecessarily high real estate settlement charges. To this end, RESPA mandates that consumers receive information about the costs associated with a mortgage loan transaction, and prohibits certain business practices. Under RESPA, creditors must provide a GFE within three business days after a consumer submits a written application for a mortgage loan, which is the same time creditors must provide the early TILA disclosure. RESPA also requires a statement of the actual costs imposed at loan settlement (HUD-1 settlement statement). In November 2008, HUD published revised RESPA rules, including new GFE and HUD-1 settlement statement forms, which lenders, mortgage brokers, and settlement agents must use beginning on January 1, 2010. 73 FR 68204; Nov. 17, 2008. In addition to revised disclosures of settlement costs, the revised GFE now includes loan terms, some of which would also appear on the TILA disclosure, such as whether there is a prepayment penalty and the borrower's interest rate and monthly payment. The revised GFE form was developed through HUD's consumer testing.

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[2] The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Public Law 110-289, enacted on July 30, 2008. The MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Public Law 110-343, enacted on October 3, 2008.

TILA, which is implemented by the Board's Regulation Z, governs the disclosure of the APR and certain loan terms. This proposal contains a revised model TILA form that was developed through consumer testing. In addition to a revised disclosure of the APR and loan terms, the revised TILA disclosure would include the total settlement charges that appear on the GFE required under RESPA. Total settlement charges would be added to the TILA form because consumer testing conducted by the Board found that consumers wanted to have settlement charges disclosed on the TILA form.

The proposed revised TILA form and HUD's revised GFE would represent significant improvements, but overlap between the two forms could be eliminated to reduce information overload and consistency issues. There have been previous efforts to develop a combined TILA and RESPA disclosure form, which were fueled by the amount, complexity, and overlap of information in the disclosures. Under a 1996 congressional directive, the Board and HUD studied ways to simplify and improve the disclosures. In July 1998, the Board and HUD submitted a joint report to Congress that provided a broad outline intended to be a starting point for consideration of legislative reform of the mortgage disclosure requirements (the 1998 Joint Report). [3] The 1998 Joint Report included a recommendation for combining and simplifying the RESPA and TILA disclosure forms to satisfy the requirements of both laws. In addition, The 1998 Joint Report recommended that the timing of the TILA and RESPA disclosures be coordinated. Recent regulatory changes addressed the timing issues so that initial disclosures required under TILA and RESPA would be delivered at the same time.

B. The Bankruptcy Act's Amendment to TILA

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act) primarily amended the federal bankruptcy code, but also contained several provisions amending TILA. With respect to open-end and closed-end dwelling-secured credit, the Bankruptcy Act requires that the credit application disclosure contain a statement warning consumers that if the loan exceeds the fair market value of the dwelling, then the interest on that portion of the loan is not tax deductible, and the consumer should consult a tax advisor for further information on tax deductibility. This proposal would implement this Bankruptcy Act provision.

C. The MDIA's Amendments to TILA

On July 30, 2008, Congress enacted the MDIA. [4] The MDIA codified some of the requirements of the Board's 2008 HOEPA Final Rule, which required transaction-specific disclosures to be provided within three business days after an application is received and before the consumer has paid a fee, other than a fee for obtaining the consumer's credit history. [5] The MDIA also expanded coverage of the early disclosure requirement to include loans secured by a dwelling even when it is not the consumer's principal dwelling. In addition, the MDIA required creditors to mail or

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[3] Bd. of Governors of the Fed. Reserve Sys. and U.S. Dep't of Hous. and Urban Dev.,*Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act (1998), available at http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf* .

[4] As noted, Congress subsequently amended the MDIA with the Emergency Economic Stabilization Act of 2008.

[5] To ease discussion, the description of theclosed-end mortgage disclosure scheme includes MDIA's recent amendments to TILA and the disclosure timing requirements of the 2008 HOEPA Final Rule that will be effective July 30, 2009.

deliver early TILA disclosures at least seven business days before consummation and provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The Board implemented these MDIA requirements in final rules published May 19, 2009, and effective July 30, 2009. 74 FR 23289; May 19, 2009.

The MDIA also requires payment examples if the interest rate or payments can change. Such disclosures are to be formatted in accordance with the results of consumer testing conducted by the Board. Those provisions of the MDIA will not become effective until January 30, 2011, or any earlier compliance date established by the Board. This proposal would implement those MDIA provisions.

D. Consumer Testing

A principal goal for the Regulation Z review is to produce revised and improved mortgage disclosures that consumers will be more likely to understand and use in their decisions, while at the same time not creating undue burdens for creditors. Currently, Regulation Z requires creditors to provide at application an ARM loan program disclosure and the CHARM booklet. An early TILA disclosure is required within three business days of application and at least seven business days before consummation for closed-end mortgages.

In 2007, the Board retained a research and consulting firm (ICF Macro) that specializes in designing and testing documents to conduct consumer testing to help the Board's review of mortgage rules under Regulation Z. Working closely with the Board, ICF Macro conducted several tests in different cities throughout the United States. The testing consisted of four focus groups and eleven rounds of one-on-one cognitive interviews. The goals of these focus groups and interviews were to learn ***how*** consumers shop for mortgages and what information consumers read when they receive mortgage disclosures, and to assess their understanding of such disclosures.

The consumer testing groups contained participants with a range of ethnicities, ages, educational levels, and mortgage behaviors, including first-time mortgage shoppers, prime and subprime borrowers, and consumers who had obtained one or more closed-end mortgages. For each round of testing, ICF Macro developed a set of model disclosure forms to be tested. Interview participants were ***asked*** to review model forms and provide their reactions, and were then ***asked*** a series of questions designed to test their understanding of the content. Data were collected on which elements and features of each form were most successful in providing information clearly and effectively. The findings from each round of interviews were incorporated in revisions to the model forms for the following round of testing.

Specifically, the Board worked with ICF Macro to develop and test several types of closed-end disclosures, including:

. Two Board publications to be provided at application, entitled *"Key Questions To **Ask** About **Your** Mortgage"* and *"Fixed vs. Adjustable Rate Mortgages"*;

. An ARM loan program disclosure to be provided at application;

. An early TILA disclosure to be provided within three business days of application, and again so that the consumer receives it at least three business days before consummation;

. An ARM adjustment notice to be provided after consummation; and

. A payment option monthly statement to be provided after consummation.

Exploratory focus groups. In February and March 2008 the Board worked with ICF Macro to conduct four focus groups with consumers who had obtained a mortgage in the previous two years. Two of the groups consisted of subprime borrowers and two consisted of prime borrowers, with creditworthiness determined by their answers to questions about prior financial hardship, difficulties encountered in shopping for credit, and the rate on their current mortgage. Each focus group consisted of between seven and nine people that discussed issues identified by the Board and raised by a moderator from ICF Macro. Through these focus groups, the Board gathered information on ***how*** consumers shop for mortgages, what information consumers currently use in making decisions about mortgages, and what perceptions consumers had of TILA disclosures currently provided in the shopping and application process.

Cognitive interviews on existing disclosures. In 2008, the Board worked with ICF Macro to conduct five rounds of cognitive interviews with mortgage customers (seven to eleven participants per round). These cognitive interviews consisted of one-on-one discussions with consumers, during which consumers described their recent mortgage shopping experience and reviewed existing sample mortgage disclosures. In addition to learning about shopping behavior, the goals of these interviews were: (1) To learn more about what information consumers read when they receive current mortgage disclosures; (2) to research ***how*** easily consumers can find various pieces of information in these disclosures; and (3) to test consumers' understanding of certain mortgage related words and phrases.

1. Initial design of disclosures for testing. In the fall of 2008, the Board worked with ICF Macro to develop sample mortgage disclosures to be used in later rounds of testing, taking into account information learned through the focus groups and the cognitive interviews.

2. Additional cognitive interviews and revisions to disclosures. In late 2008 and early 2009, the Board worked with ICF Macro to conduct six additional rounds of cognitive interviews (nine or ten participants per round), where consumers were ***asked*** to view new sample mortgage disclosures developed by the Board and ICF Macro. The rounds of interviews were conducted sequentially to allow for revisions to the testing materials based on what was learned from the testing during each previous round.

Results of testing. Several of the model forms were developed through the testing. A report summarizing the results of the testing is available on the Board's public Web site: *http://www.federalreserve.gov*.

Many consumer testing participants reported that they did not shop for a lender or a mortgage. Several stated that they were referred to a lender by a realtor, family member or friend, and that they relied on that lender to get them a loan. Participants who reported shopping for a mortgage relied on originators' oral quotes for interest rates, monthly payments, and closing costs. Most participants stated that once they had applied for a particular loan and received a TILA disclosure they ceased shopping. Some cited the time involved, and the amount of documentation required, as factors for limiting their shopping. These findings suggest that consumers need information early in the process and that information should not be limited to information about ARMs. Therefore, the proposal would require creditors to provide key information about evaluating loan terms at the time an application form is provided, as discussed below.

1. Disclosures provided to consumers before application. Currently, creditors must provide the CHARM booklet before a consumer applies or pays a nonrefundable fee, whichever is earlier. The booklet explains ***how*** ARMs generally work. Testing ***showed*** that participants found the CHARM booklet too lengthy to be useful, although some liked specific elements such as the glossary. In addition, creditors must provide an ARM loan program disclosure for each ARM loan program in which the consumer expresses an interest, before the consumer applies or has paid a nonrefundable fee. The ARM loan program disclosure currently must include either a 15-year historical example of rates and payments for a $ 10,000 loan, or the maximum interest rate and payment for a $ 10,000 loan originated at the interest rate in effect for the disclosure's identified month and year. Many testing participants found the narrative form of the current ARM loan program disclosure difficult to read and understand. Some participants mistook the historical examples to be their actual loan rate and payments. Participants also found the content of the disclosure too general to be useful to them when comparing between lenders or products, and noted the absence of key loan information, such as the interest rate.

Thus, the proposal would require creditors to provide, for all closed-end mortgages, a one-page document that explains the basic differences between fixed-rate mortgages and ARMs, and a one-page document that would explain potentially risky features of a mortgage in a plain-English question and answer format. In addition, the proposal would streamline the content of the ARM loan program disclosure to highlight in a table form information that participants found most useful, such as interest rate and payment adjustments, and to provide information about program-specific loan features that could pose greater risk, such as prepayment penalties. Consumer testing suggested that highlighting such information in a table form improved participants' ability to identify and understand the information provided about key loan features.

2. Disclosures provided to consumers after application. Currently, creditors must provide an early TILA disclosure within three business days after application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining the consumer's credit history. If the APR on the early TILA disclosure exceeds a certain tolerance before consummation, the creditor must provide corrected disclosures that the consumer must receive at least three days before consummation. If any term other than the APR becomes inaccurate, the creditor must give the corrected disclosure no later than at consummation.

The early TILA disclosure--and any corrected disclosure--must provide certain information, such as the loan's annual percentage rate (APR), finance charge, amount financed, and total of payments. Participants in consumer testing indicated that much of the information in the current TILA disclosure was of secondary importance to them when considering a loan. Participants consistently looked for the contract rate of interest, monthly payment, and in some cases, closing costs. Most participants assumed that the APR was the contract rate of interest, and that the finance charge was the total of all interest they would pay if they kept the loan to maturity. Most identified the amount financed as the loan amount. When ***asked*** to compare two loan offers using redesigned model forms that contained these disclosures, few participants used the APR and finance charge to compare the loans. In addition, some participants had difficulty determining whether the loan tested had a variable or fixed rate and understanding the payment schedule's relationship to the changing interest rate. Many did not understand what circumstances would trigger a prepayment penalty.

Thus, the proposal contains a number of revisions to the format and content of TILA disclosures to make them clearer and more conspicuous. To enhance the effectiveness of the finance charge as a disclosure of the true cost of credit, the proposal would require a simpler, more inclusive approach. The disclosure of the APR would be enhanced to improve consumers' comprehension of the cost of credit. In addition, to help consumers determine whether the loan offered is affordable for them, creditors would be required to summarize key loan terms and highlight interest rate and payment information in a table. Consumer testing ***showed*** that using special formatting requirements, consistent terminology and a minimum 10-point font, would ensure that consumers are better able to identify and review key loan terms.

3. Disclosures required after consummation. Currently, creditors must provide advance notice to a consumer before the interest rate and monthly payment adjust on an ARM. The ARM adjustment notice must provide certain information, including current and prior interest rates, the index values upon which the current and prior interest rates are based, and the payment that would be required to amortize the loan fully at the new interest rate. The Board worked with ICF Macro to develop a revised ARM adjustment notice that would enhance consumers' ability to identify and understand changes being made to their loan terms. Consumer testing of the revised ARM adjustment notice indicated that consumers understood the content and were able correctly to identify the amount and due date of the new payment. Thus, under the proposal, creditors would be required to provide the ARM adjustment notice in a revised format that would highlight changes being made to the interest rate and the monthly payment, and provide other important information, such as the due date of the new payment and the loan balance.

Currently, creditors are not required to provide disclosures after consummation for negatively-amortizing loans. The Board worked with ICF Macro to develop a monthly statement that compares the amount and the impact on the loan balance of a fully-amortizing payment, interest-only payment, and minimum payment. Consumer testing of the proposed monthly statement indicated that consumers understood the content, easily recognized the payment options highlighted in the table, and understood that by making only the minimum payment they would be borrowing more money and increasing their loan balance. Thus, to improve consumer understanding of the risks associated with payment option loans, the Board proposes to require, not later than 15 days before a periodic payment is due, a monthly statement of payment options that explains the impact of payment choice on the loan balance.

Additional testing during and after the comment period. During the comment period, the Board will work with ICF Macro to conduct additional testing of model disclosures. After receiving comments from the public on the proposal and the proposed disclosure forms, the Board will work with ICF Macro to further revise model disclosures based on comments received, and to conduct additional rounds of cognitive interviews to test the revised disclosures. After the cognitive interviews, quantitative testing will be conducted. The goal of the quantitative testing is to measure consumers' comprehension of the newly-developed disclosures with a larger and more statistically representative group of consumers.

E. Other Outreach and Research

The Board also solicited input from members of the Board's Consumer Advisory Council on various issues presented by the review of Regulation Z. During 2009, for example, the Council discussed ways to improve disclosures for home-secured credit. In addition, Board staff met or conducted conference calls with various industry and consumer group representatives throughout the review process leading to this proposal. Board staff also reviewed disclosures currently provided by creditors, the Federal Trade Commission's (FTC) report on consumer testing of mortgage disclosures, [6] HUD's report on consumer testing of the GFE, [7] and other information.

F. Reviewing Regulation Z in Stages

The Board is proceeding with a review of Regulation Z in stages. This proposal largely contains revisions to rules affecting closed-end credit transactions secured by real property or a dwelling. Published elsewhere in today's **Federal Register** is the Board's proposal regarding disclosures for open-end credit secured by a consumer's dwelling. Closed-end mortgages are distinct from other TILA-covered products, and conducting a review in stages allows for a manageable process. To minimize compliance burden for creditors offering other closed-end credit, as well as home-secured credit, the proposed rules that would apply only to closed-end home-secured credit are organized in sections separate from the general disclosure requirements for closed-end rules. Although this reorganization would increase the size of the regulation and commentary, the Board believes a clear delineation of rules for closed-end, home-secured loans pending the review of the remaining closed-end rules provides a clear compliance benefit to creditors.

G. Implementation Period

The Board contemplates providing creditors sufficient time to implement any revisions that may be adopted. The Board seeks comment on an appropriate implementation period.

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[6] James M. Lacko and Janis K. Pappalardo, Fed. Trade Comm'n,*Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Protoype Disclosure Forms* (2007), ("*Improving Consumer Mortgage Disclosures*") *available at* http://www2.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf .

[7] U.S. Dep't. of Hous. and Urban Dev.,*Summary Report: Consumer Testing of the Good Faith Estimate Form (GFE)* (2008), *available at* http://www.huduser.org/publications/pdf/Summary_Report_GFE.pdf .

IV. The Board's Rulemaking Authority

TILA Section 105. TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also specifically authorizes the Board, among other things, to:

. Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

. Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

In the course of developing the proposal, the Board has considered the views of interested parties, its experience in implementing and enforcing Regulation Z, and the results obtained from testing various disclosure options in controlled consumer tests. For the reasons discussed in this notice, the Board believes this proposal is appropriate pursuant to the authority under TILA Section 105(a).

Also, as explained in this notice, the Board believes that the specific exemptions proposed are appropriate because the existing requirements do not provide a meaningful benefit to consumers in the form of useful information or protection. In reaching this conclusion with each proposed exemption, the Board considered (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection. The rationales for these proposed exemptions are explained in part VI below.

TILA Section 129(l)(2). TILA also authorizes the Board to prohibit acts or practices in connection with:

. Mortgage loans that the board finds to be unfair, deceptive, or designed to evade the provisions of HOEPA; and

. Refinancing of mortgage loans that the Board finds to be associated with abusive lending practices or that are otherwise not in the interest of the borrower.

The authority granted to the Board under TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2), is broad. It reaches mortgage loans with rates and fees that do not meet HOEPA's rate or fee trigger in TILA Section 103(aa), 15 U.S.C. 1602(aa), as well as mortgage loans not covered under that section, such as home purchase loans. Moreover, while HOEPA's statutory restrictions apply only to creditors and only to loan terms or lending practices, Section 129(l)(2) is not limited to acts or practices by creditors, nor is it limited to loan terms or lending practices. *See* 15 U.S.C. 1639(l)(2). It authorizes protections against unfair or deceptive practices "in connection with mortgage loans," and it authorizes protections against abusive practices "in connection with refinancing of mortgage loans." Thus, the Board's authority is not limited to regulating specific contractual terms of mortgage loan agreements; it extends to regulating loan-related practices generally, within the standards set forth in the statute.

HOEPA does not set forth a standard for what is unfair or deceptive, but the Conference Report for HOEPA indicates that, in determining whether a practice in connection with mortgage loans is unfair or deceptive, the Board should look to the standards employed for interpreting State unfair and deceptive trade practices statutes and the Federal Trade Commission Act (FTC Act), Section 5(a), 15 U.S.C. 45(a). [8]

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[8] H.R. Rep. 103-652, at 162 (1994) (Conf. Rep.).

Congress has codified standards developed by the Federal Trade Commission (FTC) for determining whether acts or practices are unfair under Section 5(a), 15 U.S.C. 45(a). [9] Under the FTC Act, an act or practice is unfair when it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In addition, in determining whether an act or practice is unfair, the FTC is permitted to consider established public policies, but public policy considerations may not serve as the primary basis for an unfairness determination. [10]

The FTC has interpreted these standards to mean that consumer injury is the central focus of any inquiry regarding unfairness. [11] Consumer injury may be substantial if it imposes a small harm on a large number of consumers, or if it raises a significant risk of concrete harm. [12] The FTC looks to whether an act or practice is injurious in its net effects. [13] The FTC has also observed that an unfair act or practice will almost always reflect a market failure or market imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs. [14] In evaluating unfairness, the FTC looks to whether consumers' free market decisions are unjustifiably hindered. [15]

The FTC has also adopted standards for determining whether an act or practice is deceptive (though these standards, unlike unfairness standards, have not been incorporated into the FTC Act). [16] First, there must be a representation, omission or practice that is likely to mislead the consumer. Second, the act or practice is examined from the perspective of a consumer acting reasonably in the circumstances. Third, the representation, omission, or

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[9] *See* 15 U.S.C. 45(n); Letter from Commissioners of the FTC to the Hon. Wendell H. Ford, Chairman, and the Hon. John C. Danforth, Ranking Minority Member, Consumer Subcomm. of the H. Comm. on Commerce, Science, and Transp. (Dec. 17, 1980).

[10] 15 U.S.C. 45(n).

[11] Statement of Basis and Purpose and Regulatory Analysis, Credit Practices Rule,42 FR 7740, 7743; Mar. 1, 1984 (*Credit Practices Rule*).

[12] Letter from Commissioners of the FTC to the Hon. Wendell H. Ford, Chairman, and the Hon. John C. Danforth, Ranking Minority Member,Consumer Subcomm. of the H. Comm. on Commerce, Science, and Transp., n.12 (Dec. 17, 1980).

[13] *Credit Practices Rule*, 42 FR at 7744.

[14] *Id*.

[15] *Id*.

practice must be material. That is, it must be likely to affect the consumer's conduct or decision with regard to a product or service. [17]

Many States also have adopted statutes prohibiting unfair or deceptive acts or practices, and these statutes employ a variety of standards, many of them different from the standards currently applied to the FTC Act. A number of States follow an unfairness standard formerly used by the FTC. Under this standard, an act or practice is unfair where it offends public policy; or is immoral, unethical, oppressive, or unscrupulous; and causes substantial injury to consumers. [18]

In developing proposed rules under TILA Section 129(l)(2)(A), 15 U.S.C. 1639(l)(2)(A), the Board has considered the standards currently applied to the FTC Act's prohibition against unfair or deceptive acts or practices, as well as the standards applied to similar State statutes.

V. Discussion of Major Proposed Revisions

The goal of the proposed revisions is to improve the effectiveness of the Regulation Z disclosures that must be provided to consumers for closed-end credit transactions secured by real property or a dwelling. To shop for and understand the cost of home-secured credit, consumers must be able to identify and comprehend the key terms of mortgages. But the terms and conditions for mortgage transactions can be very complex. The proposed revisions to Regulation Z are intended to provide the most essential information to consumers when the information would be most useful to them, with content and formats that are clear and conspicuous. The proposed revisions are expected to improve consumers' ability to make informed credit decisions and enhance competition among creditors. Many of the changes are based on the consumer testing that was conducted in connection with the review of Regulation Z.

In considering the proposed revisions, the Board sought to ensure that the proposal would not reduce access to credit, and sought to balance the potential benefits for consumers with the compliance burdens imposed on creditors. For example, the proposed revisions seek to provide greater certainty to creditors in identifying what costs must be disclosed for mortgages, and ***how*** those costs must be disclosed. More effective disclosures may also

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[16] Letter from James C. Miller III, Chairman, FTC to the Hon. John D. Dingell, Chairman, H. Comm. on Energy and Commerce (Oct. 14, 1983) (*Dingell Letter*).

[17] *Dingell Letter* at 1-2.

[18] *See, e.g.,* Kenai Chrysler Ctr., Inc. v. Denison, 167 P.3d 1240, 1255 (Alaska 2007) (quoting FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244-45 n.5 (1972)); State v. Moran, 151 N.H. 450, 452, 861 A.2d 763, 755-56 (N.H. 2004) (concurrently applying the FTC's former test and a test under which an act or practice is unfair or deceptive if "the objectionable conduct * * * attain[s] a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.") (citation omitted); Robinson v. Toyota Motor Credit Corp., 201 Ill. 2d 403, 417-418, 775 N.E.2d 951, 961-62 (2002) (quoting 405 U.S. at 244-45 n.5).

reduce confusion and misunderstanding, which may also ease creditors' costs relating to consumer complaints and inquiries.

A. Disclosures at Application

Currently, Regulation Z requires preapplication disclosures only for variable-rate transactions. For these transactions, creditors are required to provide the CHARM booklet and a loan program disclosure that provides twelve items of information at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

"Key Questions to ***Ask*** *about* ***Your*** *Mortgage" publication*. Since 1987, the number of loan products and product features has grown, providing consumers with more choices. However, the growth in loan features and products has also made the decision-making process more complex for consumers. The proposal would require creditors to provide to consumers a one-page Board publication entitled, *"Key Questions to* ***Ask*** *about* ***Your*** *Mortgage."* Creditors would be required to provide this document for all closed-end loans secured by real property or a dwelling, not just variable-rate loans, before the consumer applies for a loan or pays a nonrefundable fee, whichever is earlier. The publication would inform consumers in a plain-English question and answer format about potentially risky features, such as interest-only, negative amortization, and prepayment penalties. To enable consumers to track the presence or absence of potentially risky features throughout the mortgage transaction process, the key questions and answers provided in this one-page document would also be included in the ARM loan program disclosure and the early and final TILA disclosures.

"Fixed vs. Adjustable Rate Mortgages" publication. Instead of the CHARM booklet, the proposal would require creditors to provide a one-page Board publication entitled, *"Fixed vs. Adjustable Rate Mortgages"* for all closed-end loans secured by real property or a dwelling, not just variable-rate loans. The publication would contain an explanation of the basic differences between fixed-rate mortgages and ARMs. Although the requirement to provide a CHARM booklet would be eliminated, the Board would continue to publish the CHARM booklet as a consumer-education publication.

ARM loan program disclosure. Currently, for each variable-rate loan program in which a consumer expresses an interest, creditors must provide certain information, including the index and margin to be used to calculate interest rates and payments, and either a 15-year historical example of rates and payments for a $ 10,000 loan, or the maximum interest rate and payment for a $ 10,000 loan originated at the interest rate in effect for the disclosure's identified month and year. Based on consumer testing, the proposal would simplify the ARM loan program disclosure to focus on the interest rate and payment and the potential risks associated with ARMs. Information on ***how*** to calculate payments, and the effect of rising interest rates on monthly payments would be moved to the early TILA disclosure provided after application. Placing the information there will allow the creditor to customize the information to the consumer's potential loan, making the information more useful to consumers. The proposed ARM loan program disclosure would be provided in a tabular question and answer format to enable consumers to easily locate the most important information.

B. Disclosures Within Three Days After Application

TILA and Regulation Z currently require creditors to provide an early TILA disclosure within three business days after application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining the consumer's credit history. If the APR on the early TILA disclosure exceeds a certain tolerance before consummation, the creditor must provide corrected disclosures that the consumer must receive at least three days before consummation. If any term other than the APR becomes inaccurate, the creditor must give the corrected disclosure no later than at consummation.

The early TILA disclosure, and any corrected disclosure, must include certain loan information, including the amount financed, the finance charge, the APR, the total of payments, and the amount and timing of payments. The finance charge is the sum of all credit-related charges, but excludes a variety of fees and charges. TILA requires that the finance charge and the APR be disclosed more conspicuously than other information. The APR is calculated based on the finance charge and is meant to be a single, unified number to help consumers understand the total cost of credit.

Calculation of the finance charge. The proposal contains a number of revisions to the calculation of the finance charge and the disclosure of the finance charge and the APR to improve consumers' understanding of the cost of credit. Currently, TILA and Regulation Z permit creditors to exclude several fees or charges from the finance charge, including certain fees or charges imposed by third party closing agents; certain premiums for credit or property insurance or fees for debt cancellation or debt suspension coverage, if the creditor meets certain conditions; security interest charges; and real-estate related fees, such as title examination or document preparation fees.

Consumer groups, creditors, and government agencies have long been dissatisfied with the "some fees in, some fees out" approach to the finance charge. Consumer groups and others believe that the current approach obscures the true cost of credit. They contend that this approach creates incentives for creditors to shift the cost of credit from the interest rate to ancillary fees excluded from the finance charge. They further contend that this approach undermines the purpose of the APR, which is to express in a single figure the total cost of credit. Creditors maintain that consumers are confused by the APR and that the current approach creates significant regulatory burdens. They contend that determining which fees are or are not included in the finance charge is overly complex and creates litigation risk.

The Board proposes to use its exception and exemption authority to revise the finance charge calculation for closed-end mortgages, including HOEPA loans. The proposal would maintain TILA's definition of a "finance charge" as a fee or charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the extension of credit. However, the proposal would require the finance charge to include charges by third parties if the creditor requires the use of a third party as a condition of or incident to the extension of credit (even if the consumer chooses the third party), or if the creditor retains a portion of the third-party charge (to the extent of the portion retained). Charges that would be incurred in a comparable cash transaction, such as transfer taxes, would continue to be excluded from the finance charge. Under this approach, consumers would benefit from having a finance charge and APR disclosure that better represent the cost of credit, undiluted by myriad exclusions for various fees and charges. This approach would cause more loans to be subject to the special protections of the Board's 2008 HOEPA Final Rule, special disclosures and restrictions for HOEPA loans, and certain State anti-predatory lending laws. However, the proposal could also reduce compliance burdens, regulatory uncertainty, and litigation risks for creditors.

Disclosure of the finance charge and the APR. Currently, creditors are required to disclose the loan's "finance charge" and "annual percentage rate," using those terms, more conspicuously than the other required disclosures. Consumer testing indicated that consumers do not understand the term "finance charge." Most consumers believe the term refers to the total of all interest they would pay if they keep the loan to maturity, but do not realize that it includes the fees and costs associated with the loan. For these reasons, the proposal replaces the term "finance charge" with "interest and settlement charges" to make clear it is more than interest, and the disclosure would no longer be more conspicuous than the other required disclosures.

In addition, the disclosure of the APR would be enhanced to improve consumers' comprehension of the cost of credit. Under the proposal, creditors would be required to disclose the APR in 16-point font in close proximity to a graph that compares the consumer's APR to the HOEPA average prime offer rate for borrowers with excellent credit and the HOEPA threshold for higher-priced loans. This disclosure would put the APR in context and help consumers understand whether they are being offered a loan that comports with their creditworthiness.

Interest rate and payment summary. Currently, creditors are required to disclose the number, amount, and timing of payments scheduled to repay the loan. Under the MDIA's amendments to TILA, creditors will be required to provide examples of adjustments to the regularly required payment based on the change in interest rates specified in the contract. Consumer testing consistently indicated that consumers shop for and evaluate a mortgage based on the contract interest rate and the monthly payment, but consumers have difficulty understanding such terms using the current TILA disclosure. Under the proposal, creditors would be required to disclose in a tabular format the contract interest rate together with the corresponding monthly payment, including escrows for taxes and property and/or mortgage insurance. Special disclosure requirements would be imposed for adjustable-rate or step-rate loans to ***show*** the interest rate and payment at consummation, the maximum interest rate and payment at first adjustment, and the highest possible maximum interest rate and payment. Additional special disclosures would be required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments, and balloon payments.

Disclosure of other terms. In addition to the interest rate and monthly payment, consumer testing indicated that consumers benefit from the disclosure of other key terms in a clear format. Thus, the proposal would require creditors to provide in a tabular format information about the loan amount, the loan term, the loan type (such as fixed-rate), the total settlement charges, and the maximum amount of any prepayment penalty. In addition, creditors would be required to disclose in a tabular question and answer format the "Key Questions about Risk," which would include information about potentially risky loan features such as prepayment penalties, interest-only payments, and negative amortization.

C. Disclosures Three Days Before Consummation

As noted above, the creditor is required to provide the early TILA disclosure to the consumer within three business days after receiving the consumer's written application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining the consumer's credit history. If the APR on the early TILA disclosure exceeds a certain tolerance before consummation, the creditor must provide corrected disclosures that the consumer must receive at least three days before consummation. If any term other than the APR becomes inaccurate, the creditor must give the corrected disclosure no later than at consummation. The consumer may waive the seven- and three-day waiting periods for a bona fide personal financial emergency.

There are, however, long-standing concerns about consumers facing different loan terms or increased settlement costs at closing. Members of the Board's Consumer Advisory Council, participants in public hearings, and commenters on prior Board rulemakings have expressed concern about consumers not learning of changes to credit terms or settlement charges until consummation. In addition, consumer testing indicated that consumers are often surprised at closing by changes in important loan terms, such as the addition of an adjustable-rate feature. Despite these changes, consumers report that they have proceeded with closing because they lacked alternatives (especially in the case of a home purchase loan), or were told that they could easily refinance with better terms in the near future.

For these reasons, the proposal would require the creditor to provide a final TILA disclosure that the consumer must receive at least three business days before consummation, even if no terms have changed since the early TILA disclosure was provided. In addition, the Board is proposing two alternative approaches to address changes to loan terms and settlement charges during the three-business-day waiting period. Under the first approach, if any terms change during the three-business-day waiting period, the creditor would be required to provide another final TILA disclosure and wait an additional three business days before consummation could occur. Under the second approach, creditors would be required to provide another final TILA disclosure, but would have to wait an additional three business days before consummation only if the APR exceeds a designated tolerance or the creditor adds an adjustable-rate feature. Otherwise, the creditor would be permitted to provide the new final TILA disclosure at consummation.

D. Disclosures After Consummation

Regulation Z requires certain notices to be provided after consummation. Currently, for variable-rate transactions, creditors are required to provide advance notice of an interest rate adjustment. There are no disclosure requirements for other post-consummation events.

ARM adjustment notice. Currently, for variable-rate transactions, creditors are required to provide a notice of interest rate adjustment at least 25, but no more than 120, calendar days before a payment at a new level is due. In addition, creditors must provide an adjustment notice at least once each year during which an interest rate adjustment is implemented without an accompanying payment change. These disclosures must include certain information, including the current and prior interest rates and the index values upon which the current and prior interest rates are based.

Under the proposal, creditors would be required to provide the ARM adjustment notice at least 60 days before payment at a new level is due. This proposal seeks to address concerns that consumers need more than 25 days to seek out a refinancing in the event of a payment adjustment. This notice is particularly critical for subprime borrowers who may be more vulnerable to payment shock and may have a more difficult time refinancing a loan.

Payment option statement. Currently, creditors are not required to provide disclosures after consummation for negatively amortizing loans, such as payment option loans. To ensure consumers receive information about the risks associated with payment option loans (*e.g*., payment shock), the proposal would require creditors to provide a periodic statement for payment option loans that have negative amortization. The disclosure would contain a table with a comparison of the amount and impact on the loan balance and property equity of a fully-amortizing payment, interest-only payment, and minimum negatively-amortizing payment. This disclosure would be provided not later than 15 days before a periodic payment is due.

Creditor-placed property insurance notice. Creditors are not currently required under Regulation Z to provide notice before charging for creditor-placed property insurance. Industry reports indicate that the volume of creditor-placed property insurance has increased significantly. Consumers struggling financially may fail to pay required property insurance premiums unaware that creditors have the right to obtain such insurance on their behalf and add the premiums to their outstanding loan balance. Such premiums are often considerably more expensive than premiums for insurance obtained by the consumer. Thus, under the proposal, creditors would be required to provide notice to consumers of the cost and coverage of creditor-placed property insurance at least 45 days before a charge is imposed for such insurance. In addition, creditors would be required to provide consumers with evidence of such insurance within 15 days of imposing a charge for the insurance.

E. Prohibitions on Payments to Loan Originators and Steering

Currently, creditors pay commissions to loan originators in the form of "yield spread premiums." A yield spread premium is the present dollar value of the difference between the lowest interest rate a lender would have accepted on a particular transaction and the interest rate a loan originator actually obtained for the lender. Some or all of this dollar value is usually paid to the loan originator by the creditor as a form of compensation, though it may also be applied to other closing costs.

Yield spread premiums can create financial incentives to steer consumers to riskier loans for which loan originators will receive greater compensation. Consumers generally are not aware of loan originators' conflict of interest and cannot reasonably protect themselves against it. Yield spread premiums may provide some benefit to consumers because consumers do not have to pay loan originators' compensation in cash or through financing. However, the Board believes that this benefit may be outweighed by costs to consumers, such as when consumers pay a higher interest rate or obtain a loan with terms the consumer may not otherwise have chosen, such as a prepayment penalty or an adjustable rate.

In response to these concerns, the 2007 HOEPA Proposed Rule attempted to address the potential unfairness through disclosure. The proposal would have prohibited a creditor from paying a mortgage broker more than the consumer had previously agreed in writing that the mortgage broker would receive. A mortgage broker would have had to enter into the written agreement with the consumer, before accepting the consumer's loan application and before the consumer paid any fee in connection with the transaction (other than a fee for obtaining a credit report). The agreement also would have disclosed (1) that the consumer ultimately would bear the cost of the entire compensation even if the creditor paid part of it directly; and (2) that a creditor's payment to a broker could influence the broker to offer the consumer loan terms or products that would not be in the consumer's interest or the most favorable the consumer could obtain.

Based on analysis of comments received on the 2007 HOEPA Proposed Rule, the results of consumer testing, and other information, the Board withdrew the proposed provisions relating to broker compensation in the 2008 HOEPA Final Rule. In particular, the Board's consumer testing raised concerns that the proposed agreement and disclosures would confuse consumers and undermine their decisionmaking rather than improve it. Participants often concluded, not necessarily correctly, that brokers are more expensive than creditors. Many also believed that brokers would serve their best interests notwithstanding the conflict resulting from the relationship between interest rates and brokers' compensation. [19] The proposed disclosures presented a significant risk of misleading consumers regarding both the relative costs of brokers and lenders and the role of brokers in their transactions. In withdrawing the broker compensation provisions of the HOEPA proposal, the Board stated it would continue to explore options to address potential unfairness associated with loan originator compensation arrangements.

To address the concerns related to loan originator compensation, the Board proposes to prohibit payments to loan originators that are based on the loan's terms and conditions. This prohibition would not apply to payments that consumers make directly to loan originators. The Board solicits comment on an alternative that would allow loan originators to receive payments that are based on the principal loan amount, which is a common practice today. If a consumer directly pays the loan originator, the proposal would prohibit the loan originator from also receiving compensation from any other party in connection with that transaction. These rules would be proposed under the Board's HOEPA authority to prohibit unfair or deceptive acts or practices in connection with mortgage loans.

Under the proposal, a "loan originator" would include both mortgage brokers and employees of creditors who perform loan origination functions. The 2007 HOEPA Proposed Rule covered only mortgage brokers. However, a creditor's loan officers frequently have the same discretion as mortgage brokers to modify loans' terms to increase their compensation, and there is evidence that creditors' loan officers engage in such practices.

The Board also seeks comment on an optional proposal that would prohibit loan originators from directing or "steering" consumers to a particular creditor's loan products based on the fact that the loan originator will receive additional compensation even when that loan may not be in the consumer's best interest. The Board solicits comment on whether the proposed rule would be effective in achieving the stated purpose. In addition, the Board solicits comment on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have.

F. Additional Protections

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[19] *See* Macro International, Inc., *Consumer Testing of Mortgage Broker Disclosures* (July 10, 2008), *available at* http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf .

Credit insurance or debt cancellation or debt suspension coverage eligibility for all loan transactions. Currently, creditors may exclude from the finance charge a premium or charge for credit insurance or debt cancellation or debt suspension coverage if the creditor discloses the voluntary nature and cost of the product, and the consumer signs or initials an affirmative request for the product. Concerns have been raised about creditors who sometimes offer products that contain eligibility restrictions, specifically age or employment restrictions, but do not evaluate whether applicants for the products actually meet the eligibility restrictions at the time of enrollment. Subsequently, consumers' claims for benefits may be denied because they did not meet the eligibility restrictions at the time of enrollment. Consumers are presumably unaware that they are paying for a product for which they will derive no benefit. Under the proposal, creditors would be required to determine whether the consumer meets the age and/or employment eligibility criteria at the time of enrollment in the product and provide a disclosure that such a determination has been made. The proposal is not limited to mortgage transactions and would apply to all closed-end and open-end transactions.

VI. Section-by-Section Analysis

Section 226.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

1(b) Purpose

Section 226.1(b) would be revised to reflect the fact that § 226.35 prohibits certain acts or practices for transactions secured by the consumer's principal dwelling. In addition, § 226.1(b) would be revised to reflect the proposal to broaden the scope of § 226.36 (from transactions secured by the consumer's principal dwelling to all transactions secured by real property or a dwelling).

1(d) Organization

1(d)(5)

The Board proposes to revise § 226.1(d)(5) to reflect the scope of §§ 226.32, 226.34, and 226.35. The Board would also revise § 226.1(d)(5) to reflect the proposed change in the scope of § 226.36, and the addition of new §§ 226.37 and 226.38.

Section 226.2 Definitions and Rules

2(a) Definitions

2(a)(24) Residential Mortgage Transaction

Regulation Z, § 226.2(a)(24), defines a "residential mortgage transaction" as "a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling." Currently, comment 2(a)(24)-1 states that the term is important in five provisions in Regulation Z, including assumption under §§ 226.18(q) and 226.20(b). However, the proposed rule would expand coverage of the assumption rules to cover any closed-end credit transaction secured by real property or a dwelling. Thus, the Board proposes to revise comments 2(a)(24)-1, -2, and -5 to reflect this change.

Section 226.3 Exempt Transactions

3(b) Credit Over $ 25,000 Not Secured by Real Property or a Dwelling

TILA and Regulation Z cover all credit transactions that are secured by real property or a principal dwelling in which the amount financed exceeds $ 25,000. 15 U.S.C. 1603(3). Section 226.3(b), which implements TILA Section 104(3), provides that credit transactions over $ 25,000 not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, are exempt from Regulation Z. 15 U.S.C. 1603(3).

As noted in the discussion under §§ 226.19 and 226.38, the Board proposes to require creditors to provide certain disclosures for all closed-end transactions secured by real property or a dwelling, not just principal dwellings. However, the Board recognizes that, if personal property that is a dwelling but not the borrower's principal dwelling secures a loan of over $ 25,000, it is not covered by TILA in the first instance. For example, Regulation Z does not apply to a $ 26,000 loan that is secured by a manufactured home that is not the consumer's second or vacation home. Notwithstanding this exemption, the Board solicits comment on whether consumers in these transactions receive adequate information regarding their loan terms and are afforded sufficient protections. The Board also seeks comment on the relative benefits and costs of applying Regulation Z to these transactions.

Section 226.4 Finance Charge

Background

Section 106(a) of TILA provides that the finance charge in a consumer credit transaction is "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." 15 U.S.C. 1605(a). The finance charge does not include charges of a type payable in a comparable cash transaction. *Id*. The finance charge does not include fees or charges imposed by third party closing agents, such as settlement agents, attorneys, and title companies, if the creditor does not require the imposition of those charges or the services provided, and the creditor does not retain the charges. *Id*. Examples of finance charges include, among other things, interest, points, service or carrying charges, credit report fees, and credit insurance premiums. *Id*.

The finance charge is significant for two reasons. First, it is meant to represent, in dollar terms, the "cost of credit" in whatever form imposed by the creditor or paid by the borrower. Second, the finance charge is used in calculating the annual percentage rate (APR) for the loan, 15 U.S.C. 1606, which represents the "cost of credit, expressed as a yearly rate." § 226.22(a)(1). Together, these two interrelated terms are among the most important terms disclosed to consumers under TILA.

While the test for determining what is included in a finance charge is very broad, TILA Section 106 excludes from the definition of the finance charge various fees or charges. The statute excludes from the finance charge: Premiums for credit insurance if coverage is not required to obtain credit, certain disclosures are provided to the consumer, and the consumer affirmatively requests the insurance in writing; and premiums for property and liability insurance written in connection with a consumer credit transaction if the insurance may be obtained from a person of the consumer's choice and certain disclosures are provided to the consumer. 15 U.S.C. 1605(b) and (c). Statutory exclusions also apply to certain security interest charges, including: (1) Fees or charges required by law and paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying, any security related to the credit transaction; (2) premiums for insurance purchased instead of perfecting any security interest otherwise required by the creditor; and (3) taxes levied on security instruments or the documents evidencing indebtedness if payment of those taxes is required to record the instrument securing the evidence of indebtedness. 15 U.S.C. 1605(d). Finally, the statute excludes from the finance charge various fees in connection with loans secured by real property, such as title examination fees, title insurance premiums, fees for preparation of loan-related documents, escrows for future payment of taxes and insurance, notary fees, appraisal fees, pest and flood-hazard inspection fees, and credit report fees. 15 U.S.C. 1605(e).

Through the exclusions described above, the Congress has adopted a "some fees in, some fees out" approach to the finance charge with some fees automatically excluded from the finance charge and other fees excluded from the finance charge provided certain conditions are met. The regulation tracks this approach with a three-tiered approach to the classification of fees or charges: (1) Some fees or charges are finance charges; (2) some fees and charges are not finance charges; and (3) some fees and charges are not finance charges, but only if certain conditions are met. As a result, neither the finance charge nor the corresponding APR disclosed to the consumer reflect the consumer's total cost of credit.

Section 226.4(a) defines the finance charge as "the cost of consumer credit as a dollar amount." Consistent with TILA Section 106(a), the finance charge includes "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit" and does not include "any charge of a type payable in a comparable cash transaction." § 226.4(a). The finance charge also includes fees and amounts charged by someone other than the creditor if the creditor requires the use of a third party as a condition of or incident to the extension of credit, even if the consumer can choose the third party, or if the creditor retains a portion of the third party charge (to the extent of the portion retained). § 226.4(a)(1).

The Board has adopted provisions in the regulation to give effect to each of the statutory exclusions and conditional exclusions from the finance charge. Closing agent charges are not included in the finance charge unless the creditor requires the particular services for which the consumer is charged, requires imposition of the charge, or retains a portion of the charge (to the extent of the portion retained). § 226.4(a)(2). Premiums for credit insurance may be excluded from the finance charge if insurance coverage is not required by the creditor, certain disclosures are provided to the consumer, and the consumer affirmatively requests the insurance coverage in a writing signed or initialed by the consumer. § 226.4(d)(1). Premiums for property and liability insurance may also be excluded from the finance charge if the insurance may be obtained from a person of the consumer's choice and certain disclosures are provided to the consumer. § 226.4(d)(2). Certain security interest charges enumerated in the statute, such as taxes and fees prescribed by law and paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying, a security interest, are excluded from the finance charge. § 226.4(e). The regulation also excludes from the finance charge the real estate related fees enumerated in Section 106(e) of TILA. § 226.4(c)(7).

Over time, the Board, by regulation, has contributed to the "some fees in, some fees out" approach to the finance charge by determining that certain other charges not specifically excluded by the statute are not finance charges. These regulatory exclusions often sought to bring logical consistency to the treatment of fees that are similar to fees the statute excludes or conditionally excludes from the finance charge. Charges excluded from the finance charge by regulation include: Charges for debt cancellation or debt suspension coverage if the coverage is not required by the creditor, certain disclosures are provided to the consumer, and the consumer affirmatively requests the coverage in a writing signed or initialed by the consumer; and fees for verifying the information in a credit report. *See* § 226.4(d)(3) and comment 4(c)(7)-1. The additional fees the Board has excluded from the finance charge generally are closely analogous or related to fees that the statute excludes or conditionally excludes from the finance charge. For example, premiums for voluntary debt cancellation coverage are closely analogous to premiums for voluntary credit insurance, which TILA excludes from the finance charge. Likewise, charges for verifying a credit report are related to the credit report itself.

Concerns With the Current Approach to Finance Charges

The "some fees in, some fees out" approach to the finance charge has been problematic both for consumers and for creditors since TILA's inception. Many of these problems were described in the 1998 Joint Report. [20]

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[20] The*1998 Joint Report* at 8-16.

One fundamental problem is that there are two views of what is meant by the "cost of credit." From the creditor's perspective, the cost of credit means the interest and fee income that the creditor receives or requires in exchange for providing credit to the consumer. From the consumer's perspective, however, the cost of credit means what the consumer pays for the credit, regardless of the persons to whom such amounts are paid. [21] The statute uses both of these approaches in designating which fees are and are not included in the finance charge.

The influence of the creditor's perspective on the cost of credit is evident in ***how*** the "some fees in, some fees out" approach to the finance charge has evolved and been applied to loans secured by real property. Many services provided in connection with real estate loans are performed by third parties, such as appraisers, closing agents, inspectors, public officials, attorneys, and title companies. Some of these services are required by the creditor, while others are not. In either case, the fees for these services generally are remitted in whole or in part to the third party. In some cases, the creditor may have little control over the fees imposed by these third parties. From the creditor's perspective, the creditor generally does not receive and retain these charges in connection with providing credit to the consumer. From the consumer's perspective, however, these third-party charges are part of what the consumer pays to obtain credit. [22]

Another problem with the "some fees in, some fees out" approach is that it undermines the effectiveness of the APR as an accurate measure of the cost of credit expressed as a yearly rate. The APR is designed to be a benchmark for consumer shopping. In consumer testing conducted for the Board, however, the APR appeared not to be fulfilling that objective in connection with mortgage loans.

A single figure such as the APR is simple to use, particularly if consumers can use it to evaluate and compare competing products, rather than having to evaluate multiple figures. [23] This is especially true for a figure such as the APR, which has a forty-year history in consumer disclosures, and thus is familiar to consumers. Nevertheless, if that single figure is not understood by consumers or does not fully represent what it purports to represent, the usefulness of that figure is undermined. Consumer testing ***shows*** that most consumers do not understand the APR, and many believe that the APR is the interest rate.

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[21] *See* The *1998 Joint Report* at 10.

[22] *See* The *1998 Joint Report* at 11.

[23] *See* The *1998 Joint Report* at 9.

Under the current "some fees in, some fees out" approach to the finance charge, mortgage lenders also have an incentive to unbundle the cost of credit and shift some of the costs from the interest rate into ancillary fees that are excluded from the finance charge and not considered when calculating the APR, resulting in a lower APR than otherwise would have been disclosed. This further undermines the usefulness of the APR and has resulted in the proliferation of "junk fees," such as fees for preparing loan-related documents. Such unbundling of the cost of credit, and the resulting pricing complexity, can have a detrimental impact on consumers. For example, research undertaken by HUD suggests that borrowers experience great difficulty when deciding whether the tradeoff between paying higher up-front costs or paying a higher interest rate is in their best interest, and that borrowers who do not pay up-front loan origination fees generally pay less than borrowers who do pay such fees. [24] To the extent that the APR calculation includes most or all fees, the APR can reduce the incentive for lenders to include junk fees in credit agreements. [25]

Based on extensive outreach conducted by Board staff, there appears to be a broad consensus that the "some fees in, some fees out" approach to the finance charge and corresponding APR calculation and disclosure is seriously flawed. Many industry representatives consider the finance charge definition overly complex. For creditors, this complexity creates significant regulatory burden and litigation risk. While some industry representatives generally favor a more inclusive measure, they have not advocated a specific test for determining the finance charge.

Consumer advocates believe that the exclusions from the finance charge undermine the purpose of the finance charge and the APR, which is to measure the cost of credit. Some consumer advocates have recommended a "but for" test that would include in the finance charge all fees except those that the consumer would pay if he or she were not "obtaining, accessing, or repaying the extension of credit," such as fees paid in comparable cash transactions. [26]

In the 1998 Joint Report, the Board and HUD recommended that the Congress adopt a more comprehensive definition of the finance charge. [27] The Board and HUD recommended adopting a "required-cost of credit" test that would include in the finance charge "the costs the consumer is required to pay to get the credit." [28] Under this approach, the finance charge would include (and the APR would reflect) costs required to be paid by the consumer to obtain the credit, including many fees currently excluded from the finance charge, such as application fees, appraisal fees, document preparation fees, fees for title services, and fees paid to public officials to record security

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[24] U.S. Department of Housing and Urban Development,*A Study of Closing Costs for FHA Mortgages* at x-xi and 2-4 (May 2008).

[25] *See* The *1998 Joint Report* at 9.

[26] Renuart, Elizabeth and Diane E. Thomson,*The Truth, the Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending*, 25 Yale J. on Reg. 181, 230 (2008).

[27] The*1998 Joint Report* at 15-16.

[28] The*1998 Joint Report* at 13, 16.

interests. [29] Under the "required-cost of credit" test, fees for optional services, such as premiums for voluntary credit insurance, would be excluded from the finance charge. [30]

The Board's Proposal

A simpler, more inclusive test for determining the finance charge. The Board believes consumers would benefit from having a disclosure that includes fees or charges that better represent the full cost of credit undiluted by myriad exclusions, the basis for which consumers cannot be expected to understand. In addition, having a single benchmark figure--the APR--that is simple to use should allow consumers to evaluate competing mortgage products by reviewing one variable. The Board also believes that such a disclosure would reduce compliance burdens, regulatory uncertainty, and litigation risks for creditors who must provide accurate TILA disclosures.

Thus, the Board would retain the APR as a benchmark for closed-end transactions secured by real property or a dwelling but is proposing certain revisions designed to make the APR more useful to consumers. First, as discussed below, the Board is proposing to provide consumers with more helpful explanation of the APR and what it represents. Second, the Board is proposing to require disclosure of the APR together with a new disclosure of the interest rate, as discussed below. Third, the Board is proposing to replace the "some fees in, some fees out" approach for determining the finance charge with a simpler, more inclusive approach for determining the finance charge that is based on TILA Section 106(a), 15 U.S.C. 1605(a). This approach is designed to ensure that the finance charge and the corresponding APR disclosed to consumers fulfills the basic purpose of TILA by providing a more complete and useful measure of the cost of credit.

Pursuant to its authority under TILA Sections 105(a) and (f) of TILA, 15 U.S.C. 1604(a) and (f), the Board is proposing to amend § 226.4 to make most of the current exclusions from the finance charge inapplicable to closed-end credit transactions secured by real property or a dwelling. For such loans, the Board is proposing to replace the "some fees in, some fees out" approach with a simpler, more inclusive test based on the definition of finance charge in TILA Section 106(a), 15 U.S.C. 1605(a), for determining what fees or charges are included in the finance charge. The Board believes that the current patchwork of fee exclusions from the definition of the finance charge is not consistent with TILA's purpose of disclosing the cost of credit to the consumer. The Board believes that a more inclusive approach to determining the finance charge would be more consistent with TILA's purpose, enhance consumer understanding and use of the finance charge and APR disclosures, and reduce compliance costs. The Board also believes that the proposed revisions to the finance charge may enhance competition for third-party services since creditors would likely be more mindful of fees or charges that must be included in the finance charge and APR.

The proposed test for determining the finance charge tracks the language of current § 226.4 but excluding § 226.4(a)(2). Specifically, under this test, a fee or charge is included in the finance charge for closed-end credit transactions secured by real property or a dwelling if it is (1) "payable directly or indirectly by the consumer" to whom credit is extended, and (2) "imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." The finance charge would continue to exclude fees or charges paid in comparable cash transactions. *See* § 226.4(a). The finance charge also includes charges by third parties if the creditor: (1) Requires use of a third party as a condition of or incident to the extension of credit, even if the consumer can choose the third party; or (2) retains a portion of the third-party charge, to the extent of the portion retained. *See* § 226.4(a)(1). Other

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[29] The*1998 Joint Report* at 13.

[30] The*1998 Joint Report* at 13.

exclusions from the finance charge for closed-end credit transactions secured by real property or a dwelling would be limited to late fees and similar default or delinquency charges, seller's points, and premiums for property and liability insurance.

As new services are added, and new fees are charged, in connection with closed-end credit transactions secured by real property or a dwelling, creditors would have to apply the basic test in making judgments about whether or not new fees must be included in the finance charge. The Board requests comment on whether further guidance is needed to assist creditors in making these determinations, and, if so, what specific guidance would be helpful.

Loans covered. Section 226.4 is part of Subpart A, General, as opposed to Subpart C, Closed-End Credit. Nevertheless, the proposed amendments to § 226.4 would apply only to closed-end credit transactions secured by real property or a dwelling, consistent with the general scope of this proposed rule. The Board seeks comment on whether the same amendments should be made applicable to other closed-end credit and may consider such amendments under a future review of Regulation Z. Contemporaneous with this proposal, the Board is publishing separately proposed rules regarding home equity lines of credit (HELOCs). Accordingly, the Board is not proposing to apply the changes to the finance charge determination to HELOCs in this rulemaking. As discussed in the HELOC proposal, the Board believes that changing the definition of finance charge for HELOC accounts would not have a material effect on the HELOC disclosures and accordingly is unnecessary.

Impact on coverage of other rules. One potential consequence of adopting a more inclusive test for determining the finance charge is that more loans may qualify as "HOEPA loans," as described in TILA Section 103(aa), and therefore be subject to the additional disclosures and prohibitions applicable to such loans under TILA Section 129. Similarly, more loans may be subject to the Board's recently adopted protections for higher-priced mortgage loans under § 226.35, which become effective on October 1, 2009. 73 FR 44522; Jul. 30, 2008. Finally, more loans may qualify as covered loans under certain State anti-predatory lending laws that use the APR as a coverage test. The Board has conducted some analysis to quantify these impacts.

To estimate representative charges, the Board obtained information from a 2008 survey conducted by Bankrate.com on closing costs for each state, based on a $ 200,000 hypothetical mortgage loan. [31] Using these estimates, and scaling those that are calculated as a percentage of loan amount as necessary, the Board estimated the effect on the APRs of first-lien loans in two databases: HMDA records, which include most closed-end home loans, and data obtained from Lender Processing Services, Inc. (LPS), which include mostly prime and near-prime home loans serviced by several large mortgage servicers.

On the basis of this analysis, the Board estimates that proposed § 226.4 would increase the share of first-lien refinance and home improvement loans covered by HOEPA, under § 226.32, by about 0.6 percent. While this increase is small, the Board also notes that, because very few HOEPA loans are originated overall, the absolute number of loans covered would increase markedly--more than 350 percent. Because the HMDA data do not include APRs for loans below the rate spread reporting thresholds, *see* 12 CFR 203.4(a)(12), 2006 LPS data were used to estimate the impact on coverage of § 226.35. Based on this analysis, the Board estimates that about 3 percent of the first-lien loans in the loan amount range of the typical home purchase or refinance loan ($ 175,000 to $ 225,000)

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[31] To supplement the Bankrate.com survey with estimated recording fees and taxes, which the survey did not include, the Board used the Martindale-Hubbell service's digest of State laws. As discussed below, the Board is not proposing to revise comment 4(a)--5, which provides principles for determining the treatment of taxes based on the party on whom the law imposes the tax. For the sake of simplicity, the Board did not attempt to distinguish such laws on this basis and, instead, included all recording taxes in thefinance charge under the proposal. The analysis thus may have included some recording taxes in the finance charge under the proposal that could have been excluded under comment 4(a)-5.

that were below the § 226.35 APR threshold would have been above the threshold if proposed § 226.4 had been in effect at the time.

The Board also examined HMDA data for the impact of the proposed, more inclusive finance charge definition on APRs in certain states. Specifically, the Board considered the APR tests for coverage of first-lien mortgages under the anti-predatory lending laws in the District of Columbia (DC), Illinois, and Maryland. These laws are the only three State anti-predatory lending laws with APR coverage thresholds that are lower than the federal HOEPA APR threshold, for first-lien loans, of 800 basis points over the U.S. Treasury yield on securities with comparable maturities. DC and Illinois use a threshold of 600 basis points, and Maryland uses a threshold of 700 basis points, over the comparable Treasury yield. [32] Freddie Mac and Fannie Mae have policies under which they will not purchase loans that exceed the Illinois thresholds, [33] but they have no such policies with regard to DC or Maryland. The Board estimates that proposed § 226.4 would convert the following percentages of first-lien loans that are under the applicable APR threshold into loans that exceed that threshold and thus would become covered by the applicable State anti-predatory lending law: DC, 2.5%; Illinois, 4.0%; Maryland, 0.0%.

The Board notes that the impact of the proposed finance charge definition on APRs varies among loans based on two significant factors. First, because many of the affected charges are fixed dollar amounts, the impact is significantly greater for smaller loans. Second, the impact likely would vary geographically because some charges, notably title insurance premiums and recording fees and taxes, vary considerably by state. The Board believes the proposal, on balance, would be in consumers' interests but seeks comment on these consequences of the proposal and the impact it may have on loans that could become subject to these various laws.

Legal authority. The Board is proposing to adopt the simpler, more inclusive test for determining the finance charge and corresponding APR pursuant to its general rulemaking, exception, and exemption authorities under TILA Section 105. Section 105(a) directs the Board to prescribe regulations to carry out the purposes of this title, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(a) generally authorizes the Board to make adjustments and exceptions to TILA to effectuate the statute's purposes, to prevent circumvention or evasion of the statute, or to facilitate compliance with the statute. 15 U.S.C. 1601(a), 1604(a).

The Board has considered the purposes for which it may exercise its authority under TILA Section 105(a) carefully and, based on that review, believes that the proposed adjustments and exceptions are appropriate. The proposal has the potential to effectuate the statute's purpose by better informing consumers of the total cost of credit and to prevent circumvention or evasion of the statute through the unbundling or shifting of the cost of credit from finance charges to fees or charges that are currently excluded from the finance charge. The Board believes that Congress did not anticipate ***how*** such unbundling would undermine the purposes of TILA, when it enacted the exceptions. For example, fees for preparation of loan-related documents are excluded from the finance charge by TILA Section 106(e), 15 U.S.C. 1605(e); in practice, document preparation fees have become a common vehicle used by creditors to enhance their revenue without having any impact on the finance charge or APR. A simpler, more inclusive approach to determining the finance charge also would facilitate compliance with the statute.

TILA Section 105(f) generally authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to

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[32] DC Code Ann. 26-1151.01(7)(A)(i); Ill. Comp. Stat. ch. 815, 137/10; Md. Code Ann. Com. Law 12-1029(a)(2).

[33] *http://www.freddiemac.com/learn/pdfs/uw/Pred_requirements.pdf;*
https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2003/03-12.pdf .

consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). The Board is proposing to exempt closed-end transactions secured by real property or a dwelling from the complex exclusions in TILA Section 106(b) through (e), 15 U.S.C. 1605(b) through (e). TILA Section 105(f) directs the Board to make the determination of whether coverage of such transactions under those exclusions provides a meaningful benefit to consumers in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully and, based on that review, believes that the proposed exemptions are appropriate. Mortgage loans generally are the largest credit obligation that most consumers assume. Most of these loans are secured by the consumer's principal residence. For many consumers, their mortgage loan is the most important credit obligation that they have. Consumer testing suggests that consumers find the finance charge and APR disclosures confusing and unhelpful when shopping for a mortgage. Along with other changes, replacing the patchwork "some fees in, some fees out" approach to determining the finance charge with a more inclusive approach that reflects the consumer's total cost of credit has the potential to further the goals of consumer protection and promote the informed use of credit for mortgage loans. Adoption of a more inclusive finance charge also would simplify compliance, reduce regulatory burden, and reduce litigation risk for creditors.

The Board's exception and exemption authority under Sections 105(a) and (f) does not apply in the case of a mortgage referred to in Section 103(aa), which are high-cost mortgages generally referred to as "HOEPA loans." The Board does not believe that this limitation restricts its ability to apply the revised provisions regarding finance charges to all mortgage loans, including HOEPA loans. This limitation on the Board's general exception and exemption authority is a necessary corollary to the decision of the Congress, as reflected in TILA Section 129(*l*)(1), to grant the Board more limited authority to exempt HOEPA loans from the prohibitions applicable only to HOEPA loans in Section 129(c) through (i) of TILA. *See* 15 U.S.C. 1639(*l*)(1). Here, the Board is not proposing any exemptions from the HOEPA prohibitions. This limitation does raise a question as to whether the Board could use its exception and exemption authority under Sections 105(a) and (f) to except or exempt HOEPA loans, but not other types of mortgage loans, from other, generally applicable TILA provisions. That question, however, is not implicated by this proposal.

Here, the Board is proposing to apply its general exception and exemption authority to enhance the finance charge disclosure for all loans secured by real property or a dwelling, including both HOEPA and non-HOEPA loans, in order to fulfill the statute's purpose of having the finance charge and APR disclosures reflect the total cost of credit. It would not be consistent with the statute or with Congressional intent to interpret the Board's authority under Sections 105(a) and (f) in such a way that the proposed revisions could apply only to mortgage loans that are not subject to HOEPA. Reading the statute in a way that would deprive HOEPA borrowers of improved finance charge and APR disclosures is not a reasonable construction of the statute and contravenes the Congress's goal of ensuring "that enhanced protections are provided to consumers who are most vulnerable to abuse." n34

The Board solicits comment on all aspects of this proposal, including the cost, burden, and benefits to consumers and to industry regarding the proposed revisions to the determination of the finance charge. The Board also requests comment on any alternatives to the proposal that would further the purposes of TILA and provide consumers with more useful disclosures.

4(a) Definition

Comment 4(a)--5 contains guidance for determining whether taxes should be treated as finance charges. Generally, a tax imposed on the creditor is a finance charge if the creditor passes it through to the consumer. If applicable law imposes a tax solely on the consumer, on the creditor and consumer jointly, on the credit transaction itself without specifying a liable party, or on the creditor with direction or authorization to pass it through to the consumer, the tax is not a finance charge.

Consequently, an examination of the law imposing each tax that is paid by the consumer is required to determine whether such taxes are finance charges. This examination of laws creates burden for creditors and may result in inconsistent treatment of similar taxes. The resulting disclosures likely are not as useful to consumers as they might be if all taxes were treated consistently. The Board seeks comment on whether the rules for determining the finance charge treatment of taxes imposed by State and local governments should be simplified and, if so, ***how***. The Board also seeks comment on whether any such simplification should be for purposes of closed-end transactions secured by real property or a dwelling only or should have more general applicability.

Proposed new comment 4(a)--6 would clarify that there is no comparable cash transaction in a transaction where there is no seller, such as a refinancing, and thus the comparable cash transaction exclusion from the finance charge does not apply to such transactions.

4(a)(2) Special Rule; Closing Agent Charges

The Board is proposing to amend § 226.4(a)(2), which set out special rules for closing agent charges, in light of the proposed new § 226.4(g), discussed below. As a result, this provision would no longer apply to closed-end credit transactions secured by real property or a dwelling because the fees excluded by § 226.4(a)(2) meet the general definition of the finance charge in TILA Section 106(a). The Board also proposes certain conforming amendments to the staff commentary under this provision.

Under the general definition of "finance charge" in TILA Section 106(a), a charge is a finance charge if it is (1) "payable directly or indirectly by the person to whom the credit is extended," and (2) "imposed directly or indirectly by the creditor as an incident to the extension of credit." 15 U.S.C. 1605(a). Application of the basic statutory definition as the test for determining which charges are finance charges would result in many third-party charges being treated as finance charges because such third-party charges often are payable directly or indirectly by the consumer and imposed indirectly by the creditor. For instance, because real estate settlements are complex financial and legal transactions, creditors generally require a licensed closing agent (often an attorney) to conduct closings to ensure that the transaction is handled with professional skill and care. These closing agents typically impose fees on the consumer in the course of ensuring that the loan is consummated appropriately. In some cases, the creditor clearly requires the particular third-party service for which a fee is charged, such as where the creditor instructs the closing agent to send documents by overnight courier. In other cases, however, whether the creditor requires the particular service is not clear.

A rule that requires case-by-case factual determinations as to whether a particular third-party fee must be included in the finance charge results in complexity and inconsistent treatment of such fees. Such inconsistent treatment in turn undermines the utility of the finance charge and APR as comparison shopping tools and introduces uncertainty and litigation risk for creditors. For these reasons, the Board believes that fees charged by closing agents, both their own and those of other third parties they hire to perform particular services, should be treated uniformly as finance charges. The Board seeks comment on whether any such third-party charges do not fall within the basic test for determining the finance charge and could be excluded from the finance charge without requiring factual determination in each case.

Requiring third-party charges to be included in the finance charge creates some risk that a creditor may understate the finance charge if the creditor does not know that a particular charge was imposed by a third party. This risk is mitigated to some extent by TILA Section 106(f), which provides that a disclosed finance charge is treated as accurate if it does not vary from the actual finance charge by more than $ 100 or is greater than the amount required to be disclosed. 15 U.S.C. 1605(f). This tolerance has been incorporated into Regulation Z. *See* § 226.18(d)(1). The Board requests comment on whether it should increase the finance charge tolerance, for example to $ 200, in light of its proposal to require more third-party charges to be included in the finance charge. The Board also requests comment on whether the existing or any increased tolerance should be linked to an inflation index, such as the Consumer Price Index.

Excluding fees from the finance charge because they are voluntary or optional also is not consistent with the statutory purpose of disclosing the "cost of credit," which includes charges imposed "as an incident to the extension of credit." [35] 15 U.S.C. 1605(a). One basis for the current exclusions for voluntary or optional charges is an implicit assumption that they are not "imposed directly or indirectly by the creditor" on the consumer. However, charges may be imposed by a creditor even if the services for which the fee is imposed are not specifically required by the creditor. Moreover, a test that depends upon whether a service is "voluntary" inherently requires a factual determination. In the current provisions addressing credit insurance, the Board has identified certain objective criteria for determining when the consumer's purchase of such insurance is deemed to be voluntary. However, as discussed below, this approach has many problems and has not proven satisfactory. The Board believes that drawing a bright-line to include in the finance charge both voluntary and required charges that are imposed by the creditor would eliminate the difficulties posed by this type of fact-based analysis and provide a more consistent measure of the cost of credit.

Another basis for the current exclusions for voluntary or optional charges in connection with the credit transaction is an assumption that creditors cannot know the amounts of such charges at the time the disclosure must be provided to the consumer. The Board presumes that creditors know the amounts of their own voluntary charges, if any. The Board believes that creditors generally know or can readily determine voluntary third-party charges when providing TILA disclosures three business days before consummation, as proposed § 226.19(a)(2)(ii) would require. As a practical matter, the primary voluntary third-party charge in connection with a mortgage transaction of which the Board is aware (and that is not otherwise excluded from the finance charge) is the premium for voluntary credit insurance, and creditors generally solicit consumers for such insurance. In fact, under existing § 226.4(d)(1)(ii), creditors historically have had to disclose the premium for voluntary credit insurance to exclude it from the finance charge. The Board nevertheless solicits comment on whether there are voluntary third-party charges the amounts of which cannot be determined three business days before consummation.

The Board recognizes that creditors may not know what voluntary or optional charges the consumer will incur when providing early TILA disclosures. When providing early TILA disclosures, creditors may rely on reasonable assumptions regarding voluntary or optional charges and label those amounts as estimates. The Board invites comment on whether further guidance is required regarding reasonable assumptions that may be made regarding voluntary or optional charges in early TILA disclosures.

4(b) Examples of Finance Charges

The Board is proposing technical amendments to comment 4(b)--1 to reflect the fact that the exclusions from the finance charge under § 226.4(c) through (e), other than §§ 226.4(c)(2), 226.4(c)(5) and 226.4(d)(2), would not apply to closed-end credit transactions secured by real property or a dwelling.

4(c) Charges Excluded From the Finance Charge

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[35] The Board has consistently interpreted the definition offinance charge as not dependent on whether a charge is voluntary or required. As a practical matter, most voluntary fees are excluded because they coincidentally are payable in a comparable cash transaction, not specifically because they are voluntary. *See, e.g.*, 61 FR 49237, 49239; Sept. 19, 1996 (charges for voluntary debt cancellation agreements).

The Board proposes to amend § 226.4(c), which lists miscellaneous exclusions from the finance charge, to provide that § 226.4(c) is limited by proposed new § 226.4(g). Thus, except for late fees and similar default or delinquency charges and seller's points, the exclusions in § 226.4(c) would not apply to closed-end credit transactions secured by real property or a dwelling. The Board also proposes certain conforming amendments to the staff commentary under those provisions.

4(c)(2)

The exclusion of fees for actual unanticipated late payment, exceeding a credit limit, or for delinquency, default, or a similar occurrence in § 226.4(c)(2) would be retained for closed-end credit transactions secured by real property or a dwelling. The Board believes these charges should be excluded because they necessarily occur only after the finance charge is disclosed to consumers. At the time the TILA disclosures must be provided to consumers, a creditor cannot know whether it will impose such charges or their amounts.

4(c)(5)

The exclusion of seller's points from the finance charge in § 226.4(c)(5) would be retained for closed-end credit transactions secured by real property or a dwelling. Seller's points are not payable by the consumer. Comment 226.4(c)(5)--1 notes that seller's points may be passed on to the buyer in the form of a higher sales price for the property or dwelling. Even then, seller's points are excluded from the finance charge. A different rule would require a fact-specific determination in every transaction involving seller's points regarding whether and to what extent the seller shifted those costs to the borrower. The Board does not believe that such a rule is feasible. The Board seeks comment on the retention of the seller's points exclusion.

4(c)(7) Real-Estate Related Fees

The Board is proposing to amend § 226.4(c)(7), which currently excludes from the finance charge a number of fees charged in transactions secured by real property or in residential mortgage transactions if those fees are bona fide and reasonable. Under the proposal, the following fees currently excluded would be included in the finance charge for closed-end credit transactions secured by real property or a dwelling: fees for title examination, abstract of title, title insurance, property survey, and similar purposes; fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents; notary and credit-report fees; property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations; and amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge. The commentary provisions under § 226.4(c)(7) would also be amended accordingly.

As amended, § 226.4(c)(7) and the commentary provisions under § 226.4(c)(7) would apply only to open-end credit plans secured by real property and open-end residential mortgage transactions. Thus, for HELOCs, the fees specified in § 226.4(c)(7) would continue to be excluded from the finance charge. The Board requests comment on whether it should retain § 226.4(c)(7), as proposed to be amended, or delete § 226.4(c)(7) altogether, in light of the proposed changes to the Regulation Z HELOC rules, published today in a separate Federal Register notice. *See* the discussion under § 226.4 in that notice.

4(d) Insurance and Debt Cancellation and Debt Suspension Coverage

The Board is proposing technical amendments to comment 4(d)--12 to reflect the fact that the exclusions from the finance charge under § 226.4(e) would not apply to closed-end transactions secured by real property or a dwelling.

4(d)(1) and (3) Voluntary Credit Insurance Premiums; Voluntary Debt Cancellation and Debt Suspension Fees

The Board is proposing to amend §§ 226.4(d)(1), exclusion for voluntary credit insurance premiums, and 226.4(d)(3), exclusion for voluntary debt cancellation and debt suspension fees, to limit their application consistently with proposed § 226.4(g). Thus, these exclusions would not apply to closed-end transactions secured by real property or a dwelling.

Age or employment eligibility criteria. Under TILA Section 106(a)(5), 15 U.S.C. 1605(a)(5), a premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss is a finance charge. Under §§ 226.4(b)(7) and 226.4(b)(10), a premium or charge for credit life, accident, health, or loss-of-income insurance, or debt cancellation or debt suspension coverage is a finance charge if the insurance or coverage is written in connection with a credit transaction. TILA Section 106(b), 15 U.S.C. 1605(b), allows the creditor to exclude from the finance charge any charge or premium for credit life, accident, or health insurance written in connection with any consumer credit transaction if (1) the coverage 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 consumer; and (2) in order to obtain the insurance, the consumer specifically requests the insurance after getting the disclosures. Under §§ 226.4(d)(1) and 226.4(d)(3), the creditor may exclude from the finance charge any premium for credit life, accident, health or loss-of-income insurance; any charge or premium paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation; or any charge or premium for debt cancellation or debt suspension coverage in the event of loss of life, health, or income or in case of accident, whether or not the coverage is insurance, if (1) the insurance or coverage is not required by the creditor and the creditor discloses this fact in writing; (2) the creditor discloses the premium or charge for the initial term of the insurance or coverage, (3) the creditor discloses the term of insurance or coverage, if the term is less than the term of the credit transaction, and (4) the consumer signs or initials an affirmative written request for the insurance or coverage after receiving the required disclosures. In addition, under § 226.4(d)(3)(iii), the creditor must disclose for debt suspension coverage the fact that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. [36] Under proposed § 226.4(g), these provisions would not apply to closed-end credit transactions secured by real property or a dwelling.

Some creditors offer credit insurance or debt cancellation or debt suspension products with eligibility restrictions, but may not evaluate whether applicants for the products actually meet the eligibility criteria at the time the applicants request the product. [37] For instance, a consumer who is 70 at the time of enrollment could never receive the benefits of a product with a 65-year-old age limit. [38] Similarly, a consumer who is self-employed at the time of

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[36] The provisions regarding debtsuspension coverage were in the December 2008 Open-End Final Rule. *See* 74 FR 5244, 5400; Jan. 29, 2009. These provisions will take effect on July 1, 2010.

[37] *See, e.g., Parker et al. v. Protective Life Ins. Co. of Ohio et al*., Nos. 2004-T-0127 and 2004-T-0128, 2006 Ohio App. LEXIS 3983, at *28 (Ohio Ct. App. Aug. 4, 2006) (reversing summary judgment for defendants automobile dealership and insurer because the automobile dealership employee did not evaluate whether the plaintiffs were eligible for credit disability insurance and the plaintiffs were later denied benefits based on eligibility restrictions); *Stewart v. Gulf Guaranty Life Ins. Co*., No. 2000--CA--01511--SCT, 2002 Miss. LEXIS 254, at *4 (Miss. Aug. 15, 2002) (affirming the jury award where the insurer did not require the bank employee to have the consumer fill out a credit life and disability insurance application regarding pre-existing conditions and the insurer later denied coverage based on a pre-existing condition).

[38] *See, e.g., Fed. Trade Comm'n v. Stewart Finance Holdings, Inc. et al*., Civ. Action No. 103CV--2648, Final Judgment and Order at 13 (N.D. Ga. Nov. 9, 2005) (alleging that the finance company sold accidental death and dismemberment insurance to borrowers who were not eligible for the product due to age restrictions).

enrollment would not receive benefits if the product requires the consumer to be employed as a W-2 wage employee. [39]

Although age and employment eligibility criteria may be set forth in the product marketing materials and/or enrollment forms, the Board believes few consumers notice this information when they obtain credit and choose to purchase the voluntary credit insurance or debt cancellation or debt suspension coverage. Because the product is sold in connection with a credit transaction that is underwritten by the creditor, the consumer may reasonably believe that the creditor has determined that the consumer is eligible for the product. This may be especially true for age restrictions because that information is typically requested by the creditor on the credit application form. As a result, many consumers may not discover until they file a claim that they were paying for a product for which they were not eligible when they initially purchased it. Consumers that do not submit claims may never discover that they are paying for products that hold no value for them.

To address this problem, the Board proposes to add §§ 226.4(d)(1)(iv) and 226.4(d)(3)(v) to permit creditors to exclude a premium or charge from the finance charge only if the creditor determines at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for the credit insurance or the debt suspension or debt cancellation coverage. These provisions would apply to open-end as well as closed-end (non-real property) credit transactions. Proposed comment 4(d)--14 would state that a premium or charge for credit life, accident, health, or loss-of-income insurance, or debt cancellation or debt suspension coverage is voluntary and can be excluded from the finance charge only if the consumer meets the product's age or employment eligibility criteria at the time of enrollment. The proposed comment would further clarify that to exclude such a premium or charge from the finance charge, the creditor would have to determine at the time of enrollment that the consumer is eligible for the product under the product's age or employment eligibility restrictions.

Proposed comment 4(d)--14 would provide that the creditor could use reasonably reliable evidence of the consumer's age or employment status to satisfy the condition. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include the consumer's information on a credit application, Internal Revenue Service Form W--2, tax returns, payroll receipts, or other evidence such as a letter or e-mail from the consumer or the consumer's employer. A determination of age or employment eligibility at the time of enrollment should not be unduly burdensome because in most cases the creditor would already have information about the consumer's age and employment status as part of the credit underwriting process. The Board seeks comment on whether other examples of reasonably reliable evidence of the consumer's age or employment status should be included.

Proposed comment 4(d)--14 would clarify that, if the consumer does not meet the product's age or employment eligibility criteria, then the premium or charge is not voluntary and must be included in the finance charge. If the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer does not meet the age and/or employment eligibility criteria for all of the bundled products, the proposed commentary would clarify that the creditor must either: (1) treat the entire premium or charge for the bundled product as a finance charge, or (2) offer the consumer the option of selecting only the products for which the consumer is eligible and exclude the premium or charge from the finance charge if the

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[39] *See, e.g., In the Matter of Providian Nat'l Bank*, OCC Docket No. 2000-53, Consent Order (June 28, 2000) (alleging that the bank marketed an involuntary unemployment credit protection program but failed to adequately disclose that such protection was unavailable to consumers who were self-employed).

consumer chooses an optional product for which the consumer meets the age and/or employment eligibility criteria at the time of enrollment.

The Board proposes this rule and commentary to address concerns about the voluntary nature of this product. TILA Section 106(b), 15 U.S.C. 1605(b), states that "[c]harges 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." Historically, § 226.4(d) has implemented this provision as a "voluntariness" standard. For example, in 1981, comment 4(d)--5 was adopted as part of the TILA simplification process. The comment stated that the credit insurance "must be *voluntary* in order for the premium to be excluded from the finance charge." 46 FR 50288, 50301; Oct. 9, 1981 (emphasis added). In 1996, the Board amended Regulation Z to apply the rules for credit insurance to debt cancellation coverage. In adopting this provision, the Board stated: "The new rule allows creditors to exclude fees for *voluntary* debt cancellation coverage from the finance charge when specified disclosures are made." 61 FR 49237, 49240; Sept. 19, 1996 (emphasis added). In the December 2008 Open-End Final Rule, the Board applied the rules for credit insurance and debt cancellation coverage to debt suspension coverage. In adopting this provision, the Board referred to the May 2007 Open-End Proposed Rule, which stated that the Board "proposed to revise § 226.4(d)(3) to expressly permit creditors to exclude charges for *voluntary* debt suspension coverage from the finance charge when, after receiving certain disclosures, the consumer affirmatively requests such as product." 74 FR 5244, 5266; Jan. 29, 2009 (emphasis in original). Finally, the model forms currently contain the following statement emphasizing the voluntary nature of the product: "Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost." *See* Appendix H--1 (Credit Sale Model Form) and Appendix H--2 (Loan Model Form). The Board believes that if the consumer was ineligible for the benefits of credit insurance or debt cancellation or debt suspension coverage at the time of enrollment, then the purchase cannot be voluntary because a reasonable consumer would not knowingly purchase a policy for which he or she can derive no benefit. For these reasons, the Board believes that the requirements of proposed §§ 226.4(d)(1)(iv) and 226.4(d)(3)(v) would help ensure that the purchase of credit insurance or debt cancellation or debt suspension coverage would, in fact, be voluntary.

The Board notes that although the proposed rule would require creditors to determine the consumer's age and/or employment eligibility for the product at the time of enrollment, the proposed rule would not affect the creditor's ability to deny coverage if the consumer misrepresented his or her age or employment status at the time of enrollment. Finally, the proposed rule does not require a creditor to determine if a consumer ceases to meet the age or employment eligibility criteria after enrollment. For example, the creditor has complied with the proposal if the consumer becomes ineligible for the policy or coverage after enrollment. State or other law may address these issues. However, the Board solicits comment on whether creditors should be required to determine whether the consumer meets the product's age or employment eligibility criteria after the product is sold (*e.g.*, before renewing an annual premium), or whether creditors should be required to provide notice when the consumer exceeds the age limit of the product after enrollment.

Revised disclosures. As discussed above, TILA Section 106(b), 15 U.S.C. 1605(b), and §§ 226.4(d)(1) and 226.4(d)(3) allow a creditor to exclude from the finance charge a credit insurance premium or debt cancellation or debt suspension fee if the creditor provides disclosures that inform the consumer of the voluntary nature and cost of the product. Currently, Regulation Z does not specifically mandate the format of these disclosures, but provides sample language in the model forms. For example, Appendix H--2 (Loan Model Form) contains the following language: "Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost." The model form also ***shows*** the type of product (*e.g.*, credit life or credit disability); the cost of the premium; and a signature line. The signature area is accompanied by the following language: "I want credit life insurance."

Concerns have been raised about whether the current disclosures sufficiently inform consumers of the voluntary nature and costs of the product. To address these concerns, a disclosure was tested that included a charge for credit life insurance and listed the product under the title "Optional Features." Only about half of the participants understood that accepting credit insurance was voluntary and that they could decline the product. Subsequently, a disclosure was tested that stated, "STOP. You do not have to buy this insurance to get this loan." After reading this disclosure, all participants understood the voluntary nature of the product.

In addition, concerns have been raised about the product's cost. The product may be more costly than, for example, traditional life insurance, but may not provide additional benefits. To address this concern, the Board tested the following language: "If you have insurance already, this policy may not provide you with any additional benefits. Other types of insurance can give you similar benefits and are often less expensive." Participant comprehension of the costs and benefits of the product was significantly increased by these plain-language disclosures.

Concerns have also been raised about eligibility restrictions. Consumers might not be aware that they may incur a cost for a product that provides no benefit to them if the eligibility criteria are not met at the time of enrollment. Accordingly, the Board tested the following language: "Even if you pay for this insurance, you may not qualify to receive any benefits in the future." Participants were greatly surprised to learn that they might purchase the insurance only to later discover that they were not eligible for benefits. A few participants indicated that they did not understand ***how*** they could pay for the coverage and then receive no benefits. To address this issue and to conform to the requirements of proposed §§ 226.4(d)(1)(iv) and 226.4(d)(3)(v), the following statement was added to the disclosure: "Based on our review of ***your*** age and/or employment status at this time, you would be eligible to receive benefits." However, if there are other eligibility restrictions, such as pre-existing health conditions, the creditor would be required to disclose the following statements: "Based on our review of ***your*** age and/or employment status at this time, you may be eligible to receive benefits. However, you may not qualify to receive any benefits because of other eligibility restrictions."

Finally, a sentence was added to the disclosure to refer consumers to the Board's Web site to learn more about the product, and the cost disclosure was streamlined to display more clearly the exact cost of the product. Most consumer testing participants indicated they would visit the Board's Web site to learn more about a credit insurance or debt cancellation or debt suspension product.

Based on this consumer testing, the Board proposes to add model clauses and samples that provide clearer information to consumers about the voluntary nature and costs of credit insurance or debt cancellation or debt suspension coverage. These model clauses and samples would apply in open-end or closed-end (not secured by real property) transactions, if the product is voluntary and the consumer qualifies for benefits based on age or employment. For closed-end transactions secured by real property or a dwelling, the model clause or sample would be required whether or not the product is voluntary. Model Clauses and Samples are proposed at Appendix G--16(C) and G--16(D) and H--17(C) and H--17(D). These Model Clauses and Samples would be in addition to the Debt Suspension Model Clauses and Samples found at Appendix G--16(A) and G--16(B) and H--17(A) and H--17(B).

Timing of disclosures. Currently, comment 4(d)--2 states that "[i]f disclosures are given early, for example under § 226.17(f) or § 226.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge." The Board proposes to delete the reference to § 226.19(a) to conform to the new timing and redisclosure requirements under proposed § 226.19(a).

4(d)(2) Property Insurance Premiums

The proposal would retain the exclusion from the finance charge of premiums for insurance against loss or damage to property or against liability arising out of the ownership or use of property under TILA Section 106(c) and § 226.4(d)(2). Consumers typically purchase property and liability insurance to protect against a variety of risks, including loss of or damage to the property, such as damage caused by fire, loss of or damage to personal property kept on the property, such as furniture, and owner liability for injuries incurred by visitors to the property. Although creditors generally require such insurance as a condition of extending closed-end credit secured by real property or a dwelling in order to protect the value of the collateral that is securing the loan, consumers who do not have mortgages regularly purchase this type of insurance to protect themselves from the risks described above. This type of insurance is best viewed as a hybrid product that protects not only the value of the creditor's collateral, but also protects the consumer from loss or impairment of the consumer's equity in the property, loss or impairment of the consumer's personal property, and personal liability if anyone is injured on the property. Consequently, it is impossible to segregate that portion of the insurance (and that portion of the premium) which protects the creditor from that portion which protects only the consumer.

In addition, the Board has not identified significant abuses in connection with the sale or marketing of insurance against loss or damage to property or against liability arising out of the ownership or use of property. The market for these products appears to be competitive. Consumers can purchase this type of insurance from many insurance companies, including companies not associated with mortgage lenders. In addition, policies generally are tailored to the particular risks faced by the consumer. Thus, consumers have choices with regard to ***how*** much insurance to purchase to cover various risks and, as a result, have some control over the premiums they pay.

The Board requests comment on the appropriateness of retaining the current exclusion from the finance charge of premiums for insurance against loss or damage to property or against liability arising out of the ownership or use of property. The Board notes that, under current § 226.4(d)(2), the category of property and liability insurance has been interpreted to include coverage against flood risks; the Board seeks comment on whether the reasons for retaining the exclusion discussed above are applicable to flood insurance specifically and, if not, whether it should be subject to separate treatment under Regulation Z. In addition, the Board requests comment on whether including such premiums in the finance charge could have adverse or unintended consequences for consumers and for creditors.

TILA Section 106(c) states that charges or premiums for property insurance must 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." 15 U.S.C. 1605(c) (emphasis added). Section 226.4(d)(2) permits property insurance premiums to be excluded from the finance charge under the following conditions, among others: "If the coverage is obtained *from or through the creditor*, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed." (Emphasis added). Comment 4(d)--8 states, in relevant part, that "[t]he premium or charge must be disclosed only if the consumer elects to purchase the insurance *from the creditor*; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation." (Emphasis added.) Currently, the comment does not use the statutory language "from or through the creditor" and does not define the phrase. To conform to the statutory and regulatory language, the Board proposes to amend comment 4(d)--8 to clarify that the premium or charge and term (if less than the term of the obligation) must be disclosed if the consumer elects to purchase the insurance "from or through the creditor." In addition, the proposed comment would clarify that insurance is available "from or through a creditor" if it is available from the creditor's "affiliate," as that term is defined under the Bank Holding Company Act, 12 U.S.C. 1841(k). The Bank Holding Company Act defines an "affiliate" as "any company that controls, is controlled by, or is under common control with another company." Thus, if the consumer elects to purchase property insurance from a company that controls, is controlled by, or is under common control with the creditor, then the creditor would be required to disclose the cost of the insurance, and the term, if it is less than the term of the obligation. The Board believes that this proposed rule would clarify for creditors the meaning of "through the creditor" and provide consumers with a clearer disclosure of the cost of property insurance.

4(d)(4) Telephone Purchases

Under §§ 226.4(d)(1) and 226.4(d)(3), creditors may exclude from the finance charge premiums for credit insurance or fees for debt cancellation or debt suspension coverage, if the creditor provides certain disclosures in writing and the consumer signs or initials an affirmative written request for the insurance or coverage. Over the years, the Board has received industry requests to permit creditors to provide the disclosures and obtain the affirmative consumer request orally in order to facilitate telephone purchases of these products. In addition, the OCC has issued telephone sales guidelines for national banks that sell debt cancellation and debt suspension coverage. 12 CFR 37.6(c)(3), 37.7(b).

In the December 2008 Open-End Final Rule, the Board created an exception to the requirement to provide prior written disclosures and obtain written signatures or initials for telephone purchases of credit insurance and debt cancellation or debt suspension coverage in connection with open-end (not home-secured) plans. 74 FR 5244, 5267; Jan. 29, 2009. This rule will take effect on July 1, 2010. Under new § 226.4(d)(4), for telephone purchases a creditor may make the disclosures orally and the consumer may affirmatively request the insurance or coverage orally, provided that the creditor (1) maintains evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage, and (2) mails the required disclosures within three business days after the telephone purchase. New comment 226.4(d)(4)-1 provides that a creditor does not satisfy the requirement to obtain a consumer's affirmative request if the "request" was a response to a leading question or negative consent. The comment also provides an example of an acceptable enrollment question ("Do you want to enroll in this optional debt cancellation plan?").

The Board promulgated this rule pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). In addition, the Board considered the exemption factors set forth in TILA Section 105(f)(2), 15 U.S.C. 1604(f)(2), and determined that an exemption for telephone purchases for open-end (not home-secured) plans was appropriate because the rule contained adequate safeguards to ensure that oral purchases are voluntary. 74 FR 5268. The Board emphasized that consumers in open-end (not home-secured) plans receive monthly statements that clearly disclose fees, including credit insurance and debt cancellation or debt suspension coverage charges. *Id*. Consumers who are billed for insurance or coverage they did not request can dispute the charge as a billing error. *Id*. The Board stated that as part of the closed-end review, it would consider whether to expand the telephone purchase rule to this type of credit. 74 FR 5267.

The Board believes that a telephone purchase rule for closed-end credit is not appropriate. Monthly statements are not required for closed-end credit, and it would be difficult for consumers who do not receive monthly statements to detect charges for unwanted coverage. Moreover, there is no billing error resolution process for closed-end loans.

Finally, the Board noted in the December 2008 Open-End Final Rule that an exception or exemption for the telephone purchase of credit insurance or debt cancellation or debt suspension coverage in connection with closed-end loans may be "less necessary." 74 FR 5267. For open-end (not home-secured) credit, new comments 4(b)(7) and (8)-2 and 4(b)(10)-2 in the December 2008 Open-End Final Rule clarify that credit insurance and debt cancellation or debt suspension coverage is "written in connection with a credit transaction" if the consumer purchases it after the opening of an open-end (not home-secured) plan because the consumer retains the ability to obtain advances of funds. 74 FR 5265. Therefore, in such a transaction, the creditor must comply with the disclosure and consumer request requirements even if the credit insurance and debt cancellation or debt suspension coverage is sold after the opening of the plan. A creditor in an open-end (not home-secured) transaction may be more likely to market the product by telephone after the opening of the plan, and new § 226.4(d)(4) facilitates the telephone purchase. By contrast, a creditor in a closed-end transaction is more likely to have the opportunity to meet the consumer face-to-face at or before consummation to market the product, provide the disclosure, and obtain the consumer request. For these reasons, this proposal does not contain a telephone purchase rule for credit insurance or debt cancellation or debt suspension coverage sold in connection with a closed-end credit transaction. The Board seeks comment on this issue. For a discussion of the application of the telephone purchase rule to HELOCs, see the Board's proposal for such transactions published simultaneously with this proposal.

4(e) Certain Security Interest Charges

The Board proposes to amend § 226.4(e), which provides exclusions from the finance charge for certain government recording and related charges and insurance premiums incurred in lieu of such charges, as limited by proposed § 226.4(g). Thus, the exclusions listed in § 226.4(e) would not apply to closed-end credit transactions secured by real property or a dwelling. The Board also proposes certain conforming amendments to the staff commentary under this provision.

4(g) Special Rule; Closed-End Mortgage Transactions

The Board is proposing to add a new § 226.4(g) as a special rule for closed-end credit transactions secured by real property or a dwelling. Proposed § 226.4(g) would provide that the exclusions from the finance charge enumerated in §§ 226.4(a)(2) (closing agent charges), (c) (miscellaneous charges), (d) (premiums for certain insurance and debt cancellation coverage), and (e) (certain security-interest charges) do not apply to closed-end credit transactions secured by real property or a dwelling, except that the exclusions in § 226.4(c)(2) for late, over-limit, delinquency, default, and similar fees, § 226.4(c)(5) for seller's points, and § 226.4(d)(2) for property and liability insurance would continue to apply to such transactions. As noted above, a cross-reference to the special rule in § 226.4(g) would be added to each of the enumerated sections. With these changes, the following fees that currently are excluded from the finance charge would be included in the finance charge for closed-end mortgage transactions (unless otherwise excluded): Closing agent charges, application fees charged to all applicants for credit (whether or not credit is extended), voluntary credit insurance premiums, voluntary debt-cancellation charges or premiums, taxes or fees required by law and paid to public officials relating to security interests, premiums for insurance obtained in lieu of perfecting a security interest, taxes imposed as a condition of recording the instruments securing the evidence of indebtedness, and various real-estate related fees.

Proposed commentary to § 226.4(g) is included to clarify the rule for mortgage transactions. Proposed comment 4(g)--1 clarifies that the commentary for the exclusions identified above no longer applies to closed-end credit transactions secured by real property or a dwelling. Proposed comment 4(g)--2 clarifies that third-party charges that meet the definition under § 226.4(a) and are not otherwise excluded generally are finance charges, whether or not the creditor requires the services for which they are imposed. Proposed comment 4(g)--3 clarifies that charges payable in a comparable cash transaction, such as property taxes and fees or taxes imposed to record the deed evidencing transfer of title to the property from the seller to the buyer, are not finance charges because they would have to be paid even if no credit were extended to finance the purchase.

Request for Comment

The Board solicits comment on the benefits and costs of the proposed changes for determining the finance charge for closed-end credit transactions secured by real property or a dwelling. The Board requests comment specifically on whether this approach adequately or appropriately addresses the concerns raised by the "some fees in, some fees out" approach in light of the statute's purposes, the need for consumer protection and meaningful disclosures, and industry concerns regarding complexity and burden. The Board also seeks comment on the benefits and costs of the rules for insurance and related products under the proposed amendments to § 226.4(d).

Section 226.17 General Disclosure Requirements

The Board is proposing new rules governing format and content of disclosures for transactions secured by real property or a dwelling under new §§ 226.37 and 226.38. Accordingly, the Board proposes conforming and technical amendments to current §§ 226.17 and 226.18, as discussed more fully below. In addition, in reviewing the rules for closed-end credit, regulatory text and associated commentary have been redesignated, and footnotes moved to the text of the regulation or commentary, as appropriate, to facilitate compliance with the regulation.

17(a) Form of Disclosures

17(a)(1)

The Board proposes special rules in new § 226.37 and associated commentary to govern the format of disclosures required under proposed §§ 226.38 and 226.20(d), and existing §§ 226.19(b) and 226.20(c). These new format rules would be in addition to the rules contained in current § 226.17(a)(1). Current § 226.17(a)(1) requires that closed-end credit disclosures be grouped together, segregated from everything else, and not contain any information not directly related to the disclosures. The Board proposes to revise § 226.17(a)(1) to clarify that the general disclosure standards continue to apply to transactions secured by real property or a dwelling, but under the proposal, creditors would also be required to meet the higher standards under proposed § 226.37. In addition, § 226.17(a)(1) would be revised to reflect the requirement of electronic disclosures in certain circumstances, as discussed under § 226.19(d). Under the proposal, the substance of footnotes 37 and 38 would be moved to the regulatory text of § 226.17(a)(1).

Footnotes 37 and 38 currently provide exceptions to the grouped and segregated requirement under § 226.17(a)(1). Footnote 37 allows creditors to include certain information not directly related to the required disclosures, such as the consumer's name, address, and account number. Footnote 38, which implements TILA Section 128(b)(1) in part, allows creditors to exclude certain required disclosures from the grouped and segregated requirement, such as the creditor's identity under § 226.18(a). 15 U.S.C. 1638(b)(1). The Board proposes to revise the substance of footnote 38 to require that the creditor's identity under § 226.18(a) be subject to the grouped together and segregated requirement for all closed-end credit disclosures. (See proposed § 226.37(a)(2), which parallels this approach for transactions secured by real property or a dwelling). The Board proposes to make this adjustment pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms, and ***avoiding*** the uninformed use of credit. 15 U.S.C. 1601(a).

The Board believes requiring the creditor's identity to be grouped together with required disclosures could assist consumers. The Board believes it is important for the disclosures to bear the creditor's identity so that consumers can more easily identify the appropriate entity. As a result, the Board believes the proposal would help serve TILA's purpose to provide meaningful disclosure of terms.

Commentary to § 226.17(a)(1) provides guidance to creditors regarding the general disclosures standards contained in § 226.17(a)(1). The Board proposes to clarify the applicability of comments 17(a)(1)-2, -5, -6, and -7 to transactions secured by real property or a dwelling.

Current comment 17(a)(1)-2 provides an exception to the grouped and segregated requirement for disclosures on variable rate transactions required under existing §§ 226.19(b) and 226.20(c). For the reasons discussed under proposed § 226.37(a)(2), the Board proposes to require that ARM loan program disclosures under proposed § 226.19(b), and ARMs adjustment notices under proposed § 226.20(c), be subject to the grouped and segregated requirement. As a result, the reference made to §§ 226.19(b) and 226.20(c) would be removed from comment 17(a)(1)-2.

Current comment 17(a)(1)-5, which addresses information considered directly related to the segregated disclosures, would be revised to clarify that it does not apply to transactions secured by real property or a dwelling, and to cross-reference proposed § 226.37(a)(2). Under the proposal, cross-references in comments 17(a)(1)-5(viii), (xi), (xii), and (xvi) would be updated; no substantive change is intended. In addition, as noted below, proposed revisions to § 226.18(f) regarding variable rate transactions, and proposed § 226.38(j)(6) regarding assumption disclosure for transactions secured by real property or a dwelling, render comments 17(a)(1)-5(xiii) and (xiv) unnecessary and therefore those comments would be deleted. Finally, comment 17(a)(1)-5(xvi) would be revised to update cross-references.

As discussed under proposed §§ 226.37(a)(2) and 226.38, the Board proposes to require that creditors make disclosures for transactions secured by real property or a dwelling only as applicable. Current comment 17(a)(1)-6, which permits creditors to design multi-purpose forms for closed-end credit disclosures as long as they are clear and conspicuous, would be revised to clarify that it does not apply to transactions secured by real property or a dwelling, as discussed more fully below under proposed § 226.37(a)(2).

Finally, the Board proposes to clarify in current comment 17(a)(1)-7 that transactions secured by real property or a dwelling and that have balloon payment financing with leasing characteristics are treated as closed-end credit under TILA and subject to its disclosure requirements.

17(a)(2)

Section 226.17(a)(2), which implements TILA Section 122(a), requires the terms finance charge and annual percentage rate, together with a corresponding amount or percentage rate, to be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a). The Board proposes new disclosure requirements under proposed § 226.38(e)(5)(ii) for the finance charge (renamed "interest and settlement charges"), and under proposed §§ 226.37(a)(2) and 226.38(b) for the APR. As a result, the Board would revise § 226.17(a)(2) to be inapplicable to transactions secured by real property or a dwelling.

17(b) Time of Disclosures

Section 227.17(b) and comment 17(b)-1 require creditors to make closed-end credit disclosures before consummation of the transaction; special timing requirements apply to dwelling-secured transactions and variable-rate transactions. As discussed more fully under § 226.19, the Board is proposing to require creditors to make pre-consummation disclosures for transactions secured by real property or a dwelling in accordance with special timing requirements. As a result, the Board proposes to revise § 226.17(b) and comment 17(b)-1 to clarify that more specific timing rules would apply to transactions secured by real property or a dwelling. Current comment 17(b)-2, which addresses disclosure requirements for transactions converted from open-end to closed-end, would be revised to clarify that the special timing requirements under § 226.19(b) would apply for adjustable rate transactions secured by real property or a dwelling.

17(c) Basis of Disclosures and Use of Estimates

17(c)(1) Legal Obligation

Section 226.17(c)(1) requires that disclosures under subpart C reflect the terms of the legal obligation between the parties. Commentary to § 226.17(c)(1) provides guidance regarding disclosure of specific transaction types and loan features. The Board proposes to add new provisions in § 226.17(c)(1)(i) through (vi) to move certain content from commentary to the regulation, as discussed below. In addition, the Board would revise certain commentary to § 226.17(c)(1) to reflect the new disclosure regime for mortgages, and redesignate comments as appropriate. Each of these proposed subsections, and accompanying commentary, is discussed below.

Comments 17(c)(1)-1 and 17(c)(1)-2 generally address disclosure of the legal obligation and modification of such obligation. Comment 17(c)(1)-1 would be revised to include the general principle that the consumer is presumed to abide by the terms of the legal obligation. For example, proposed comment 17(c)(1)-1 states that creditors should assume that a consumer will make payments on time and in full. This proposed revision is consistent with existing comment 17(c)(2)(i)-3, which states that creditors may base all disclosures on the assumption that payments will be made on time, disregarding any possible inaccuracies resulting from consumers' payment patterns. Comment 17(c)(2)(i)-3 specifically addresses disclosures for simple-interest transactions that potentially may be affected by late payments. The proposed revisions to comment 17(c)(1)-1 would clarify that disclosures for all transactions subject to § 226.17 should be based on the assumption that the consumer will adhere to the terms of the legal obligation.

Comment 17(c)(1)-2 would be revised to clarify that transactions secured by real property or a dwelling are subject to the special disclosure rules under proposed § 226.38(a)(3) and (c). Under the proposal, preferred-rate loans with a fixed interest rate would not be considered ARMs, and therefore, comment 17(c)(1)-2 also would be revised to remove the cross-reference to § 226.19(b). Comment 17(c)(1)-2 would be redesignated as 17(c)(1)-2(i) through (iii). Comment 17(c)(1)-16, which addresses disclosure for credit extensions that may be treated as multiple transactions, would be moved and redesignated as comment 17(c)(1)-3; no substantive change is intended.

Comment 17(c)(1)-15 states that where a deposit account is created for the sole purpose of accumulating payments that are applied to satisfy the consumer's credit obligation--a practice used in Morris Plan transactions--payments to that account are treated the same as loan payments. Under the proposal, comment 17(c)(1)-15 would be removed. As discussed below, Morris Plan transactions are rare. In addition, the Board believes that such deposits clearly constitute loan payments and therefore comment 17(c)(1)-15 is unnecessary.

The remaining commentary to § 226.17(c)(1) would be revised and redesignated as discussed below under proposed subsections 17(c)(1)(i) through (vi).

17(c)(1)(i) Buydowns

Comments 17(c)(1)-3 through 17(c)(1)-5 address third-party buydowns, consumer buydowns, and split buydowns, respectively. The proposed rule would add a new provision in § 226.17(c)(1)(i) that reflects that existing commentary about buydowns. Proposed § 226.17(c)(1)(i) requires creditors to disclose an APR that is a composite rate, based on the rate in effect during the initial period and the rate in effect for the remainder of the loan's term, if the consumer's interest rate or payments are reduced for all or part of the loan term. Proposed § 226.17(c)(1)(i) applies to seller or third-party buydowns if they are reflected in the legal obligation, and to all consumer buydowns.

Comments 17(c)(1)-3 through 17(c)(1)-5 would be redesignated as comments 17(c)(1)(i)-1 through -4 and revised to reflect changes in the terminology used under the proposed rule to describe the finance charge, for transactions secured by real property or a dwelling.

17(c)(1)(ii) Wrap-Around Financing

Comment 17(c)(1)-6 provides guidance on disclosures for transactions that involve wrap-around financing; comment 17(c)(1)-7 provides guidance on disclosures for wrap-around transactions that include a balloon payment. Both comments state that, in transactions that involve wrap-around financing, the amount financed equals the sum of the new funds advanced by the wrap creditor and the remaining principal owed to the original creditor on the pre-existing loan. The proposed rule would incorporate this guidance into proposed § 226.17(c)(1)(ii). Comments 17(c)(1)-6 and 17(c)(1)-7 would be redesignated as comments 17(c)(1)(ii)-1 and 17(c)(1)(ii)-2, respectively; no substantive change is intended.

17(c)(1)(iii) Variable- or Adjustable-Rate Transactions

Comment 17(c)(1)-8 currently provides that creditors should base disclosures for variable- or adjustable-rate transactions on the full term of the transaction and the terms in effect at the time of consummation and should not assume that the rate will increase. The proposed rule would incorporate that guidance into proposed § 226.17(c)(1)(iii). Proposed § 226.17(c)(1)(iii) would require creditors to base disclosures for variable- or adjustable-rate transactions on the full loan term, and on the terms in effect at the time of consummation, except as otherwise provided under proposed §§ 226.17(c)(1)(iii) or 226.38(a)(3) and (c) for transactions secured by real property or a dwelling.

As discussed below under proposed § 226.38(c), creditors would be required to disclose specified rate and payment adjustments for adjustable-rate loans secured by real property or a dwelling. As a result, comment 17(c)(1)-8 would be revised to clarify that creditors must disclose specified rate and payment adjustments for adjustable-rate loans secured by real property or a dwelling in accordance with the requirements under proposed § 226.38(c). Current comment 17(c)(1)-8 would be redesignated as comment 17(c)(1)(iii)-1.

Current comment 17(c)(1)-9, which states that a variable-rate feature does not, by itself, make the disclosures estimates, would be redesignated as comment 17(c)(1)(iii)-2. No substantive change is intended.

17(c)(1)(iii)(A) and (B) Discounted and Premium Rates

Comment 17(c)(1)-10 provides that if the initial interest for a variable-rate transaction is not determined by the index or formula used to make later interest-rate adjustments, disclosures should reflect a composite APR based on the initial interest rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The proposed rule would incorporate that commentary into proposed § 226.17(c)(1)(iii)(B).

Proposed § 226.17(c)(1)(iii) contains two separate disclosure rules; which disclosure rule applies depends on whether or not the initial rate is determined using the same index or formula used to make subsequent rate adjustments. If the initial rate is determined using the same index or formula used for subsequent rate adjustments, then the general rule that disclosures must reflect the terms in effect at the time of consummation applies under proposed § 226.17(c)(1)(iii)(A). If the initial rate is set using a different index or formula, however, disclosures must reflect a composite APR under proposed § 226.17(c)(1)(iii)(B). The composite APR would be based on the initial rate for as long as it is charged and, for the remainder of the loan term, the rate that would have applied if such index or formula had been used at the time of consummation. Comments 17(c)(1)-10(i) through (vi) would be revised to reflect that, under the proposed rule, for transactions secured by real property or a dwelling, new terminology would be used for specified disclosures (for example, the term "interest and settlement charges" would be used in place of "finance charge"), as discussed below. Comments 17(c)(1)-10(i) through (vi) also would be redesignated as comments 17(c)(1)(iii)-3(i) through (vi); no substantive change is intended. Finally, a cross-reference in comment 24(c)-4 would be updated to reflect the redesignation of comment 17(c)(1)-10.

Comment 17(c)(1)-11 provides that variable rate transactions include the following transaction types, even if initially they feature a fixed interest rate: balloon-payment loans where the creditor is unconditionally obligated to renew, but can increase the interest rate at the time of renewal; preferred-rate loans where the interest rate may increase upon some future event; and price-level adjusted mortgages that provide for periodic payment and loan balance adjustments. (But see the discussion under proposed § 226.19(b) on comment 19(b)-5, which clarifies that creditors need not provide the disclosures required by § 226.19(b) for specified balloon-payment, preferred-rate, and price-level adjusted mortgages.) As discussed below, proposed § 226.38(a)(3), which address disclosure of loan type for transactions secured by real property or a dwelling, would treat each of these transaction types as fixed-rate loans. As a result, comment 17(c)(1)-11 would be revised to clarify that balloon-payment, preferred-rate, and price-level adjusted mortgages secured by real property or a dwelling are considered fixed-rate transactions for the purposes of the loan type disclosure required under proposed § 226.38(a)(3). (See also the discussion under proposed § 226.38(c), which clarifies that the loan type attributed to transactions under proposed § 226,38(a)(3) applies for purposes of interest rate and payment summary disclosures under proposed § 226.38(c).)

Further, certain shared-equity or shared-appreciation mortgages are considered variable-rate transactions under comment 17(c)(1)-11. However, under the proposal, if a mortgage is secured by real property or a dwelling, the mortgage would not be considered an adjustable-rate loan solely because of a shared-equity or shared-appreciation feature. As discussed under proposed §§ 226.19(b)(2)(ii)(F) and 226.38(d)(2)(vi), the Board would require creditors to disclose shared-equity or shared-appreciation as a loan feature for transactions secured by real property or a dwelling. As a result, guidance in comment 17(c)(1)-11 relating to shared-equity and shared-appreciation mortgages would be deleted.

Comment 17(c)(1)-11 would be redesignated as comment 17(c)(1)(iii)-4(i) through (iii), except that guidance under current comment 17(c)(1)-11 regarding graduated payment mortgages and step-rate transactions without a variable-rate feature would be redesignated as comment 17(c)(1)(iii)-5. A cross-reference to comment 17(c)(1)-11 in comment 30-1 would be updated accordingly. Comment 17(c)(1)-12, which addresses graduated-payment ARMs, would be redesignated as comment 17(c)(1)(iii)-6(i) through (iii); no substantive change is intended.

Current comment 17(c)(1)-13 states that creditors may base disclosures for growth-equity mortgages (also referred to as "payment-escalated mortgages") on estimated payment increases, using the best information reasonably available, or may disclose by analogy to the variable-rate disclosures in § 226.18(f)(1). As discussed below, current § 226.18(f) contains disclosure requirements for variable-rate transactions that differ based on a loan's security interest and term. Under the proposed rule, § 226.18(f) would be revised so that a loan's security interest, not its term, would determine whether the creditor would provide variable- or adjustable-rate disclosures. Accordingly, under the proposal, the reference made in comment 17(c)(1)-13 to providing disclosures analogous to those under current § 226.18(f)(1) would be deleted, and comment 17(c)(1)-13 would be revised to require creditors to base disclosures for growth-equity mortgages using estimated payment increases. The reference to graduated-payment mortgages would be removed for clarity. Comment 17(c)(1)-13 would be redesignated as comment 17(c)(1)(iii)-7.

17(c)(1)(iv) Reverse Mortgages

Comment 17(c)(1)-14 provides that if a reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that repayment will occur when disbursements end. The proposed rule would incorporate this commentary into the regulation as proposed § 226.17(c)(1)(vi). Comment 17(c)(1)-14 would be revised to clarify that the disclosure requirements for reverse mortgage under § 226.33 apply only if the consumer's death is one of the conditions of repayment, as provided under § 226.33(a). Comment 17(c)(1)-14 also would be revised by removing the discussion of shared-equity and shared-appreciation features because under the proposed rule transactions with such features would not be deemed adjustable-rate loans solely because of such features, as discussed above. Further, comment 17(c)(1)-14 would be revised to state that, if a reverse mortgage has an adjustable interest rate and is secured by real property or a dwelling, the creditor must disclose the shared-equity or shared-appreciation feature as required under §§ 226.19(b)(2)(ii)(F) and 226.38(d)(2)(vi). Finally, under the proposed rule comment 17(c)(1)-14 would be redesignated as comment 17(c)(1)(iv)-1(i) through (iii).

17(c)(1)(v) Tax Refund-Anticipation Loans

Comment 17(c)(1)-17 clarifies that if a consumer is required to repay a tax refund-anticipation loan when the consumer receives a tax refund, disclosures are to be based on the creditor's estimate of the time the refund will be delivered. Comment 17(c)(1)-17 further clarifies that the finance charge includes any repayment amount that exceeds the loan amount that is not excluded from the finance charge under § 226.4. The proposed rule would incorporate this guidance into the regulation as proposed § 226.17(c)(1)(v). Comment 17(c)(1)-17 which would be redesignated as comments 17(c)(1)(v)-1(i) and -1(ii) under the proposed rule. No substantive change is intended.

17(c)(1)(vi) Pawn Transactions

For pawn transactions, proposed § 226.17(c)(1)(vi) would require creditors to: (1) Disclose the initial sum provided to the consumer as the amount financed; (2) include the difference between the initial sum provided to the consumer and the price at which the item is pledged or sold in the finance charge; and (3) determine the APR using the redemption date as the end of the loan term. Proposed § 226.17(c)(1)(vi) is consistent with comment 17(c)(1)-18, which would be redesignated as comment 17(c)(1)(vi)-1. No substantive change is intended.

17(c)(2) Estimates

Under the proposal, § 226.17(c)(2) would be revised to clarify that proposed § 226.19(a) would limit creditors' ability to provide estimated disclosures for transactions secured by real property or a dwelling. As discussed below, proposed § 226.19(a) requires creditors to provide disclosures that consumers must receive no later than three business days before consummation and which may not be estimated disclosures. Comments 17(c)(2)(i)-1 and

17(c)(2)(i)-2, which address the basis and labeling of estimates, respectively, also would be revised to reflect this limitation. In addition, comment 17(c)(2)(i)-3, which states that creditors may base all disclosures on the assumption that consumers will make timely payments, would be revised to clarify that creditors may also assume that consumers would make payments in the amounts required by the terms of the legal obligation. In technical revisions, a heading would be added to § 226.17(c)(2) for clarity; no substantive change is intended.

17(c)(3) Disregarded Effects

In technical revisions, a heading would be added to § 226.17(c)(3) for clarity, and guidance under current comment 17(c)(3)-1 would be redesignated as 17(c)(3)-1(i) and (ii). No substantive change is intended.

17(c)(4) Disregarded Irregularities

Under the proposal, § 226.17(c)(4) would be revised to clarify that creditors may disregard period irregularities when disclosing the payment summary table, as required under proposed § 226.38(c), for transactions secured by real property or a dwelling. No substantive change to the treatment of period irregularities is intended.

In technical revisions, a heading would be added to § 226.17(c)(4) for clarity. Also, comment 17(c)(4)-1 would be redesignated as comment 17(c)(4)-1(i) and (ii), and comment 17(c)(4)-2 would be redesignated as comment 17(c)(4)-2(i) through (iii). No substantive change is intended.

17(c)(5) Demand Obligations

Under the proposal, comment 17(c)(5)-1, which addresses demand obligation disclosures, would be revised to reflect that proposed §§ 226.19(b)(2)(ii)(D) and 226.38(d)(2)(iv) contain requirements for disclosing a demand feature in transactions secured by real property or a dwelling. Comment 17(c)(5)-2, which addresses future events such as the maturity date, would be revised to clarify that certain disclosures for transactions not secured by real property or a dwelling may not contain estimated disclosures, as discussed below under proposed § 226.19(a)(2). Comment 17(c)(5)-3, which addresses demand after a stated period, would be revised to delete obsolete references to specific loan programs and update cross-references. Comment 17(c)(5)-4, which addresses balloon payment mortgages, would be revised to reflect that creditors must disclose a payment summary table for transactions secured by real property or a dwelling under proposed § 226.38(c) (rather than a payment schedule, as required for transactions not secured by real property or a dwelling under § 226.18(g)) and to update a cross-reference. In technical revisions, a heading would be added to § 226.17(c)(5) for clarity; no substantive change is intended.

17(c)(6) Multiple Advance Loans

In technical revisions, a heading would be added to § 226.17(c)(6) for clarity; no substantive change is intended.

17(d) Multiple Creditors; Multiple Consumers

Section 226.17(d) addresses transactions that involve multiple creditors and consumers. The Board does not propose any changes to these provisions, except that the guidance contained in current comment 17(d)-1 would be redesignated as comment 17(d)-1(i) through (iii); no substantive change is intended.

17(e) Effect of Subsequent Events

Section 226.17(e) addresses whether a subsequent event makes a disclosure inaccurate or requires a new disclosure. Under proposed § 226.20(e), if a creditor obtains insurance on behalf of the consumer subsequent to consummation, the creditor would be required to provide notice before charging for such insurance. The Board proposes to revise comment 17(e)-1 to reflect this new requirement.

17(f) Early Disclosures

Under the proposal, in addition to providing early disclosures, creditors would be required to provide additional disclosures that a consumer must receive no later than three business days before consummation for transactions secured by real property or a dwelling. Accordingly, comments 17(f)-1 through -4 would be revised to clarify that the special disclosure timing requirements under § 226.19(a)(2) would apply to transactions secured by real property or a dwelling. In technical revisions, guidance in current comment 17(f)-1 would be renumbered and headings revised to clarify that some of the current guidance would not apply to transactions secured by real property or a dwelling under the proposed rule.

17(g) Mail or Telephone Orders--Delay in Disclosures

Section 226.17(g) and comment 17(g)-1 permit creditors to delay disclosures for transactions involving mail or telephone orders until the first payment is due if certain information, such as the APR or finance charge, is provided to the consumer in advance of any request. As discussed under § 226.19(a) and 226.20(c), the Board proposes special timing requirements for disclosures for transactions secured by real property or a dwelling and for adjustable rate transactions. As a result, the Board proposes to revise § 226.17(g) and comment 17(g)-1 to clarify that they do not apply to transactions secured by real property or a dwelling.

17(h) and 17(i) Series of Sales--Delay in Disclosures; Interim Student Credit Extensions

Sections 226.17(h) and (i) address delay in disclosures in transactions involving a series of sales and interim student credit extensions. The Board does not propose any substantive changes to these provisions. In technical revisions, a cross-reference is corrected.

Section 226.18 Content of Disclosures

As noted, the Board proposes to require creditors to provide new disclosures for transactions secured by real property or a dwelling under proposed § 226.38. Accordingly, the Board would clarify under § 226.18 that creditors must provide the new disclosures under § 226.38 for transactions secured by real property or a dwelling. In addition, the Board proposes conforming amendments to § 226.18 and associated commentary to reflect the new disclosure regime for mortgages, and would redesignate comments as appropriate.

18(a) Creditor

Currently, § 226.18(a), which implements TILA Section 128(a)(1), requires disclosure of the identity of the creditor making the disclosures. 15 U.S.C. 1638(a)(1). Comment 18(a)-1 states, in part, that this disclosure may, at the creditor's option, appear apart from the other required disclosures. As discussed above, currently, § 226.17(a)(1) footnote 38, which implements TILA Section 128(b)(1), allows creditors to exclude from the grouped and segregated requirement certain required disclosures, such as the creditor's identity. 15 U.S.C. 1638(b)(1). However, the Board proposes to revise the substance of footnote 38 to require the creditor's identity under § 226.18(a) to be subject to the grouped together and segregated requirement for all closed-end credit disclosures. Thus, the Board proposes to revise comment 18(a)-1 to reflect this change.

18(b) Amount Financed

Section 226.18(b) addresses the disclosure and calculation of the amount financed. The Board proposes to revise comment 18(b)-2, which provides guidance regarding treatment of rebates and loan premiums for the amount financed calculation required under § 226.18(b). Comment 18(b)-2 primarily addresses credit sales, such as automobile financing, and provides that creditors may choose whether to reflect creditor-paid premiums and seller-or manufacturer-paid rebates in the disclosures required under § 226.18. The Board believes that creditor-paid premiums and seller- or manufacturer-paid rebates are analogous to buydowns. Like buydowns, such premiums and rebates may or may not be funded by the creditor and reduce costs that otherwise would be borne by the consumer. Accordingly, their impact on the amount financed, like that of buydowns, properly depends on whether they are part of the legal obligation. *See* comments 17(c)(1)-1 through -5. The Board is proposing to revise comment 18(b)-2 to clarify that the disclosures, including the amount financed, must reflect loan premiums and rebates regardless of their source, but only if they are part of the terms of the legal obligation between the creditor and the consumer. As discussed below, proposed comment 38(e)(5)(iii)-2 would parallel this approach for transactions secured by real property or a dwelling.

In addition, the Board proposes to revise comment 18(b)(2)-1, which addresses amounts included in the amount financed calculation that are not otherwise included in the finance charge, to remove reference to real estate settlement charges for the reasons discussed more fully under § 226.4.

18(c) Itemization of Amount Financed

Section 226.18(c) requires a separate disclosure of the itemization of amount financed and provides guidance on the amounts that must be included in such itemization. As discussed below, the Board proposes new § 226.38(e)(5)(iii) to address the calculation and disclosure requirements of the amount financed for transactions secured by real property or a dwelling. Under the proposal, the substance of footnote 40, which permits creditors to substitute good faith estimates required under RESPA for the itemization of the amount financed for dwelling-secured transactions, would be moved to new § 226.38(j)(1)(iii).

Comment 18(c)-2 affords creditors flexibility in the information that may be included in the itemization of amount financed. Under the proposal, the Board would revise comment 18(c)-2(i) to remove references made to escrow items and to the commentary under § 226.18(g) because the proposal renders them unnecessary, and 18(c)-2(vi) to reflect a technical revision with no intended change in substance or meaning. The Board also proposes to move comment 18(c)-4 regarding the exemption afforded to RESPA transactions, and 18(c)(1)(iv)-2 regarding prepaid mortgage insurance premiums to proposed comments 38(j)(1)(iii)-1 and 38(j)(1)(i)(D)-2, respectively, because they apply only to dwelling-secured transactions.

18(d) Finance Charge

Section 226.18(d) requires disclosure of the finance charge for closed-end credit. As discussed below, the Board proposes new § 226.38(e)(5)(ii) to address disclosure of the finance charge (renamed "interest and settlement charges") for transactions secured by real property or a dwelling. As a result, reference to the finance charge tolerances for mortgage loans would be moved from § 226.18(d) to proposed § 226.38(e)(5)(ii); no substantive change is intended. Technical amendments to comment 18(d)(2) would reflect this revision.

18(e) Annual Percentage Rate

Section 226.18(e) requires disclosure of the annual percentage rate, using that term. The substance of footnote 42 would be moved to the regulatory text of § 226.18(e). Technical amendments to comment 18(e)-2 would reflect this revision; no substantive change is intended.

18(f) Variable Rate

Section 226.18(f)(1) contains disclosure requirements for variable-rate transactions not secured by a consumer's principal dwelling and variable-rate transactions secured by a consumer's principal dwelling if the loan term is one year or less. Section 226.18(f)(1) requires creditors to make the following disclosures within three business days after receiving the consumer's application: (1) Circumstances under which the APR may increase; (2) any limitations on the increase; (3) the effect of an increase; and (4) an example of the payment terms that would result from an increase. Section 226.18(f)(2) applies to variable-rate transactions secured by a consumer's principal dwelling with a loan term greater than one year, and requires creditors to disclose that the loan has a variable-rate feature together with a statement that variable-rate program disclosures (required by current § 226.19(b)) have been provided earlier.

The Board adopted § 226.18(f)(2) in 1987, at the same time that it adopted § 226.19(b) (disclosures for variable-rate mortgages with terms greater than one year). The Board adopted those provisions based on recommendations by the Federal Financial Institutions Examination Council (FFIEC). 52 FR 48665; Dec. 24, 1987. However, the Board applied the requirements of those provisions only to loans secured by a principal dwelling with a term greater than one year. Loans secured by a principal dwelling with a term of one year or less, and loans not secured by a principal dwelling remained subject to rules in § 226.18(f)(1). The Board did not apply the new variable-rate loan disclosure requirements to such loans because public comments expressed concern about potential compliance problems for creditors making short-term loans. 52 FR at 48666.

Proposed §§ 226.19(b) and 226.38(c) contain disclosure requirements for closed-end adjustable-rate loans secured by real property or a dwelling, and would apply the same rules to loans with a term of one year or less as for loans with a term greater than one year. Disclosures required by those provisions are discussed below. As a result, § 226.18(f)(2) and comment 18(f)(2)-1, which address requirements and guidance for closed-end adjustable-rate loans secured by real property or a dwelling, are unnecessary and would be deleted. The substance of footnote 43, which permits creditors to substitute information required under § 226.18(f)(2) and 226.19(b) for the disclosures required by § 226.18(f)(1), would also be deleted. Section 226.18(f)(1)(i) through (iv) would be redesignated as § 226.18(f)(1) through (4), and references in comment 18(f)-1 would be updated.

As discussed below, proposed §§ 226.19(b)(3)(iii) and 226.38(d)(2)(iii) regarding disclosure of shared-equity or shared-appreciation loan features would render guidance about shared-equity or shared-appreciation mortgages in comment 18(f)-1 unnecessary, and therefore that comment would be deleted. Comment 18(f)(1)-1 regarding terms used in disclosures, and comment 18(f)(1)(i)-2 regarding conversion features would be redesignated as comments 18(f)-2 and -3, respectively. Finally, comments 18(f)(1)(i)-1, 18(f)(1)(ii)-1, 18(f)(1)(iii)-1, and 18(f)(1)(iv)-1 would be redesignated as comments 18(f)(1)-1, 18(f)(2)-1, 18(f)(3)-1, and 18(f)(4)-1, respectively.

18(g) Payment Schedule

Section 226.18(g) and associated commentary address the disclosure of the payment schedule for all closed-end credit. As discussed under proposed § 226.38(c), the Board would require creditors to provide disclosures regarding interest rates and monthly payments in a tabular format for transactions secured by real property or a dwelling. As a result, creditors would not need to comply with the disclosure requirements of § 226.18(g) for such transactions. However, as discussed under proposed § 226.38(e)(5)(i), creditors would be required to disclose the number and total amount of payments that the consumer would make over the full term of the loan for transactions secured by real property or a dwelling. Proposed comment 18(e)(5)(i)-1 would require creditors to calculate the total payments following the rules under § 226.18(g) and associated commentary. As a result, the Board proposes to revise comment 18(g)-3 to require creditors to disclose the total number of payments for all payment levels as a single figure for transactions secured by real property or a dwelling, and to cross-reference proposed § 226.38(e)(5)(i).

18(h) Total of Payments

In a technical revision, the substance of footnote 44 would be moved to the regulation text of § 226.18(e); technical amendments to comment 18(h)-3 would reflect this revision.

18(i) Demand Feature

Section 226.18(i) and associated commentary address the following for all closed-end credit: disclosure of a demand feature; the type of demand features covered; and the relationship to payment schedule disclosures. The Board does not propose any change to this provision, except that comments 18(i)-2 and -3 would be updated to cross-reference proposed §§ 226.38(d)(2)(iv) and 226.38(c), which address the disclosure requirements for a demand feature and payment schedule, respectively, for transactions secured by real property or a dwelling. No substantive change is intended.

18(k) Prepayment

Section 226.18(k)(1) provides that, when an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, the creditor must disclose a statement that indicates whether or not a penalty may be imposed if the obligation is prepaid in full. Comment 18(k)(1)-1 provides examples of charges considered penalties under § 226.18(k)(1). One such example is "interest charges for any period after prepayment in full is made." When the loan is prepaid in full, there is no balance to which the creditor may apply the interest rate. Accordingly, the proposed rule would revise this example for clarity; no substantive change is intended. Proposed § 226.38(a)(5) contains requirements for disclosing prepayment penalties for transactions secured by real property or a dwelling. As discussed below, commentary on proposed § 226.38(a)(5) is consistent with the commentary on § 226.18(k), as proposed to be revised.

18(j) Through 18(m) Total Sale Price; Prepayment; Late Payment; Security Interest

Sections 226.18(j), (k), (1), and (m) address, respectively, disclosures regarding: total sale price; prepayment; late payment; and security interest. The Board does not propose any changes to these provisions, except for a minor technical amendment to comment 18(k)(l)-1, as discussed above. However, as noted below, the Board proposes new disclosure requirements under §§ 226.38(a)(5) and 226.38(d)(1)(iii) regarding prepayment penalties, § 226.38(j)(3) regarding late payment, and § 226.38(f)(2) regarding security interest, for transactions secured by real property or a dwelling.

18(n) Insurance and Debt Cancellation

Section 226.18(n) requires disclosure of insurance and debt cancellation in accordance with the requirements under § 226.4(d) to exclude such fees from the finance charge. For the reasons discussed under § 226.4(d), the Board proposes to revise § 226.18(n) and comment 18(n)-2 to clarify that this disclosure requirement also applies to debt suspension policies.

18(o) and 18(p) Certain Security-Interest Charges; Contract Reference

Sections 226.18(o) and (p) address, respectively, disclosures regarding certain security-interest charges and contract reference. The Board does not propose any changes to these provisions. However, as noted below, the Board would require creditors to provide parallel contract references for transactions secured by real property or a dwelling under proposed § 226.38(j)(5). No parallel disclosure for security-interest charges is proposed for transactions secured by real property or a dwelling because such disclosures would not apply to those transactions under the Board's proposed revisions to § 226.4, discussed above.

18(q) Assumption Policy

Section 226.18(q) and associated commentary require disclosure of assumption policies for residential mortgage transactions. Under the proposal, the Board proposes to move § 226.18(q) and comments 18(q)-1 and -2 to proposed § 226.38(j)(6) and comments 38(j)(6)-1 and -2, respectively, because assumption policies apply only to transactions secured by real property or a dwelling. No substantive change is intended.

18(r) Required Deposit

Section 226.18(r) addresses disclosure requirements when creditors require consumers to maintain deposits as a condition to the specific transaction. Footnote 45 provides additional guidance on such required deposits and includes a reference to payments made under Morris Plans. Although at least one Morris Plan bank remains active, Morris Plans essentially are obsolete today. Accordingly, the Board proposes to move the substance of footnote 45 to the regulation text but delete the reference to Morris Plans. Comments 18(r)-1, -3, and -5 would also be similarly revised. In addition, under the proposal, comment 18(r)-2 on pledged-account mortgages would be moved to comment 38(i)-2 because it applies only to transactions secured by real property. (See also comment 17(c)(1)-15 on Morris Plans, which the Board proposes to delete as unnecessary.) Comment 18(r)-6 would be redesignated as comment 18(r)-6(i) through (vii).

Section 226.19 Early Disclosures and Adjustable-Rate Disclosures for Transactions Secured by Real Property or a Dwelling

Section 226.19(a) currently contains timing requirements for providing disclosures for closed-end transactions secured by a dwelling and subject to RESPA. Section 226.19(b) contains disclosure timing and content requirements for variable-rate loans secured by a consumer's principal dwelling. The Board proposes to revise § 226.19(a) and (b) to apply the disclosures to any closed-end transaction secured by real property or a dwelling, for reasons discussed below. Section 226.19(a) also would be revised to require creditors to provide new disclosures that a consumer must receive at least three business days before consummation, in addition to the existing requirement to provide early disclosures within three business days of application. The Board also proposes to revise the content of disclosures for ARMs required under § 226.19(b), require new disclosures about risky loan features in proposed § 226.19(c), and to include existing rules about disclosures provided through an intermediary agent or broker, or by telephone or electronic communication, in proposed § 226.19(d).

19(a) Good Faith Estimates of Mortgage Transaction Terms and New Disclosures

TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), requires creditors to mail or deliver to consumers good faith estimates of disclosures required by TILA Section 128(a), 15 U.S.C. 1638(a) (early disclosures), for a transaction secured by a dwelling and subject to RESPA. As amended by the MDIA, TILA Section 128(b)(2) requires creditors to deliver or mail the early disclosures at least seven business days before consummation. Further, TILA Section 128(b)(2), as amended by the MDIA, requires that the creditor provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The Board implemented these MDIA requirements in § 226.19(a) through a final rule effective July 30, 2009 (MDIA Final Rule). 74 FR 23289; May 19, 2009.

The Board proposes to expand the coverage of § 226.19(a) so that the timing provisions would apply to closed-end mortgage transactions secured by real property or a dwelling, and would not be limited to RESPA-covered transactions. Thus, proposed § 226.19(a) would apply to transactions secured by real property that does not include a dwelling, such as vacant land, and transactions that are not subject to RESPA, such as construction loans.

The Board also proposes to revise § 226.19(a) so that, in addition to the early disclosures, the creditor must provide final disclosures that the consumer must receive no later than three business days before consummation. Under existing § 226.19(a), by contrast, a consumer must receive new disclosures at least three business days before consummation only if changes to the previously disclosed APR exceed a specified tolerance. The Board is proposing two alternative provisions to address circumstances where terms change after the consumer has received the final disclosures.

19(a)(1)(i) Time of Good Faith Estimates of Disclosures

TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), as amended by the MDIA, requires creditors to provide early disclosures if a transaction is secured by a dwelling and subject to RESPA. However, TILA's early disclosure requirements do not apply to mortgage transactions for personal, family, or household purposes if they are secured by real property that is not a dwelling, for example a consumer's business property. Creditors need not provide early disclosures for transactions secured by property of 25 acres or more, temporary financing (such as a construction loan), or transactions secured by vacant land because RESPA does not apply to such transactions. 24 CFR 3500.5(b)(1), (3), and (4).

The Board proposes to expand § 226.19(a) to cover transactions secured by real property, even if the property is not a dwelling and even if the transaction is not subject to RESPA. (Transactions secured by a consumer's interest in a timeshare plan would be treated differently, as discussed under § 226.19(a)(5) below.) Under TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), if the transaction is not secured by a dwelling, or is not covered by RESPA, the creditor is only required to provide disclosures before consummation. The Board proposes to require creditors to provide early disclosures under TILA for all closed-end transactions secured by real property or a dwelling to facilitate compliance.

Section 226.18 currently contains requirements for the content of transaction-specific disclosures secured by real property or a dwelling, whether or not creditors are required to provide that content in early disclosures. Although under the proposed rule § 226.38 rather than § 226.18 would contain requirements for disclosure content for transactions secured by real property or a dwelling, the content required in early disclosures is the same as the content of disclosures provided in cases where early disclosures are not required. Applying the requirement to provide early disclosures to all transactions secured by real property or a dwelling would simplify creditors' determination of the time by which creditors must make the disclosures required by § 226.38. The Board requests comment about operational or other issues involved in providing early disclosures for temporary loans, however. The Board also solicits comment on whether there are other types of loans exempt from RESPA to which it is not appropriate to apply proposed § 226.19(a).

Proposed new comment 19-1 states that proposed § 226.19 applies to transactions secured by real property or a dwelling even if such transactions are not subject to RESPA. The proposed comment clarifies that TILA does not apply to transactions that are primarily for business, commercial, or agricultural purposes, however. (Proposed comment 19-1 addresses the introductory text to proposed § 226.19, which provides that all of § 226.19, not only § 226.19(a), applies to closed-end transactions secured by real property or a dwelling.)

Comment 19(a)(1)(i)-1, which discusses the coverage of § 226.19(a), would be removed because proposed comment 19-1 would discuss the coverage of all of proposed § 226.19. Comment 19(a)(1)(i)-2 would be revised to clarify that under the proposed rule disclosures required by proposed § 226.19(a)(2) may not contain estimated disclosures, with limited exceptions. The comment also would be revised to reflect that proposed § 226.37 contains requirements for disclosure of estimates and contingencies, as discussed below. Comment 19(a)(1)(i)-3 would be revised to reflect that creditors may rely on RESPA and Regulation X to determine when an application is received, even for transactions not subject to RESPA. Comment 19(a)(1)(i)-5 would be revised to refer to the itemization of the amount financed disclosures in proposed § 226.38(j) rather than in § 226.18(c), as currently referenced. Finally, comments 19(a)(1)(i)-2 through -5 would be redesignated as comments 19(a)(1)(i)-1 through -4.

19(a)(1)(ii) Imposition of Fees

On July 30, 2008, the Board published the 2008 HOEPA Final Rule amending Regulation Z, which implements TILA and HOEPA. The July 2008 final rule requires creditors to give transaction-specific cost disclosures no later than three business days after receiving a consumer's application, for closed-end mortgage transactions secured by a consumer's principal dwelling, under § 226.19(a)(1)(i). Further, the 2008 HOEPA Final Rule prohibits creditors and other persons from imposing a fee on the consumer, other than a fee for obtaining the consumer's credit history, before the consumer receives the early disclosures, under § 226.19(a)(1)(ii) and (iii). Section 226.19(a)(1)(ii) provides that if the early disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed. 73 FR 44522, 44600-44601.

The proposed rule would revise § 226.19(a)(1)(ii) to conform to the presumption of receipt provision the Board subsequently adopted in the MDIA Final Rule in § 226.19(a)(2)(ii). [40] Under the proposed rule § 226.19(a)(1)(ii) would be revised to provide that if the early disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered. This is consistent with comment 19(a)(1)(ii)-1, which provides that creditors may impose a fee any time after midnight following the third business day after the creditor delivers or mails the early disclosures in all cases, regardless of the method the creditor uses to provide the early disclosures. The Board does not intend to make substantive changes by conforming the presumption of receipt provisions under §§ 226.19(a)(1)(ii) and 226.19(a)(2)(ii).

The Board also proposes to revise comment 19(a)(1)(ii)-1 to clarify that the three-business-day presumption of receipt applies in all cases, including where a creditor uses electronic mail or a courier to provide the early disclosures. Proposed comment 19(a)(1)(ii)-1 provides that creditors that use electronic mail or a courier other than the postal service may use the three-business-day presumption of receipt. This comment is consistent with existing comment 19(a)(2)(ii)-3 adopted through the MDIA Final Rule. (Comment 19(a)(2)(ii)-3 would be redesignated as comment 19(a)(2)(v)-1 and conforming edits would be made in connection with the proposed requirement that creditors provide final disclosures that the consumer must receive no later than three business days before consummation, as discussed below.)

An additional change would be made to comment 19(a)(1)(ii)-1 under the proposed rule. Currently, comment 19(a)(1)(ii)-1 provides that if the creditor places the early disclosures in the mail, the creditor may impose a fee in all cases "after midnight on the third business day following mailing of the disclosures." The Board recognizes that the phrase "after midnight on the third business day" may be construed to mean *either* that the creditor may impose a fee at the beginning of the third business day after the creditor receives the consumer's application, *or* at the beginning of the fourth business day after the creditor receives the consumer's application. Thus, the Board proposes to revise comment 19(a)(1)(ii)-1 to provide that the creditor may impose a fee after the consumer receives the early disclosures or, in all cases, after midnight following the third business day after mailing the early disclosures. For example, proposed comment 19(a)(1)(ii)-1 provides that (assuming that there are no intervening legal public holidays) a creditor that receives the consumer's written application on Monday and mails the early mortgage loan disclosure on Tuesday may impose a fee on the consumer on Saturday.

19(a)(2)(ii) Three-Business-Day Waiting Period

Under § 226.19(a), as revised by the MDIA Final Rule, if changes to the APR disclosed for a closed-end transaction secured by a dwelling and subject to RESPA exceed a specified tolerance, creditors must provide corrected disclosures. The consumer must receive the corrected disclosures no later than three business days before consummation. The tolerance specified for closed-end "regular transactions" (those that do not involve multiple advances, irregular payment periods, or irregular payment amounts) is 1/8 of 1 percentage point and for closed-end "irregular transactions" (those that involve multiple advances, irregular payment periods, or irregular payment

[40] On the same day the July 2008 final rule was published, the Congress passed the MDIA. Under the MDIA, if the APR stated in the early disclosures changes in excess of a specified tolerance, the creditor must provide corrected disclosures that the consumer must receive no later than three business days before consummation. The MDIA provides that if the creditor mails the corrected disclosures, the consumer is considered to have received them three business days after they are mailed. These early disclosure rules are contained in TILA Section 128(b)(2)(E) (to be codified at 15 U.S.C. 1638(13)(2)(E)). Section 226.19(a)(2)(ii) implements these rules.

amounts, such as an ARM with a discounted initial interest rate) is 1/4 of 1 percentage point. *See* § 226.22(a) and footnote 46; comment 17(c)(1)-10(iv).

Currently, if an APR stated in early disclosures for a closed-end transaction not subject to § 226.19(a) remains accurate but other terms that were not labeled as estimates change, the creditor must disclose those changed terms before consummation under § 226.17(f). Creditors also must provide corrected disclosures if a variable-rate feature is added to a closed-end transaction under § 226.17(f), whether or not the transaction is subject to § 226.19(a). *See* comment 17(f)-2. In practice, most creditors provide "final" disclosures to a consumer on the day of consummation, whether or not the loan terms stated in the early disclosures have changed.

Under the proposed rule, after providing early disclosures for a closed-end transaction secured by real property or a dwelling, creditors would provide a second set of disclosures in all cases, under § 226.19(a)(2)(ii). The consumer would have to receive these final disclosures no later than three business days before consummation. Proposed § 226.19(a)(2)(ii) is designed to address long-standing concerns that consumers may find out about different loan terms or increased settlement costs only at consummation. Members of the Board's Consumer Advisory Council and commenters on prior Board rulemakings have expressed concern about consumers not learning of changes to credit terms until consummation. Further, several participants in the Board's consumer testing stated that they had been surprised at closing by important changes in loan terms. For example, some participants said that they had been told at closing that a loan would have an adjustable rate even though previously they had been told they would receive a fixed-rate loan. Participants said that they closed despite unfavorable changes in loan terms because they lacked alternatives, especially in the case of a loan financing a home purchase. Some participants stated that they accepted changed terms because the loan originator advised them that they could easily obtain a refinance loan with better terms in the near future.

Terms or costs may change after early disclosures are given for a variety of reasons, including that the consumer did not lock the interest rate at application or an appraisal report developed after early disclosures are provided ***shows*** a different property value than the creditor assumed when providing the early disclosure. Regardless of the reason for the changed terms, a consumer who receives notice of changed loan terms at consummation that differ from those originally disclosed does not have a meaningful opportunity to make an informed credit decision.

To address concerns about changes to loan terms, proposed § 226.19(a)(2)(ii) requires creditors to provide final disclosures that a consumer would have to receive no later than the third business day before consummation. Under proposed § 226.38(a)(4), the early disclosures and final disclosures would contain total estimated settlement costs disclosed under RESPA and HUD's Regulation X, which implements RESPA. Regulation X permits final settlement charges to be disclosed at consummation; the consumer may request that final settlement charges be disclosed twenty-four hours in advance, however. 24 CFR 3500.10(a) and (b). Thus, under RESPA, creditors, settlement agents, and settlement service providers have until the day of consummation to determine the amounts of the various settlement costs. Effective January 1, 2010, Regulation X provides that the sum of most lender-required third party settlement costs may vary no more than 10 percent from the same costs disclosed on the good faith estimate (GFE) delivered earlier. Certain other changes, such as the lender's origination fee, cannot vary, unless the consumer did not lock the interest rate.

The Board believes that proposed § 226.19(a)(2) would not conflict with tolerance and timing rules under Regulation X--that is, creditors could comply with both Regulation Z and Regulation X. However, the Board's proposal would require creditors to finalize settlement costs earlier than RESPA does: At least three business days before consummation, and as much as a week before consummation if the creditor mails the disclosures to the consumer. [41] The Board recognizes that requiring that loan terms and costs be finalized several days before

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[41] Under existing and proposed § 226.19(a)(2), a consumer is deemed to receive corrected disclosures three business days after a creditor mails them. Under existing and proposed § 226.19(a)(2), creditors may but need not rely on the presumption of receipt to determine when the three-business-day waiting period begins, whether creditors mail TILA disclosures using the postal service, use a courier other than the postal service, or provide disclosures electronically. Alternatively, creditors may rely on evidence of receipt. 74 FR at 23293; 73 FR 44522, 44593; July 30, 2008.

consummation would require significant changes to current settlement practices. These changes would generate costs that creditors and third-party service providers would pass on to consumers. The Board solicits comment on the operational and other practical effects of requiring that consumers receive final TILA disclosures for closed-end loans secured by real property or a dwelling no later than three business days before consummation.

Proposed comment 19(a)(2)(ii)-1 provides that creditors must provide final disclosures even if the terms disclosed have not changed since the creditor provided the early disclosures. Proposed comment 19(a)(2)(ii)-2 provides that disclosures made under § 226.19(a)(2)(ii) must contain each of the applicable disclosures required by § 226.38.

If escrows for taxes and insurance will be required, creditors may disclose periodic payments of taxes and insurance as estimates under § 226.38(c). If the creditor includes escrowed amounts when calculating the total of payments under § 226.38(e)(5)(i), then the total of payments also would be disclosed as estimated disclosures, as discussed in comment 38(e)(5)-1. Periodic payment disclosures that include escrowed amounts must be estimated disclosures because the creditor cannot know with certainty the amounts for property taxes and insurance after the first year of the loan. Proposed comment 19(a)(2)(ii)-3 clarifies that other disclosures may not be estimated under proposed § 226.19(a)(2)(ii). Finally, comment 19(a)(2)(ii)-4 provides an example that illustrates when consummation may occur after the consumer receives the final disclosures.

19(a)(2)(iii) Additional Three-Business-Day Waiting Period

The Board is proposing two alternative requirements for creditors to provide corrected disclosures after making the final disclosures required by § 226.19(a)(2)(ii), to be designated as § 226.19(a)(2)(iii). Consumers would have to receive the corrected disclosures required by proposed § 226.19(a)(2)(iii) no later than the third business day before consummation. Under both Alternative 1 and Alternative 2, comment 19(a)(2)-2 would be revised to reflect that there is more than one three-business-day waiting period under § 226.19(a).

Alternative 1. The first alternative would require that a creditor provide corrected disclosures if any terms stated in the final disclosures required by proposed § 226.19(a)(2)(ii) change. This would ensure that consumers are aware of the final loan terms and costs at least three business days before consummation. The consumer would have to receive the corrected disclosures no later than the third business day before consummation.

Under Alternative 1, proposed comment 19(a)(2)(iii)-1 clarifies that a disclosed APR is accurate for purposes of § 226.19(a)(2)(iii) if the disclosure is accurate under proposed § 226.19(a)(2)(iv). (Under proposed § 226.19(a)(2)(iv), an APR disclosed under proposed § 226.19(a)(2)(ii) or (iii) is considered accurate as provided by § 226.22, except that in certain circumstances the APR is considered accurate if the APR decreases from the APR disclosed previously, as discussed below.) Proposed comment 19(a)(2)(iii)-2 states that disclosures made under § 226.19(a)(2)(ii) must contain each of the disclosures required by § 226.38. Proposed comment 19(a)(2)(iii)-3 clarifies that creditors may rely on proposed comment 19(a)(2)(ii)-3 in determining which of the disclosures required by § 226.19(a)(2)(iii) may be estimated disclosures. Proposed comment 19(a)(2)(iii)-4 provides an example that ***shows*** when consummation may occur after the consumer receives corrected disclosures. Existing comments 19(a)(2)(ii)-1 through -4 would be removed under Alternative 1.

Alternative 2. It is not clear that it is always in a consumer's interest to delay consummation until three business days after the consumer receives corrected disclosures if any terms or costs change. Thus, the Board proposes an alternative § 226.19(a)(2)(iii) that incorporates the existing tolerance for APR changes under § 226.22 and incorporates an additional tolerance discussed under § 226.19(a)(iv). If the APR changes beyond the specified tolerances, creditors would be required to provide corrected disclosures that the consumer must receive no later than three business days before consummation.

Under the second alternative, after the creditor provides the final disclosures, only APR changes beyond the specified tolerances or the addition of a variable-rate feature to the loan would trigger a requirement that consumers receive corrected disclosures no later than three business days before consummation. In other cases, the creditor would have to disclose changed terms no later than the day of consummation, under existing § 226.17(f). Under this alternative, a consumer would be alerted to significant increases in loan costs and would have three business days to investigate the reason for the change or to consider other options. Smaller APR increases or other changes to loan terms would not trigger a three-day delay in consummation, however. This alternative is designed to prevent relatively minor changes in loan terms from repeatedly delaying consummation.

Under Alternative 2, comment 19(a)(2)(ii)-1 would be redesignated as comment 19(a)(2)(iii)-1 and revised to clarify that creditors must provide corrected disclosures if the APR disclosed pursuant to § 226.19(a)(ii) becomes inaccurate under proposed § 226.19(a)(2)(iv), which incorporates existing tolerances under § 226.22, or an adjustable-rate feature is added. Comment 19(a)(2)(ii)-2 would be redesignated as comment 19(a)(2)(iii)-2 and revised to: (1) Reflect that corrected disclosures must comply with the format requirements of proposed § 226.37 as well as those of § 226.17(a); (2) reflect that a different APR will almost always result in changes in "interest and settlement charges" and the "payment summary" (currently designated as the finance charge and payment schedule, respectively); (3) clarify that the addition of an adjustable-rate feature triggers the requirement to provide corrected disclosures, by moving a cross-reference to comment 17(f)-2; and (4) remove guidance on the timing and conditions of new disclosures from guidance on disclosure content, for clarity. Proposed comment 19(a)(2)(iii)-3 clarifies that creditors may rely on proposed comment 19(a)(2)(ii)-3 in determining which of the disclosures required by § 226.19(a)(2)(iii) creditors may estimate. Under the proposed rule, comment 19(a)(2)(iii)-4 would be revised to update a cross-reference consistent with the proposed rule and reflect that consumers must receive disclosures under § 226.19(a)(2)(ii) whether or not the disclosures correct the early disclosures.

The Board solicits comment on whether, under Alternative 2, changes other than APR changes in excess of the specified tolerance or the addition of an adjustable-rate feature after the creditor makes the new disclosures should trigger an additional three-business-day waiting period. For example, should the addition of a prepayment penalty, negative amortization, interest-only, or balloon payment feature trigger a waiting period requirement?

Proposed § 226.19(a)(2)(iii) (under Alternative 2) would require corrected disclosures and a new three-business-day waiting period if the previously disclosed APR has become inaccurate. Under current rules, a disclosed APR is considered accurate and does not trigger corrected disclosures if it results from a disclosed finance charge that is greater than the finance charge required to be disclosed (*i.e.*, the finance charge is "overstated"). *See* §§ 226.22(a)(4) and 226.18(d)(1)(ii). In some transactions, the finance charge at consummation might be lower than the amount previously disclosed, for example, if the parties agree to a smaller principal loan amount after early disclosures were made. In the same transaction, the APR might increase because of an increase in the interest rate after the early disclosures were made. In this transaction, at consummation the previously disclosed finance charge would be overstated and the previously disclosed APR understated. In such a case, the question has been raised as to whether the previously disclosed APR, which was derived from the overstated finance charge, should be deemed accurate even though it is understated at consummation. The Board believes the APR in this case is not accurate. The Board believes an APR "results from" an overstated finance charge only if the APR also is overstated. The Board solicits comment on whether, should Alternative 2 be adopted, the Board also should adopt commentary under § 226.22(a)(4) to clarify this interpretation.

Proposed § 226.19(a)(2)(iv) contains APR tolerances, and proposed § 226.38(e)(5)(ii) contains tolerances for interest and settlement charges (as the finance charge would be referred to under the proposed rule), for transactions secured by real property or a dwelling. The Board solicits comment on whether, under § 226.38(e)(5)(ii), tolerances would be appropriate for numerical disclosures other than the APR and interest and settlement charges. For example, would dollar tolerances for overstatements of periodic payment disclosures required by § 226.38(c) be appropriate? What standards should be used to prevent overstated disclosures from undermining the integrity of the early disclosures and their usefulness as a shopping tool?

19(a)(2)(iv) Annual Percentage Rate Accuracy

Under proposed § 226.19(a)(2)(iv), an APR disclosed under proposed § 226.19(a)(2)(ii) or (iii) is considered accurate as provided by § 226.22, except that the APR also is considered accurate if the APR decreases due to a discount (1) the creditor gives the consumer to induce periodic payments by automated debit from a consumer's deposit account or (2) the title insurer gives the consumer on owner's title insurance. Thus, such APR changes would not trigger a new three-business-day waiting period. Comment 19(a)(2)(iv)-1 clarifies that if a change occurs that does not render the APR inaccurate under § 226.19(a)(iv), the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). The Board solicits comment on whether a disclosed APR that is higher than the actual APR at consummation should be considered accurate in other circumstances.

19(a)(2)(v) Timing of Receipt

As adopted by the MDIA Final Rule, § 226.19(a)(2)(ii) provides that consumers must receive corrected disclosures, if required, no later than three business days before consummation. Further, § 226.19(a)(2)(ii) provides that if the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the disclosures three business days after they are mailed or delivered. The proposed rule applies this presumption for purposes of both the waiting period under proposed § 226.19(a)(2)(ii) and the waiting period under proposed § 226.19(a)(2)(iii). The presumption would be moved to § 226.19(a)(2)(v) under the proposed rule.

Proposed comment 19(a)(2)(v)-1 states that whether the creditor provides disclosures by delivery, postal service, electronic mail, or courier other than the postal service, consumers are deemed to receive the disclosures three business days after the creditor so provides them, for purposes of determining when a three-business-day waiting period required by § 226.19(a)(2)(ii) or (iii) begins. Further, proposed comment 19(a)(2)(v)-1 clarifies that creditors may rely on evidence of earlier receipt, regardless of ***how*** the creditor provides disclosures to the consumer. This commentary is consistent with the Board's discussion of delivery and mailing under the MDIA Final Rule and the 2008 HOEPA Final Rule. *See* 74 FR at 23292-23293; 73 FR at 44593.

19(a)(3) Consumer's Waiver of Waiting Period

Section 226.19(a)(3) and comment 19(a)(3)-1 would be revised to reflect that under the proposed rule the disclosures required for transactions secured by real property or a dwelling are contained in § 226.38 rather than in § 226.18. Section 226.19(a)(3) also would be revised to reflect that there is more than one three-business-day waiting period under proposed § 226.19(a)(2); comment 19(a)(3)-1 would be revised to clarify that a separate waiver is required for each waiting period to be waived.

Section 226.19(a)(2)(ii) currently requires creditors to provide corrected disclosures to a consumer if changes to the disclosed APR exceed the specified tolerance (APR correction disclosures). The consumer must receive APR correction disclosures no later than three business days before consummation. Comment 19(a)(3)-2 provides examples that ***show*** whether or not the three-business-day waiting period would need to be waived to allow consummation to occur during the seven-business-day waiting period required by § 226.19(a)(2)(i), in the event of a *bona fide* personal financial emergency. This example would be removed because proposed § 226.19(a)(2)(ii) provides that, after the creditor provides the early disclosures, consumers must receive final disclosures no later than three business days before consummation in all cases. Comment 19(a)(3)-3 provides examples illustrating whether or not, after the seven-business-day waiting period required by § 226.19(a)(2)(i), the three-business-day waiting period triggered by APR correction disclosures would need to be waived to allow consummation to occur, in the event of a *bona fide* personal financial emergency. Comment 19(a)(3)-3 would be revised to reflect that in all cases consumers would have to receive final disclosures after the creditor provides the early disclosures under the proposed rule and that under proposed § 226.19(a)(2)(iv) a disclosed APR that is overstated is considered accurate in specified circumstances. Comment 19(a)(3)-3 would be redesignated as comment 19(a)(3)-2 under the proposed rule.

19(a)(4) Notice

Section 226.19(a)(4) currently requires creditors to disclose that a consumer need not enter into a loan agreement because the consumer has received disclosures or signed a loan application. This requirement would be moved to § 226.38(f)(1) under the proposed rule. Proposed § 226.38 contains all content requirements for disclosures for transactions secured by real property or a dwelling.

19(a)(5) Timeshare Transactions

Section 226.19(a)(5) excludes transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)) (timeshare transactions) from § 226.19(a)(1) through (a)(4), which address the following: (1) The period within which the creditor must provide the early disclosures and the fact that creditors and other persons cannot collect fees from the consumer before the consumer receives the early disclosures; (2) waiting periods after the creditor provides the early disclosures and after the consumer receives corrected disclosures (if any) and before consummation; (3) waiver of waiting periods; and (4) the requirement to disclose a statement that the consumer is not required to consummate a transaction merely because the consumer has received disclosures or signed a loan application.

Section 226.19(a)(5)(ii) contains timing requirements for early disclosures, and § 226.19(a)(5)(iii) contains timing requirements for corrected disclosures, for timeshare transactions. Waiting periods are not required for timeshare transactions, so § 226.19(a)(5) does not contain requirements similar to the requirements in § 226.19(a)(3) for waiving waiting periods for non-timeshare transactions. Section 226.19(a)(5) also does not contain a requirement similar to that in § 226.19(a)(4) that disclosures contain a statement that a consumer need not consummate a transaction simply because the consumer receives disclosures or signs a loan application. Section 226.19(a)(4) would be removed under the proposed rule, and a substantially similar requirement would apply under proposed § 226.38(f)(1).

Proposed § 226.38(f)(1) requires creditors to disclose a statement that a consumer is not obligated to consummate a loan and that the consumer's signature only confirms receipt of a disclosure statement. Proposed § 226.38(f)(1) applies to timeshare transactions. The MDIA exempts timeshare transactions from the requirements of TILA Section 128(b)(2)(C), which existing § 226.19(a)(4) implements. However, the Board does not believe that the Congress intended to exempt timeshare transactions from any requirement to disclose to a consumer that the consumer is not obligated to consummate a loan. Thus, the proposed rule does not exempt timeshare transactions from § 226.38(f)(1).

Section 226.19(a)(5) would be redesignated as § 226.19(a)(4) and cross-references adjusted accordingly under the proposed rule because § 226.19(a)(4) would be removed, as discussed above. Comment 19(a)(5)(ii)--1 would be revised to reflect that the coverage of § 226.19 has been expanded to include transactions not subject to RESPA, as discussed above. Comment 19(a)(5)(iii)--1 would be revised to clarify that timeshare transactions are subject to the general requirement to disclose changed terms under § 226.17(f). Further, comment 19(a)(5)(iii)--1 would be revised to reflect that cross-referenced commentary on variable- or adjustable-rate transactions would be incorporated into proposed § 226.17(c)(1)(iii). Finally, commentary on § 226.19(a)(5)(ii) and (iii) would be redesignated as commentary on § 226.19(a)(4)(ii) and (iii), respectively.

19(b) Adjustable-Rate Loan Program Disclosures

Section 226.19(b) currently requires creditors to provide detailed disclosures about adjustable-rate loan programs and a CHARM booklet if a consumer expresses an interest in ARMs. Section 226.19(b) applies to closed-end transactions secured by a consumer's principal dwelling with a term greater than one year. Creditors must provide these disclosures at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. Creditors need not provide these disclosures, however, if a loan is secured by a dwelling other than a principal dwelling (such as a second home) or real property that is not a dwelling (such as vacant land) or with a term of one year or less. For such transactions, creditors instead must provide the less detailed variable-rate disclosures required by § 226.18(f)(1) within three business days after receiving the consumer's application, as discussed above.

The Board proposes to require creditors to provide ARM loan program disclosures, and additional disclosures discussed below, at the time an application form is provided, for all closed-end transactions secured by real property or a dwelling, regardless of the length of the loan's term. The ARM disclosures and the new disclosures are intended to alert consumers to certain risks before they apply for a loan. The Board believes that consumers should receive this information, even where the loan would be secured by a second home or unimproved real property, and where the loan term is one year or less. In these circumstances, the transaction likely involves a significant asset and consumers should receive information about risks, so that they can decide whether the program or loan feature is appropriate. The Board solicits comment on whether loan program disclosures should be given at the time an application form is provided to a consumer or before the consumer pays a non-refundable fee, whichever is earlier, for transactions other than ARMs.

The Board proposes to require creditors to provide the following disclosures at the time an application is provided:

. The ARM loan program disclosure, for each program in which the consumer expresses an interest (proposed § 226.19(b));

. The "Key Questions about Risk" document published by the Board (proposed § 226.19(c)); and

. The "Fixed vs. Adjustable-Rate Mortgages" document published by the Board (proposed § 226.19(c)).

Creditors no longer would be required to provide the CHARM booklet, as discussed under § 226.19(c).

Current content of ARM loan program disclosures. For adjustable-rate mortgage transactions secured by a consumer's principal dwelling with a term greater than one year, § 226.19(b)(2) requires the creditor to provide disclosures to consumers at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier. Section 226.19(b)(2) requires creditors to provide the following disclosures, as applicable, for each adjustable-rate loan program in which the consumer expresses an interest: (1) The fact that interest rate, payment, or term of the loan can change, (2) the index or formula used in making adjustments, and a source of information about the index or formula, (3) an explanation of ***how*** the interest rate and payment will be determined, including an explanation of ***how*** the index is adjusted, such as by the addition of a margin, (4) a statement that the consumer should ***ask*** about the current margin value and current interest rate, (5) the fact that the interest rate will be discounted, and a statement that the consumer should ***ask*** about the amount of the interest rate discount, (6) the frequency of interest rate and payment changes, (7) any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance, (8) pursuant to TILA Section 128(a)(14), 15 U.S.C. 1638(a)(14), either (a) an historical example based on a $ 10,000 loan amount that illustrates ***how*** interest rate changes implemented according to the terms of the loan program would have affected payments and the loan balance over the past fifteen years or (b) the maximum interest rate and payment for a $ 10,000 loan originated at an initial interest rate in effect as of an identified month and year and a statement that the periodic payments may increase or decrease substantially, (9) an explanation of ***how*** the consumer may calculate the payments for the loan, (10) the fact that the loan program contains a demand feature, (11) the type of information that will be provided in notices of adjustments and the timing of such notices, and (12) a statement that the disclosure forms are available for the creditor's other variable-rate loan programs.

Amendments to maximum rate and historical example disclosures. TILA Section 128(a)(14), 15 U.S.C. 1638(a)(14), requires creditors to disclose at application (a) a statement that the periodic payments may increase or decrease substantially and the maximum interest rate and payment for a $ 10,000 loan originated at a recent interest rate, assuming the maximum periodic increases in rates and payments under the program or (b) an historical example illustrating the effects of interest rate changes implemented according to the loan program. Section 226.19(b)(2)(viii) implements TILA Section 128(a)(14). For the reasons discussed below, the Board proposes not to require creditors to provide either the historical example or the maximum interest rate and payment based on a $ 10,000 loan.

The Board proposes to eliminate the disclosure of the historical example or the maximum interest rate and payment based on a $ 10,000 loan pursuant to the Board's exception and exemption authorities in TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. *See* 15 U.S.C. 1604(f)(1). The Board must make this determination in light of specific factors. *See* 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully and based on that review believes that the proposed exemption is appropriate. Consumer testing conducted by the Board ***showed*** that examples based on hypothetical loan amounts and interest rates may be confusing to consumers and may not provide meaningful benefit. Several participants thought the historical example ***showed*** payments and rates that actually would apply if the participant chose the loan program described in the disclosure. Some participants mistakenly thought that the disclosures described an ARM with a fifteen-year term because the disclosure ***showed*** fifteen years' worth of index changes under an ARM program. Some consumer testing participants said that disclosures based on a hypothetical $ 10,000 loan amount are not useful to them; these consumers said they wanted to see information about rates and terms that would actually apply in the context of their own loan amount.

The Board's exception and exemption authority under Sections 105(a) and (f) does not apply in the case of a mortgage referred to in Section 103(aa), which are high-cost mortgages generally referred to as "HOEPA loans." The Board does not believe that this limitation restricts its ability to apply the proposed changes to all mortgage loans, including HOEPA loans. This limitation on the Board's general exception and exemption authority is a necessary corollary to the decision of the Congress, as reflected in TILA Section 129(*l*)(1), to grant the Board more limited authority to exempt HOEPA loans from the prohibitions applicable only to HOEPA loans in Section 129(c) through (i) of TILA. *See* 15 U.S.C. 1639(l)(1). Here, the Board is not proposing any exemptions from the HOEPA prohibitions. This limitation does raise a question as to whether the Board could use its exception and exemption authority under Sections 105(a) and (f) to except or exempt HOEPA loans, but not other types of mortgage loans, from other, generally applicable TILA provisions. That question, however, is not implicated by this proposal.

Here, the Board is proposing to apply its general exception and exemption authority to eliminate information from the ARM loan program disclosure that consumers find confusing or not useful, for all loans secured by real property or a dwelling, including both HOEPA and non-HOEPA loans, in order to fulfill the statute's purpose of facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. It would not be consistent with the statute or with Congressional intent to interpret the Board's authority under Sections 105(a) and (f) in such a way that the proposed revisions could apply only to mortgage loans that are not subject to HOEPA. Reading the statute in a way that would deprive HOEPA borrowers of improved ARM loan program disclosures is not a reasonable construction of the statute and contravenes the Congress's goal of ensuring "that enhanced protections are provided to consumers who are most vulnerable to abuse." n42

The Board notes that proposed § 226.38(c) would require creditors to provide consumers with the maximum possible interest rate and payment within three business days after the consumer applies for an ARM or a loan in which payments may vary. *See* discussion of § 226.38(c). Consumer testing indicated that consumers find this information very useful when provided in the context of an actual loan offer, in contrast to the information for a hypothetical loan amount in relation to an historical interest rate or the interest rate or for a recently originated loan, as required by TILA Section 128(a)(14).

In addition to removing § 226.19(b)(2)(viii), the proposed rule would remove the related requirement under § 226.19(b)(2)(ix) that creditors explain ***how*** a consumer may calculate payments for the consumer's loan amount based on either the initial interest rate used to calculate the maximum interest rate and payment disclosure or the most recent payment ***shown*** in the historical example. The proposed rule also would eliminate commentary on § 226.19(b)(2)(viii) and (ix). Further, the proposed rule would eliminate comment 19(b)(2)-2(i)(I), which provides that if a loan feature must be taken into account in preparing the historical example of payment and loan balance movements required by § 226.19(b)(2)(viii), variable-rate loans that differ as to that feature constitute separate loan programs under § 226.19(b)(2).

Amendments to other regulations and comments. Comment 19(b)--1 currently provides that in an assumption of an adjustable-rate mortgage 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). Comment 19(b)--2(iv) currently provides that in cases where an open-end credit account will convert to a closed-end transaction subject to § 226.19(b), the creditor must provide the disclosures required by § 226.19(b). The proposed rule would integrate the foregoing commentary into § 226.19(b). Proposed § 226.19(b) would apply to all closed-end mortgage transactions secured by real property or a dwelling regardless of loan security or term, however, as discussed above.

The proposed rule would not require program disclosures to contain an explanation of ***how*** payments will be determined, a disclosure that creditors must make under existing § 226.19(b)(2)(iii). In general, consumer testing participants preferred to receive specific information about the amount of the payments they would have to make, which generally is not available at the time the consumer submits a loan application. Most participants found model loan program disclosures based on current requirements to be confusing because they contained complex terminology. Participants responded much more positively to revised model disclosures, which did not discuss technical issues about ***how*** payments are determined. If a creditor chooses to include an explanation of ***how*** payments will be determined, the explanation must be disclosed apart from the segregated disclosures that proposed § 226.19(b) requires, as a general rule under proposed § 226.37(a)(2), discussed below.

Footnote 45a to § 226.19(b) currently states that creditors may substitute information provided in accordance with variable-rate regulations of other federal agencies for the disclosures required by § 226.19(b). The proposed rule would remove and reserve that footnote and comment 19(b)--4. The footnote was designed to account for the fact that disclosure rules for variable-rate loans issued by HUD, the Federal Home Loan Bank Board, and the Office of the Comptroller of the Currency (OCC) were in effect when the Board adopted § 226.19(b). No comprehensive disclosure requirements for variable-rate loans currently are in effect under the rules of HUD, the OCC, or the Office of Thrift Supervision (OTS), the successor agency to the FHLBB. No such requirements are in effect under the rules of the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) either. Moreover, HUD and the OTS have incorporated the disclosure requirements for variable-rate loans under TILA and Regulation Z into their own regulations by cross-reference. [43] Accordingly, footnote 45a no longer appears to be

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[43] *See* 24 CFR 203.49(g) (HUD); 12 CFR 560.210 (OTS). Some of those agencies have issued regulations that apply to adjustable rate mortgages. *See, e.g.*, 12 CFR 34.22 (OCC) (requiring that an index specified in a national bank's loan documents for an ARM subject to § 226.19(b) be readily available to and verifiable by a borrower and beyond the bank's control). Those requirements do not establish comprehensive disclosure requirements, however.

necessary. The Board requests comment, however, on whether there are potential inconsistencies between any ARM loan disclosures required by other federal financial institution supervisory agencies that Regulation Z should specifically address.

Comment 19(b)--5 currently states that creditors must provide disclosures under § 226.19(b) for certain renewable balloon-payment, preferred-rate, and price-level adjusted mortgages with a fixed interest rate, if they are secured by a dwelling and have a term greater than one year. However, such mortgages lack most of the adjustable interest rate and payment features required to be disclosed under proposed § 226.19(b)(1). For example, the frequency of rate and payment changes for a preferred-rate loan with a fixed interest rate likely cannot be known because the loss of the preferred rate is based on factors other than a formula or a change in the value of an index. Accordingly, under the proposed rule creditors would not be required to provide ARM loan program disclosures under § 226.19(b) for such mortgages. Creditors would be required to provide ARM loan program disclosures for such mortgages if their interest rate is adjustable, however. Cross-references in comment 19(b)--5 would be updated and the comment would be redesignated as comment 19(b)--3 under the proposed rule.

Existing comment 19(b)(2)-2(i) provides examples of particular loan features that distinguish separate loan programs. That commentary would be redesignated as comment 19(b)--5(i) but generally would be unchanged under the proposal, with one exception. Differences among rules relating to loan balance changes would be removed as an example of a particular loan feature that distinguishes separate loan programs. However, differences in the possibility of negative amortization would continue to distinguish separate loan programs, as discussed above. Also, existing comment 19(b)(2)(vii)--2(i) on disclosing a negative amortization feature would be redesignated as comment 19(b)--5 under the proposal.

The requirement to provide loan program disclosures for each loan program in which a consumer expresses an interest generally would remain unchanged. However, comment 19(b)(2)-4 would be revised to state that a creditor "must describe"--rather than "must fully describe"--an ARM loan program. The proposal would reduce some of the material that creditors must disclose about ARM loan programs to highlight information that is most important to consumers, as discussed above.

Use of term "Adjustable-Rate Mortgage" or "ARM." Proposed § 226.19(b) requires the creditor to disclose the heading "Adjustable-Rate Mortgage" or "ARM." Participants in the Board's consumer testing ***showed*** greater familiarity with the term "adjustable-rate mortgage" than with "variable-rate mortgage." Format requirements in proposed § 226.19(b)(4)(iii) state that the statement must be more conspicuous than, and must precede, the other disclosures required by § 226.19(b) and must be located outside of the tables required by proposed § 226.19(b)(4)(iv). Finally, proposed § 226.19(b)(4)(iii) states that creditors may make the "Adjustable-Rate Mortgage" or "ARM" disclosure in a heading that states the name of the creditor and the name of the loan program, such as "ABC Bank 3/1 Adjustable Rate Mortgage."

19(b)(1) Interest Rate and Payment Disclosures

Proposed § 226.19(b)(1) requires the creditor to disclose the following information, as applicable, grouped together under the heading "Interest Rate and Payment," using that term: (1) The introductory period, (2) the frequency of the rate and payment change, (3) the index, (4) the limit on rate changes, (5) the conversion feature, and (6) the preferred rate.

Introductory period. Proposed § 226.19(b)(1)(i) requires the creditor to disclose the period during which the interest rate or payment remains fixed and a statement that the interest rate may vary or the payment may increase after that period. This disclosure is similar to that required under existing § 226.19(b)(2)(i). Proposed § 226.19(b)(1)(i) also requires the creditor to provide an explanation of the effect on the interest rate of having an initial interest rate that is not determined using the index or formula that applies for interest rate adjustments, that is, of having a discounted or premium interest rate. This disclosure requirement is similar to that required under existing § 226.19(b)(2)(v). However, the proposed rule would eliminate the requirement that ARM loan program disclosures state that the consumer should ***ask*** about the amount of the interest rate discount.

Frequency of rate and payment change. Proposed § 226.19(b)(1)(ii) requires the creditor to disclose the frequency of interest rate and payment changes, as currently is required under § 226.19(b)(2)(vi).

Index. Proposed § 226.19(b)(1)(iii) requires the creditor to disclose the index or formula used in making adjustments and a source of information about the index or formula. Proposed § 226.19(b)(1)(iii) also requires the creditor to provide an explanation of ***how*** the interest rate will be determined, including an explanation of ***how*** the index is adjusted, such as by the addition of a margin. Those requirements are contained in existing § 226.19(b)(2)(ii) and (iii). However, the proposed rule eliminates § 226.19(b)(2)(iv), which requires the creditor to disclose that the consumer should ***ask*** about the current margin value and current interest rate.

Limit on rate changes. Currently, requirements for disclosing interest rate or payment limitations and carryover are contained in existing § 226.19(b)(2)(vii). The proposed rule would retain these requirements, under proposed § 226.19(b)(1)(iv). (Existing § 226.19(b)(2)(vii) also contains a requirement to disclose negative amortization. The proposed rule would retain that requirement as proposed § 226.19(b)(2)(ii)(B), as discussed below.)

Conversion feature. Existing comment 19(b)(2)(vii)--3 provides that if a loan program permits consumers to convert a variable-rate loan to a fixed-rate loan, the creditor must disclose that the fixed interest rate after conversion may be higher than the adjustable interest rate before conversion. Comment 19(b)(2)(vii)--3 further provides that the creditor must disclose any limitations on the period during which the loan may be converted, a statement that conversion fees may be charged, and any interest rate and payment limitations that apply if the consumer exercises the conversion option. The proposed rule would integrate this commentary into proposed § 226.19(b)(1)(v).

Preferred rate. Currently, if the variable-rate mortgage transaction is a preferred-rate loan, the creditor must disclose any event that would allow the creditor to increase the interest rate, for example, upon the termination of the consumer's employment with the creditor, whether voluntary or involuntary. *See* comment 19(b)(2)(vii)--4. The creditor also must disclose that fees may be charged when the preferred rate no longer is in effect, if applicable. The Board proposes to retain these requirements in proposed § 226.19(b)(1)(vi).

19(b)(2) Key Questions About Risk

Currently, TILA Section 128(a)(14), 15 U.S.C. 1638(a)(14), and § 226.19(b)(2), require the creditor to disclose only certain information about certain adjustable-rate mortgage features early in the mortgage application process. The Board believes, however, that the consumer should be aware early in the process of other risky features, in addition to adjustable-rate features. For this reason, the Board proposes to require "Key Question" disclosures several times during the process to allow consumers to become aware of and track potentially risky features of their loan. Consumer testing and document design principles suggest that keeping language and design elements consistent between forms improves consumers' ability to identify and track any changes in the information being disclosed. As discussed more fully below, proposed § 226.19(c)(1) would require the creditor to provide a Board publication entitled "*Key Questions to **Ask** about **Your** Mortgage*" at the time an application form is provided to the consumer or before the consumer pays a non-refundable fee, whichever is earlier. The content of this disclosure would be published by the Board and would address important terms related to any type of mortgage, whether fixed-rate or adjustable-rate. At the same time, if the consumer expresses an interest in an ARM loan program, proposed § 226.19(b)(2) would require the creditor to disclose the "Key Questions about Risk" as part of the ARM loan program disclosure. These "Key Questions" would be tailored to the specific ARM loan program in which the consumer has expressed an interest. Subsequently, within three days of the creditor receiving the consumer's application for a specific loan program, proposed § 226.38(d) would require the creditor to make a similar disclosure of "Key Questions about Risk" in the transaction-specific TILA disclosure. The list of the "Key Questions about Risk" for the transaction-specific TILA disclosure required under proposed § 226.38(d) would be the same as that required for the ARM loan program disclosure under proposed § 226.19(b)(2), but the information in the TILA disclosure would be specific to the loan program for which the consumer applied and would apply to fixed-rate or adjustable-rate loan programs. The Board believes that consistently using the "Key Questions" terminology would enhance consumers' ability to identify, review, and understand the disclosed terms across all disclosures, and, therefore, ***avoid*** the uninformed use of credit.

Key questions about risk. As discussed above, current § 226.19(b)(2) requires the creditor to disclose over 12 loan features. Consumer testing ***showed*** that the current format for these disclosures was very difficult for participants to understand. In addition, because the content was so general, participants felt the current disclosure would not help them shop for a mortgage. Therefore, the Board proposes to replace existing § 226.19(b)(2) with a new streamlined ARM loan program disclosure that would contain key information specific to that loan program. The proposed rule would require creditors to disclose certain information grouped together under the heading "Key Questions about Risk," using that term, to draw the consumer's attention to information about the potential adverse impact that certain loan features could have on the consumer's ability to repay the loan. Proposed § 226.19(b)(2)(i) requires the creditor to always disclose information about the following three terms: (1) Rate increases, (2) payment increases, and (3) prepayment penalties. Proposed § 226.19(b)(2)(ii) would require the creditor to disclose information about the following six terms, but only if they are applicable to the loan program: (1) Interest-only payments, (2) negative amortization, (3) balloon payment, (4) demand feature, (5) no-documentation or low-documentation loans, and (6) shared-equity or shared-appreciation. The "Key Questions about Risk" disclosure would be subject to special format requirements, including a tabular format and a question and answer format, as described under proposed § 226.19(b)(4). The Board believes it is critical that consumers be alerted to certain risk factors before they have applied for an ARM, so that they can decide whether they want a loan with those terms. The Board solicits comment on whether there are other risk factors that loan program disclosures or publications should identify.

Required disclosures. As noted above, proposed § 226.19(b)(2)(i) requires the creditor to disclose information about the following three terms: (1) Rate increases, (2) payment increases, and (3) prepayment penalties. The Board believes that these three factors should always be disclosed. Rate and payment increases pose the most direct risk of payment shock. In addition, consumer testing ***showed*** that interest rate and monthly payment were by far the two most common terms that participants used to shop for a mortgage. The Board also believes that the prepayment penalty is a key risk factor because it is critical to the consumer's ability sell the home or to refinance the loan to obtain a lower rate and payments. While the other risk factors are important, those factors are only required to be disclosed as applicable to ***avoid*** information overload.

Rate and payment increases. With respect to rate increases, proposed § 226.19(b)(2)(i)(A) would require the creditor to disclose a statement that the interest rate on the loan may increase, along with a statement indicating when the first rate increase may occur and the frequency with which the interest rate may increase. With respect to payment increases, proposed § 226.19(b)(2)(i)(B) would require the creditor to disclose a statement indicating whether or not the periodic payment on the loan may increase. If the periodic payment on the loan may increase, then the creditor would disclose a statement indicating when the first payment may increase. For payment option loans, if the periodic payment may increase, the creditor would disclose a statement indicating when the first *minimum* payment would increase. Proposed comment 19(b)(2)(i)--1 would clarify that the requirement to disclose when the first rate or payment increase may occur refers to the time period in which the increase may occur, not the exact calendar date. For example, the disclosure may state, "***Your*** interest rate may increase at the end of the 3-year introductory period."

Prepayment penalties. If the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, proposed § 226.19(b)(2)(i)(C) would require the creditor to disclose a statement indicating whether or not a penalty could be imposed if the obligation is prepaid in full. If the creditor could impose a prepayment penalty, the creditor would disclose the circumstances under which and the period in which the creditor could impose the penalty. Because of the importance of prepayment penalties, the proposed rule would also require disclosure of this feature under proposed § 226.38(a)(5). To ***avoid*** duplication, proposed comments 19(b)(2)(i)(C)--1 to --3 cross-reference proposed comments 38(a)(5)-1 to --3 for information about whether there is a prepayment penalty and examples of charges that are or are not prepayment penalties.

Some consumers take out ARM loans planning to refinance or sell the home securing the loan before the rate or payment increases. Consumer testing ***showed*** that while most participants understood the general meaning of the phrase "prepayment penalty," they did not realize that the penalty would apply if they refinanced their loan or sold their home. The Board believes it is important for consumers to understand that a prepayment penalty may be imposed in various circumstances, including paying off the loan, refinancing, or selling the home early.

Additional disclosures. As noted above, proposed § 226.19(b)(2)(ii) requires the creditor to disclose information about the following six terms, as applicable: (1) Interest-only payments, (2) negative amortization, (3) balloon payment, (4) demand feature, (5) no-documentation or low-documentation loans, and (6) shared-equity or shared-appreciation. The Board proposes to require these disclosures only when the feature is present, in contrast to the required disclosures of proposed § 226.19(b)(2)(i). Proposed comment 19(b)(2)(ii)--1 would clarify that "as applicable" means that any disclosure not relevant to a particular ARM loan program may be omitted. Although consumer testing ***showed*** that some participants felt reassured by seeing all of the risk factors whether they were a feature of the loan or not, the Board is concerned about the potential for information overload if the entire list is included on every ARM loan program disclosure.

Interest-only payments. Proposed § 226.19(b)(2)(ii)(A) requires the creditor to disclose a statement that periodic payments will be applied only toward interest on the loan. The creditor would also disclose a statement of any limitation on the number of periodic payments that will be applied only toward interest on the loan and not towards the principal, that such payments will cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount. For payment option loans, the creditor would disclose a statement that the loan gives the consumer the choice to make periodic payments that cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount. Consumer testing ***showed*** that many participants did not understand that there are loans where the periodic payments do not pay down the mortgage principal. The Board believes it is important to alert consumers to this feature in order to ***avoid*** payment shock when the principal becomes due or the periodic payment increases.

Negative amortization. Proposed § 226.19(b)(2)(ii)(B) would require the creditor to disclose a statement that the loan balance may increase even if the consumer makes the required periodic payments. In addition, the creditor would disclose a statement that the minimum payment covers only a part of the interest the consumer owes each period and none of the principal, that the unpaid interest will be added to the consumer's loan amount, and that over time this will increase the total amount the consumer is borrowing and cause the consumer to lose equity in the home. The proposed requirement would replace existing § 226.19(b)(2)(vii), which requires the creditor to disclose any rules relating to changes in the outstanding loan balance, including an explanation of negative amortization. The Board believes that information regarding negative amortization should be disclosed because it is a complicated feature that significantly impacts a consumer's ability to repay the loan. Consumer testing ***showed*** that participants were generally unfamiliar with the term or concept. However, participants generally understood the revised transaction-specific plain-language explanation of negative amortization's causes and effects when disclosed in the "Key Questions" format.

Balloon payment. Proposed § 226.19(b)(2)(ii)(C) requires the creditor to disclose a statement that the consumer will owe a balloon payment, along with a statement of when it will be due. Proposed comment 19(b)(2)(ii)(C)--1 would clarify that the creditor must make this disclosure if the loan program includes a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance. Proposed comment 19(b)(2)(ii)(C)--2 would clarify that the requirement to disclose when the balloon payment is due refers to the time period when it is due, not the exact calendar date. For example, the disclosure may state, "You would owe a balloon payment due in seven years." The Board believes it is important for the consumer to be aware early in the process of any potential payment shock.

Demand feature. Proposed § 226.19(b)(2)(ii)(D) would require the creditor to disclose a statement that the creditor may demand full repayment of the loan, along with a statement of the timing of any advance notice the creditor will give the consumer before the creditor exercises such right. Proposed comment § 226.19(b)(2)(ii)(D)--1 would clarify that this requirement would apply not only to transactions payable on demand from the outset, but also to transactions that convert to a demand status after a stated period. Proposed comments § 226.19(b)(2)(ii)(D)--2 and --3 cross-reference comment 18(i)--2 regarding covered demand features and comment 18(i)--3 regarding the relationship to the payment schedule disclosures. The proposed rule replaces existing § 226.19(b)(2)(x). The Board believes that demand features are rare in consumer mortgage transactions, but pose a considerable risk when present and, therefore, should be brought to the consumer's attention. Consumer testing ***showed*** that participants understood the revised language regarding a demand feature and thought it was important information.

No-documentation or low-documentation loans. Proposed § 226.19(b)(2)(ii)(E) would require the creditor to disclose a statement that the consumer's loan could have a higher rate or fees if the consumer does not document employment, income, or other assets. In addition, the creditor would disclose a statement that if the consumer provides more documentation, the consumer could decrease the interest rate or fees. The Board is concerned that consumers who obtain loans with such features may not understand that they may pay a higher price for this feature.

Shared-equity or shared-appreciation. Proposed § 226.19(b)(2)(ii)(F) requires the creditor to disclose a statement that any future equity or appreciation in the real property or dwelling that secures the loan must be shared, along with a statement of the percentage of future equity or appreciation to which the creditor is entitled, and the events that may trigger such an obligation. The Board is aware that a number of shared-equity and shared-appreciation programs are being offered to consumers, including low- and moderate-income borrowers, on various terms. Consumer testing ***showed*** that participants were generally unfamiliar with the concept of shared-equity or shared-appreciation. However, to the extent that a shared-equity or a shared-appreciation feature is being offered as one of the loan terms, participants stated that they would want it disclosed clearly and prominently.

19(b)(3) Additional Information and Web Site

Currently, § 226.19(b)(2)(iv) and (v) require the creditor to disclose a statement that consumers should ***ask*** the creditor about the current margin value and current interest rate or the amount of any interest rate discount. Existing § 226.19(b)(2)(xii) requires a notice that disclosure forms are available for the creditor's other variable-rate programs. Consumer testing indicated that many consumers skim disclosures quickly and become frustrated if they cannot quickly locate the key information they seek. Reducing the number of non-specific notices in the loan program disclosures would increase the likelihood that consumers will read and understand specific disclosures. Under proposed § 226.19(b)(3), the creditor would be required to disclose that the consumer may visit the Web site of the Federal Reserve Board for more information about adjustable-rate mortgages and for a list of licensed housing counselors in the consumer's area that can help the consumer understand the risks and benefits of the loan. The Board believes that streamlining the notice will reduce information overload.

19(b)(4) Format Requirements

Proposed § 226.19(b)(4) contains format requirements for ARM loan program disclosures. As discussed more fully in proposed § 226.37, consumer testing ***showed*** that the location and order in which information was presented affected consumers' ability to locate and comprehend the information disclosed. Based on these findings, the Board proposes, under § 226.19(b)(4)(i), to require that creditors disclose the "Key Questions about Risk" using the format requirements for similar disclosures required by § 226.38, except as otherwise provided in proposed § 226.19(b)(4). Proposed § 226.19(b)(4)(ii) would require that the disclosures required by paragraphs (b)(1) through (b)(3) be grouped together and placed in a prominent location. Proposed § 226.19(b)(4)(iii) would require that the heading "Adjustable Rate Mortgage" or "ARM" required under § 226.19(b) be more conspicuous than and precede the other disclosures. The heading would be required to be outside the tables required under this paragraph. The creditor would be permitted to use a heading with the name of the loan program and the name of the creditor, such as "XXX Bank 3/1 ARM." Proposed § 226.19(b)(4)(viii) would require the disclosure of the Board's Web site and list of licensed housing counselors to be disclosed outside of the required tables described below.

Proposed § 226.19(b)(4)(iv) to (vii) would require the following special formats for the ARM loan program disclosure: tabular format, question and answer format, highlighted answers, and special order of disclosures. Proposed § 226.19(b)(4)(iv) would require the creditor to provide the interest rate disclosure required under § 226.19(b)(1) and the "Key Questions about Risk" disclosure required under § 226.19(b)(2) in the form of two tables with headings, content and format substantially similar to Model Form H--4(B) in Appendix H. Consumer testing ***showed*** that using a tabular format improved participants' ability to readily identify and understand key information. Only the information required or permitted by paragraphs (b)(1) and (b)(2) would be in this table. In addition, under § 226.19(b)(4)(v), the "Key Questions about Risk" disclosures would be required to be grouped together and presented in the format of a question and answer in a manner substantially similar to Model Form H--4(B) in Appendix H. The table with interest rate information would precede the table with the "Key Questions about Risk." Consumer testing ***showed*** that using a question and answer format improved participants' ability to recognize and understand potentially risky or costly features of a loan. Proposed § 226.19(b)(4)(vi) would require the creditor to disclose each affirmative answer in bold text and in all capitalized letters to highlight the fact that a risky feature is present in the loan. Negative answers (required under proposed § 226.19(b)(2)(i) but not under proposed § 226.(b)(2)(ii)) would be disclosed in non-bold text. Finally, proposed § 226.19(b)(4)(vii) would require the creditor to make the disclosures, as applicable, in the following order: Rate increases under § 226.19(b)(2)(i)(A), payment increases under § 226.19(b)(2)(i)(B), interest-only payments under § 226.19(b)(2)(ii)(A), negative amortization under § 226.19(b)(2)(ii)(B), balloon payments under § 226.19(b)(2)(ii)(C), prepayment penalties under § 226.19(b)(2)(i)(C), demand feature under § 226.19(b)(2)(ii)(D), no-documentation or low-documentation loans under § 226.19(b)(2)(ii)(E), and shared-equity or shared-appreciation under § 226.19(b)(2)(ii)(F). This order would ensure that consumers receive critical information about their payments first. Model Clauses and Samples are proposed at Appendix H--4(C) through H--4(F).

19(c) Publications for Transactions Secured by Real Property or a Dwelling

Based on the results of consumer testing, under the proposal creditors would be required to provide to consumers two Board publications for closed-end transactions secured by real property or a dwelling. The first publication, entitled "*Key Questions to **Ask** about **Your** Mortgage*," discusses loan terms and conditions that are important for consumers to consider when selecting a closed-end mortgage loan. The second publication, entitled "*Fixed vs. Adjustable Rate Mortgages*," discusses the respective costs and benefits of fixed-rate mortgages and ARMs.

Under existing § 226.19(b)(1), the creditor must provide to the consumer a copy of the CHARM booklet published by the Board, or a suitable substitute. The Board consumer tested the CHARM booklet and a sample current loan program disclosure. Few of the consumer testing participants who had obtained an ARM recalled having seen the CHARM booklet. Although many participants thought that the information in the CHARM booklet is useful, particularly the descriptions of "payment shock," prepayment penalties, and negative amortization, most participants thought that the CHARM booklet is too long and that they likely would not read it.

The proposed rule would eliminate the requirement under § 226.19(b)(1) for creditors to provide the CHARM booklet to consumers who express interest in an ARM transaction, and instead, under proposed § 226.38(c)(2) require a brief Board publication ***showing*** the principal differences between a fixed-rate loan and an ARM. Comment 19(b)(1)-- and --2 on the CHARM booklet would be removed accordingly. Also, proposed § 226.38(c)(1) would require creditors to provide to all consumers--regardless of whether they express interest in an ARM--two new single-page Board publications. These new disclosure forms would contain a notice stating where consumers may obtain additional information about ARMs. The Board believes that requiring that creditors provide the "*Key Questions to **Ask** about **Your** Mortgage*" publication and the "*Fixed versus Adjustable Rate Mortgages*" publication without modifications would promote consistency in the information consumers receive about ARMs. Accordingly, proposed § 226.19(c) would require creditors to provide this information "as published."

The Board proposes to require creditors to provide these publications at the time a consumer is given an application form or pays a non-refundable fee, whichever is earlier, for fixed-rate mortgage loans as well as variable-rate mortgage loans. Special rules for when a consumer accesses an application form electronically and when the creditor receives a consumer's application from an intermediary agent or broker are discussed below. The Board solicits comment on whether there are other loan types for which loan program publications should be given at the time an application form is provided to a consumer or before the consumer pays a non-refundable fee, whichever is earlier.

19(d) Timing of Disclosures

Proposed comment 19(c)--1 states that creditors are not required to provide disclosures under proposed § 226.19(c) in cases where an open-end credit account will convert to a closed-end transaction. The "*Key Questions to **Ask** About **Your** Mortgage*" disclosure and the "*Fixed vs. Adjustable Rate Mortgages*" disclosure would not be helpful at that time, because the creditor and consumer already will have entered into a written agreement. By contrast, transaction-specific disclosures are required in such cases under § 226.19(b), both as in effect (*see* comment 19(b)--2(iv)) and as proposed (see proposed § 226.19(b) and comment 19(b)--2).

Existing § 226.19(b) requires that creditors provide variable-rate loan program disclosures at the time an application form is provided to a consumer or before the consumer pays a non-refundable fee, whichever is earlier. Comment 19(b)--2 currently discusses when a creditor should provide such disclosures in cases where the creditor receives a consumer's application through an intermediary agent or broker or a consumer requests an application by telephone. The comment also clarifies that if the creditor solicits applications by mailing application forms, the creditor must send the ARM loan program disclosures with the application form. Existing § 226.19(c) contains requirements for providing variable-rate loan program disclosures when a consumer accesses an application form electronically. (Section 226.17(a)(1) currently permits creditors to provide the ARM loan program disclosures electronically, without regard to the consumer-consent or other provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq*. (E-Sign Act)).

Under the Board's proposal, timing requirements for ARM loan program disclosures would be consolidated in proposed § 226.19(d). These timing requirements also would apply to the provision of the proposed new "*Key Questions to **Ask** About **Your** Mortgage*" and "*Fixed vs. Adjustable Rate Mortgages*" disclosures. Proposed § 226.19(d)(1) contains the general requirement to provide ARM loan program disclosures (if a consumer expresses interest in ARMs) at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. Proposed § 226.19(d)(1) also specifies that creditors must provide ARM loan program disclosures before charging a fee for obtaining a consumer's credit report.

Proposed § 226.19(d)(2) states that if a consumer accesses an ARM loan application electronically, a creditor must provide the disclosures in electronic form, except as provided in § 226.19(d)(2). Proposed § 226.19(d)(2), in turn, states that if a consumer who is physically present in a creditor's office accesses an ARM loan application electronically, the creditor may provide disclosures in either electronic or ***paper*** form. These provisions are consistent with existing comment 19(c)--1(i) and (ii). Comment 19(c)--1 on the form of electronic disclosures would be redesignated as comment 19(d)(2)(i)--1. Commentary on the timing of electronic disclosures, currently contained in comment 19(b)--2(v), would be redesignated as comments 19(d)(2)(i)--2 and 19(d)(2)(ii)--1. Further, under the proposed rule existing § 226.17(a) would be revised to include the proposed new Key Questions to ***Ask*** *About* ***Your*** *Mortgage*" and "*Fixed vs. Adjustable Rate Mortgages*" disclosures among the disclosures creditors may provide without regard to the consumer-consent or other provisions of the E-Sign Act.

Proposed § 226.19(d)(3) contains rules for applications made by telephone or through an intermediary. These rules are consistent with existing comment 1(b)--2. Existing comments 19(b)--2(i) through --2(iii) are redesignated as comments 19(d)(3)-1 through 19(d)(3)-3. Existing comment 19(b)--2(iii) states that the creditor must include the disclosures required by § 226.19(b) with any application form the creditor sends by mail to solicit consumers. This comment is redesignated as proposed comment 19(d)(3)-3 and revised to cover the *Key Questions and Fixed versus Adjustable Rate Mortgages* disclosures required by proposed § 226.19(c).

Proposed § 226.19(d)(4) provides that, where a consumer does not express interest in an ARM until after receiving or accessing an application form or paying a non-refundable fee, the creditor must provide an ARM loan program disclosure(s) within three business days after the consumer expresses such interest to the creditor or the creditor receives notice from an intermediary broker or agent that the consumer has expressed interest in an ARM. This is consistent with existing footnote 45b. Existing comment 19(b)--3 is redesignated as comments 19(d)(3)-1 through 19(d)(3)-3 under the proposed rule.

Proposed § 226.19(d)(5) provides that if the consumer expresses an interest in negotiating loan terms that are not generally offered, the creditor need not provide the disclosures required by § 226.19(b) before an application form is provided. Proposed § 226.19(d)(5) requires that the creditor provide such disclosures as soon as reasonably possible after the terms to be disclosed have been determined and not later than the time the consumer pays a non-refundable fee. Further, proposed § 226.19(d)(5) provides that in all cases the creditor must provide the disclosures required by § 226.19(c) of this section at the time an application form is provided or before the consumer pays a non-refundable fee, including a fee for obtaining a consumer's credit history, whichever is earlier.

Comment 19(b)(2)-1 currently provides that, if ARM loan program disclosures cannot be provided because a consumer expresses an interest in individually negotiating loan terms that the creditor generally does not offer, the creditor may provide disclosures reflecting those terms as soon as reasonably possible after the terms have been decided upon, but not later than the time the consumer pays a non-refundable fee. Proposed § 226.19(d)(5) incorporates that guidance into the regulation. Further, comment 19(b)(2)-1 provides that if, after an application form is provided or the consumer pays a non-refundable fee, a consumer expresses an interest in an adjustable-mortgage loan program for which the creditor has not provided the ARM loan program disclosures, the creditor must provide such disclosures as soon as reasonably possible. Proposed § 226.19(d)(6) incorporates that guidance into the regulation. The foregoing guidance is removed from comment 19(b)(2)-1 (which the proposed rule would redesignate as comment 19(b)--4) because under the proposed rule timing rules for ARM loan program disclosures are contained in § 226.19(d) rather than § 226.19(b).

Section 226.20 Subsequent Disclosure Requirements

20(b) Assumptions

Section 226.20(b) currently requires post-consummation disclosures if the creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligator on an existing residential mortgage transaction. The Board proposes technical changes to § 226.20(b) and associated commentary to reflect the new format and content disclosure requirements for transactions secured by real property or a dwelling under §§ 226.37 and 226.38.

20(c) Rate Adjustments

For ARM transactions subject to § 226.19(b), § 226.20(c) currently requires creditors to mail or deliver to consumers a notice of interest rate adjustment at least 25, but no more than 120, calendar days before a payment at a new level is due. Section 226.20(c) also requires creditors to mail or deliver to consumers an adjustment notice at least once each year during which an interest rate adjustment is implemented without an accompanying payment change.

Those adjustment notices must state: (1) The current and prior interest rates for the loan; (2) the index values upon which the current and prior interest rates are based; (3) the extent to which the creditor has foregone any increase in the interest rate; (4) the contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance; and (5) the payment, if different from the payment due after adjustment, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term. Model clauses in Appendix H--4(H) illustrate ***how*** creditors may comply with the requirements of § 226.20(c).

Discussion

The Board adopted the requirements for post-consummation disclosures (subsequent disclosures) in 1987. The minimum advance notice of a rate adjustment was set at 25 days to track the rules of the Office of the Comptroller of the Currency (OCC) and to provide creditors with flexibility in giving adjustment notices for a variety of ARMs. *See* 52 FR 48665, 48668; Dec. 24, 1987. Since 1987, ARMs have grown in popularity, especially from 2003 to 2007. Beginning in 2007, ARM growth began to slow as consumers experienced difficulty repaying such loans and concerns grew about the risk of payment shock ARMs pose.

Because ARMs pose the risk of payment shock, it is critical that consumers receive notice of ARM payment changes so they can prepare to make higher payments if necessary. If the new payments are unaffordable, borrowers need time to seek a refinance loan with lower payments or make other arrangements. Even if a consumer can afford a higher payment, the consumer may want to refinance into a fixed-rate loan for payment certainty or into another ARM loan with lower payments. It is particularly important that consumers with subprime loans receive adequate notice before a payment increase, as these borrowers tend to be more vulnerable to payment shock.

The Board believes the current 25-day notice is insufficient to allow many consumers to refinance into a loan with affordable payments or to make other arrangements. In the "Subprime Mortgage Guidance" issued in 2007, the Board, the OCC, FDIC, OTS, and NCUA stated that consumers should be given at least 60 days before an ARM adjustment in which to refinance without paying a prepayment penalty. Several consumer advocates who commented on the Board's 2008 HOEPA Final Rule stated that consumers with subprime ARMs may need significant time in which to seek out a refinancing, in some cases as much as 6 months.

The Board's Proposal

The Board proposes to require creditors to mail or deliver a notice of an interest rate adjustment at least 60 days before payment at a new level is due, instead of the current 25-day provision. Creditors would provide notice annually where interest rate changes are made without accompanying payment changes under the proposed. Proposed § 226.20(c)(1)(i) contains timing requirements for circumstances where a payment change accompanies an interest rate adjustment, and proposed § 226.20(c)(ii) contains timing requirements for circumstances where no payment change accompanies interest rate changes made during a year.

Proposed § 226.20(c)(2) contains content requirements for disclosures required where a payment change accompanies an interest rate adjustment. Proposed § 226.20(c)(3) contains content requirements for disclosures required once each year where no payment change accompanies an interest rate change. Whether or not a payment change is made, under proposed § 226.20(c)(4) creditors would disclose the following information: (1) The date until which the creditor may impose a prepayment penalty if the consumer prepays the obligation in full, if applicable; (2) a phone number the consumer may call to obtain additional information about the loan; and (3) a telephone number and Internet Web site for HUD-licensed housing counselors. Proposed § 226.20(c)(5) contains formatting requirements for discloses required by proposed § 226.20(c).

Section 226.20(c) currently provides that an adjustment to the interest rate with or without a corresponding adjustment to the payment in an adjustable-rate mortgage subject to § 226.19(b) is an event requiring new disclosures to the consumer. The proposed rule would retain this provision. Comment 20(c)--1 provides that the requirements of § 226.20(c) apply where the interest rate and payment change due to the conversion of an adjustable-rate mortgage subject to § 226.19(b) to a fixed-rate mortgage. The proposed rule would incorporate this guidance into proposed § 226.20(c). Further, the proposed rule would revise comment 20(c)--1 for clarity and to remove commentary on timing requirements, because timing requirements are contained in proposed § 226.20(c)(1).

The proposed rule would revise comment 20(c)--2 to clarify that price-level adjusted mortgages and similar mortgages are not subject to the disclosure requirements of § 226.20(c) because they are not subject to the disclosure timing requirements of § 226.19(b), as discussed above. The proposed rule would remove the commentary stating that "shared-equity" and "shared-appreciation" mortgages are not subject to the disclosure requirements of § 226.20(c) to conform with the removal of reference to such mortgages as examples of variable-rate transactions from comment 17(c)(1)-11 (redesignated as proposed comment 17(c)(1)(iii)--4), as discussed above. Under the proposed rule, whether or not creditors must provide ARM adjustment notices for a shared-equity or shared-appreciation mortgage depends on whether such mortgage has an adjustable rate or a fixed rate. Shared-equity and shared-appreciation mortgages with a fixed rate would not be considered adjustable-rate mortgages under the proposed rule.

20(c)(1) Timing of Disclosures

The Board proposes to require creditors to mail or deliver a notice of an interest rate adjustment for a closed-end ARM at least 60, but no more than 120, days before payment at a new level is due. This proposal is designed to provide borrowers with enough advance notice about an impending rate and payment change to enable them to refinance the loan if they cannot afford the adjusted payment. Even if consumers do not need or want to refinance a loan, they may need time to adjust other spending in order to afford higher mortgage loan payments.

The Board issued the current rule requiring 25 days' notice before a payment at a new level is due in 1987. Home Mortgage Disclosure Act (HMDA) data for the years 2004 through 2007 suggest that a requirement to provide ARM adjustment 60, rather than 25, days before payment at a new level is due more closely reflects the time needed for consumers to refinance a loan. [44] In each of those years, for first-lien refinance loans, the period between loan application and origination was 25 days or less for 50 percent of the loans originated, 45 days or less for 75 percent of the loans originated, and 65 days or less for 90 percent of the loans originated. (These data do not include time needed to compare available refinance loans.) Requiring creditors to provide an ARM adjustment notice at least 60 days before payment at a new level is due would better enable consumers to arrange to make a higher payment (if applicable) without missing a payment or paying less than the amount due.

The Board believes that a 60-day minimum notice requirement is consistent with many existing ARM agreements. For most ARMs, creditors base the calculation of interest rate changes on the value of an index 30 or 45 days prior to the effective date of a rate change (calculation date). Creditors generally refer to the period from the calculation date to the effective date of the interest rate change as the "look-back period." (Interest rate change dates tend to be the first of a month to correspond with payment due dates.) In turn, payment in the new amount is due on the first day of the month following the month in which interest accrued at the new rate.

Thus, for most ARM loans creditors know what the new interest rate and payment will be well before payment at a new level is due, even assuming a week-long lag between publication of an index's level and the creditor's verification of that level. In fact, many creditors mail or deliver notice of an interest rate and payment change 60 or more days before payment at a new level is due.

However, some ARM agreements may provide for shorter look-back periods. For example, the calculation date for some ARM products is the first business day of the month that precedes the effective date of the interest rate change. The first day of that month may not be a business day, in which case the look-back period would be fewer than 30 days. In addition, it takes time for index levels to be reported and for creditors to confirm the index level and prepare disclosures for delivery or mailing.

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[44] HMDA data consist of information reported by about 8,600 home lenders, including all of the nation's largest mortgage originators. Reported loans are estimated to represent about 80 percent of all home lending nationwide. Accordingly, HMDA data likely provide a broadly representative view of U.S. home lending. Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner,*The 2007 HMDA Data*, 94 Fed. Reserve Bulletin A107 (Dec. 23, 2008).

Proposed § 226.20(c)(1) requires creditors to provide advance notice of an adjustment at least 60, but no more than 120, days before *payment* at a new level is due, not before the interest rate changes. Comment 20(c)--1 would be revised to reflect the increase in the required advance notice of a payment adjustment. Proposed comment 20(c)(1)-1 provides that if an adjustable-rate feature is added when an open-end credit account is converted to an adjustable-rate transaction, creditors must provide disclosures under § 226.20(c)(1) where payments change due to conversion of a transaction subject to § 226.19(b) to a fixed-rate transaction. Because relevant payment changes under existing and proposed § 226.20(c) are those due to interest changes, proposed comment 20(c)(1)-2 clarifies that payment changes due to adjustments in property tax obligations or premiums for mortgage-related insurance do not trigger requirements to disclose interest rate and payment adjustments.

The Board solicits comment on the operational changes creditors and servicers would need to make to provide disclosures at least 60 days before payment at a new level is due. Are there indices that are published at times that would make compliance with such a rule difficult? Are reported levels for particular indices difficult to confirm within a few days? The Board requests comment on whether requiring creditors to provide 45, rather than 60, days' advance notice of a payment change better balance concerns about providing sufficient notice to consumers and sufficient time for creditors to verify reported indices and prepare disclosures.

A look-back period of 45 days likely provides ample time for a creditor to determine a loan's new interest rate and provide disclosures at least 60 days before payment at a new level is due, as discussed above. Are there reasons why a look-back period of forty-five days is not feasible for certain loan types for which a shorter look-back period is common, for example, subordinate-lien loans? Also, where an interest rate and payment adjustment is due to the conversion of an adjustable-rate mortgage to a fixed-rate mortgage under a written agreement, should creditors continue to be required to provide an adjustment notice at least 25, rather than at least 60, days before payment at a new level is due?

Coverage. Section 226.20(c) currently applies to transactions subject to § 226.19(b), which applies to closed-end ARMs secured by a consumer's principal dwelling with a term greater than one year. The Board is proposing to apply § 226.19(b) to all closed-end ARMs secured by real property or a dwelling, as discussed above. Proposed § 226.20(c) would apply to the same category of transactions.

The Board recognizes that currently creditors need not provide ARM adjustment notices under existing § 226.20(c) for a short-term transaction, such as a construction loan, with an adjustable rate. The Board solicits comment on whether a 60-day notice period is appropriate for such loans and if not, what period would be appropriate and still provide consumers sufficient notice of a payment change.

Existing ARM loan agreements. The Board is aware that some ARM loan agreements may provide for a look-back period that is too short for the creditor to be able to provide an adjustment notice at least 60 days before payment at a new level is due. The Board seeks comment on the number or proportion of existing ARM loan agreements under which creditors or servicers could not comply with a minimum 60-day advance notice requirement.

20(c)(2)(i)

Where a payment change accompanies an interest rate change, proposed § 226.20(c)(2)(i) requires creditors to disclose a statement that changes are being made to the interest rate and the date such change is effective. Proposed § 226.20(c)(2)(i) also requires creditors to state that more detailed information is available in the loan agreements. Proposed § 226.20(c)(5)(ii) requires that these disclosures appear before the other required disclosures, as discussed below.

20(c)(2)(ii)

Proposed § 226.20(c)(2)(ii) requires creditors to provide the following disclosures for covered loans in the form of a table: (1) The current and new interest rates; (2) if payments are interest-only or negatively amortizing, the amount of the current and new payment allocated to pay interest, principal, and property taxes and mortgage-related insurance, as applicable; and (3) the current and new periodic payment amounts and the due date for the first new payment. This content is substantially similar to the content of the "Payment Summary" table in the TILA disclosures provided before consummation for most types of ARMs. (Under proposed § 226.38, the "Payment Summary" table for negatively amortizing ARMs differs from the "Payment Summary" table for other ARMs, as discussed below.) Under proposed § 226.20(c)(5)(iii), this table would have to contain headings, content, and format substantially similar to those in Appendix H--4(G), as discussed below.

Currently, ARM adjustment notices need not state ***how*** payments are allocated among principal, interest, and escrow accounts. The Board believes that a table ***showing*** payment allocations would benefit consumers with interest-only or negatively amortizing loans. Participants in the Board's consumer testing generally understood a sample form with a table ***showing*** the transition from interest-only payments to payments of both principal and interest. Further, all participants correctly identified the new payment and the due date of the first payment at the new level ***shown*** in the table. Almost all participants recognized the increase in the interest rate and amounts escrowed for taxes and property-related insurance and that part of the new payment would be allocated to pay principal.

Comment 20(c)(1)-1 on disclosing "current" and "prior" interest rates would be revised for clarity to refer instead to "current" and "new" interest rates. Under the proposed rule, § 226.20(c)(3) contains content requirements for annual notice disclosures and § 226.20(c)(2) contains content requirements for payment change notices. Accordingly, commentary on disclosure where no payment change has occurred during a year would be removed from comment 20(c)(1)-1.

20(c)(2)(iii)

Creditors currently must disclose the index values upon which the prior and new interest rates are based, under existing § 226.19(c)(2). Some consumer testing participants had difficulty understanding the relationship among an index, a margin, and an interest rate. Accordingly, proposed § 226.20(c)(2)(iii) substitutes a requirement that disclosures contain a description of the change in the index or formula for the disclosure required under existing § 226.20(c)(2). For example, rather than disclose that payments previously were based on a 1-year LIBOR rate of 3.75 and now would be based on a new rate of 5.75, a creditor might disclose the following: "***Your*** interest rate will change due to an increase in the 1-year LIBOR index." Further, proposed § 226.20(c)(2)(iii) requires creditors to disclose any application of previously foregone increases together with the description of the change in the index or formula.

A simple statement of the occurrence that caused the interest rate and payment to change likely conveys a level of information suitable for most consumers' needs. In consumer testing conducted for the Board, participants indicated that they found explanations of interest rates difficult to follow. Thus, providing more information would likely result in information overload. Consumers who prefer more information can review the loan agreement to determine the interaction between the interest rate and the index and margin or to learn more about the formula used to determine the interest rate. The loan agreement also will contain information about ***how*** the creditor may apply previously foregone interest. For these reasons, proposed § 226.20(c)(2)(ii) does not require creditors to disclose the current and prior index values. Comment 20(c)(2)-1 would be removed accordingly.

Comment 20(c)(4)-1, which discusses the types of contractual effects § 226.20(c) requires creditors to disclose--for example, effects on the loan term and balance--also would be removed under the proposed rule. Proposed comments 20(c)(2)(vi)-2, 20(c)(2)(vii)-1, and 20(c)(3)(v)-1 reflect the removed commentary, however.

20(c)(2)(iv)

Existing § 226.20(c)(3) requires that a creditor disclose the extent to which the creditor has foregone any increase in the interest rate. This requirement would be redesignated as proposed § 226.20(c)(2)(iv). Further, proposed § 226.20(c)(iv) would require creditors to disclose the earliest date a creditor may apply foregone interest to future adjustments, subject to any rate caps. Proposed comment 20(c)(3)(iv)-1 states that creditors may rely on proposed comment 20(c)(2)(iv)-1 in determining to which transactions the requirement to disclose foregone interest applies and ***how*** to disclose such increases. Proposed comment 20(c)(3)(iv)-1 clarifies that creditors need not disclose the earliest date the creditor may apply foregone interest in notices provided annually when no payment change occurs during a year.

20(c)(2)(v)

Proposed § 226.20(c)(2)(v) would require creditors to disclose limits on interest rate or payment increases at each adjustment, if any, and the maximum interest rate or payment over the life of the loan. This is consistent with the disclosure of rate change limits in the "More Information about ***Your*** Payments" section of the disclosures provided within three business days of application. *See* proposed § 226.38(e).

20(c)(2)(vi)

Currently, where the required loan payment is different from the payment disclosed under § 226.20(c)(4), § 226.20(c)(5) requires a creditor to disclose the payment required to fully amortize the loan over the remainder of the loan term. This requirement would be redesignated as proposed § 226.20(c)(2)(vi). Further, in all cases creditors would disclose a statement regarding whether or not part of the new payment will be allocated to pay the loan principal. This is consistent with the focus on the impact of loan payments on loan principal in the proposed new "Key Questions" disclosure in § 226.19(c) and the "Key Questions about Risk" section of the disclosure creditors provide within three business days of application in proposed § 226.38(d).

Existing comment 20(c)(5)-1, on fully amortizing payments, would be redesignated as comment 20(c)(2)(vi)-1. The comment also would be revised for clarity and to update cross-references. Consistent with existing comment 20(c)(4)-1, proposed comment 20(c)(2)(vi)-2 clarifies that the creditor must disclose any change in the term or maturity of the loan if the change resulted from the rate adjustment.

20(c)(2)(vii)

Existing § 226.20(c)(4) requires creditors to disclose the loan balance. This requirement would be redesignated as proposed § 226.20(c)(2)(vii) and would require creditors to disclose the loan balance as of the effective date of the interest rate adjustment. Proposed comment 20(c)(2)(vii)-1 clarifies that the balance required to be disclosed is the balance on which the new adjusted payment is based. This is consistent with existing comment 20(c)(4)-1.

20(c)(3) Content of Annual Interest Rate Notice

Existing § 226.20(c) requires creditors to provide ARM adjustment notices at least once each year during which an interest rate adjustment is implemented without an accompanying payment change. This requirement would be redesignated as proposed § 226.20(c)(3). Currently, § 226.20(c) contains a single list of required disclosures creditors must provide as applicable, in a payment change notice and an annual notice of interest rate changes without payment changes. Proposed § 226.20(c)(3) specifies the disclosures that are applicable for purposes of annual notices.

20(c)(3)(i)

Under proposed § 226.20(c)(3)(i), where no payment adjustment has been made during a year, the creditor must disclose that the interest rate on the loan has changed without changing the payments the consumer must make. Further, proposed § 226.20(c)(3)(i) requires creditors to disclose the specific time period for which the annual notice discloses interest rates that were not accompanied by payment changes. Proposed § 226.20(c)(5)(ii) requires that this disclosure appear before the other required disclosures, as discussed below.

20(c)(3)(ii)

Under proposed § 226.20(c)(3)(ii), a creditor must disclose the highest and lowest interest rates applied during the year in which no payment change has accompanied interest rate changes. Creditors would not disclose all interest rates applied to a transaction if the payment has not changed. By contrast, existing comment 20(c)-1 provides that creditors either may disclose all interest rates that applied or the highest and lowest rates. The Board believes that a simple and clear disclosure of the highest and lowest interest rates applied better conveys to consumers the impact of interest rate changes than does a list of all of the interest rates applied. This is especially true where interest rates change more frequently than monthly.

20(c)(3)(iii)

Creditors disclose the extent to which the creditor has foregone any increase in the interest rate under existing § 226.20(c)(3). This requirement would be contained in proposed § 226.20(c)(3)(iii) for notices where payment changes do not accompany interest rate changes made during a year.

20(c)(3)(iv)

Proposed § 226.20(c)(3)(iv) requires creditors to disclose the maximum interest rate that may apply over the life of the loan. This is consistent with the disclosure of rate change limits in the "More Information about ***Your*** Payments" section of the disclosures provided within three business days of application in proposed § 226.38(e).

20(c)(3)(v)

Existing § 226.20(c)(4) requires creditors to disclose the loan balance. Under the proposal, this requirement would be contained in proposed § 226.20(c)(3)(v) for purposes of annual notices where payment changes do not accompany interest rate changes. Creditors would disclose the loan balance as of the last date of the year covered by the disclosure. Proposed comment 20(c)(3)(v)-1 clarifies that the balance required to be disclosed is the balance on which the new adjusted payment is based. This is consistent with existing comment 20(c)(4)-1.

20(c)(4) Additional Information

Proposed § 226.20(c)(4) requires that ARM adjustment notices creditors provide information about prepayment penalties, contacting the creditor, and locating housing counseling resources. Proposed § 226.20(c)(5)(ii) requires that these additional disclosures be located directly below the required interest rate disclosures, as discussed below.

20(c)(4)(i)

Proposed § 226.20(c)(4)(i) requires creditors to disclose the last date the creditor may impose a penalty if the consumer prepays the obligation in full and the amount of the maximum penalty possible before that date, if applicable. Under proposed § 226.20(c)(4)(i), if an ARM has a prepayment penalty, the creditor must disclose the required information whether or not a payment change accompanies the interest rate change. The Board believes that disclosures regarding a prepayment penalty would assist consumers in determining when to seek a refinance loan. When presented with a sample ARM adjustment notice for a loan with a prepayment penalty, almost all consumer testing participants recognized that a prepayment penalty would apply if they obtained a refinance loan before a specified date.

Proposed § 226.20(c)(4)(i) provides that the creditor shall disclose the maximum prepayment penalty possible if the consumer prepays in full between the date the creditor delivers or mails the ARM adjustment notice and the last day the creditor may impose the penalty. The Board requests comment on whether creditors should determine the maximum prepayment penalty during some other period, for example between the date the creditor prepares the ARM adjustment notice and the last day the creditor may impose the penalty.

20(c)(4)(ii)

Proposed § 226.20(c)(4)(ii) requires creditors to disclose a phone number to call for additional information about the consumer's loan. Creditors must provide this information whether or not a payment change accompanies an interest rate change, under the proposed rule. Most consumer testing participants responded positively to tested disclosures stating ***how*** to contact their lender with questions and stated that they would call their lender if they realized they were unable to afford higher payments on an ARM.

20(c)(4)(iii)

Proposed § 226.20(c)(4)(iii) requires creditors to disclose a phone number and an Internet Web site consumers may use to obtain a list of HUD-licensed housing counselors. The proposed rule requires creditors to provide this disclosure whether or not a payment change accompanies an interest rate change. Most consumer testing participants thought that information about ***how*** to locate a HUD-licensed housing counselor would be useful to consumers. Some said that they would use the information themselves if they had difficulty affording payments.

20(c)(5) Format of Disclosures

20(c)(5)(i)

Proposed § 226.20(c)(5)(i) requires that the heading, content, and format of the disclosures required by § 226.20(c) be substantially similar to the heading, content, and format of the model form in Appendix H-4(G), where an interest rate adjustment is accompanied by a payment change, or the model form in Appendix H-4(K), where a creditor provides an annual notice of interest rate adjustments without an accompanying payment change. Proposed § 226.20(c)(5)(i) also requires that the disclosures required by § 226.20(c) be placed in a prominent location. (Comment 37(d)-1 states that disclosures meet the prominent location standard if they are located on the first page and on the front side of the disclosure statement.)

Further, under proposed § 226.20(c)(5)(i) the interest rate disclosures required by § 226.20(c)(2) (where a payment change accompanies an interest rate change) or § 226.20(c)(3) (where no payment change occurs during a year) must be grouped together with the additional disclosures on prepayment penalties, contacting the creditor or servicer for loan information, and locating housing counseling resources required by proposed § 226.20(c)(4). These grouped disclosures must be segregated from everything else.

20(c)(5)(ii)

Under proposed § 226.20(c)(5)(ii), the statement that changes are being made to the interest rate and payments (under proposed § 226.20(c)(2)(i)) or that the interest rate has changed without accompanying payments changes (under proposed § 226.20(c)(3)(i)) must precede the other required disclosures. The additional disclosures on information on prepayment penalties, contacting the creditor, and housing counseling resources required by proposed § 226.20(c)(4) must follow the interest rate disclosures, under proposed § 226.20(c)(5)(ii).

20(c)(5)(iii)

Under proposed § 226.20(c)(5)(iii), where a payment change accompanies an interest rate adjustment, the interest rate and payment change disclosures required by proposed § 226.20(c)(2)(ii) must contain headings, content, and format substantially similar to those in the table contained in Appendix H-4(G). The textual disclosures required by proposed § 226.20(c)(2)(iii) through (vii) must be located directly below the table. Further, the format requirements in § 226.37 apply to ARM adjustment notices, as discussed below.

Regulations of other agencies.

Footnote 45c to § 226.20(c) currently states that creditors may substitute information provided in accordance with variable-rate subsequent disclosure regulations of other federal agencies for the disclosure required by § 226.20(c). The Board adopted footnote 45c in 1987, a time when OCC, FHLBB, and HUD regulations contained subsequent disclosure requirements for ARMs. *See* 52 FR 48665, 48671; Dec. 24, 1987. The proposed rule would remove footnote 45c. No comprehensive disclosure requirements for variable-rate mortgage transactions presently are in effect under the regulations of the other Federal financial institution supervisory agencies, as discussed above.

20(d) Periodic Statement for Negative Amortization Loans

The Board proposes to require creditors to provide periodic statements for payment option ARMs with a negative amortization feature that are secured by real property or a dwelling. Such ARMs permit consumers to choose the amount paid (above a specified minimum) each period. In 2006, the Board, the OCC, the OTS, the FDIC, and the NCUA expressed concerns about consumer understanding of ***how*** such loans function and of the effect of negative amortization on a loan's balance in the Interagency Guidance on Nontraditional Mortgage Product Risks issued in 2006. 71 FR 58609; October 4, 2006. The agencies issued related sample illustrations that include a payment summary table ***showing*** the impact of various payment options on the loan balance that creditors may include with periodic statements for payment option ARMs. 72 FR 31825, 31831; Jun. 8, 2007. The illustrations were not consumer-tested. The Board's proposed model table ***showing*** payment options is similar to the summary table the agencies issued but has been revised based on consumer testing.

Payment option ARMs are complex products. Most participants in the Board's consumer testing were unfamiliar with such loans and with negative amortization generally. These loans present consumers with choices each month, and ***how*** the consumer exercises his or her choice may result in negative amortization and much higher payments when the consumer must begin to make fully amortizing payments or a balloon payment. The Board believes that consumers should be informed of the consequences of making minimum payments on such a loan. Thus, the Board proposes to require creditors to provide a periodic statement that describes a consumer's payment options and the effects of making payments in those amounts. [45]

20(d)(1) Timing and Content of Disclosures

For closed-end transactions secured by real property or a dwelling that permit the consumer to select among multiple payment options that include an option that results in negative amortization, proposed § 226.20(d) requires creditors to provide a periodic statement that discloses payment options not later than fifteen business days before

[45] The Federal financial institution supervisory agencies (the Board, the OCC, the OTS, the FDIC, and the NCUA (collectively, the agencies)) expressed concerns about consumer understanding of ***how*** such loans function and of the effect of negative amortization on a loan's balance in the Interagency Guidance on Nontraditional Mortgage Product Risks issued in 2006. 71 FR 58609; October 4, 2006. The agencies issued related sample illustrations that include a payment summary table ***showing*** the impact of various payment options on the loan balance that creditors may include with periodic statements for payment option ARMs. 72 FR 31825, 31831; Jun. 8, 2007. Proposed § 226.20(d) requires creditors to provide periodic statements that disclose payment options in the form of a table. The proposed model table is similar to the summary table the agencies issued but has been revised based on consumer testing.

a payment is due. Where payment at a new level is due, however, proposed § 226.20(c) requires creditors to provide an ARM adjustment notice no later than 60 days beforehand, as discussed above.

20(d)(1)(i) Payment

Proposed § 226.20(d)(1)(i) would require creditors to disclose, based on the interest rate in effect at the time the disclosure is made, the payment amount required to: (1) Pay off the loan balance in full by the end of the term through regular periodic payments, without a balloon payment; (2) prevent negative amortization, if the legal obligation explicitly permits the consumer to elect to pay interest only without paying principal; and (3) pay the minimum payment required under the legal obligation. Under the proposed rule, creditors would provide each disclosure as applicable. For example, if the terms of the loan obligation did not provide the option for consumers to make interest-only payments, creditors would disclose only the required minimum payment and the fully amortizing payment.

In consumer testing conducted for the Board, participants generally understood the options presented in the table. Most were able to understand that making the minimum required payment would cause their loan balance to grow. They also understood that making a fully amortizing payment would be a safe choice and would pay their loan balance off over time.

Proposed comment 20(d)(1)-1 clarifies that creditors must provide a summary table under § 226.20(d) for covered loans that allow a consumer to choose to make a payment that results in negative amortization even if the initial payments required do not negatively amortize the loan. Proposed comment 20(d)(1)-1 states that a payment summary table need only contain those disclosures that apply to payment options available to a consumer, however. For example, the proposed comment states that if a negatively amortizing loan recasts and a consumer must begin to make fully amortizing payments, the payment summary table need not disclose payments other than the fully amortizing payment.

Proposed comment 20(d)(1)-2 states that creditors may base all disclosures on the assumption that payments will be made on time and in the amounts required by the terms of the legal obligation, disregarding any possible inaccuracies resulting from consumers' payment patterns. This is consistent with existing comment 17(c)(2)(i)-3 and proposed revisions to comment 17(c)(1)-1, discussed above. Proposed comment 20(d)(1)-2 clarifies, however, that creditors may not base disclosures for loans with a negatively amortizing feature on the fully amortizing, interest-only, or other payment unless that payment is the amount the consumer is required to pay under the legal obligation. Finally, proposed comment 20(d)(1)(i)-1 states that creditors may rely on comment 38(c)(5)-1 to determine whether a payment is a regular periodic payment or a balloon payment.

20(d)(1)(ii) Effects

Proposed § 226.20(d)(1)(ii) requires creditors to disclose the effects of making payments in the amounts required to be disclosed under proposed § 226.20(d). Appendix H-4(L) contains a proposed model form with accessible language on fully amortizing payments, interest-only payments, and negatively amortizing minimum payments. First, the model form states that a fully amortizing payment will cover all the interest owed in a particular payment plus some principal and decrease the loan balance and that if the consumer regularly makes the fully amortizing payment the consumer will pay off the loan on schedule. Second, the model form states that an interest-only payment will cover all the interest owed in a particular payment but none of the principal, that the consumer's balance will remain the same, and that if the consumer regularly makes interest-only payments the consumer will have to make larger payments as early as a specified date. Third, the model form states that a minimum payment will cover only part of the interest owed in a particular payment and result in a specified amount of unpaid interest being added to the loan balance and that if the consumer makes a minimum payment the consumer in effect will be borrowing more money and will lose home equity. Further, the model form states that if a consumer regularly makes minimum payments the consumer will have to make significantly larger payments as early as a specified date.

Proposed comment 20(d)(1)(ii)-1 states that the disclosures required by § 226.20(d) must be consistent with the terms of the legal obligation. For example, the proposed comment clarifies that disclosures may not state that making fully amortizing payments on an interest-only loan will reduce a consumer's loan balance if the creditor will not apply payments that exceed the interest-only payment to principal.

20(d)(1)(iii) Unpaid Interest

Proposed § 226.20(d)(1)(iii) requires creditors to disclose the amount that will be added to the loan balance due to unpaid interest, if the consumer elects to make a payment that results in negative amortization.

20(d)(2) Format of Disclosures

Proposed § 226.20(d)(2)(i) requires that periodic statements for loans with a negative amortization feature contain payment disclosures with content substantially similar to the content of Form H-4(L) in Appendix H. Further, the proposed provision requires creditors to make payment disclosures in a payment summary table with headings, content, and format substantially similar to Form H-4(L). Proposed § 226.20(d)(2)(ii) requires that disclosures be placed in a prominent location (that is, located on the first page and on the front side of the disclosure statement, as clarified by proposed comment 37(d)(1)-1), with one exception. Under proposed § 226.20(d)(2)(ii), if the payment disclosures required by § 226.20(d) are made together with the ARM adjustment disclosures required by § 226.20(c), the payment disclosures must be located directly below the ARM adjustment disclosures.

Proposed § 226.20(d)(2)(iii) requires that the table required by § 226.20(d)(2)(i) contain only the information required by § 226.20(d)(1). Other information may be presented with the table under the proposed rule, provided that such information appears outside of the required table.

Alternatives not proposed. The Board is proposing to apply the requirement to provide periodic statements that contain a payment summary table, for payment option ARMs with a negative amortization feature that are secured by real property or a dwelling. The Board considered requiring periodic statements for all loans secured by real property or a dwelling. The Board is not proposing such a requirement, however. It is not clear that a monthly statement on a fixed-rate mortgage or an ARM without payment options would provide sufficient benefits to consumers to offset the costs of providing statements. For these loans, the consumer cannot exercise any choice in payments. Moreover, creditors must give borrowers advance notice each time the required payment for a variable-rate transaction adjusts, under § 226.20(c), as discussed above. Servicers send borrowers with escrow accounts annual statements under RESPA. Some servicers send additional escrow notices more frequently, for example quarterly. Those statements assist consumers in monitoring account changes related to changes in taxes or property insurance costs.

20(e) Creditor-Placed Property Insurance

Creditor-placed property insurance requirements. The security instrument or promissory note typically contains a requirement that the consumer maintain insurance on the property securing the loan, such as the consumer's dwelling or automobile. If the consumer fails to maintain the insurance or the insurance is cancelled, the credit agreement typically authorizes the creditor to obtain such insurance at the consumer's expense. The premium becomes additional debt of the consumer. This practice is known as "creditor-placed property insurance."

Industry reports indicate that the volume of creditor-placed property insurance premiums has increased significantly in the past few years. [46] Consumers struggling financially may fail to pay required property insurance premiums unaware that the creditor has the right to obtain such insurance on their behalf and add the premiums to the

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[46] *See, e.g.*, Consumer Credit Industry Association, *Fact Book of Credit-Related Insurance* at 1 (2007) (finding that the 2007 volume of creditor-placed property insurance premiums was over twice the 2002 amount).

outstanding loan balance. [47] In some instances, creditors have improperly obtained property insurance when they arguably knew or should have known that the consumer already had insurance. [48] Generally, creditor-placed insurance is more costly and provides less coverage than insurance that a consumer purchases through an insurance agent. [49]

Currently, there is no provision in Regulation Z or federal law that requires the creditor to provide notice of the cost to the consumer before charging the consumer for creditor-placed property insurance. It appears that only a few states require creditors to provide notice, and these requirements differ. Under Michigan law, for example, a creditor may not impose charges on a debtor for creditor-placed property insurance unless the creditor provides two notices and allows the borrower a total of 30 days to provide evidence of insurance. [50] New Mexico law, on the other hand, simply requires the insurer to provide notice to the debtor within 15 days *after* the placement or renewal of creditor-placed property insurance. [51] The majority of states have no notice requirement. The servicing guidelines of Fannie Mae and Freddie Mac also vary greatly. Fannie Mae's guidelines state that the servicer "should" provide the borrower with at least one written notice and a total of at least 60 days to provide evidence of insurance before charging for creditor-placed property insurance. [52] Freddie Mac's guidelines do not require the servicer to provide notice to the borrower. [53]

In order to ensure that consumers are informed of the cost of creditor-placed property insurance, the Board proposes to use its authority under TILA Section 105(a), 15 U.S.C. 1604(a), to add § 226.20(e) to require the creditor to provide notice of the cost and coverage of creditor-placed property insurance before charging the consumer for such insurance. In addition, proposed § 226.20(e)(4) would require the creditor to provide the

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[47] *See* State of Wisconsin, Office of the Commissioner of Insurance, *"Force-Placed" Insurance Surprises Those Who Let Policies Lapse* (May 30, 2002) *available at* http://oci.wi.gov/pressrel/0502home.htm ("Many people don't realize that if they let that [homeowner's] insurance lapse, banks and other lenders can legally re-insure their home loan by buying insurance to replace it and making the homebuyer pay for it.").

[48] *See, e.g., United States of America v. Fairbanks Capital Corp*., Civ. Action No. 03-12219-DPW, Complaint at P 17 (D. Mass. Nov. 12, 2003) (finding that Fairbanks improperly obtained property insurance when it knew or should have known that borrowers already had insurance); *Ocwen Federal Bank FSB*, OTS Docket No. 04592, Supervisory Agreement, OTS Docket No. 04592 (Apr. 19, 2004) (requiring the bank to take reasonable actions to determine whether appropriate hazard insurance is already in place before it obtained creditor-placed property insurance).

[49] *See, e.g., Webb, et al. v. Chase Manhattan Mortgage Corp*., No. 2:05-CV-0548, 2008 U.S. Dist. LEXIS 42559, at *15 (S.D. Ohio May 28, 2008) (finding that the creditor-placed property insurance premium was four times higher than the plaintiff's original premium and did not cover personal property or provide coverage for personal liability or medical payments to others).

[50] Mich. Comp. Laws § 500.1625 (2009).

[51] N.M. Admin. Code § 13.18.3.17 (2009).

[52] Fannie Mae Single-Family Servicing Guide, Part II, Ch. 6 Lender-Placed Property Insurance (2005).

[53] Freddie Mac Single-Family Seller/Servicer Guide, Vol. 2, § 58.9 Special Insurance Requirements and Changes in Insurance Requirements (2007).

consumer with evidence of creditor-placed property insurance within 15 days of imposing a charge for such insurance. Proposed § 226.20(e)(1) would define "creditor-placed property insurance" as "property insurance coverage obtained by the creditor when the property insurance required by the credit agreement has lapsed." Section 226.20(e) would apply to secured closed-end loans, including mortgage and automobile loans. The Board solicits comment as to whether this rule should also apply to HELOCs.

Proposed § 226.20(e)(2) contains three conditions for charging for creditor-placed property insurance. First, proposed § 226.20(e)(2)(i) would require the creditor to make a reasonable determination that the required property insurance had lapsed. Second, proposed § 226.20(e)(2)(ii) would require the creditor to mail or deliver to the consumer a written notice containing the information required by the proposed rule at least 45 days before a charge is imposed on the consumer for the creditor-placed property insurance. Finally, proposed § 226.20(e)(2)(iii) would permit the creditor to charge the consumer if, during the 45-day notice period, the consumer did not provide the creditor with evidence of adequate property insurance.

Notice period timing and charges.

Under the proposed rule, the creditor would have to mail or deliver to the consumer the required written notice at least 45 days before charging the consumer for the cost of creditor-placed property insurance. This 45-day notice period is consistent with the 45-day notice period required by the Flood Disaster Protection Act of 1973 Section 102(e), 42 U.S.C. 4012a(e), and represents the midpoint between State law 30-day notice periods [54] and the 60-day Fannie Mae Servicing Guide recommendation. [55] The Board notes that the provision in the Fannie Mae Servicing Guide is stated as a recommendation, but not a requirement. The Board believes that a 45-day notice period would allow the consumer reasonable time to shop for and provide evidence of insurance. The Board recognizes that it may take several days for the consumer to receive a notice sent by mail, but the consumer would still have at least one calendar month in which to shop for and purchase property insurance. Comment is solicited, however, on whether a different time period would better serve the needs of consumers and creditors.

Proposed comment 20(e)-1 would make clear that if the creditor complies with § 226.20(e), the creditor could charge the consumer for creditor-placed insurance as of the 46th day after sending the notice to the consumer. For example, a creditor that mails the required notice on January 2, 2011, may begin to charge the consumer for the cost of the creditor-placed property insurance on February 18, 2011. Proposed comment 20(e)-1 would also clarify that the creditor may charge the consumer for the cost of any required property insurance obtained during the 45-day notice period if such charge is not prohibited by applicable State or other law.

Content and format of notice.

Proposed § 226.20(e)(3) would require the creditor to provide the written notice clearly and conspicuously. Proposed § 226.20(e)(3)(i) would require that the notice contain the creditor's name and contact information, the loan number, and the address or description of the property securing the credit transaction. The Board solicits comment as to whether the creditor should be required to establish a local or toll-free telephone number for the consumer to contact the creditor.

Under proposed § 226.20(e)(ii)-(viii), the notice would also need to contain the following statements: (1) That the consumer is obligated to maintain insurance on the property securing the credit transaction; (2) that the required property insurance has lapsed; (3) that the creditor is authorized to obtain the property insurance on the consumer's

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[54] *See* Ark. Code Ann. § 23-101-113 (2008); Mich. Comp. Laws § 500.1625 (2009); Miss. Code Ann. § 83-54-25 (2008); Tenn. Code Ann. § 56-49-113 (2009).

[55] Fannie Mae Single-Family Servicing Guide, Part II, Ch. 6 Lender-Placed Property Insurance (2005).

behalf; (4) the date the creditor can charge the consumer for the cost of the creditor-placed property insurance; (5) ***how*** the consumer may provide evidence of property insurance; (6) the cost of the creditor-placed property insurance stated as an annual premium, and that this premium is likely significantly higher than a premium for property insurance purchased by the consumer; and (7) that the creditor-placed insurance may not provide as much coverage as homeowner's insurance. The Board solicits comment on whether the notice should also contain statements, if applicable, that the creditor will receive compensation for obtaining creditor-placed property insurance and that the creditor will establish an escrow account to pay for the creditor-placed insurance premium. Although such statements would be informative, the Board is concerned that providing these additional disclosures could result in information overload for the consumer. A Model Clause is proposed at Appendix H-18.

The Board proposes to use its authority under TILA Section 105(a), 15 U.S.C. 1604(a), to add § 226.20(e) to require the creditor to provide notice before charging the consumer for the cost of creditor-placed property insurance. TILA Section 105(a), 15 U.S.C. 1604(a), authorizes the Board to prescribe regulations to carry out the purposes of the act. TILA's purpose includes promoting "the informed use of credit," which "results from an awareness of the cost thereof by consumers." TILA Section 102(a), 15 U.S.C. 1601(a). Currently, few consumers are aware of the cost or coverage of creditor-placed property insurance, or that the premiums become additional debt of the consumer. The Board believes that this proposed rule would inform consumers of the cost and coverage of the creditor-placed property insurance and ***avoid*** the uninformed use of credit. In addition, this proposed rule would not prohibit the creditor from charging for creditor-placed property insurance, but would simply delay the charge until the consumer has been provided sufficient notice of the cost and sufficient time to shop for his or her own homeowner's insurance.

Section 226.25 Record Retention

25(a) General Rule

Section 226.25(a) provides that creditors must retain records to evidence compliance with Regulation Z for two years. As discussed in detail below, the Board is proposing to add a new comment to § 226.25(a) to provide guidance on record retention requirements relating to proposed § 226.36(d)(1), which would prohibit any person from paying compensation to a loan originator based on any of the terms or conditions of the transaction. Proposed comment 25(a)-5 would provide that, to evidence compliance with proposed § 226.36(d)(1), a creditor must retain for each covered transaction a record of the agreement between it and the loan originator that governs the originator's compensation and a record of the amount of compensation actually paid to the originator in connection with the transaction.

Section 226.27 Language of Disclosures

Currently, § 226.27, permits TILA disclosures in a language other than English as long as the disclosures are provided in English upon the consumer's request. Many consumers do not speak English or speak English as a second language. According to the 2000 Census, at least 18% of the population (47 million people) speak a language other than English at home. [56] To protect non-native English speakers from fraud and discrimination in credit transactions, recent enforcement actions have required that creditors or mortgage brokers provide translations of presentations, disclosures, or documents. [57] Moreover, several states have enacted laws to require

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[56] U.S. Census Bureau,*Language Use and English-Speaking Ability: 2000* at 2 (Oct. 2003), *available at* http://www.census.gov/prod/2003pubs/c2kbr-29.pdf .

[57] *See, e.g., In the Matter of First Mariner Bank, Baltimore, Maryland*, FDIC-07-285b, FDIC-08-358k, Consent Agreement at 5 (April 22, 2009) (alleging that the bank discriminated against Hispanics, African-Americans, and women by charging them higher prices for residential mortgage loans and requiring the bank to provide financial literacy courses in English and Spanish); *Fed.*

credit disclosures or documents in Spanish or other foreign languages. [58] In 2006, Fannie Mae and Freddie Mac announced the availability of non-executable Spanish translations of the Fannie Mae/Freddie Mac Uniform Instrument to help the residential mortgage industry better serve Spanish-speaking consumers. [59] Finally, Congress recently ***asked*** the General Accounting Office to conduct a study examining the relationship between fluency in English and financial literacy, and the extent, if any, to which individuals whose native language is not English are impeded in the conduct of their financial affairs. [60]

Consumer advocates are concerned that consumers who do not speak English or speak English as a second language may be more susceptible to abusive credit practices or offered less favorable credit terms or products because they are not provided with disclosures they can understand. Industry representatives, on the other hand, raise concerns about the cost and burden of translating documents into multiple foreign languages and the potential liability for inaccurate translations. Both consumer advocates and industry representatives question whether consumers who speak minority languages will still have access to credit if creditors have to bear the cost and liability for translating documents into little-known languages. Creditors may be reluctant to engage in outreach to consumers who speak those languages.

The Board solicits comment on whether it should use its rulemaking authority to require creditors to provide translations of credit disclosures. Comment is requested on whether the failure to provide credit disclosure translations is unfair or deceptive, or impedes the informed use of credit. Comment is also requested on potential litigation issues, such as whether a translation would be admissible into evidence or whether an inaccurate translation would toll TILA's statute of limitations or extend the right of rescission. Finally, comment is requested on the effectiveness of State laws that require translations of disclosures or documents and whether the Board should adopt similar regulations.

The Board requests comment on the following translation issues:

Trade Comm'n v. MortgagesParaHispanos.com and Daniel Moises Goldberg, Civ. Action No. 4:06cv19, Final Judgment and Order at 5 (E.D. Tex. Sept. 27, 2006) (alleging that the mortgage broker misrepresented the mortgage terms to Spanish-speaking consumers and requiring the broker to provide a disclosure and consumer education brochure in Spanish to any consumer if they have reason to believe that the consumer's primary language is Spanish); *In re Ameriquest Mortgage Co., et al*., Settlement Agreement at 17-18 (Jan. 23, 2006) (requiring documents and disclosures to be translated to Spanish or to any language in which Ameriquest advertises).

[58] Ariz. Rev. Stat. § 6-631 (requiring a consumer loan lender to provide a notice in English and Spanish that the consumer may request the TILA disclosure in Spanish); Cal. Civ. Code § 1632 (requiring any person engaged in a trade or business who negotiates certain transactions primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver a translation of the contract in the language in which the contract was negotiated); DC Code Ann. § 26-1113 (requiring a post-application mortgage disclosure to be provided in the language of the mortgage lender's presentation to the borrower); 815 Ill. Comp. Stat. Ann. 122/2-20 (requiring payday lenders to provide consumers with a written disclosure in English and in the language in which the loan was negotiated); Tex. Fin. Code Ann. § 341.502 (requiring that the TILA disclosure be provided in Spanish if the terms for the consumer loan, retail installment transaction, or home equity loan were negotiated in Spanish).

[59] News Release,*Fannie Mae and Freddie Mac Offer Mortgage Documents in Spanish to Aid Lenders and Industry Partners with Helping More Hispanics Become Homeowners; Collaborative Effort Aimed at Helping Close the Hispanic and Overall Minority Homeownership Gaps (Sept. 25, 2006), available at* http://www.fanniemae.com/newsreleases/2006/3803.jhtml?p=Media&s=News+Releases .

[60] Credit CARD Act of 2009, Public Law 111-24, § 513, 123 Stat. 1734, 1765 (2009).

. What is the scope of the problem? That is, approximately ***how*** many consumers do not understand TILA disclosures because of language barriers?

. Should creditors be required to provide consumers with translations of required TILA disclosures? If such translations were required, what should be the trigger for such disclosures (e.g., the language of the negotiation, the language of the creditor's presentation, the language of the creditor's advertisement, a consumer request)?

. Should there be an exception for consumers who are accompanied by an interpreter?

. Would a translation requirement negatively affect consumers and the type and terms of credit offered because creditors would be reluctant to risk liability for engaging in transactions in a language other than English?

Finally, the Board solicits comment on the following coverage issues:

. Should a translation requirement apply only to mortgages loans, or also to other types of credit products, such as auto loans or credit cards?

. Should a translation requirement apply only to the TILA disclosures provided before or at consummation, or to any credit disclosures or documents provided before, at, or subsequent to consummation?

. Should a translation requirement apply to Web sites that provide early TILA disclosures?

. Should a translation requirement apply only to one or a few languages, or should it apply to any foreign language?

Section 226.32 Requirements for Certain Closed-End Mortgages

32(b) Definitions

32(b)(1)

Section 226.32(b)(1) defines the "point and fees" used to determine whether a loan is a HOEPA loan. That definition consists of four elements: (i) All items required to be disclosed under § 226.4(a) and 226.4(b), except interest or the time-price differential; (ii) All compensation paid to mortgage brokers; (iii) All items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) unless 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 (iv) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction. In light of the changes to the finance charge under proposed § 226.4, discussed above, the Board is proposing technical amendments to this provision.

The reference to "items required to be disclosed under § 226.4(a) and 226.4(b), except interest or the time-price differential" in § 226.32(b)(1)(i) implements TILA Section 103(aa)(4)(A). That provision includes in points and fees "all items included in the finance charge, except interest or the time-price differential." 15 U.S.C. 1602(aa)(4)(A). Thus, "items required to be disclosed under § 226.4(a) and 226.4(b)" is intended to capture the finance charge. Section 226.32(b)(1)(ii) and (iii) parallel the additional elements in TILA Section 103(aa)(4)(B) and (C). *See* 15 U.S.C. 1602(aa)(4)(B) and (C). Finally, TILA Section 103(aa)(4)(D) provides for the inclusion of such other charges as the Board determines to be appropriate. 15 U.S.C. 1602(aa)(4)(D). Pursuant to that authority, in § 226.32(b)(1)(iv), the Board included credit insurance premiums and debt cancellation coverage fees. Thus, the statutory definition reflects Congress's intent to include in points and fees mortgage broker compensation, certain real-estate related fees, and the insurance charges added by the Board, even if those items would be excluded from the finance charge under other applicable rules.

Under TILA Section 103(aa)(1), HOEPA applies to certain transactions that are secured by a consumer's principal dwelling. 15 U.S.C. 1602(aa)(1). Proposed § 226.4(g), and therefore the more inclusive definition of finance charge it would create, would apply to any transaction secured by real property or a dwelling. Consequently, all loans that are potentially subject to HOEPA would be subject to the proposed "but for" finance charge definition. Under that definition, the items included under the points and fees definition in addition to the finance charge (other than interest or the time-price differential) would never be excluded from the finance charge for transactions secured by real property or a dwelling.

The Board believes that proposed § 226.4 would render § 226.32(b)(1)(ii) through (iv) unnecessary because all items included in points and fees under those provisions already would be included as part of the finance charge. To eliminate unnecessary complexity, the Board proposes to streamline § 226.32(b)(1) by deleting those additional elements. The Board also proposes to revise § 226.32(b)(1) to provide that points and fees means all items included in the finance charge pursuant to § 226.4, except interest or the time-price differential, instead of § 226.32(b)(1)(i)'s reference to "items required to be disclosed under § 226.4(a) and 226.4(b)." This change would reflect the language of TILA more closely and is not meant to effect any substantive change to HOEPA's coverage.

32(c) Disclosures

32(c)(1) Notices

For HOEPA loans, TILA Sections 129(a)(1)(A) and (B), 15 U.S.C. 1639(a)(1)(A) and (B), and § 226.32(c)(1), require the creditor to provide the following disclosures in conspicuous type size: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on ***your*** home. You could lose ***your*** home, and any money you have put into it, if you do not meet ***your*** obligations under the loan." The first sentence is a "no obligation" statement to inform the consumer that the space for the consumer's signature that may be on the credit application does not obligate the consumer to accept the terms of the loan. The next two sentences are "security interest" disclosures to inform the consumer of the potential consequences when the creditor takes a security interest in the consumer's home. Comment 32(c)(1)-1 states that these disclosures need not be in a particular format or part of the note or mortgage document. A Model Clause is currently provided at Appendix H-16.

As discussed more fully in § 226.38(f)(1), the MDIA amended TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), to require the creditor to provide the following "no obligation" statement on the TILA disclosure: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." Based on consumer testing, the Board proposes to use its adjustments and exception authority under TILA Section 105(a), 15 U.S.C. 1604(a), to modify the specific wording on the disclosure. Proposed § 226.38(f)(1) would require the creditor to provide a statement that the consumer has no obligation to accept the loan, and, if the creditor provides space for a consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement. During consumer testing, participants' comprehension improved when they reviewed the plain-language version of the clause.

Similarly, based on consumer testing, the Board proposes to use its adjustments and exception authority under TILA Section 105(a), 15 U.S.C. 1604(a), to require the creditor under proposed § 226.32(c)(1) to provide the following "no obligation" statement in connection with a HOEPA loan: "You have no obligation to accept this loan. ***Your*** signature below only confirms that you have received this form." TILA Section 105(a), 15 U.S.C. 1604(a), states that the Board "may provide for such adjustments * * * as in the judgment of the Board are necessary or proper to effectuate the purposes of [TILA]". One of the purposes of TILA is to promote the informed use of credit. TILA Section 102(a), 15 U.S.C. 1601(a). Consumer testing ***showed*** that the "no obligation" language improved participants' understanding of the key point that signing or accepting a disclosure did not obligate the consumer to accept the terms of the loan.

In addition, the Board proposes to use its adjustments and exception authority under TILA Section 105(a), 15 U.S.C. 1604(a), to require the creditor under proposed § 226.32(c)(1) to provide the following "security interest" statement in connection with a HOEPA loan: "If you are unable to make the payments on this loan, you could lose ***your*** home." As discussed more fully in § 226.38(f)(2), consumer testing ***showed*** that participant comprehension of this disclosure improved when the plain-language version of the "security interest" disclosure was used. The Board believes that the plain-language versions of the "no obligation" and "security interest" disclosures will better inform consumers who are considering obtaining HOEPA loans.

The proposal would delete comment 32(c)(1)-1 and require these statements to be in bold text and a minimum 10-point font, consistent with proposed §§ 226.37 and 226.38. A revised Model Clause is proposed at Appendix H-16.

32(c)(5) Amount Borrowed

For HOEPA mortgage refinancing loans, § 226.32(c)(5) requires the creditor to disclose the amount borrowed, and states that "where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed." In the December 2008 Open-End Final Rule, the existing rules for credit insurance and debt cancellation coverage were applied to debt suspension coverage for purposes of excluding a charge for debt suspension coverage from the finance charge. *See* 74 FR 5244, 5255; Jan. 29, 2009. In the final rule, the Board stated that "[d]ebt cancellation coverage and debt suspension coverage are fundamentally similar to the extent they offer a consumer the ability to pay in advance for the right to reduce the consumer's obligations under the plan on the occurrence of specified events that could impair the consumer's ability to satisfy those obligations." 74 FR 5266. The Board also noted that the two products are different because debt cancellation coverage cancels the debt while debt suspension merely suspends payment of the debt. *Id*. Despite this difference, the Board adopted a final rule treating the two products the same for purposes of the finance charge, but adding a special disclosure warning consumers of the risks of debt suspension coverage. *Id*. Consistent with this approach, the Board proposes to treat debt suspension coverage in the same manner as debt cancellation coverage for purposes of the disclosing the amount borrowed for a HOEPA mortgage refinancing loan. The Board proposes to revise § 226.32(c)(5) to clarify that where the amount borrowed includes charges for debt suspension coverage, that fact should be stated, grouped together with the disclosure of the amount borrowed. Proposed comment 32(c)(5)-1 would also be revised to include a reference to debt suspension coverage. Comment is solicited on this approach.

Section 226.35 Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

35(a) Higher-Priced Mortgage Loans

35(a)(2)

In its final rule implementing new requirements for higher-priced mortgage loans, 73 FR 44522; July 30, 2008, the Board adopted the "average prime offer rate" as the benchmark for coverage of new § 226.35. In so doing, the Board adopted commentary under new § 226.35(a)(2) regarding the calculation of the average prime offer rate and related guidance. Comment 35(a)(2)-4 indicated that the Board publishes average prime offer rates and the methodology for their calculation on the Internet. The Board is proposing to amend comment 35(a)(2)-4 to specify where on the Internet the table and methodology may be found (*http://www.ffiec.gov/hmda*).

The Board also is proposing new comment 35(a)(2)-5 to provide additional guidance on determination of applicable average prime offer rates for purposes of § 226.35. The comment would clarify that the average prime offer rate is defined identically under § 226.35 and under Regulation C (HMDA), 12 CFR 203.4(a)(12)(ii). Thus, for purposes of both coverage of § 226.35 and coverage of the rate spread reporting requirement under Regulation C, 12 CFR 203.4(a)(12)(i), the applicable average prime offer rate is identical. The comment would clarify further that guidance on the applicable average prime offer rate is provided in the staff commentary under Regulation C, the Board's *A*

Guide to HMDA Reporting: Getting it Right!, and the relevant "Frequently ***Asked*** Questions" on HMDA compliance posted on the FFIEC's Web site referenced above.

Section 226.36 Prohibited Acts or Practices in Connection With Credit Secured by Real Property or a Consumer's Dwelling

The Board proposes to amend § 226.36 to extend the scope of the section's coverage to all closed-end transactions secured by real property or a dwelling. Currently, this section applies to closed-end credit transactions secured by a consumer's principal dwelling. As revised, § 226.36 would apply to closed-end transactions secured by any dwelling, not just a consumer's principal dwelling. This approach would be consistent with recent amendments to the TILA effected by the MDIA.

36(a) Loan Originator and Mortgage Broker Defined

As discussed below in more detail, the Board proposes to prohibit certain payments to loan originators that are based on a transaction's terms and conditions, and also proposes to prohibit loan originators from "steering" consumers to transactions that are not in their interest in order to increase the originator's compensation. Accordingly, the Board proposes to amend the regulation to provide a definition of "loan originator" in § 226.36(a)(1), which would include persons who are covered by the current definition of mortgage broker but also would include employees of the creditor, who are not considered "mortgage brokers." Existing § 226.36(a) defines the term "mortgage broker" because mortgage brokers are subject to the prohibition on coercion of appraisers in § 226.36(b). A revised definition of mortgage broker would be designated as § 226.36(a)(2). The provision of existing § 226.36(a) stating that a creditor making a "table funded" transaction is considered a mortgage broker would be revised for clarity; no substantive change is intended other than the expansion of the definition from mortgage broker to loan originator. Thus, under proposed § 226.36(a)(1), a creditor that does not provide the funds for the transaction at consummation out of its own resources, out of deposits held by it, or by drawing on a bona fide warehouse line of credit would be considered a loan originator for purposes of § 226.36.

36(b) and (c) Misrepresentation of Value of Consumer's Dwelling; Servicing Practices

The Board proposes to amend § 226.36(b) and (c) to reflect the expanded scope of coverage of § 226.36, as noted above. Existing § 226.36(b) prohibits creditors and mortgage brokers and their affiliates from coercing, influencing, or otherwise encouraging appraisers to misstate or misrepresent the value of the consumer's principal dwelling in connection with a closed-end mortgage transaction. Section 226.36(c) currently prohibits certain practices of servicers of closed-end consumer credit transactions secured by a consumer's principal dwelling. Under this proposal, the rules relating to appraiser coercion and loan servicing would apply to all closed-end transactions secured by real property or a dwelling, for the reasons discussed above.

36(d) Prohibited Payments to Loan Originators

The Board is proposing to use its authority in HOEPA to prohibit unfair or deceptive acts or practices in mortgage lending to restrict certain practices related to the payment of loan originators. *See* TILA Section 129(*l*)(2)(A), 15 U.S.C. 1639(*l*)(2)(A). For this purpose, a "loan originator" includes both mortgage brokers and employees of creditors who perform loan origination functions.

Specifically, to address the potential unfairness that can arise with certain loan originator compensation practices, the proposed rule would prohibit a creditor or other party from paying compensation to a loan originator based on the credit transaction's terms or conditions. This prohibition would not apply to payments that consumers make directly to a loan originator. However, if a consumer directly pays the loan originator, the proposed rule would prohibit the originator from also receiving compensation from any other party in connection with that transaction.

The Board is soliciting comment on an alternative that would allow loan originators to receive payments that are based on the principal loan amount, which is a common practice today. The Board is also soliciting comment on whether it should adopt a rule that seeks to prohibit loan originators from directing or "steering" consumers to loans based on the fact that the originator will receive additional compensation, unless that loan is in the consumer's interest. The Board is expressly soliciting comment on whether the rule would be effective in achieving the stated purpose. Comment is also solicited on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have. These proposals and alternatives are discussed more fully below.

Background

In the summer of 2006, the Board held public hearings on home equity lending in four cities. During the hearings, consumer advocates urged the Board to ban "yield spread premiums," payments that mortgage brokers receive from the creditor at closing for delivering a loan with an interest rate that is higher than the creditor's "buy rate." The consumer advocates asserted that yield spread premiums provide brokers an incentive to increase consumers' interest rates unnecessarily. They argued that a prohibition would align reality with consumers' perception that brokers serve consumers' best interests.

In light of the information received at the 2006 hearings and the rise in defaults that began soon after, the Board held an additional hearing in June of 2007 to explore ***how*** it could use its authority under HOEPA to prevent abusive lending practices in the subprime mortgage market while still preserving responsible lending. Although the Board did not expressly solicit comment on mortgage broker compensation in its notice of the June 2007 hearing, a number of commenters and some hearing panelists raised the topic. Consumer and creditor representatives alike raised concerns about the fairness and transparency of creditors' payment of yield spread premiums to brokers. Several commenters and panelists stated that consumers are not aware of the payments creditors make to brokers, or that such payments increase consumers' interest rates. They also stated that consumers may mistakenly believe that a broker seeks to obtain the best interest rate available. Consumer groups have expressed particular concern about increased payments to brokers for delivering loans both with higher interest rates and prepayment penalties. Consumer groups suggested a variety of solutions, such as prohibiting creditors paying brokers yield spread premiums, imposing on brokers that accept yield spread premiums a fiduciary duty to consumers, imposing on creditors that pay yield spread premiums liability for broker misconduct, or including yield spread premiums in the points and fees test for loans subject to HOEPA. Several creditors and creditor trade associations advocated requiring brokers to disclose whether the broker represents the consumer's interests, and ***how*** and by whom the broker is to be compensated. Some of these commenters recommended that brokers be required to disclose their total compensation to the consumer and that creditors be prohibited from paying brokers more than the disclosed amount.

To address these concerns, the Board's January 2008 proposed rule would have prohibited a creditor from paying a mortgage broker any compensation greater than the amount the consumer had previously agreed in writing that the broker would receive. 73 FR 1672, 1698-1700; Jan. 9, 2008 (HOEPA proposal). In support of the rule, the Board explained its concerns about yield spread premiums, which are summarized below.

A yield spread premium is the present dollar value of the difference between the lowest interest rate the wholesale lender would have accepted on a particular transaction and the interest rate the broker actually obtained for the lender. This dollar amount is usually paid to the mortgage broker, though it may also be applied to reduce the consumer's upfront closing costs. The creditor's payment to the broker based on the interest rate is an alternative to the consumer paying the broker directly from the consumer's preexisting resources or from loan proceeds. Preexisting resources or loan proceeds may not be sufficient to cover the broker's total fee, or may appear to the consumer to be a more costly way to finance those costs if the consumer expects to prepay the loan in a relatively short period. Thus, consumers potentially benefit from having an option to pay brokers for their services indirectly by accepting a higher interest rate.

The Board shares concerns, however, that creditors' payments to mortgage brokers are not transparent to consumers and are potentially unfair to them. Creditor payments to brokers based on the interest rate give brokers an incentive to provide consumers loans with higher interest rates. Some brokers may refrain from acting on this incentive out of legal, business, or ethical considerations. Moreover, competition in the mortgage loan market may often limit brokers' ability to act on the incentive. The market often leaves brokers room to act on the incentive should they choose, however, especially as to consumers who are less sophisticated and less likely to shop among either loans or brokers.

Large numbers of consumers are simply not aware the incentive exists. Many consumers do not know that creditors pay brokers based on the interest rate, and the current legally required disclosures seem to have only limited effect. Some consumers may not even know that creditors pay brokers: A common broker practice of charging a small part of its compensation directly to the consumer, to be paid from the consumer's existing resources or loan proceeds, may lead consumers to believe, incorrectly, that this amount is all the consumer will pay or that the broker will receive. Consumers who do understand that the creditor pays the broker based on the interest rate may not fully understand the implications of the practice. They may not appreciate the full extent of the incentive the practice gives the broker to increase the rate because they do not know the dollar amount of the creditor's payment.

Moreover, consumers often wrongly believe that brokers have agreed, or are required, to obtain the best interest rate available. Several commenters in connection with the 2006 hearings suggested that mortgage broker marketing cultivates an image of the broker as a "trusted advisor" to the consumer. Consumers who have this perception may rely heavily on a broker's advice, and there is some evidence that such reliance is common. In a 2003 survey of older borrowers who had obtained prime or subprime refinancings, majorities of respondents with refinance loans obtained through both brokers and creditors' employees reported that they had relied "a lot" on their loan originators to find the best mortgage for them. [61] The Board's recent consumer testing also suggests that many consumers shop little for mortgages and often rely on one broker or lender because of their trust in the relationship.

If consumers believe that brokers protect consumers' interests by shopping for the lowest rates available, then consumers will be less likely to take steps to protect their interests when dealing with brokers. For example, they may be less likely to shop rates across retail and wholesale channels simultaneously to assure themselves the broker is providing a competitive rate. They may also be less likely to shop and negotiate brokers' services, obligations, or compensation upfront, or at all. For example, they may be less likely to seek out brokers who will promise in writing to obtain the lowest rate available.

In response to these concerns, the 2008 HOEPA proposal would have prohibited a creditor from paying a broker more than the consumer agreed in writing to pay. Under the proposal, the consumer and mortgage broker would have had to enter into a written agreement before the broker accepted the consumer's loan application and before the consumer paid any fee in connection with the transaction (other than a fee for obtaining a credit report). The agreement also would have disclosed (i) that the consumer ultimately would bear the cost of the entire compensation even if the creditor paid part of it directly; and (ii) that a creditor's payment to a broker could influence the broker to offer the consumer loan terms or products that would not be in the consumer's interest or the most favorable the consumer could obtain.

Based on the Board's analysis of comments received on the HOEPA proposal, the results of consumer testing, and other information, the Board withdrew the proposed provisions relating to broker compensation. 73 FR 44522,

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[61] *See* Kellie K. Kim-Sung & Sharon Hermanson, *Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender-Originated Loans*, Data Digest No. 83 (AARP Public Policy Inst., Washington, DC, Jan. 2003, at 3, available at *http://assets.aarp.org/rgcenter/post-import/dd83_loans.pdf* .

44563-65; July 30, 2008. The Board's withdrawal of those provisions was based on its concern that the proposed agreement and disclosures could confuse consumers and undermine their decision-making rather than improve it. The risks of consumer confusion arose from two sources. First, an institution can act as either creditor or broker depending on the transaction. At the time the agreement and disclosures would have been required, such an institution could be uncertain as to which role it ultimately would play. This could render the proposed disclosures inaccurate and misleading in some, and possibly many, cases. Second, the Board was concerned by the reactions of consumers who participated in one-on-one interviews about the proposed agreement and disclosures as part of the Board's consumer testing. These consumers often concluded, not necessarily correctly, that brokers are more expensive than creditors. Many also believed that brokers would serve their best interests notwithstanding the conflict resulting from the relationship between interest rates and brokers' compensation. [62] The proposed disclosures presented a significant risk of misleading consumers regarding both the relative costs of brokers and lenders and the role of brokers in their transactions.

In withdrawing the broker compensation provisions of the HOEPA proposal, the Board stated it would continue to explore options to address potential unfairness associated with loan originator compensation arrangements, such as yield spread premiums. The Board indicated it would consider whether disclosures or other approaches could effectively remedy this potential unfairness without imposing unintended consequences.

Potential for Unfairness in Loan Originator Compensation Practices

As noted above, the Board is now proposing rules to prohibit certain practices relating to payments made to compensate mortgage brokers and other loan originators. These rules would be adopted pursuant to the Board's authority under HOEPA, as contained in TILA Section 129(*l*), which authorizes the Board to prohibit acts or practice in connection with mortgage loans that the Board finds to be unfair or deceptive. As discussed in part IV above, in considering whether a practice is unfair or deceptive under TILA Section 129(*l*), the Board has generally relied on the standards that have been adopted for purposes of Section 5(a) of the FTC Act, 15 U.S.C. 45(a), which also prohibits unfair and deceptive acts and practices.

For purposes of the FTC Act, an act or practice is considered unfair when it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. As explained below, the practice of basing a loan originator's compensation on the credit transaction's terms or conditions appears to meet these standards and constitute an unfair practice. Furthermore, based on its experience with consumer testing, particularly in connection with the HOEPA proposal, the Board believes that disclosure alone would be insufficient for most consumers to ***avoid*** the harm caused by this practice. Thus, the Board is proposing a rule that would remedy the practice through substantive regulations that prohibit particular practices.

Specifically, under proposed § 226.36(d)(1), compensation payments made to a mortgage broker or any other loan originator based on a mortgage transaction's terms or conditions would be prohibited. Unlike the 2008 HOEPA proposal, the rule would also apply to creditors' employees who originate loans. As noted above, such payments when made to a mortgage broker are commonly referred to as yield spread premiums. There are analogous payments made by creditors to their employees who originate loans at a higher interest rate than the minimum rate required by the creditor. This arrangement is frequently referred to as an "overage." For convenience, the

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[62] For more details on the consumer testing, see the report of the Board's contractor, Macro International, Inc.,*Consumer Testing of Mortgage Broker Disclosures* (July 10, 2008), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf* .

discussion below uses the term "yield spread premium" also to refer to these types of payments, which would be covered by the proposed rule as well.

Substantial injury. When loan originators receive compensation based on a transaction's terms and conditions, they have an incentive to provide consumers loans with higher interest rates or other less favorable terms. Yield spread premiums, therefore, present a significant risk of economic injury to consumers. Currently, such injury is common because consumers typically are not aware of the practice or do not understand its implications and cannot effectively negotiate its use.

Creditors' payments to mortgage brokers or their own employees that originate loans ("loan officers") generally are not transparent to consumers. Brokers may impose a direct fee on the consumer which may lead consumers to believe that this is the sole source of the broker's compensation. While consumers expect the creditor to compensate its own loan officers, they do not necessarily understand that the loan originator may have the ability to increase the creditor's interest rate or include certain loan terms for the originator's own gain.

To guard effectively against this practice, a consumer would have to know the lowest interest rate the creditor would have accepted to ascertain that the offered interest rate represents a rate increase by the loan originator. Most consumers will not know the lowest rate the creditor would be willing to accept. The consumer also would need to understand the dollar amount of the yield spread premium that is generated by the rate increase to determine what portion, if any, is being applied to reduce the consumer's upfront loan charges. Although HUD recently adopted disclosures in Regulation X, implementing RESPA, that could enhance some consumers' understanding of mortgage broker compensation, the details of the compensation arrangements are complex and the disclosures are limited. A creditor may ***show*** the yield spread premium as a credit to the borrower that is applied to cover upfront costs, but is also permitted to add the amount of the yield spread to the total origination charges being disclosed. This would not necessarily inform the consumer that the rate has been increased by the originator and that a lower rate with a smaller origination charge was also available. In addition, the Regulation X disclosure concerning yield spread premiums would not apply to overages occurring when the loan originator is employed by the creditor. Thus, the Regulation X disclosure, while perhaps an improvement over previous rules, is not likely by itself to prevent consumers from incurring substantial injury from the practice.

Because consumers generally do not understand the yield spread premium mechanism, they are unable to engage in effective negotiation. Instead they are more likely to rely on the loan originator's advice and frequently obtain a higher rate or other unfavorable terms solely because of greater originator compensation. These consumers suffer substantial injury by incurring greater costs for mortgage credit than they would otherwise be required to pay.

Injury not reasonably avoidable. Yield spread premiums create a conflict of interest between the loan originator and consumer. As noted above, many consumers are not aware of creditor payments to loan originators, especially in the case of mortgage brokers, because these arrangements lack transparency. Although consumers may reasonably expect creditors to compensate their own employees, consumers do not know ***how*** the loan officer's compensation is structured or that the loan officer can increase the creditor's interest rate or offer certain loan terms to increase their own compensation. Without this understanding, consumers cannot reasonably be expected to appreciate or ***avoid*** the risk of financial harm these arrangements represent.

Yield spread premiums are complex and may be counter-intuitive even to well-informed consumers. Based on the Board's experience with consumer testing, the Board believes that disclosures are insufficient to overcome the gap in consumer comprehension regarding this critical aspect of the transaction. Currently, the required disclosures of originator compensation under federal and State laws seem to have little, if any, effect on originators' incentive to provide consumers with increased interest rates or other unfavorable loan terms, such as a prepayment penalty, that can increase the originator's compensation. [63] The Board's consumer testing, discussed above, supported the

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[63] Creditors may be willing to offer a loan with a lower interest rate in return for including a prepayment penalty. A loan originator that offers a loan with a prepayment penalty might not offer the lower rate, resulting in a premium interest rate and the payment of a yield spread premium.

finding that disclosures about yield spread premiums are ineffective; consumers in these tests did not understand yield spread premiums and did not grasp ***how*** they create an incentive for loan originators to increase consumers' costs.

Consumers' lack of comprehension of yield spread premiums is compounded where the originator also imposes a direct charge on the consumer. A mortgage broker might charge the consumer a direct fee, for example $ 500, for arranging the consumer's mortgage loan. This charge encourages consumers to infer that the broker accepts the consumer-paid fee to represent the consumer's financial interests. Consumers may believe that the fee they pay is the originator's sole compensation. This may lead reasonable consumers to believe, erroneously, that loan originators are working on their behalf and are under a legal or ethical obligation to help consumers obtain the most favorable loan terms and conditions. There is evidence that consumers often regard loan originators as "trusted advisors" or "hired experts" and consequently rely on originators' advice. Consumers who regard loan originators in this manner are far less likely to shop or negotiate to assure themselves that they are being offered competitive mortgage terms. Even for consumers who shop, the lack of transparency in originator compensation arrangements makes it unlikely consumers will ***avoid*** yield spread premiums that unnecessarily increase the cost of their loan.

Consumers generally lack expertise in complex mortgage transactions because they engage in such mortgage transactions infrequently. Their reliance on the loan originator is reasonable in light of the originator's greater experience and professional training in the area, the belief that originators are working on their behalf, and the apparent ineffectiveness of disclosures to dispel that belief.

Injury not outweighed by benefits to consumers or to competition. Yield spread premiums can represent a potential consumer benefit in cases where the amount is applied to reduce consumers' upfront closing costs, including originator compensation. A creditor's increase in the interest rate (or the addition of other loan terms) may be used to generate additional income that the creditor uses to compensate the originator, in lieu of adding origination points or fees that the consumer would be required to pay directly from the consumer's preexisting funds or the loan proceeds. This can benefit a consumer who lacks the resources to pay closing costs in cash, or who might have insufficient equity in the property to increase the loan amount to cover these costs. Further, some consumers prefer to fund closing costs, including origination fees, through a higher rate if the consumer expects to own the property or have the loan for a relatively short period, for example, less than five years. For those consumers who understand this trade-off there could be potential benefits. In such cases, however, the yield spread premium does not increase the amount of compensation paid by the creditor to the originator, who would receive the same amount whether the loan has a higher rate or a lower rate accompanied by higher upfront fees.

Nevertheless, without a clear understanding of yield spread premiums or effective disclosure, the majority of consumers are not equipped to police the market to ensure that yield spread premiums are in fact applied to reduce their closing costs, especially in the case of loan originator compensation. This would be particularly difficult because consumers are not likely to have any basis for determining a "typical" or "reasonable" amount for originator compensation. Accordingly, the Board is proposing a rule that prohibits any person from basing a loan originator's compensation on the loan's rate or terms but still affords creditors the flexibility to structure loan pricing to preserve the potential consumer benefit of compensating an originator through the interest rate.

The Board's Proposal

Under § 226.36(d)(1), the Board proposes to prohibit any person from compensating a loan originator, directly or indirectly, based on the terms or conditions of a loan transaction secured by real property or a dwelling. This prohibition would apply to any person, rather than only a creditor, to prevent evasion by structuring loan originator payments through non-creditors. For example, secondary market investors that purchase closed loans from creditors would not be permitted to pay compensation to loan originators that is based on the terms or conditions of their transactions.

Under the proposal, compensation that is based on the loan amount would be considered a payment that is based on a term or condition of the loan. The prohibition would not apply to consumers' direct payments to loan originators. Under § 226.36(d)(2), however, if the consumer compensates the loan originator directly, the originator would be prohibited from receiving compensation from the creditor or any other person.

Because the loan originator could not receive compensation based on the interest rate or other terms, the originator would have no incentive to alter the terms made available by the creditor to deliver a more expensive loan. For example, a company acting as a mortgage broker could not provide greater compensation to its employee acting as the loan originator for a transaction with a 7 percent interest rate than for a transaction with a 6 percent interest rate. A creditor would be under the same restriction in compensating its loan officer. For this purpose, the term "compensation" would not be limited to commissions, but would include salaries or any financial incentive that is tied to the transaction's terms or conditions, including annual or periodic bonuses or awards of merchandise or other prizes. *See* proposed comment 36(d)(1)-1.

Proposed comment 36(d)(1)-2 provides examples of compensation that is based on the transaction's terms or conditions, such as payments that are based on the interest rate, annual percentage rate, or the existence of a prepayment penalty. Examples of loan originator compensation that is not based on the transaction's terms or conditions are listed in proposed comment 36(d)(1)-3. These include compensation based on the originator's loan volume, the performance of loans delivered by the originator, or hourly wages.

The Board recognizes that loans originators may need to expend more time and resources in originating loans for consumers with limited or blemished credit histories. Because such loans are likely to carry higher rates, originators currently rely on higher yield spread premiums to compensate them for the additional time and efforts. Paying an originator based on the time expended would be permissible under the proposed rule.

Although the proposed rule would not prohibit a creditor from basing compensation on the originator's loan volume, such arrangements may raise concerns about whether it creates incentives for originators to deliver loans without proper regard for the credit risks involved. The Board expects creditors to exercise due diligence to monitor and manage such risks. Financial institution regulators generally will examine creditors they supervise to ensure they have systems in place to exercise such due diligence.

The proposed rule also would not prohibit compensation that differs by geographical area, but any such arrangements must comply with other applicable laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f) and Fair Housing Act (42 U.S.C. 3601-3619). *See* proposed comment 36(d)(1)-4. Creditors that use geography as a criterion for setting originator compensation would need to be able to demonstrate that this reflects legitimate differences in the costs of origination and in the levels of competition for originators' services.

Under the proposed rule, creditors also may compensate their own loan officers differently than mortgage brokers. For instance, in light of the fact that mortgage brokers relieve creditors of certain overhead costs of loan originations, a creditor might pay brokers more than its own loan officers. Likewise, a creditor might pay one loan originator of either type more than it pays another, as long as each originator receives compensation that is not based on the terms of the transactions they deliver to the creditor.

Scope of coverage. The Board believes that the proposed rule should apply to creditors' employees who originate loans in addition to mortgage brokers. A creditor's loan officers frequently have the same discretion over loan pricing that mortgage brokers have to modify a loan's terms to increase their compensation, and there is evidence suggesting that loan officers engage in such practices. [64] Accordingly, the coverage of § 226.36(d)(1) is broader than the 2008 HOEPA proposal, which covered only mortgage brokers. Some commenters on the HOEPA proposal expressed concern that it would create an "unlevel playing field" by creating an unfair advantage for creditors that would not have to comply with the same requirements as brokers.

The proposed rule would apply to covered transactions whether or not they are higher-priced mortgage loans. A loan originator's financial incentive to deliver less favorable loan terms to a consumer could result in consumer injury whether or not the loan has a rate above the coverage threshold in § 226.35. The risks of harm could be reduced in the lower-priced segment of the market, however, where consumers historically have more choices. Comment is solicited on the relative costs and benefits of applying the rule to all segments of the market, and whether the costs would outweigh the benefits for loans below the higher-priced mortgage loan threshold.

Creditors' pricing flexibility. The proposed rule would not affect creditors' flexibility in setting rates or other loan terms. The rule does not limit the creditor's ability to adjust the loan terms it offers to consumers as a means of financing costs the consumer would otherwise be obligated to pay directly (in cash or out of the loan proceeds), including the originator's compensation, provided this does not affect the amount the originator receives for the transaction. Thus, a creditor could recoup costs by adding to the loan pricing terms an origination point (calculated as one percentage point of the loan amount) even though the creditor could not pay the originator's compensation on that basis. Similarly, a creditor could add a constant premium of, for instance, 1/4 of one percent to the interest rates on all transactions for which the creditor will pay compensation to the loan originator, as a means of recouping the cost of the originator's compensation. The creditor would not recoup the same dollar amount in each transaction, however, because the present value of the premium in dollars would vary with the loan amount. Consequently, even though loan pricing could be set in this manner, this method could not be used to set the loan originator's compensation. *See* proposed comment 36(d)(1)-5.

Effect of modification of loan terms. The proposed rule is designed to prevent consumers from being harmed by loan originators making unfavorable modifications to loan terms, such as increasing the interest rate, to increase the originator's compensation. Currently, loan originators might also exercise discretion to make modifications in the consumer's favor. For example, to retain the consumer's business, today a loan originator might agree with the consumer to reduce the amount the consumer must pay in origination points on the loan, which would be funded by a reduction in the amount the originator receives from the creditor as compensation for delivering the loan. Under the proposed rule, however, a creditor would not be permitted to reduce the amount it pays to the loan originator based on such a change in loan terms. As a result, the reduction in origination points would be a cost borne by the creditor.

Thus, when the creditor offers to extend a loan with specified terms and conditions (such as the rate and points), the amount of the originator's compensation for that transaction is not subject to change, through either an increase or a decrease, even if different loan terms are negotiated. If this were not the case, a creditor generally could agree

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[64] For example, the Federal Trade Commission's settlement with Gateway Funding, Inc. in December 2008 illustrates a case where a creditor's loan officers created "overages," although the primary legal theory concerned disparate treatment by race in the imposition of overages. The FTC's complaint and the court's final judgment and order can be found on the FTC's web-site at*http://www.ftc.gov/os/caselist/0623063/index.shtm* . The FTC has since filed a complaint alleging similar patterns of overages in violation of fair lending laws, against Golden Empire Mortgage, Inc. The May 2009 complaint can be found at *http://www.ftc.gov/os/caselist/0623061/090511gemcmpt.pdf* . A similar pattern of overages was alleged in legal actions brought by the Department of Justice (DOJ), which resulted in settlement agreements with Huntington Mortgage Company (1995) and Fleet Mortgage Corp. (1996).

to compensate originators at a high level and then subsequently lower the compensation only in selective cases, such as when the consumer obtains a competing offer with a lower interest rate. This would have the same effect as increasing the originator's compensation for higher rate loans. Proposed comment 36(d)(1)-6 would address this issue.

Periodic changes in loan originator compensation. Under proposed § 226.36(d)(1) a creditor would not be prevented from periodically revising the compensation it agrees to pay a loan originator. However, a creditor may not revise a loan originator's compensation arrangement in connection with each transaction. This guidance is reflected in proposed comment 36(d)(1)-7. The revised compensation arrangement must result in payments to the loan originator that are not based on the terms or conditions of a credit transaction. A creditor might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first six months of the year, a creditor pays $ 3,000 to a particular loan originator for each loan delivered, regardless of the loan terms. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $ 3,250 for each loan delivered by that originator, regardless of the loan terms. The change in compensation would not be a violation even if the loans made by the creditor after July 1 generally carry higher interest rates than loans made before that date.

Alternative to permit compensation based on loan amount. The Board is also publishing for comment a proposed alternative that would allow loan originator compensation to be based on the loan amount, which would not be considered a transaction term or condition for purposes of the prohibition in § 226.36(d)(1). Currently, the compensation received by many mortgage originators is structured as a percentage of the loan amount. Other participants in the mortgage market, such as creditors, mortgage insurers, and other service providers, also receive compensation based on the loan amount. The Board is therefore seeking comment on whether prohibiting originator compensation on this basis might be unduly restrictive and unnecessary to achieve the purposes of the proposed rule.

On the other hand, prohibiting compensation based on the loan amount would eliminate an incentive for the originator to steer consumers to a larger loan amount. Such steering maximizes the originator's compensation but also increases the transaction's loan-to-value ratio and decreases the consumer's equity in the property. If the loan-to-value ratio increases sufficiently, the consumer may incur additional costs in the form of a higher interest rate or additional points and fees, including the cost of mortgage insurance premiums. Because the consumer's monthly payment would also be larger, the originator might direct the consumer to riskier loan products that have discounted initial rates but are subject to significant payment increases after the introductory period expires.

Because of the foregoing concerns, the Board is publishing two alternative versions of proposed § 226.36(d)(1). The first alternative would consider the loan amount as a term or condition of the loan, thereby prohibiting the payment of originator compensation as a percentage of the loan amount. The second alternative provides that the loan amount is not a term or condition of the loan, and would permit such payments. The second alternative would be accompanied by proposed comment 36(d)(1)-10 to provide further guidance. Under proposed comment 36(d)(1)-10, a loan originator could be paid a fixed percentage of the loan amount even though the dollar amount paid by a particular creditor would vary from transaction to transaction and would increase as the loan amount increases. Comment 36(d)(1)-10 also permits compensation paid as a fixed percentage of the loan amount to be subject to a specified minimum or maximum dollar amount. For example, a loan originator's compensation could be set at one percent of the principal loan amount but not less than $ 1,000 or greater than $ 5,000.

The Board seeks comment on the two alternatives. Further, if the final rule permits compensation based on the loan amount, should creditors be permitted to apply different percentages to loans of different amounts? Should creditors be allowed to pay a larger percentage for smaller loan amounts, which could be an incentive to originate loans in lower-priced neighborhoods that ensures that the originator receives an amount that is comparable to loans originated in high-priced neighborhoods? If so, should creditors also be permitted to pay originators a higher percentage for larger loan amounts?

Prohibition of compensation from both the consumer and another source. Proposed § 226.36(d)(2) would provide that, if a loan originator is compensated directly by the consumer for a transaction secured by real property or a dwelling, no other person may pay any compensation to the originator for that transaction. Direct compensation paid by a consumer to a loan originator would not be limited to "origination fees," "broker fees," or similarly labeled charges. Rather, compensation for this purpose includes any payment by the consumer that is retained by the loan originator. Thus, a creditor that is a loan originator by virtue of making a table funded transaction, as discussed above, would be subject to this prohibition if it imposes and retains any direct charge on the consumer for the transaction.

Consumers reasonably may believe that when they pay a loan originator directly, that amount is the only compensation the originator will receive. As discussed above, consumers generally are not aware of creditor payments to originators. If the consumer were aware of such payments, the consumer might reasonably expect that making a direct payment to an originator would reduce or eliminate the need for the creditor to fund the originator's compensation through the consumer's interest rate. Because the consumer is unaware of yield spread premiums, however, the consumer cannot effectively negotiate the originator's compensation. In fact, if consumers pay loan originators directly and creditors also pay originators through higher rates, consumers may be injured by unwittingly paying originators more in total compensation (directly and through the rate) than consumers believe they agreed to pay.

The Board believes that simply disclosing the yield spread premium would not address this injury to consumers. Consumer testing in connection with the Board's 2008 HOEPA Final Rule ***shows*** that, even with a disclosure, consumers do not understand ***how*** a creditor payment to a loan originator can result in a higher interest rate for the consumer. A disclosure therefore cannot inform consumers that they effectively are paying the loan originator more than they believe they agreed to pay. Without that knowledge, consumers cannot take steps to protect their own interests, such as by negotiating for a smaller direct payment, a lower rate, or both.

The Board also believes that this prohibition would increase transparency for consumers by requiring that all originator compensation come from the creditor or from the consumer, but not both. This additional consequence of proposed § 226.36(d)(2) would reduce the total number of loan pricing variables with which the consumer must contend. There is evidence that such simplification is consistent with TILA's purpose of promoting the informed use of consumer credit. [65] *See* TILA Section 102(a), 15 U.S.C. 1601(a).

Proposed § 226.36(d)(2) would prohibit only payments to an originator that are made in connection with the particular credit transaction, such as a commission for delivering the loan. The rule is not intended to prohibit payment of a salary to a loan originator who also receives direct compensation from a consumer in connection with that consumer's transaction. This guidance is contained in proposed comment 36(d)(2)-1.

Record retention requirements. Creditors are required by § 226.25(a) to retain evidence of compliance with Regulation Z for two years. Proposed staff comment 25(a)-5 would be added to clarify that, to demonstrate compliance with § 226.36(d)(1), a creditor must retain at least two types of records.

First, a creditor must have a record of the compensation agreement with the loan originator that was in effect on the date the transaction's rate was set. The Board believes this date is most likely when a loan originator's compensation was determined for a given transaction. The Board seeks comment, however, on whether some

[65] *See, e.g.*, Woodward, Susan E., *A Study of Closing Costs for FHA Mortgages* at 70-73 (Urban Institute and U.S. Department of Housing and Urban Development 2008), available at http://www.urban.org/UploadedPDF/411682_fha_mortgages.pdf .

other time would be more appropriate, in light of the purposes of the proposed rule. Proposed comment 25(a)-5 would clarify that the rules in § 226.35(a) would govern in determining when a transaction's rate is set.

Second, proposed comment 25(a)-5 would state that a creditor must retain a record of the actual amount of compensation it paid to a loan originator in connection with each covered transaction. The proposed comment would clarify that, in the case of mortgage brokers, the HUD-1 settlement statement required under RESPA would be an example of such a record because it itemizes the compensation received by a mortgage broker. The Board solicits comment on whether any comparable record exists for loan officer compensation that should be referenced in proposed comment 25(a)-5. To facilitate compliance, a cross reference to the record retention requirement would be included in proposed comment 36(d)(1)-9.

The Board solicits comment on whether there are other records that should be subject to the retention requirements. The Board also seeks comment on whether the existing two-year record retention period is adequate for purposes of the rules governing loan originator compensation.

The current record retention requirements in § 226.25 apply only to creditors. Although loan originator compensation has historically been paid by creditors, the prohibitions in § 226.36(d) apply more broadly to any person to prevent evasion by restructuring of payments through non-creditors. Accordingly, the Board expects that payments to loan originators will continue to be made largely by creditors. The Board seeks comment on whether there is a need to adopt requirements for retaining records concerning originator compensation that would apply to persons other than creditors, including the relative costs and benefits of that approach.

36(e) Prohibition on Steering

Optional Proposal on Steering by Loan Originators

The Board is also soliciting comment on whether it should adopt a rule that seeks to prohibit loan originators from directing or "steering" consumers to loans based on the fact that the originator will receive additional compensation, when that loan may not be in the consumer's best interest. Under proposed § 226.36(d)(1), a loan originator would receive the same compensation from a particular creditor regardless of the transaction's rate or terms. That provision, however, would not prohibit a loan originator from directing a consumer to transactions from a single creditor that offers greater compensation to the originator, while ignoring possible transactions having lower interest rates that are available from other creditors.

Attempting to address this issue presents difficulties. Determining whether a loan originator was warranted in directing a consumer to a loan that resulted in greater compensation for the originator also involves a determination of whether that loan was in the consumer's best interest compared to other available loan products. There is, however, no uniform method for making that evaluation. Consumers and loan originators may choose from among possible loan offers for a variety of reasons. The annual percentage rate (APR) is a tool that facilitates comparison shopping among different loans, but it is imperfect for reasons that are well documented, including the fact that the APR is calculated by amortizing origination fees over the full loan term rather than the expected life of the loan. *See* the 1998 Joint Report to the Congress by the Board and HUD, cited above. In considering interest rates, consumers may view the economic trade-off between rates and points differently depending on their individual financial circumstances or the amount of time they expect to hold the loan. Moreover, consumers evaluate other factors in deciding whether a loan is in their best interest even if it is not represented as the lowest cost option among the possible loan offers available through the originator. Thus, some consumers may reasonably determine that the financial risk created by a loan's prepayment penalty is acceptable in light of the loan's lower interest rate, while other consumers may prefer to accept a higher rate to ***avoid*** the risk. Consumers and loan originators also may consider factors other than loan cost, such as the creditor's rate lock-in policies, or the creditor's reputation for delivering loans within the promised time-frame, especially for home-purchase loans.

The Board believes, however, that there is benefit in attempting to craft a rule that prohibits and deters the most egregious practices, even if such a rule cannot ensure that consumers always obtain the lowest cost loan. Under the proposal, a loan originator would have a duty not to steer a consumer to higher cost loans that pay more to the originator when the loan is not in the consumer's interest. Originators would violate the rule, for example, if they directed the consumer to a fixed-rate loan option from a creditor that maximizes the originator's compensation without providing the consumer with an opportunity to choose from other available loans that have lower fixed interest rates with the equivalent amount in origination and discount points.

The Board is publishing a proposal, designated as proposed § 226.36(e)(1), to reflect this optional approach. Specifically, the rule would prohibit loan originators from directing or "steering" a consumer to consummate a transaction secured by real property or a dwelling that is not in the consumer's interest, based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer. The proposed rule seeks to preserve consumer choice by ensuring that consumers have appropriate loan options that reflect considerations other than the maximum amount of compensation that will be paid to the originator. Proposed comments 36(e)(1)-1 through -3 would provide additional guidance on the rule.

Proposed § 226.36(e) would not require a loan originator to direct a consumer to the transaction that will result in the least amount of compensation being paid to the originator by the creditor. However, if the loan originator reviews possible loan offers available from a significant number of the creditors with which the originator regularly does business and the originator directs the consumer to the transaction that will result in the least amount of creditor-paid compensation, the requirements of § 226.36(e) would be deemed to be satisfied. *See* proposed comment 36(e)(1)-2(ii).

Loan originators employed by the creditor in a transaction would be prohibited under § 226.36(d)(1) from receiving compensation based on the terms or conditions of the loan. Thus, when originating loans for the employer, the originator could not steer the consumer to a particular loan to increase compensation. Accordingly, in those cases, their compliance with § 226.36(d)(1) would be deemed to satisfy the requirements of proposed § 226.36(e). *See* proposed comment 36(e)(1)-2(ii). A creditor's employee, however, occasionally might act as a broker in forwarding a consumer's application to a creditor other than the originator's employer, such as when the employer does not offer any loan products for which the consumer would qualify. If the originator is compensated for arranging the loan with the other creditor, the originator would not be an employee of the creditor in that transaction and would be subject to proposed § 226.36(e).

The Board is also publishing provisions that would facilitate compliance with the prohibition in proposed § 226.36(e)(1). Under proposed § 226.36(e)(2) and (3), a safe harbor would be created, and there would be no violation if the loan was chosen by the consumer from at least three loan options for each type of transaction (fixed-rate or adjustable-rate loan) in which the consumer expressed an interest, provided the following conditions are met. The loan originator must obtain loan options from a significant number of creditors with which the originator regularly does business. For each type of transaction in which the consumer expressed an interest, the originator must present and permit the consumer to choose from at least three loans that include: the loan with the lowest interest rate, the loan with the second lowest interest rate, and the loan with the lowest total dollar amount for origination points or fees and discount points. The loan originator must have a good faith belief that these are loans for which the consumer likely qualifies. If the originator presents more than three loans to the consumer, the originator must highlight the three loans that satisfy the lowest rate and points criteria in the rule. Proposed comments 36(e)(2)-1 and 36(e)(3)-1 though -4 would provide guidance on the application of the rule.

Comment is expressly solicited on whether the proposed rule in § 226.36(e) and the accompanying commentary would be effective in achieving the stated purpose. Comment is also solicited on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have.

36(f)

The Board proposes to redesignate existing § 226.36(d) as § 226.36(f). Existing § 226.36(d) provides that § 226.36 does not apply to home-equity lines of credit (HELOCs). The redesignation would accommodate proposed new § 226.36(d) and (e), discussed above.

The Board proposed as part of the 2008 HOEPA proposal to exclude HELOCs from the coverage of § 226.36 because of two considerations, which suggested that the protections may be unnecessary for such transactions. First, the Board understood that most originators of HELOCs hold them in portfolio rather than sell them, which aligns these originators' interests in loan performance more closely with their borrowers' interests. Second, the Board understood that HELOCs are concentrated in the banking and thrift industries, where the federal banking agencies can use their supervisory authority to protect consumers. The Board sought comment on whether these considerations were valid or whether any or all of the protections in § 226.36 should apply to HELOCs. Although mortgage lenders and other industry representatives commented in support of the proposed exclusion and consumer advocates commented in opposition, neither group provided the Board with substantial evidence as to whether the kinds of problems § 226.36 addresses exist in the HELOC market.

In the July 2008 HOEPA Final Rule, the Board limited the scope of § 226.36 to closed-end mortgages. In the absence of clear evidence of abuse, the Board continued to believe the protections may be unnecessary for the reasons discussed above. Nevertheless, the Board remains aware of concerns that creditors may structure transactions as HELOCs solely to evade the protections of § 226.36. The Board also is aware that many of the same opportunities and incentives that underlie the abuses addressed by § 226.36 for closed-end mortgages may well exist for HELOCs. Reasons therefore exist for positing that such unfair practices either may or may not occur with HELOCs, but the Board lacks concrete evidence as to which is the case.

The Board requests comment on whether any or all of the protections in § 226.36 should apply to HELOCs. Specifically, what evidence exists that ***shows*** whether loan originators unfairly manipulate HELOC terms and conditions to receive greater compensation, injuring consumers as a result? What evidence is there as to whether appraisals obtained for HELOCs have been influenced toward misstating property values? To what extent do creditors contract out HELOC servicing to third parties, thus undermining the Board's premise regarding aligned interests between servicers and consumers? Whether third parties or the original creditors primarily service HELOCs, what evidence ***shows*** whether they engage in the abusive servicing practices addressed by § 226.36(c)?

Section 226.37 Special Disclosure Requirements for Closed-End Mortgages

Section 226.17(a), which implements Sections 122(a) and 128(b)(1) of TILA, addresses format and other disclosure standards for all closed-end credit. 15 U.S.C. 1632(a), 1638(b)(1). For closed-end credit, creditors must provide disclosures in writing in a form that the consumer may keep, grouped together and segregated from other information. In addition, the loan's "finance charge" and "annual percentage rate," using those terms, must be more conspicuous than other required disclosures.

The Board proposes special rules in new § 226.37 to govern the format of required disclosures under TILA for transactions secured by real property or a dwelling. These new rules would be in addition to the rules in § 226.17. The proposed format rules are intended to (1) improve consumers' ability to identify disclosed loan terms more readily; (2) emphasize information that is most important to the consumer in the decision-making process; and (3) simplify the organization and structure of required disclosures to reduce complexity and "information overload." Proposed § 226.37 would establish special format rules for disclosures required by proposed §§ 226.38 and 226.20(d), and existing §§ 226.19(b) and 226.20(c).

The Board is proposing § 226.37 and associated commentary to address the duty to provide "clear and conspicuous" disclosures that are grouped together and segregated from other information, and to require that certain information be highlighted in table form or in a graph. Proposed § 226.37 would also require creditors to use consistent terminology for all disclosures. The Board is proposing to revise the requirement that certain terms be used or disclosed more conspicuously, for transactions secured by real property or a dwelling. The general disclosure standards under § 226.17(a)(1) and associated commentary continue to apply transactions secured by real property or a dwelling but, under the proposal creditors would also be required to meet the higher standards under proposed § 226.37.

37(a) Form of Disclosures

37(a)(1) Clear and Conspicuous

Section 122(a) of TILA and § 226.17(a)(1) require that all closed-end credit disclosures be made clearly and conspicuously. 15 U.S.C. 1632(a). Currently, under comment 17(a)(1)-1, the Board interprets the clear and conspicuous standard to mean that disclosures must be in a "reasonably understandable" form. This standard does not require any mathematical progression or format, or that disclosures be provided in a particular type size, although disclosures must be legible whether typewritten, handwritten, or printed by computer. Comment 17(a)(1)-3 provides that the standard does not require disclosures to be located in a particular place.

Consumer testing conducted by the Board ***showed*** that information presented without any highlighting or other emphasis, and the use of small print led many participants to miss or disregard key information about the loan transaction. As discussed more fully under the following sections, consumer testing indicates that when certain information is presented and highlighted in a specific way consumers are able to identify and use key terms more easily: proposed § 226.38 for disclosures required on transactions secured by real property or a dwelling, § 226.19(b) for ARM loan program disclosures, § 226.20(c) for ARM adjustment notices, and § 226.20(d) for periodic statements on loans that are negatively amortizing. [66] For example, consumer testing of the current TILA model form indicated that participants viewed both the interest rate and monthly payment as important. Although participants generally understood that the interest rate on their loan could change, several arrived at this conclusion because of the payment schedule disclosure, which ***showed*** different monthly payment amounts, not because they understood the loan had a variable rate feature that would affect their monthly payments. In addition to testing the current TILA model form, the Board also tested variations of that form, including a form it developed in 1998 with HUD ("Joint Form") that was submitted to Congress in the 1998 Joint Report. [67] Participants who reviewed the Joint Form also generally understood the loan had an adjustable rate, but less than half understood the rate was fixed only for the first three years and could vary only after that time period. However, when the Board consumer tested information about interest rates and monthly payments in a tabular form, participants could identify more readily that the loan had an adjustable rate feature, and comprehension of when interest rates would adjust and the impact that rate adjustments had on their monthly payments improved.

For these reasons, the Board proposes to require that creditors make disclosures for transactions secured by real property or a dwelling clearly and conspicuously, by highlighting certain information in accordance with the requirements in proposed §§ 226.38, 226.19(b), § 226.20(c), and § 226.20(d). Proposed comment 37(a)(1)-1 would clarify that to meet the clear and conspicuous standard, disclosures must be in a reasonably understandable form and readily noticeable to the consumer. Proposed comment 37(a)(1)-2 provides that to meet the readily noticeable standard, the disclosures under proposed §§ 226.38, 226.19(b), 226.20(c), and 226.20(d) generally must be provided in a minimum 10-point font. The approach of requiring a minimum of 10-point font for certain disclosures is

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[66] *See also Improving Consumer Mortgage Disclosures* (finding that incorporating white space, using clear headings, and using certain formatting and organization create a "less intimidating appearance than many consumer financial disclosures, making it more likely that consumers will both want to read the form and be able to use it productively in their decisions.").

[67] *See the 1998 Joint Report*, App.A-6.

consistent with the approach taken by the Board in revising disclosures required under TILA for certain open-end credit. 74 FR 5244; Jan. 29, 2009.

New comment 37(a)(1)-3 would clarify that disclosures under proposed §§ 226.38 and 226.19(b) must be provided on a document separate from other information, although these disclosures, as well as disclosures under proposed §§ 226.20(c) and 226.20(d), may be made on more than one page, on the front or back side of a page, and continued from one page to the next. Consumer testing suggests that consumers may not read information carefully if it is excessive in length, and if unable to identify relevant information quickly are likely to become frustrated and not read the disclosures. The Board believes that allowing creditors to combine disclosures with other information may increase the likelihood that consumers will not read the disclosures.

37(a)(2) Grouped Together and Segregated

Section 128(b)(1) of TILA and § 226.17(a)(1) currently require that, except for certain information, the disclosures required for closed-end credit must be grouped together, segregated from everything else, and not contain any information not directly related to the required disclosures. 15 U.S.C. 1638(b)(1). Comment 17(a)(1)-2 states that creditors can satisfy the grouped together and segregation requirement in a variety of ways, including combining segregated disclosures with other information as long as they are set off by a certain format type. Comment 17(a)(1)-2 further provides that the segregation requirement does not apply to disclosures for variable rate transactions required under current §§ 226.19(b) and 226.20(c). Comment 17(a)(1)-7 clarifies that balloon-payment financing with leasing characteristics is subject to the grouped together and segregation requirement.

Consumer testing conducted by the Board indicated that participants generally are overwhelmed by the amount of information presented for loan transactions, and as a result, do not read their mortgage disclosures carefully. Consumer testing ***showed*** that emphasizing terms and costs consumers find important, and separating out less useful information, is critical to improving consumers' ability to identify and use key information in their decision-making process. [68] Consumer testing also demonstrated that grouping related concepts and figures together, and presenting them in a particular consumers' ability to identify, comprehend, or use disclosed terms.

For these reasons, the Board proposes to require that certain disclosures be grouped together and segregated in the manner discussed below, pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). Grouping and segregating information which is most useful and relevant to the loan transaction would facilitate consumers' ability to evaluate a loan offer.

Segregation of disclosures. Proposed § 226.37(a)(2) would implement TILA Section 128(b)(1) of TILA, in part, for transactions secured by real property or a dwelling. 15 U.S.C. 1604(a), 1638(b)(1). Proposed § 226.37(a)(2) would require that disclosures for such transactions be grouped together in accordance with the requirements under proposed § 226.38(a) through (j), segregated from other information, and not contain any information not directly related to the segregated disclosures. Based on consumer testing, the Board also is proposing to require that ARM loan program disclosures under proposed § 226.19(b), ARM adjustment notices under proposed § 226.20(c), and periodic notices for payment option loans that are negatively amortizing under proposed § 226.20(d), be subject to

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[68] *See also Improving Consumer Mortgage Disclosure* at 69 (consumer testing results ***showed*** that current mortgage disclosure forms failed to convey key cost disclosures, but that prototype disclosures, which removed less useful information, significantly improved consumers' recognition of key mortgage costs).

a grouped-together and segregation requirement. Thus, the reference to §§ 226.19(b) and 226.20(c) would be deleted from comment 17(a)(1)-2.

Proposed comment 37(a)(2)-1 would clarify that to be segregated, disclosures must be set off from other information. Based on consumer testing, the Board is concerned that allowing creditors to combine disclosures with other information, in any format, will diminish the clarity of key disclosures, potentially cause "information overload," and increase the likelihood that consumers may not read the disclosures. Proposed comment 37(a)(2)-1 also would provide guidance on ***how*** creditors can group together and segregate the disclosures in accordance with proposed § 226.38(a)-(j), such as by using bold print dividing lines.

Content of segregated disclosures; directly related information. Footnotes 37 and 38 currently provide exceptions to the grouped-together and segregation requirement under § 226.17(a)(1). Footnote 37 allows creditors to include information not directly related to the required disclosures, such as the consumer's name, address, and account number. Footnote 38, which implements TILA Section 128(b)(1), 15 U.S.C. 1638(b)(1), allows creditors to exclude certain required disclosures from the grouped-together and segregation requirement, such as the creditor's identity under § 226.18(a), the variable-rate example under § 226.18(f)(1)(iv), insurance or debt cancellation disclosures under § 226.18(n), or certain security-interest charges under § 226.18(o). Comment 17(a)(1)-4 clarifies that creditors have flexibility in grouping the disclosures listed in footnotes 37 and 38 either together with or separately from segregated disclosures, and comment 17(a)(1)-5 addresses what is considered directly related to the segregated disclosures.

Proposed § 226.37(a)(2)(i) and (ii) would provide exceptions to the grouped-together and segregation requirement, and implement TILA Section 128(b)(1) for transactions secured by real property or a dwelling. 15 U.S.C. 1638(b)(1). Proposed § 226.37(a)(2)(i) replicates the content in current footnote 37 and would allow the following disclosures to be made together with the segregated disclosures: the date of the transaction, and the consumer's name, address and account number. Proposed § 226.37(a)(2)(ii) generally replicates the substance in current footnote 38, except that the Board proposes to remove the reference to the variable-rate example under § 226.18(f)(iv), which would be eliminated for mortgage loans as discussed under proposed § 226.19(b). Under proposed § 226.37(a)(2)(ii), creditors also would have flexibility to make the tax deductibility disclosure, as discussed under proposed § 226.38(f)(4), together with or separately from other required disclosures.

Proposed comment 37(a)(2)-2 clarifies that creditors may add or delete the disclosures listed in proposed § 226.37(a)(2)(i) and (ii) in any combination together with or separate from the segregated disclosures. Proposed comment 37(a)(2)-3 provides guidance on the type of information that would be considered directly related and that may be included with the segregated disclosures for transactions secured by real property or a dwelling. Information described in comments 17(a)(1)-5(i) through (xv) are not included in proposed comment 37(a)(2)-3 because they are not applicable to transactions secured by real property or a dwelling, or are unnecessary as a result of other proposed disclosures: grace periods for late fees; unsecured interest; demand features; instructions on multi-purpose forms; minimum finance charge statement; negative amortization; due-on-sale clauses; prepayment of interest statement; the hypothetical example disclosure required by current § 226.18(f)(1)(iv); the variable rate transaction disclosure required by current § 226.18(f)(1); assumption; and the late-payment fee disclosure for single-payment loans.

The Board also proposes to require that the disclosure of the creditor's identity be grouped together and segregated from other information, for all closed-end credit. The Board proposes to make this change pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms, and ***avoiding*** the uninformed use of credit. 15 U.S.C. 1601(a). The Board believes that the creditor's identity should be included with the grouped-together and segregated disclosures so that consumers can more easily identify the appropriate entity. Thus, current footnote 38 would be revised, and proposed § 226.37(a)(2) would implement this aspect of the proposal for transactions secured by real property or a dwelling.

In technical revisions, the Board proposes to move the substance of footnotes 37 and 38 to the regulatory text of § 226.17(a)(1). Current comment 17(a)(1)-7 would be revised to address disclosures for transactions secured by real property or a dwelling that have balloon payment financing with leasing characteristics; a cross-reference to comment 17(a)(1)-7 is proposed in new comment 37(a)(2)-4.

The Board seeks comment on whether it should continue to permit creditors to make the insurance or debt cancellation disclosures under proposed § 226.4(d) together with or separately from other required disclosures. Consumer testing ***showed*** that many participants found these disclosures too long and complex, and as a result they do not read or only skim the disclosures. The Board is concerned that adding the insurance information to the information about loan terms required by proposed § 226.38 will result in "information overload."

Multi-purpose forms. Comment 17(a)(1)-6 currently permits creditors to design multi-purpose forms for TILA-required closed-end credit disclosures as long as the clear and conspicuous requirement is met. The Board proposes to require that disclosures for transactions secured by real property or a dwelling be made only as applicable, as discussed more fully under proposed § 226.38. As noted, consumer testing indicates that consumers may not read information if it is excessive in length, and if unable to identify relevant information quickly are likely to become frustrated and not read the disclosures. The Board believes that allowing creditors to combine disclosures with other information that is not applicable to the transaction may contribute to "information overload," and increase the likelihood that consumers will not read the disclosures.

For these reasons, under the proposal creditors would not be permitted to use forms for more than one type of mortgage transaction (*i.e*., multi-purpose forms). The Board believes technology and form design software will allow creditors to prepare transaction-specific, customized disclosure forms at minimal cost. The Board seeks comment, however, on whether creditors already provide consumers with customized disclosures forms for mortgage loans in the regular course of business, or the extent to which creditors rely on multi-purpose forms. The Board seeks comment on potential operational changes, difficulties, or costs that would be incurred to implement the requirement to have transaction-specific disclosures for transactions secured by real property or a dwelling.

37(b) Separate Disclosures

Existing § 226.17(a)(1) requires certain disclosures to be provided separately from the segregated information, such as the itemization of amount financed required by § 226.18(c)(1) and TILA Section 128(a)(2)(A). 15 U.S.C. 1638(a)(2)(A). The Board is proposing to expand the list of disclosures that must be provided separately from the segregated information, based on consumer testing.

Consumer testing ***showed*** that certain disclosures, such as disclosures about assumption or property insurance, were confusing to participants, or were generally not as useful in the participants' decision-making process as other information. For example, with respect to assumption, few participants understood the current assumption policy model clause in Model Clause H-6 in Appendix H to Regulation Z; almost no one stated that the assumption was important information when applying for and obtaining a loan. With respect to property insurance, most participants understood that the borrower can obtain property insurance from anyone that is acceptable to the lender, but participants stated they were already aware of this fact and therefore this information was not useful. Regarding rebates, consumers understood that early payoff of the loan could result in a refund of interest and fees, and generally expressed interest in knowing this information. However, most also indicated that information about rebates would not have an impact on whether they accepted a loan and therefore, it was not as important or useful to the decision-making process as other information, such as interest rate or closing costs.

With respect to the contract reference, almost all participants understood already that they could read their contract to learn what could happen if they stopped making payments, defaulted, paid off or refinanced their loan early. In addition, other proposed disclosures, such as the prepayment penalty under proposed § 226.38(a)(5) or demand feature under proposed § 226.38(d)(2)(iv), would make the contract reference disclosure less important because such information would already be disclosed directly on the disclosure statement itself. Moreover, because creditors must provide disclosures within three business days after application for transactions secured by real property or a consumer's dwelling, consumers will not have a contract to reference at this point in time.

For these reasons, the Board proposes to require that certain information be disclosed separately from the grouped together and segregation information, to improve consumers' ability to focus on the terms that are most important for shopping and decision-making. [69] New § 226.37(b) would require that creditors provide the following disclosures separately from other information for transactions secured by real-property or a dwelling: Itemization of amount financed under proposed § 226.38(j)(1); rebates under proposed § 226.38(j)(2); late payment under proposed § 226.38(j)(3); property insurance under proposed § 226.38(j)(4); contract reference under proposed § 226.38(j)(5); and assumption under proposed § 226.38(j)(6).

The Board proposes this approach pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA for any class of transactions to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). In this case, the Board believes an exception from TILA's grouped together and segregation requirement is necessary to effectuate the Act's purposes for transactions secured by real property or a dwelling. As noted above, many consumers may not read information if it is excessive in length, and if unable to identify relevant information quickly are likely to become frustrated and not read the disclosures. The Board is concerned that allowing creditors to combine the information in proposed § 226.38(j) with other required information could contribute to "information overload," distract from other important disclosures, such as the APR or monthly payments, and may increase the likelihood that consumers will not read the disclosures. Thus, the Board believes that requiring these disclosures to be separate from the other required disclosures will serve TILA's purpose to ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a).

37(c) Terminology

37(c)(1) Consistent Terminology

Currently, there is no requirement that TILA disclosures for closed-end credit use consistent terminology. Consumer testing ***showed*** that some participants were confused when different terms are used for the same information. For example, when the terms loan amount, principal, and loan balance were used, some participants attributed different meaning to each term used. Based on these findings, the Board proposes § 226.37(c)(1) to require the use of consistent terminology for the disclosures under proposed §§ 226.38, 226.19(b), 226.20(c) and 226.20(d). The Board believes that using consistent terminology will enhance a consumers' ability to identify, review, and comprehend disclosed terms across all disclosures and therefore, ***avoid*** the uninformed use of credit. Proposed comment 37(c)(1)-1 clarifies that terms do not need to be identical, unless otherwise specified, but must be close enough in meaning to enable the consumer to relate the disclosures to one another. Proposed comment 37(c)(1)-2 provides guidance on combining terms for transactions secured by real property or a dwelling when more than one numerical disclosure would be the same, and provides an example relating to the total payments and amount financed disclosures required under proposed §§ 226.38(e)(5)(i) and 226.38(e)(5)(iii), respectively.

37(c)(2) Terms Required To Be More Conspicuous

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[69] *See also Improving Consumer Mortgage Disclosures* at 37-38, 59-60 (finding that streamlining disclosures improved consumer ability to identify and understand key terms of the loan transaction disclosed).

Currently TILA Section 122(a) and § 226.17(a)(2) require creditors to disclose the terms "finance charge" and "annual percentage rate," together with a corresponding dollar amount and percentage rate, more conspicuously than any other disclosure, except the creditor's identity under § 226.18(a). 15 U.S.C. 1632(a). Under TILA Section 103(u), the finance charge and the annual percentage rate are material disclosures; failure to disclose either term extends the right of rescission under TILA Section 125, and can result in actual and statutory damages under TILA Section 130(a). 15 U.S.C. 1602(u); 15 U.S.C. 1635, 1640(a).

Finance charge: interest and settlement charges. Section 226.18(d), which implements TILA Sections 128(a)(3) and (a)(8), requires creditors to disclose the "finance charge," using that term, and a brief description such as "the dollar amount the credit will cost you" for closed-end credit. 15 U.S.C. 1638(a)(3), (a)(8). Consumer testing ***showed*** that participants could not correctly explain what the finance charge represented. Many consumers recognized that the finance charge included all of the interest they would pay over the loan's term, but did not know that it also included fees. Most participants did not find the finance charge to be useful in evaluating a loan offer. However, some participants expressed a general interest in knowing the information.

Based on these results, the Board tested a form with the finance charge disclosed as "interest and settlement charges," to more closely represent the components of the finance charge. Participants generally understood the term, but still stated that they did not find the term very useful, particularly when compared to other information such as the interest rate or monthly payments. Consumer testing suggests that highlighting terms that are not useful in the decision-making process may generally diminish consumers' ability to understand other key terms.

For these reasons, and as discussed more fully in the discussion of proposed § 226.38(e)(5)(ii), the Board proposes to exercise its authority under TILA Section 105(a) to make certain exceptions to the disclosure of the finance charge under TILA Section 128(a)(3) and TILA Section 122(a). 15 U.S.C. 1604(a); 1632(a); 1638(a)(3). First, creditors would be required to disclose the finance charge as "interest and settlement charges," not as the "finance charge" as required by TILA Section 128(a)(3). 15 U.S.C. 1638(a)(3). Second, the disclosure of interest and settlement charges would not have to be more conspicuous than other terms, as required by TILA Section 122(a). 15 U.S.C. 1632(a).

The exception to TILA's requirements that the finance charge be disclosed as the "finance charge" and that it be more conspicuous than other information is proposed pursuant to TILA Section 105(a). 15 U.S.C. 1604(a). The Board has authority under TILA Section 105(a) to adopt "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." 15 U.S.C. 1601(a), 1604(a). The class of transactions that would be affected is closed-end transactions secured by real property or a dwelling. The Board believes an exception from TILA's requirements is necessary and proper to effectuate TILA's purposes to assure meaningful disclosure and informed credit use. Consumer testing ***showed*** that disclosing the finance charge as "interest and settlement charges" improved participants' understanding of the information, even though the figure may not include all interest and settlement charges applicable to the transaction. (See discussion under proposed § 226.4 regarding content and calculation of the interest and settlement charges.) Moreover, consumer testing ***showed*** that participants did not find the interest and settlement charges as useful, when choosing or evaluating a loan product, as other information, such as whether the loan has an adjustable rate or the monthly payment amount.

In addition, and for the reasons discussed more fully under proposed § 226.38(e)(5)(ii) regarding interest and settlement charges, the proposal would group the interest and settlement charges disclosure with other disclosures relating to the total cost of the loan offered, such as the total of payments and the amount financed. Consumer testing conducted by the Board, as well as basic document design principles, ***shows*** that grouping related concepts and figures makes it easier for consumers to identify, comprehend, or use disclosed terms.

Annual percentage rate. TILA Section 122(a) and § 226.17(a)(1) require that the term "annual percentage rate," when disclosed with the corresponding percentage rate, be disclosed more conspicuously than any other required disclosure. 15 U.S.C. 1632(a). The Board is proposing to revise the description of the APR and require that creditors provide context for the APR by disclosing it on a scaled graph with explanatory text, as discussed more fully under proposed §§ 226.38(b). In addition, the Board is proposing § 226.37(c)(2) to implement TILA Section 122(a) for transactions secured by real property or a dwelling. 15 U.S.C. 1632(a). Section 226.37(c)(2) would require that creditors disclose the APR in a 16-point font, in a prominent location, and in close proximity to the scaled graph and explanations proposed under § 226.38(b)(2) through (4).

As discussed under proposed § 226.38(b), the APR is one of the most important terms disclosed about the loan; it is the only single, unified number available to help consumers understand the overall cost of a loan. To this end, the Board believes it is essential that consumers be able to identify the APR easily. Consumer testing and basic document design principles ***show*** that participants generally pay greater attention to figures, such as numbers, percentages and dollar signs, than to terminology that may accompany, describe or label any disclosed figure. However, the TILA disclosure contains many numerical figures that consumers must identify and review. Given that the Board is proposing to require a minimum 10-point font for disclosure of other terms on the TILA (see discussion under proposed comment 37(a)(1)-2), and based on document design principles, the Board consumer tested disclosing the APR figure in a larger font and in bold text to make it more readily noticeable as compared to other disclosed terms. When tested in this manner, participants were able to easily identify the APR. Based on consumer testing, the Board believes that a 16-point font requirement for the APR is sufficient to highlight the APR. The Board also notes that the approach of requiring at least a 16-point font for the APR disclosure is consistent with the approach taken by the Board in revising the purchase APR disclosure required under TILA for open-end credit. 74 FR 5244; Jan. 29, 2009.

Proposed comment 37(c)-3(i) through (iii) would provide further guidance on the more conspicuous requirement and would clarify that the APR must be more conspicuous only in relation to other required disclosures under proposed § 226.38, and only as required under proposed § 226.37(c)(2) and § 226.38(b). Proposed comment 37(c)-4 would provide guidance on ***how*** creditors can comply with the more conspicuous requirement for transactions secured by real property or a dwelling.

The Board seeks comment on whether the APR should be made more or less prominent using a larger or smaller font-size, and whether different graphs or visuals could be used to provide better context for the APR. The Board also seeks comment on the relative advantages and disadvantages of a graphic-based versus text-based approach to disclosing the APR, and the potential operational changes, difficulties, or costs that would be incurred to implement the graphic-based APR disclosure requirement for transactions secured by real property or a dwelling.

37(d) Specific Formats

Currently, § 226.17(a)(1) does not impose special format design or location requirements on disclosures for closed-end credit. However, as discussed more fully under proposed § 226.38, consumer testing ***showed*** that the current TILA form did not present key loan information in a manner that was noticeable and easy for consumers to understand. For example, the payment schedule required under current § 226.18(g) did not effectively demonstrate to participants the relationship between monthly payments and an adjustable interest rate feature. Consumer testing also ***showed*** that the current TILA form highlighted terms that confused many participants. For example, most participants incorrectly assumed the amount financed was the same as the loan amount, a term not required on the current TILA form. In other instances, the current TILA form emphasized information that participants generally understood, but did not find useful or important, such as the total of payments. Many participants also noted that the current TILA form failed to include information they would find useful when shopping or evaluating a loan offer, such as the contract interest rate and settlement charges.

As discussed under proposed § 226.19, consumer testing of the current ARM loan program disclosure and the CHARM booklet also revealed ineffective presentation of information relating to adjustable rate loan programs. Many participants found the narrative format and terminology used in the current ARM loan program disclosure complicated, dense, and difficult to read and understand. With respect to the CHARM booklet, many participants generally indicated that the information it contained was informative and educational, but they would be unlikely to read it because it was too long.

In addition, as noted previously, consumer testing suggests that consumers may not read information carefully if it is excessive in length, and if unable to identify relevant information quickly are likely to become frustrated and not read the disclosures. As discussed more fully under proposed § 226.37(a) through (c), this suggests highlighting and structuring disclosures in a particular manner to improve clarity, identification and comprehension of disclosed terms.

To address the problems with the current TILA form and ARM loan program disclosures, the Board used various formats to present key loan information, such as tabular forms and question and answer format. Consumer testing suggests that using tabular forms improved participants' ability to readily identify and understand key information, as discussed under proposed §§ 226.19(b) and 226.38(c). For example, current ARM loan program disclosures provide information in narrative form, which participants found difficult to read and understand. However, consumer testing ***showed*** that when information about interest rate, monthly payment and loan features was presented in tabular format, participants found the information easier to locate and their comprehension of the disclosed terms improved. The benefits of disclosing important information in a tabular format are consistent with the results of consumer testing conducted by the Board in revising credit card disclosures. 74 FR 5244; Jan. 29, 2009. Consumer testing also ***showed*** that using question and answer format improved participants' ability to recognize and understand potentially risky or costly features of a loan, as discussed under proposed §§ 226.19 and 226.38(d). Consumer testing and basic document design principles suggest that keeping language and design elements consistent between forms improves consumers' ability to identify and track changes in the information being disclosed. As a result, the Board also integrated the question and answer format used on the revised TILA model form into ARM loan program disclosures required under proposed § 226.19(b).

To present key loan terms more effectively, the Board also used specific location and structure requirements. Consumer testing suggests that the location and order in which information is presented impacts consumers' ability to find and comprehend the information disclosed. For example, as discussed under proposed § 226.38(a), disclosing key information, such as the loan term, amount, type, and settlement charges, before other required disclosures and in a tabular format improved participants' ability to quickly and accurately identify key loan terms. In another example, participants' ability to identify the frequency of rate adjustments after an introductory period expired also improved when this information was included both in the loan summary section at the top of the revised TILA model form, and then again below in the interest rate and payment summary section.

Based on consumer testing results, basic document design principles, and for the reasons discussed more fully under each of the following subsections, the Board is proposing to establish special format rules for: disclosures under proposed § 226.38 for transactions secured by real property or a dwelling; ARM loan program disclosures under proposed § 226.19(b) for adjustable rate transactions; ARM adjustment notices under proposed § 226.20(c); and periodic statements required for payment option loans that are negatively amortizing under proposed § 226.20(d). The special rules regarding format, structure and location of disclosures are noted in proposed § 226.37(d)(1) through (10). Proposed comments 37(d)-1 and -2 would provide guidance to creditors on ***how*** to comply with the special format rules noted in proposed § 226.37(d)(1) through (10) regarding prominence and close proximity of disclosed terms.

37(e) Electronic Disclosures

Currently, under § 226.17(a)(1) creditors are permitted to provide in electronic form any TILA disclosure for closed-end credit that is required to be provided or made available to consumers in writing if the consumer affirmatively consents to receipt of electronic disclosures in a prescribed manner. Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq*. The Board proposes § 226.37(e) to allow creditors to provide required disclosures for transactions covered by proposed § 226.38 in electronic form in accordance with the requirements under § 226.17(a)(1).

Section 226.38 Content of Disclosures for Credit Secured by Real Property or a Dwelling

38(a) Loan Summary

To shop for and understand the cost of credit, consumers must be able to identify and understand the key credit terms offered to them. As discussed below, the Board's consumer testing suggested that loan amount, loan term and loan type are key terms that consumers are familiar with and expect to see on closed-end mortgage disclosures, together with settlement charges and whether a prepayment penalty would apply to their loan.

The Board's Proposal

The Board proposes to require creditors to provide the following key loan features in a loan summary section: loan amount, loan term, loan type, the total settlement charges, whether a prepayment penalty applies and, the maximum amount of the penalty. The purpose of the proposed disclosures is to improve their effectiveness and consumer comprehension. A concise loan summary would help consumers compare loan offers; a summary may also help consumers determine whether they can afford the loan they are offered, and whether the disclosure presents the same loan terms they discussed with their mortgage broker or lender.

The Board conducted consumer testing of loan summary disclosures. Participants were able to identify the exact loan amount, what type of a loan they were being offered, ***how*** long they would have to pay off their loan, ***how*** much they would have to pay in settlement charges, and whether a prepayment penalty would apply. A discussion of the items that would be included in the loan summary follows.

38(a)(1) Loan Amount

Currently creditors are not required to disclose the loan amount for closed-end mortgages, except for loans subject to HOEPA. Under § 226.32(c)(5), creditors are required to disclose the total amount borrowed. The Board is proposing to require a similar disclosure of the loan amount for all transactions secured by a real property or a dwelling. Proposed § 226.38(a)(1) would require creditors to disclose "loan amount," which would be defined as the principal amount the consumer will borrow reflected in the note or loan contract. The loan amount is a core loan term that the consumer should be able to verify readily on the disclosure. Disclosing the loan amount may also alert the consumer to fees that are financed in addition to the principal balance.

38(a)(2) Loan Term

Currently, Regulation Z requires creditors to disclose the number of payments but not the term of the loan. The Board believes that the loan term is an important fact about the loan that consumers should know when evaluating a loan offer. Consumer testing of current model forms conducted by the Board indicated that some consumers are not able to readily identify the loan term from the number of payments disclosed in the current disclosures. Although some participants could determine the loan term by dividing by 12 the number of months ***shown*** in the payment schedule disclosed under § 226.18(g), other participants could not readily figure the term of the loan offered, particularly for loans that have multiple payment levels, such as discounted adjustable-rate mortgages. For these reasons, the Board is proposing to require disclosure of the loan term in the summary section for loans covered by § 226.38, and to define "loan term" for these purposes as the time to repay the obligation in full. For instance, instead of disclosing the number of months for each payment amount for variable interest rate loans and requiring the consumer to add up those months to determine the loan term, the proposed disclosure would state "Loan term: 30 years." Likewise, for a 10-year loan with a balloon payment due in year 10 and an amortization schedule of 30 years, the proposed disclosure would state "Loan term: 10 years."

38(a)(3) Loan Type and Features

Regulation Z does not require the creditor to disclose the type of the loan, except in the case of loans with variable interest rates. Current § 226.18(f) requires a disclosure of a variable rate if the annual percentage rate may increase after consummation. The Board's consumer testing indicates that the current variable rate disclosures may not clearly convey whether the loan has a fixed or a variable interest rate. The Board believes that a specific disclosure of a loan type offered will assist consumers in better understanding whether a loan features a rate that may increase after consummation, so that the consumer may evaluate whether they want a loan in which the rate and payments can increase.

The Board is proposing to require a disclosure of the loan type in the loan summary section for loans covered by § 226.38. Proposed § 226.38(a)(3)(i) would require that a loan be classified as one of three types: an "adjustable-rate mortgage (ARM)," a "step-rate mortgage," or a "fixed-rate mortgage" using those terms. The categories proposed in § 226.38(a)(3)(i) apply only to disclosures requires for closed-end transaction secured by real property or a dwelling, and are different from the categories in § 226.18(f) and commentary to § 226.17(c)(1). Proposed § 226.38(a)(3)(ii) would require an additional disclosure if the loan has one or more of the following three features: "negative amortization," "interest-only payments," or "step-payments," using those terms. The related commentary would provide examples for each loan type and feature.

38(a)(3)(i) Loan Type

As discussed above, consumer testing indicated that the current variable rate disclosure is not sufficiently clear for many consumers. When presented with a current closed-end model form for an adjustable-rate mortgage, over half of the participants understood that the interest rate would change. However, several participants inferred this from the different monthly payments in the payment schedule, not because the check box on the form indicated that the loan had a "variable rate." A few participants indicated that they did not know whether the rate would change. Some participants commented that although the current model form used the term "variable rate," they were more familiar with the term "adjustable rate." As a result, the Board tested revised disclosures using the term "adjustable rate mortgage" in the loan summary section. All participants who were ***shown*** a revised disclosure for a variable rate transaction using the term "adjustable-rate mortgage" understood that the interest rate and payments could change during the loan's term.

Proposed § 226.38(a)(3)(i) would define an adjustable-rate mortgage as a transaction in which the annual percentage rate may increase after consummation; a step-rate mortgage as a transaction in which the interest rate will change after consummation as specified in the legal obligation between the parties; and a fixed-rate mortgage as a transaction that is neither an adjustable-rate mortgage nor a step-rate mortgage. Proposed comment 38(a)(3)(i)(A)-2 would offer examples of adjustable-rate mortgages and clarify that some variable-rate transactions described in comment 17(c)(1)(iii)-4, such as certain renewable balloon-payment, preferred-rate and price-level-adjusted loans, would be considered fixed-rate mortgages for the purposes of the "loan type" disclosure in the loan summary required by § 226.38(a). This follows the current approach in comment 17(c)(1)-11 which provide that disclosures for certain variable-rate transactions should be based on the interest rate that applies at consummation.

Proposed § 226.38(a)(3)(i)(B) would require the creditor to disclose a loan as a "step-rate mortgage" if the interest rate will change after consummation, provided all such interest rates are specified in the legal obligation between the parties. Under existing guidance, such a loan would not be considered a variable rate loan. The Board believes that for the purposes of the loan summary, which is to alert the consumer to the possibility that their interest rate and payment could increase after consummation, step-rate loans should not be identified as fixed or variable rate loans, even though they share certain features with both loan types. Proposed comment 38(a)(3)(i)(B)-2 would clarify that certain preferred-rate loans would not be considered step-rate mortgages for the purposes of the "loan type" disclosures. Proposed comment 38(a)(3)(i)(C)-1 would offer examples of fixed-rate mortgages and explain which variable-rate transactions described in comment 17(c)(1)(iii)-4 would be considered fixed-rate mortgages for the purposes of the "loan type" disclosure.

38(a)(3)(ii) Loan Features

The general classification of loans as fixed rate, adjustable rate and step rate would enable consumers to understand what loan type they are being offered and to shop for loan products according to consumers' needs and preferences. However, these broad categories of loan types are not sufficient to warn consumers about the potential risks that a specific loan may carry. As discussed previously, nontraditional mortgage products with negatively amortizing or interest-only payments grew in popularity in recent years, subjecting consumers to the risk of payment shock. Disclosures should clearly alert consumers to these features before the consumer becomes obligated on the loan. To alert consumers to potentially risky loan features, the Board is proposing to require an additional disclosure for each loan type in the loan summary if the loan has step-payments, payment option or negative amortization features, or interest-only payments.

Proposed § 226.38(a)(3)(ii) would require creditors to disclose whether a loan would have one or more of the following features: Step-payments if the legal obligation permits the periodic monthly payment to increase by a set amount for a specified amount of time; a payment option feature if the legal obligation permits the consumer to make payments that result in negative amortization and other types of payments; a negative amortization feature if the legal obligation requires the consumer to make payments that result in negative amortization--that is, the legal obligation does not permit the consumer to make payments that would cover all interest accrued or all interest accrued and principal; or an interest-only feature if the legal obligation permits or requires the consumer to make one or more regular periodic payments of interest accrued and no principal, and the legal obligation does not require or permit any payments that would result in negative amortization. Proposed comment 38(a)(3)(ii)(A)-1 would offer an example of a step-payment feature. For example, if the consumer is offered a fixed-rate mortgage with 24 monthly payments at $ 1,000 that will later increase to $ 1,200 and remain at that level for a specified period of time, and the loan amortizes fully over the loan term, the creditor would disclose "Fixed-Rate Mortgage, step-payments" for the loan type in the loan summary. Proposed comment 38(a)(3)(ii)(B) and (C)-1 would clarify that a creditor should disclose the loan feature as either "payment option" or "negative amortization" but not both, whereas a loan may have both a "step-payment" feature and either a "payment option" or a "negative amortization" feature. Moreover, for a loan to have a "payment option" feature, all periodic payment choices must be specified in the legal obligation and must include a choice to make payments that may result in negative amortization. Proposed comment 38(a)(3)(ii)(D)-1 would provide that a creditor should not disclose both an "interest-only" feature and a "payment option" feature or "negative amortization" feature in a single transaction, whereas a loan may have both an "interest-only" feature and a "step-payment" feature.

38(a)(4) Total Settlement Charges

Currently, TILA and Regulation Z disclose settlement charges through the finance charge. TILA Section 128(a)(3) and § 226.18(d) require the creditor to disclose the finance charge. 15 U.S.C. 1638(a)(3). TILA Section 106(a) defines the "finance charge" 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 credit or as an incident to the extension of credit." 15 U.S.C. 1605(a). Section 226.4(a) further defines the "finance charge" as "the cost of consumer credit as a dollar amount." The finance charge includes any interest due under the loan terms as well as other charges incurred in connection with the credit transaction. *See* § 226.4(a) and (b).

Consumer testing indicated that participants did not understand the term "finance charge." Most participants believed the term referred only to the total amount of interest they would pay if they kept the loan to maturity, but did not always realize that it also includes the fees and costs incurred as part of the credit transaction. Most participants did not find the finance charge useful in evaluating a loan offer.

The disclosure of settlement charges is governed by RESPA, 12 U.S.C. 2601-2617, and implemented by HUD under Regulation X, 24 CFR part 3500. Under RESPA and Regulation X, creditors must provide a GFE of settlement costs within three business days of application for a mortgage, which is the same time creditors must provide the early TILA disclosure. RESPA and Regulation X also require a statement of the final settlement costs at loan closing ("HUD--1 or HUD--1A settlement statement"). Under the new final rule for Regulation X, effective

January 1, 2010, the GFE is subject to certain accuracy requirements, absent changed circumstances. RESPA and Regulation X do not, however, provide any remedies for a violation of the accuracy requirements.

Consumer testing consistently demonstrated that participants wanted to see settlement charges on the revised TILA disclosure. Participants stated that including such a disclosure would help them confirm information that the loan originator told them about the cost of the loan during the mortgage application process. During consumer testing, participants indicated that they were often surprised at the closing table by substantial increases in the settlement charges. Despite these changes, consumers reported that they proceeded with closing because they lacked alternatives (especially in the case of a home purchase loan), or were told that they could easily refinance with better terms in the near future. Participants indicated that they would like an estimate of their settlement charges as early as possible in the loan process, and that it would be helpful to have the settlement charges displayed in the context of the other loan terms, rather than on a separate GFE or HUD--1 or HUD--1A settlement statement.

For these reasons, the Board proposes § 226.38(a)(4) to require creditors to disclose the "total settlement charges," using that term, as those charges are disclosed under Regulation X, 12 CFR part 3500. The proposed rule would further require, as applicable, a statement of the amount of the charges already included in the loan amount. Finally, the proposed rule would require disclosure of a statement, as applicable, that the total amount does not include a down payment, along with a reference to the GFE or HUD--1 for more details.

Proposed comment 38(a)(4)-1 would clarify that on the early TILA disclosure required by § 226.19(a)(1)(i), the creditor must disclose the amount of the "Total Estimated Settlement Charges" as disclosed on the GFE under Regulation X, 12 CFR part 3500, Appendix C. For the final TILA disclosure required by proposed § 226.19(a)(2)(ii), the creditor would be required to disclose the sum of the final settlement charges. The creditor would be permitted to use the sum of the "Charges That Cannot Increase," "Charges That In Total Cannot Increase By More Than 10%," and "Charges That Can Change" as would be disclosed in the column entitled "HUD--1" on page three of the HUD--1 or on page two of the HUD--1A settlement statement under Regulation X, 12 CFR part 3500, Appendix A. Alternatively, the creditor would be permitted to provide the consumer with the final HUD--1 or HUD--1A settlement statement. For transactions in which a GFE, HUD--1 or HUD--1A are not required, the proposed comment would clarify that the creditor may look to such documents for guidance on ***how*** to comply with the requirements of this section.

The Board recognizes that creditors are not currently required to provide the final settlement charges before consummation. Regulation X, 24 CFR 3500.10(b), permits the settlement agent to provide the completed HUD--1 or HUD--1A at settlement. However, proposed § 226.19(a)(2)(ii) would require the creditor to provide the TILA disclosure required by proposed § 226.38, including the total settlement charges disclosed under proposed § 226.38(a)(4), so that the consumer receives it at least three business days before consummation. In addition, under proposed § 226.19(a)(2)(iii)--Alternative 1, if anything changes during the three-business-day waiting period, including total settlement charges, the creditor would be required to supply another final TILA disclosure and three-business-day waiting period before consummation could occur. Consumers could waive the three-day waiting periods for bona fide personal financial emergencies.

The Board recognizes that proposed §§ 226.19(a)(2)(ii), 226.19(a)(2)(iii)--Alternative 1, and 226.38(a)(4) would require the creditor to disclose final settlement charge information several days in advance of consummation. These requirements would impose a cost on creditors, which may be passed on to consumers. Operational procedures and systems would need to be changed significantly to determine several days before closing the precise total amount of settlement charges that the consumer would pay at settlement. The Board believes, however, that the cost would be outweighed by the benefit to consumers of knowing their final total settlement charges three business days before consummation. This proposal would enable consumers to review and verify cost information in advance of consummation, and contact the creditor with questions or take other action, as appropriate.

38(a)(5) Prepayment Penalty

Current Disclosure Requirements

Under TILA Section 128(a)(11) and existing § 226.18(k)(1), if an obligation includes a finance charge computed by applying a rate to the unpaid principal balance (a "simple-interest obligation"), creditors must disclose whether or not a penalty may be imposed if the consumer prepays the obligation in full. Comment 18(k)(1)-1 states that the term "penalty" refers only to charges that are assessed because of the prepayment in full of a simple-interest obligation, in addition to other amounts.

The existing model form in Appendix H--2 contains checkboxes for creditors to indicate whether a consumer "may" or "will not" have to pay a penalty if the consumer prepays the obligation in full. The Board adopted these checkbox options in 1980, in response to concerns that a statement that a prepayment penalty "will be imposed" would be misleading. The Board noted that many credit contracts allow a penalty to be imposed only if the loan is paid off within a certain time period after consummation or under other specific circumstances. *See* 45 FR 80648, 80682; Dec. 5, 1980.

Discussion

Consumer testing of the current disclosure ***showed*** that participants had difficulty identifying whether a loan would have a prepayment penalty and in what circumstances it would apply. For example, in the Board's consumer testing, participants did not understand that refinancing a loan or paying off the loan with proceeds from the sale of the home securing the loan could trigger a prepayment penalty. Similarly, consumer testing conducted by FTC staff found that two-thirds of participants who looked at a sample of the existing TILA disclosure ***showing*** a loan with a two-year prepayment penalty did not understand that a prepayment penalty would be charged if the consumer refinanced the loan two years after origination. [70] Some participants thought that a prepayment penalty could be charged only if they paid off their entire loan from their own funds, such as with money obtained through a sudden financial windfall. [71]

The Board developed and tested a revised prepayment penalty disclosure. Participants in the Board's consumer testing generally understood that if they prepaid the loan within the time specified in the disclosure, a penalty could be imposed. Participants also understood that the penalty could be imposed if they refinanced or sold the home during the time the penalty was in effect.

The Board's Proposal

Under proposed § 226.38(a)(5), if the legal obligation permits a creditor to impose a prepayment penalty the creditor must disclose in the "Loan Summary" section the period during which the penalty provision applies, the maximum possible penalty, and the circumstances in which the creditor may impose the penalty. If the legal obligation does not allow the creditor to impose a prepayment penalty, the creditor would make no disclosure regarding prepayment penalties in the "Loan Summary" section. (However, proposed § 226.38(d)(1)(iii) requires the creditor to disclose whether or not the legal obligation permits the creditor to charge a prepayment penalty in the "Key Questions about Risk" section.)

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[70] *Improving Consumer Mortgage Disclosures at 78*.

[71] *Id*.

Maximum penalty amount. The Board is proposing to require creditors to disclose the maximum penalty possible under the legal obligation. Prepayment penalties may be substantial. The existence of a prepayment penalty may make it difficult to refinance a loan or sell a home. This may be particularly difficult for consumers who have adjustable rate loans or other loans that pose the risk of payment shock, as these consumers may believe that they can refinance or sell the home to ***avoid*** the increased payments. Thus, it is important for consumers to know the maximum penalty amount before they are obligated on a loan.

Under proposed § 226.38(a)(5) and (d)(1)(iii), creditors could not disclose the method or formula they use to determine the penalty with the disclosures required by § 226.38. Although some consumers might benefit from knowing ***how*** a prepayment penalty will be determined, the Board is concerned that consumers may be overloaded with information if the calculation method is included with the segregated information. Many consumers would not read the prepayment penalty disclosure at all if it contains mathematical procedures and terms. Creditors may, of course, disclose ***how*** a prepayment penalty will be determined, as long as the disclosure is not disclosed together with the segregated disclosures.

Creditors also could not disclose a range of possible prepayment penalties or give examples of penalty amounts assuming the consumer prepaid at a hypothetical point in time under proposed § 226.38(a)(5) or (d)(1)(iii). The Board believes that it is important that prepayment penalty disclosures simply and clearly convey to consumers the potential magnitude of the prepayment penalty. Disclosures based on assumptions or averages could undermine the impact of the maximum penalty disclosure.

Additional penalty disclosures. Consumer testing indicated that some consumers do not understand that paying off the loan with the proceeds of a refinance loan or a home sale can trigger a prepayment penalty provision, as discussed above. Therefore, the proposed rule would require creditors to disclose the conditions upon which and the period during which they may impose a prepayment penalty.

It is important for a consumer to know what actions will trigger a prepayment penalty provision before obtaining a loan with such a provision. Consumers likely will not receive the loan agreement containing the prepayment penalty provision until consummation and may have little opportunity to review the agreement before becoming obligated. Moreover, a prepayment penalty is but one of many loan terms for consumers to consider at closing. The Board believes that including key information about a prepayment penalty provision in transaction-specific disclosures would help consumers ***avoid*** the uninformed use of credit.

Coverage. Comment 226.18(k)(1)-1 clarifies that § 226.18(k)(1) applies to transactions in which interest calculations take into account all scheduled reductions in principal, whether interest calculations are made daily or at some other interval. Proposed comment 38(a)(5)-1 is consistent with comment 18(k)(1)-1. Proposed § 38(j)(2) reflects existing § 226.18(k)(2) on rebate disclosures, as discussed below. Existing comment 18(k)-2 discusses cases where a single transaction involves both a rebate and a penalty. Proposed comment 38(a)(5)-8 reflects this existing commentary.

Definition of prepayment penalty. Comment 18(k)(1)-1 states that under § 226.18(k)(1) the term "penalty" refers only to those charges that are assessed because of the prepayment in full of a simple-interest obligation, in addition to other amounts. Comment 18(k)(1)-1 clarifies that interest charges for any period after prepayment in full is made and minimum finance charges are examples of prepayment penalties. The Board is proposing to revise comment 18(k)(1)-1 for clarity by substituting "charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such 'balance'" for "interest charges for any period after prepayment," as discussed above. Proposed comments 38(a)(5)-2(i) and (ii) are consistent with comment 18(k)(1)-1, as it is proposed to be amended.

Proposed comment 38(a)(5)-2(iii) states that origination or other charges that a creditor waives on the condition that the consumer does not prepay the loan are prepayment penalties, for transactions secured by real property or a dwelling. Fees imposed for a preparing a payoff statement and performing other services when a consumer prepays the obligation would not be considered a prepayment penalty under the proposed rule, however. Such fees are not strictly linked to a consumer's prepaying the obligation, as they are charged at the end of a loan's term as well. The Board solicits comment on this distinction.

For purposes of some State laws, a minimum finance charge is not considered a prepayment penalty. For purposes of disclosure under TILA, a minimum finance charge is considered a prepayment penalty. Existing comment 18(k)(1)-1 and proposed comment 38(a)(5)-2 are designed to promote clear, consistent disclosure of charges creditors may impose when a consumer prepays the obligation in full. The proposed rule would not preempt State laws unless State law disclosure requirements are inconsistent with the rule, and then only to the extent of any inconsistency.

Existing comment 17(a)(1)-5(vii) allows creditors to disclose that the borrower may pay a minimum finance charge as information directly related to the penalty disclosure. Further, if a State or federal law prohibits creditors from charging a prepayment penalty but permits the charging of interest for some period after the consumer prepays from that prohibition, existing comment 17(a)(1)-5(xi) permits creditors to disclose that a consumer may have to pay interest for some period after prepayment as information directly related to the prepayment penalty disclosure. Comments 17(a)(1)-5(vii) and (xi), together with other commentary in comment 17(a)(1)-5, would not apply to transactions secured by real property or a dwelling, as discussed above.

Existing comment 18(k)(1)-1 states that loan guarantee fees are examples of charges that are not penalties. The Board proposes to retain this example in comment 38(a)(5)-2. (In a separate rulemaking, the Board proposed to remove the example of interim interest on a student loan as an example of charges that are not penalties. *See* 74 FR 12464, 12469; Mar. 29, 2009.)

Disclosed as applicable; disclosure content. Proposed comment 38(a)(5)-4 clarifies that if no prepayment penalty applies, creditors need not disclose that fact in the "Loan Summary" section of transaction-specific disclosures. Proposed § 226.38(d)(1)(iii) requires creditors to disclose whether or not the legal obligation permits the creditor to charge a prepayment penalty in the "Key Questions about Risk" section, however. Proposed comment 38(a)(5)-5 clarifies that creditors must disclose the maximum penalty as a numerical amount. This is consistent with the general rule of construction of the word "amount" required by § 226.2(b)(5).

Basis of disclosure. Proposed comment 38(a)(5)-6 explains ***how*** creditors determine the maximum penalty amount and contains examples that illustrate ***how*** those principles are applied. (Proposed comment 38(d)(1)(iii) states that creditors may rely on proposed comment 38(a)(5)-6 in determining the maximum prepayment penalty to be disclosed as one of the "Key Questions about Risk" disclosures.) Proposed comment 38(a)(5)-6 states that in all cases, the creditor should assume that the consumer prepays at a time when the prepayment penalty may be charged. The comment also states that if more than one type of prepayment penalty applies (for example, if the loan includes a minimum finance charge and the creditor may collect interest after prepayment), the creditor should include the maximum amount of each type of prepayment penalty in determining the maximum penalty possible.

Existing comment 18(k)(1)-1 clarifies that interest charges for any period after a consumer prepays in full and a minimum finance charge in a simple interest transaction are deemed to be prepayment penalties. Proposed comment 38(a)(5)-6(i) and (ii) clarifies that the amount of such charges must be counted in determining the maximum penalty.

Proposed comment 38(a)(5)-6(iii) provides examples of ***how*** creditors may calculate a maximum prepayment penalty where the creditor determines the penalty by applying a constant rate to the loan balance at the time of prepayment. In such cases, the prepayment penalty amount is largest when the balance is as high as possible. Proposed comment 38(a)(5)-6(iv) illustrates a method creditors could use to approximate the maximum penalty where the penalty amount depends on both the loan balance and the time at which the consumer prepays (for example, where a prepayment penalty on an adjustable-rate loan equals six months' interest payments). If the penalty amount depends on both the loan balance and the time at which the consumer prepays, under the proposed rule creditors would disclose the greater of (1) the penalty charged when the balance is the highest possible and (2) the penalty charged when the penalty rate is the highest possible (two-stage penalty calculation).

The two-stage penalty calculation produces an amount that approximates, but does not necessarily equal, the maximum prepayment penalty. The Board believes, however, that the amount determined using the two-stage penalty calculation ordinarily will be sufficiently close to the actual maximum prepayment penalty that it would be appropriate for creditors to use the method in complying with § 226.38(a)(5) and (d)(1)(iii). The Board solicits comment on whether the Board should permit creditors to use the two-stage penalty calculation where the penalty rate increases. Will this "two-stage penalty calculation" method produce a prepayment penalty amount that sufficiently approximates the maximum prepayment penalty possible for a loan? Are there cases where there will be a significant disparity between the maximum penalty determined using the two-stage penalty calculation and the actual maximum penalty?

Neither the simple penalty calculation nor the two-stage penalty calculation will enable the creditor to determine the maximum penalty where the penalty rate on a negatively amortizing loan declines. In such a case, the creditor must determine the maximum prepayment penalty by determining what the penalty would be at each point during the loan term while the penalty is in effect.

Requiring all creditors to base maximum penalty disclosures on the foregoing rules ensures standardization of disclosures. Allowing creditors to select their own assumptions about when consumers are likely to prepay would result in inconsistencies among the disclosures given by different creditors. The Board considered other approaches, such as requiring creditors to disclose the maximum prepayment penalty based on a single hypothetical point in time (for example, one year after origination). However, this approach would understate the amount consumers who prepay earlier would have to pay.

Timely payment assumed. Proposed comment 38(a)(5)-7 states that creditors may assume that the consumer makes payments on time and may disregard any possible inaccuracies resulting from consumers' payment patterns. This is consistent with existing comment 17(c)(2)(i)-3 and proposed clarifications in comment 17(c)(1)-1. Proposed comment 38(a)(5)-7 further clarifies that where the payment required by a legal obligation's terms is not a fully amortizing payment, the creditor must base disclosures on the required periodic payment and may not assume that the consumer will make payments that exceed the required payment.

38(b) Annual Percentage Rate

The Board proposes to improve the APR's utility to consumers by making it a more inclusive measure of the cost of credit, as discussed under § 226.4, and also by improving the manner in which the APR is disclosed on the TILA statement. Proposed § 226.38(b)(1) would require the APR to be disclosed, using the term "annual percentage rate" and with the description, "overall cost of this loan including interest and settlement charges." Proposed § 226.38(b)(2) would require creditors to ***show*** the APR plotted on a graph, relative to (1) the "average prime offer rate" (APOR) for borrowers with excellent credit for a comparable loan type, in the week in which the disclosure is provided, and (2) the higher-priced loan threshold under § 226.35(a). [72] Proposed § 226.38(b)(3) would require an explanation of the APOR and higher-priced threshold. Proposed § 226.38(b)(4) would require creditors to disclose the average per-period savings from a 1 percentage-point reduction in the disclosed APR. Certain loans, including construction loans, would be excluded from proposed § 226.38(b)(2) and (b)(3).

Current Rules

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[72] The Board issued § 226.35(a) in its 2008 HOEPA Final Rule; compliance with § 226.35(a) is mandatory beginning on October 1, 2009.

For closed-end credit, TILA Section 128(a)(4) and (a)(8) require creditors to disclose the "annual percentage rate," using that term, together with a brief description such as "the cost of ***your*** credit as a yearly rate." 15 U.S.C. 1638(a)(4), (a)(8). Section 226.18(e) implements these requirements. As discussed in proposed § 226.37, TILA Section 122 and § 226.17(a) require the APR, with the finance charge, to be more conspicuous than other disclosures except the disclosure of the creditor's identity. Changes to the requirements of § 226.17(a) are discussed under § 226.37.

Discussion

The APR is the only single, unified number available to help consumers understand the overall cost of a loan. [73] 15 U.S.C. 1638(a)(4). Before enactment of TILA in 1968, creditors could advertise a 6 percent loan rate, but were allowed to calculate the interest charged to the consumer by using a simple interest, an add-on, or a discount rate method. [74] Although the advertised loan rate would appear the same, the amount of interest consumers actually would pay over the loan term would differ greatly under each of these calculation methods. [75] In addition, consumers were forced to evaluate different components of a loan's costs, such as interest rate, points, and closing costs, when comparing competing loan offers. The APR standardizes the interest rate calculation and seeks to capture the overall cost of the credit offered so that consumers can compare competing loan more easily than if they had to evaluate the relationship and impact of different loan costs themselves. [76]

Participants in the Board's consumer testing generally did not understand the APR and often mistook it for the loan's interest rate. [77] The Board tested alternative descriptive statements and formats for the APR, but consumers continued to be confused by the APR. For example, some participants thought the APR reflected future adjustments to the interest rate, or the maximum possible interest rate for a variable rate loan. A few participants recognized that the APR differed from the interest rate, but were unable to articulate the reason. In addition, when presented with two hypothetical loan offers, participants did not use the APR to compare and choose between the offers. Instead, participants chose a loan based on one or more of the following pieces of information: the interest rate, monthly payment, and settlement costs.

The Board's Proposal

The Board proposes to retain the APR disclosure, with several changes designed to improve the APR's utility for consumers. These proposed changes would apply only to closed-end transactions secured by real property or a

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[73] The*1998 Joint Report* at 8; *see also* Bd. Of Governors of Fed. Res. Sys., *1996 Report to Congress: Finance Charges for Consumer Credit under the Truth in Lending Act* at (April 1996).

[74] The*1998 Joint Report* at 8.

[75] *Id*.

[76] *Id*.

[77] *See also Improving Consumer Mortgage Disclosures* at 35 (finding that most respondents in consumer testing did not understand or were confused by the APR and generally mistook it for the contract interest rate).

dwelling. First, the Board proposes to revise the description to use simpler terminology. Proposed § 226.38(b)(1) would require creditors to disclose the APR, expressed as a percentage, together with a statement that it represents the overall cost of the loan, including interest and settlement charges. As discussed under § 226.4, the Board also proposes to make the APR more inclusive of the cost of credit. Moreover, under § 226.38(c), the interest rate would be disclosed on the form, which would help some consumers understand that the APR does not represent the interest rate.

Second, the proposed rule also would require creditors to disclose the APR using a graph that ***shows*** the consumer ***how*** the APR for the loan offered would compare to the average prime offer rate and the threshold for higher-priced loans under § 226.35(a). This disclosure would help consumers understand ***how*** the APR on the loan offered to them compares to APRs offered to borrowers with excellent credit for a similar loan type, and higher-priced loans which generally are made to borrowers who present higher risk. Such borrowers include those with blemished credit histories, or with high loan-to-value ratios.

The Board's consumer testing ***shows*** that consumers do not understand the APR's utility. Testing the APR with different names and descriptions did not measurably increase consumers' understanding of the APR. Although the APR was designed in part to facilitate comparison of competing loan products, testing suggests that most consumers do not compare competing loans by APR, probably because they receive only one TILA disclosure before they consummate a loan. If consumers comparison shop for a loan, they do so before they apply for a loan and likely shop based on oral quotes of interest rates and points.

The Board's testing suggests that with little understanding of the APR and no ready and appropriate basis for comparison, many consumers ignore the APR in favor of information they find more accessible, such as the loan's monthly payment or settlement costs. Therefore, the Board is taking two steps to improve the disclosure of the APR. The first step is designed to draw consumers' attention to the APR. To do so, the Board proposes to require disclosure of the consumer's APR on a graph to highlight the APR and distinguish it from other numerical disclosures, including the interest rate. Consumers would be more likely to notice the APR plotted on the graph, in a prominent location on the disclosure statement. Principles of consumer design provide that a graphic device accommodates different learning styles. And, consumer research has ***shown*** that use of graphics or similar visual devices help consumers attend to or notice important information. [78]

The Board's next proposed step is to present the APR in a context that is designed to facilitate understanding of the APR. The Board believes that consumers would be more likely to use the APR if it is ***shown*** to them in context of other rates, rather than in isolation as is presently often the case. Research on consumer behavior suggests that consumer choice is affected by whether a consumer is presented with a single option for a product or multiple options. Consumers making a choice in the presence of more than one option are more likely to make a selection based on the relative merits of the options presented, rather than on their own existing "references" for the value of the product. [79] Here, the Board believes that presenting consumers with information about other rates, current as of

[78] Kozup, John, Elizabeth Howlett, and Michael Pagano. 2008. "The Effects of Summary Information on Consumer Perception of Mutual Fund Characteristics."*The Journal of Consumer Affairs*, vol. 42. See also Testimony of John Kozup, Assistant Professor, Department of Marketing, and Director, Center for Marketing and Public Policy, Villanova University; http://www.federalreserve.gov/events/publichearings/hoepa/2006/20060711/transcript.pdf .

[79] *See, e.g.*, Hsee, Christopher K. and France Leclerc. 1988. "Will Products Look More Attractive When Presented Separately or Together?" *Journal of Consumer Research*, vol. 25.

the week of the consumer's application, would help consumers make more informed decisions about the loan offered.

Testing suggests that ***showing*** the consumer the APR in context of information about other APRs would result in consumer benefits. For example, the APR graph would cause consumers to ***ask*** the creditor questions about the rate offered to them and when applicable, why it differs from the average APR offered to borrowers with excellent credit histories. The proposed APR disclosure would enable consumers to determine whether they are being offered a loan that comports with their creditworthiness. A borrower who knows his or her credit history is excellent or very good would be informed that the loan offered is higher-priced. Participants in the Board's testing stated that if they knew they had excellent credit, they would ***ask*** the lender why they were being offered a higher-priced loan and what they would need to do to get a better offer. The Board notes that some participants indicated that the disclosed APR, even if higher-priced, was lower than the interest rate on their current loan and thus was attractive to them. Nevertheless, while some consumers may not be prompted by the APR graph to seek information about improved loan terms, testing suggests others may do so and benefit as a result.

The Board recognizes that not all consumers are aware of their credit history, and thus may not be able to assess whether the loan offered is consistent with their credit standing. The Board anticipates that the APR graph would cause some consumers to investigate their credit reports. If there are errors, these consumers could take steps to resolve the errors. If consumers in fact have impaired credit, some consumers might consider whether to delay seeking a loan until they could repair their credit standing.

In some instances the APR graph may be potentially confusing. That is, a loan may be a higher-priced loan for reasons other than the borrower's credit history. For example, a consumer might have little home equity, resulting in a high loan-to-value ratio and a higher APR. The Board believes that even in such cases, the APR graph nonetheless would be beneficial to consumers. It would prompt the consumer to ***ask*** questions, and creditors should be able to explain to consumers why the APR on a loan is higher-priced. In many cases the explanation may help the consumer determine whether they could take steps to get a lower APR. For example, if the creditor explains that the offered loan is a higher-priced loan because of a low down-payment, the borrower would be alerted that providing a larger down payment would result in a reduced APR and cost savings.

The Board also notes that certain loans may be higher-priced loans simply because of the loan type. For example, loans that exceed the threshold amount for eligibility for purchase by Fannie Mae and Freddie Mac, known as "nonconforming" or "jumbo loans," may tend to be higher-priced loans because of the method for calculating the APOR. The APOR is the average APR for *conforming* loans offered to borrowers with excellent credit. In the case of such loans, creditors would have to explain to consumers why the loan's APR is higher-priced.

Third, the proposal would require the creditor to disclose the average per-period savings from a 1 percentage-point reduction in the disclosed APR. The Board believes that ***showing*** consumers the relationship between the APR and a concrete dollar figure would help make the possible benefits of obtaining better loan terms more concrete for consumers. ***Showing*** potential savings that could result from a lower APR would help encourage consumers to shop and negotiate for better loan terms, or as discussed, to increase their downpayment, resolve errors in their credit report, or seek to improve their credit standing.

38(b)(2)

Proposed § 226.38(b)(2) would require a graph indicating the consumer's APR within a range of APRs beginning with the average prime offer rate ("APOR"), as defined in § 226.35(a)(2), including the higher-priced mortgage loan threshold, as defined in § 226.35(a)(1), and terminating four percentage points greater than the higher-priced mortgage loan threshold. Proposed § 226.38(b)(3) would require a statement of the APOR as defined in § 226.35(a)(2), and the higher-priced mortgage loan threshold, as defined in § 226.35(a)(1), current as of the week the disclosure is produced. The graphic would contain different shaded areas using different scales for the range between the APOR and the higher-priced mortgage loan threshold, and for the range above the higher-priced mortgage loan threshold. The graphic would also label the range above the higher-priced mortgage loan threshold as the "high-cost zone."

Creditors would use the Board's table of average prime offer rates to find the APOR for the loan type that matches the loan being disclosed, for the week in which the creditor provides the disclosure. Creditors would follow the Board's guidance in commentary to § 226.35(a) in determining ***how*** to select the appropriate APOR. In the text explaining the APOR, creditors may include a statement clarifying that the APOR is for conforming loans only.

The Board requests comment on any potential operational difficulty in producing the graph proposed in § 226.38(b)(2) in an accurate and timely manner. Comment is also sought on whether a different graphical device would better draw consumers' attention to the APR and illustrate the APR's utility to consumers.

38(b)(3)

To help consumers navigate the information provided by the graph, proposed § 226.38(b)(3) would require an explanation of the average prime offer rate as defined in § 226.35(a)(2), and the higher-priced mortgage loan threshold, as defined in § 226.35(a)(1). Participants in the Board's consumer testing found this statement helpful in understanding the information in the graph.

38(b)(4)

Proposed § 226.38(b)(4) would provide ***how*** creditors must calculate the average per-period savings that would result from a 1 percentage-point reduction in the APR. (This discussion refers to monthly savings because most mortgage loans require monthly payments.) Creditors would calculate the average per-month savings by reducing the interest rate (or rates in the case of an ARM, as discussed in comment 34(b)(4)-1) by 1 percentage point, computing a hypothetical total of payments reflecting the payment schedule at the lower rate or rates. The creditor would divide the difference between (1) the total of payments disclosed under proposed § 226.38(e)(5)(i), and (2) the hypothetical total of payments by the number of payment periods required under the terms of the legal obligation. The creditor would report the results of this calculation as the average savings each month from a 1 percentage-point reduction in the APR. Proposed comment 38(b)(4)-1 would provide guidance on this method, and would include examples for fixed- and adjustable-rate mortgages.

The Board notes that the proposed method does not result in an exact 1 percentage-point reduction in APR, but is likely to be within a few basis points of a 1 percentage-point reduction. The results would be sufficiently accurate to ***show*** consumers that a lower APR will yield savings. Methods that might result in an actual 1 percentage-point reduction in the APR would likely be more complicated and would vary depending on the terms of the loan, such as whether the rate is variable and whether the payments amortize the loan. The Board believes that any additional consumer benefit from disclosing the precise 1 percentage-point APR reduction would not be sufficient to offset the costs of a more complex calculation method. The Board seeks comment, however, on its proposed method and whether another method would achieve the objectives of the disclosure without imposing undue compliance burdens.

38(b)(5) Exemptions

Proposed section 226.38(b)(5) would exempt construction loans, bridge loans, and reverse mortgages from the requirement to ***show*** the APR plotted on a graph (§ 226.38(b)(2)) and the statement of the APOR and the higher-priced loan threshold (§ 226.38(b)(3)). The exempted transactions are also exempt from the definition of a higher-priced mortgage, under § 226.35(a)(3) in the Board's 2008 HOEPA Final Rule. The Board does not publish an average prime offer rate for construction, bridge, or reverse mortgage loans. Thus, an exemption seems appropriate. The Board seeks comment, however, on whether these transactions should nevertheless be subject to § 226.38(b)(2) and (3).

38(c) Interest Rate and Payment Summary

Proposed § 226.38(c) provides requirements for disclosure of the contract interest rate and the periodic payment for transactions secured by real property or a dwelling. The information proposed to be required by this paragraph must be in the form of a table, as provided in § 226.38(c)(1), substantially similar to Model Forms H--19(A), H--19(B), or H--19(C) in Appendix H. Additional formatting requirements would be provided in § 226.37. The rules for disclosing the interest rate and periodic payments for an amortizing loan are provided in proposed §§ 226.38(c)(2)(i) and 226.38(c)(3). Rules for disclosing the interest rate and periodic payments for a loan with negative amortization are in proposed §§ 226.38(c)(2)(ii) and 226.38(c)(4). Special rules for disclosing balloon payments are found in proposed § 226.38(c)(5). Additional explanations of introductory rates and negative amortization are contained in proposed §§ 226.38(c)(2)(iii) and 226.38(c)(6), respectively. Proposed § 226.38(c)(7) provides definitions for certain terms used in § 226.38(c).

Existing Requirements for Periodic Payments

TILA Section 128(a)(6) requires the creditor to disclose the number, amount, and due dates or period of payments scheduled to repay the total of payments, for closed-end credit. 15 U.S.C. 1648(a)(6). Currently, § 226.18(g) implements TILA 128(a)(6). Under § 226.18(g), creditors must ***show*** the number, amounts, and timing of payments scheduled to repay the obligation, except as provided in § 226.18(g)(2) for certain loans with varying payments. [80] The creditor must provide these disclosures on the TILA statement within three business days of receiving the consumer's written application, as provided in § 226.19(a).

Comment 18(g)-1 provides that the payment schedule should include all components of the finance charge, not just interest. Thus, if mortgage insurance is required, the payment schedule must reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law. *See* comment 18(g)-5. Commentary to § 226.17(c) provides that for an adjustable-rate loan, creditors should disclose the payments and other disclosures based only on the initial rate and should not assume that the rate will increase. However, the disclosures must reflect a discounted or premium initial interest rate for as long as it is charged. The commentary permits, but does not require, creditors to include in the payments amounts that are not finance charges or part of the amount financed. Thus, creditors may, but need not, include insurance premiums excluded from the finance charge under § 226.4(d), and "real estate escrow amounts such as taxes added to the payment in mortgage transactions."

TILA Section 128(b)(2)(C), as recently added by the MDIA, requires additional disclosures for loans secured by a dwelling in which the interest rate or payments may vary. 15 U.S.C. 1638(b)(2)(C). Specifically, creditors must provide "examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required * * * is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract. * * *" TILA Section 128(b)(2)(C), 15 U.S.C.

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[80] For a mortgage transaction with rates or fees that exceed certain thresholds, TILA Section 129 requires special disclosures regarding payments three business days before consummation of the transaction. See § 226.32(c)(3), (4). The Board is not proposing revisions to these disclosures.

1638(b)(2)(C). Creditors must provide these disclosures within three business days of receipt of the consumer's written application, as provided in § 226.19(a). TILA Section 128(b)(2)(C) provides that these examples must be in conspicuous type size and format and that the payment schedule be labeled "Payment Schedule: Payments Will Vary Based on Interest Rate Changes." Section 128(b)(2)(C) requires the Board to conduct consumer testing to determine the appropriate format for providing the disclosures to consumers so that the disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount. 15 U.S.C. 1638(b)(2)(C).

The Board's Proposal

The Board proposes to add new § 226.38(c) to implement TILA Section 128(a)(6) and Section 128(b)(2)(C) for all closed-end transactions secured by real property or a dwelling. [81] (For all other closed-end credit transactions, § 226.18(g) would continue to provide the rules for disclosing payments). Section 226.38(c) would require creditors to disclose the contract interest rate, regular periodic payment, and balloon payment if applicable. For adjustable-rate or step-rate amortizing loans, up to three interest rates and corresponding monthly payments would be required, including the maximum possible interest rate and payment. If payments are scheduled to increase independent of an interest-rate adjustment, the increased payment must be disclosed. Payments for amortizing loans must include an itemized estimate of the amount for taxes and insurance if the creditor will establish an escrow account. If a borrower may make one or more payments of interest only, all payments disclosed must be itemized to ***show*** the amount that will be applied to interest and the amount that will be applied to principal. Special rate and payment disclosures would be required for loans with negative amortization. Creditors must provide the information about interest rates and payments in the form of a table, and creditors would not be permitted to include other unrelated information in the table.

Scope of proposed § 226.38(c). TILA Section 128(b)(2)(C) applies to all transactions secured by a dwelling. The Board proposes to expand the requirement in Section 128(b)(2)(C) to include loans secured by real property that do not include a dwelling. As discussed in § 226.19(a), unimproved real property is likely to be a significant asset for most consumers, and consumers should receive the disclosures required in Section 128(b)(2)(C) before they become obligated on a loan secured by such an asset. The disclosures would alert consumers to the potential for interest rate and payment increases and help them to determine whether these risks are appropriate to their circumstances.

The Board proposes this adjustment to TILA Section 128(b)(2)(C) pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA for any class of transactions to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The class of transactions that would be affected is transactions secured by real property or a dwelling. As discussed, providing examples of increased interest rates and payments would help consumers understand the risks involved in certain loans. The Board also proposes to revise the label for the interest rate and payment information from the statutory language, "Payment Schedule: Payments Will Vary Based on Interest Rate Changes," based on plain language principles, to make the disclosure more readily understandable.

[81] TILA Section 128(b)(2)(C) also provides that the Board's testing should ensure that consumers can understand that there is no guarantee that they will be able to refinance. Proposed § 226.38(f)(3) implements this aspect of Section 128(b)(2)(C).

Disclosure of the interest rate. Currently, TILA does not require disclosure of the contract interest rate for closed-end credit. In the consumer testing conducted for the Board, when consumers were ***asked*** what factors they considered when looking for a mortgage, by far the most common answers were that they wanted to obtain the lowest interest rate possible and that they wanted the loan with the lowest possible monthly payment. However, as they described their thought process, most consumers were primarily focused on the initial rate and payment, rather than ***how*** those terms might vary over time. Testing conducted on the current transaction-specific TILA disclosures indicated that consumers would like to see the interest rate disclosed on the form.

In addition, testing indicated that the current TILA payment schedule, which does not ***show*** the relationship between interest rate and payment, is ineffective at communicating to consumers what could happen to their payments over time on an ARM. Most participants said they liked the current presentation of the payments because it was specific and detailed. However, when ***shown*** a payment schedule for an ARM with an introductory rate, many incorrectly assumed that payments ***shown*** were in fact their future payments, rather than payments based on the fully-indexed rate at consummation.

Under the Board's proposal, the interest rate and payment would be ***shown*** together in a table. The Board believes that highlighting the relationship between the interest rate and payment will enhance consumers' understanding of loan terms. If the interest rate is adjustable, the table would indicate changes in the adjustable interest rate over time. In addition, payment changes that are not based on adjustments to the interest rate would also be indicated in the table. Highlighting potential changes to the interest rate and payment based on maximum interest rate increases, rather than ***showing*** a set payment schedule based on the assumption that the index used to calculate a adjustable interest rate will not change, will clarify to consumers not only *that* their interest rate and payments may change, but also ***how*** the interest rate and payment may change over time. Consumers would be better able to determine if a adjustable rate or payment loan will be affordable and appropriate for their individual circumstances.

Definitions for § 226.38(c). Proposed § 226.38(c) uses several terms that are defined in proposed § 226.38(c)(7). Under § 226.38(c)(7), the terms "adjustable-rate mortgage," "step-rate mortgage," and "interest-only" would have the same meanings as in § 226.38(a)(3). An "amortizing loan" would be defined as a loan in which the regular periodic payments cannot cause the principal balance to increase; the term "negative amortization" would mean a loan in which the regular periodic payments may cause the principal balance to increase. Finally, the tern "fully-indexed rate" would mean the interest rate calculated using the index value and margin.

Proposed § 226.38(c)(2)(i) and (c)(3) would require disclosure of interest rates and payment amounts for amortizing loans. Proposed § 226.38(c)(7) defines an amortizing loan as one in which the regular periodic payments cannot cause the principal balance to increase. Thus, loans with interest-only payments are amortizing loans. If an escrow account will be established for an amortizing loan, creditors would be required to itemize the payment to ***show*** amounts to be included for taxes and insurance. *See* proposed § 226.38(c)(3)(i)(C). Proposed §§ 226.38(c)(2)(ii) and 226.38(c)(4) would require a special table for disclosures of interest rates and payment amounts for negatively amortizing loans. For such loans in which the consumer may choose between several payment options, the table will ***show*** only two: the minimum required payment option, and the fully amortizing option. Creditors may, however, disclose other payment options to the consumer, outside the segregated information required by this section.

38(c)(1) Format

Proposed § 226.38(c)(1) would require the interest rate and payment information to be disclosed in the form of a table. This would ensure that payment examples required by the MDIA are in conspicuous format as required by TILA Section 128(b)(2)(C). The MDIA also requires conspicuous type size for the examples. Under the proposal, all disclosures must be in a minimum 10 point font, including the table required under § 226.38(c), to ensure that they are clear and conspicuous. *See* proposed § 226.37(a).

The Board's proposal would prescribe the number of interest rates and payments that could be ***shown*** in a table. The number of columns and rows for the table required by this part would vary depending on whether the loan is an amortizing loan and whether it has adjustable rates. However, tables disclosed under this section would have no more than 5 columns across, and creditors would not include information in the table that is not required under 226.38(c), to ***avoid*** information overload. Model and Sample Forms would be provided in Appendix H.

38(c)(2) Interest Rates

38(c)(2)(i) Amortizing Loans

Proposed § 226.38(c)(2)(i) would provide disclosure of interest rates for amortizing loans. For a fixed-rate mortgage with no scheduled payment increases or balloon payments, the creditor would disclose only one interest rate. Fixed-rate loans with payment increases would require the creditor to disclose the interest rate with each increase. For adjustable-rate mortgages and step-rate mortgages, more than one interest rate must be ***shown***, as discussed below.

Interest Rates for Fixed-Rate Mortgages

For fixed-rate mortgages, proposed § 226.38(c)(2)(i)(A) would require creditors to disclose the interest rate applicable at consummation. If the transaction does not provide for any payment increases, only one interest rate would be disclosed. However, some fixed-rate mortgages will have scheduled payment increases and in those cases the creditor must ***show*** the interest rate again, even though it is redundant, as discussed under § 226.38(c)(2)(i)(C) below.

Interest Rates for Adjustable-Rate Mortgages and Step-Rate Mortgages

Interest rates at consummation, maximum possible at first adjustment, and maximum possible interest rate. As discussed, TILA Section 128(b)(2)(C) requires creditors to disclose examples of payment increases including the maximum possible payment, for adjustable-rate mortgages and mortgages where payments may vary. Under § 226.38(c)(2)(i), creditors would disclose more than one interest rate and corresponding monthly payment for adjustable-rate mortgages and step-rate mortgages. Under proposed § 226.38(c)(2)(i)A)(I), the creditor must provide the interest rate at consummation, and the period of time until the first adjustment. If the interest rate at consummation is less than the fully-indexed rate (the sum of the index and margin at consummation), the interest rate must be labeled as "introductory." Additional explanation of discounted introductory rates is required in proposed § 226.38(c)(2)(iii), as discussed below.

Maximum at first adjustment. The Board proposes to require disclosure of the maximum rate and payment at first adjustment, as one of the examples required by TILA Section 128(b)(2)(C). Proposed § 226.38(c)(2)(i)(B)(1) requires the creditor to provide the maximum interest rate applicable at the first interest rate adjustment, and the calendar month and year in which the first scheduled adjustment occurs would be required to be disclosed. The creditor would take into account any limitations on interest rate increases when determining the interest rate to be disclosed under § 226.38(c)(2)(i)(B)(2). If the interest rate may reach the maximum possible at the first adjustment, the creditor should disclose the rate as the maximum possible as discussed below.

The Board proposes to require disclosure of the maximum interest rate at first adjustment because many consumers may take out adjustable-rate mortgages, planning to sell the home or refinance the loan before the first interest rate adjustment. It is important for consumers to know ***how*** much their rate and payment might increase at that point, if they are unable to refinance or sell the home before the first adjustment. The Board believes that for the same reason, the first interest rate increase should be ***shown*** for step-rate mortgages. Although such mortgages do not present the uncertainty that an adjustable-rate mortgage does, consumers need to be informed of what their rate will increase to at the first increase. Consumer testing conducted for the Board ***shows*** that most consumers would find this information useful in determining whether the loan is affordable and suitable to their needs.

Maximum possible interest rate. Proposed § 226.38(c)(2)(i)(B)(3) would require creditors to disclose the maximum interest rate that could apply, and the earliest possible year in which that rate could apply, as required by TILA Section 128(b)(2)(C). The Board proposes to require this disclosure for step-rate mortgages as well, because the rate and payment will increase in such loans. Consumer testing conducted for the Board suggests that consumers find this information about the maximum rate and payment particularly important in evaluating a loan offer for an adjustable-rate mortgage. Participants indicated that this information is most useful to them in determining whether such a loan was affordable. If an amortizing adjustable-rate mortgage has intermediate limitation on interest rate increases, then the table required by proposed § 226.38(c) would have at least three columns; if the transaction has no intermediate limitation on interest rates then the table would have two columns, one ***showing*** the rate at consummation and the other ***showing*** the maximum possible under the loan's terms.

Interest rate applicable at scheduled payment increase. Some mortgages provide for a payment increase that is not attributable to an interest rate adjustment or increase. For example, a loan may permit the borrower to make payments that cover only accrued interest for some specified period, such as the first five years following consummation; at the end of this "interest-only" period, the borrower must begin making larger payments to cover both interest accrued and principal. Proposed § 226.38(c)(2)(i)(C) would provide that, where such an increase will not coincide with an interest rate adjustment or increase, the creditor must include a column that discloses the interest rate that would apply at the time the adjustment is scheduled to occur, and the date in which the increase would occur. The creditor must include a description such as "first increase" or "first adjustment." Thus, for a fixed-rate mortgage, the creditor would ***show*** the same interest rate twice (and the corresponding payments as discussed in § 226.38(c)(4) below). The Board believes this would help the consumer understand that the increase in payment is due to the requirement to begin repaying loan principal and not to an interest-rate adjustment.

The same is true for adjustable-rate mortgages and step-rate mortgages. For example, some adjustable-rate mortgages permit the borrower to make interest-only payments for a specified period, such as the first five years following consummation. A scheduled payment increase may or may not coincide with a scheduled interest rate adjustment. Under proposed § 226.38(c)(2)(i)(C), if a scheduled payment increase does not coincide with an interest rate adjustment (or rate increase for a step-rate mortgage), creditors must include a column that discloses the interest rate that would apply at the time of the increase, the date the increase is scheduled to occur, and an appropriate description such as "first increase" or "first adjustment" as appropriate. Proposed comment 38(c)(2)(i)(C)-1 provides clarifying examples. The Board is not aware of step-rate loans with interest-only features; however, if such a loan is offered, creditors would disclose the payment increase in the same manner as for an adjustable-rate mortgage.

38(c)(2)(ii) Negative Amortization Loans

Proposed § 226.38(c)(2)(ii) would require disclosure of the interest rate applicable at consummation. Many payment option loans do not provide any limitations on interest rate increases ("interest rate caps"); the only cap is the maximum possible interest rate required by § 226.30(a.) For payment option loans, the creditor would disclose the interest rate in effect at consummation, and assume that the interest rate reaches the maximum at the next adjustment--often the second month after consummation. The creditor would disclose that rate for the first and second scheduled payment increases, as explained more fully in § 226.38(c)(4) below, and in the last column, when the loan has recast and the consumer must first make a fully amortizing payment. The proposed approach to interest rates for negative amortization loans is consistent with the MDIA, which requires disclosure of the payment at the maximum possible rate, and other examples of payment increases.

Additional proposed rules for disclosing the interest rate on a loan with negative amortization are discussed under 38(c)(6) Special Disclosures for Loans with Negative Amortization, below.

38(c)(2)(iii) Introductory Rate Disclosure for Adjustable-Rate Mortgages

Many adjustable-rate mortgages have an introductory or teaser rate, set below the index and margin used for later adjustments. Proposed § 226.38(c)(2)(iii) would require a special disclosure in the case of an introductory rate. In consumer testing conducted for the Board, many participants did not understand the ramifications of an introductory interest rate. Participants understood that if market interest rates increased, the interest rate and payment on their loan would increase. However, participants did not understand that if they had an introductory rate, their interest rate and payment would increase when the introductory rate expired, even if market interest rates did not increase. Several different disclosures designed to ***show*** the impact of an introductory rate were tested in tabular form, with mixed results. Therefore, the Board proposes to require an explanation of the introductory rate below the table itself. Proposed § 226.38(c)(2)(iii) would require disclosure of the introductory rate, ***how*** long it will last, and that the interest rate will increase at the first scheduled adjustment even if market rates do not increase. Creditors would also disclose the fully indexed rate that otherwise would apply at consummation. Proposed § 226.37(d)(4) would provide that this disclosure must be prominent and placed in a box under the table.

38(c)(3) Payments for Amortizing Loans

38(c)(3)(i) Principal and Interest Payments

Section 226.38(c)(3)(i) would require disclosure of the principal and interest payment that corresponds to each interest rate disclosed under proposed § 226.38(c)(2)(i). Special itemization of the payment is required, however, if the loan permits the consumer to make any payments that will be applied only to interest accrued. Proposed § 226.3(c)(3)(ii)(C) would require disclosure of an estimate of the amount of taxes and insurance, including mortgage insurance. Proposed § 226.3(c)(3)(i)(D) would require disclosure of the estimated total payment including principal, interest, and taxes and insurance.

Principal and interest payments. Proposed § 226.38(c)(3)(i) would require the disclosure of payment amounts that correspond to the interest rates disclosed under § 226.38(c)(2)(i). Proposed comment 38(c)(3)-1 would clarify that the interest rate and payment amount applicable at consummation are required to be disclosed for all loans. In addition, the comment would clarify that if a payment amount is required to be disclosed under more than one subparagraph, the payment should only be disclosed once. For example, in an adjustable-rate transaction with a balloon payment, if the balloon payment will occur at the same time the loan may reach its maximum interest rate, only one disclosure of the interest rate and payment is required. Proposed comment 38(c)(3)-2 provides examples of the types of loans that trigger additional payment disclosures.

Fixed-rate mortgages. Under proposed § 226.38(c)(3)(i)(A), for fixed-rate transactions where the regular periodic payment fully amortizes the loan and there are no scheduled payment increases (such as upon the expiration of an interest-only feature), the payment amount including both principal and interest would be required to be disclosed.

Fixed-rate interest-only loans. For fixed-rate transactions in which the consumer may make one or more interest-only payments, proposed § 226.38(c)(3)(i)(B) would require disclosure of the payment at any scheduled increase in the payment amount and the date on which the increase is scheduled to occur. For example, in a fixed-rate interest-only loan a scheduled increase in the payment amount from an interest-only payment to a fully amortizing payment would be required to be disclosed. Similarly, in a fixed-rate balloon loan, the balloon payment must be disclosed, but it would be disclosed under the table pursuant to § 226.38(c)(5).

Adjustable-rate and step-rate transactions. Under proposed § 226.38(c)(3)(i), for adjustable-rate and step-rate transactions, a payment amount corresponding to each interest rate in § 226.38(c)(2) would be required to be disclosed.

Adjustable-rate interest-only and balloon loans. For adjustable-rate transactions in which the consumer may make interest-only payments, proposed § 226.38(c)(3)(ii) would require additional disclosures. Section 226.38(c)(3)(i)(B) would require disclosure of the payment amount at any scheduled payment increase that does not coincide with an interest rate adjustment, and the date on which the increase is scheduled to occur. In addition, for an adjustable-rate balloon loan, if the balloon payment will not coincide with either the first interest rate adjustment or the time when the interest rate reaches its maximum, the balloon payment is required to be disclosed separately, below the table, in accordance with § 226.38(c)(5).

Principal and interest payment itemization. Under proposed § 226.38(c)(3)(i) and (ii), the format of the payment disclosure would vary depending on whether all regular periodic payment amounts will include principal and interest. If all regular periodic payments include principal and interest, under § 226.38(c)(3)(i) each payment amount would be listed in a single row in the table with a description such as principal and interest (except that a balloon payment would be disclosed in accordance with § 226.38(c)(5)). If any regular periodic payment amounts will include interest but not principal, under § 226.38(c)(3)(ii) all payments for the loan must be itemized into principal and interest. For a payment that includes no principal, the creditor must indicate that none of the payment amount will be applied to principal. The creditor must label the dollar amount to be applied to interest "Interest Payment." The Board proposes this itemization and labeling to emphasize for consumers the impact of making interest-only payments. Many participants in the Board's consumer testing did not clearly understand that an "interest-only" loan was different from a loan in which all payments are applied to principal and interest without this emphasis and the statement in the loan summary required in proposed § 226.38(a)(3).

Balloon payment. Under proposed § 226.38(c)(5)(i), if a payment amount is a balloon payment, the payment must be disclosed in the last row of the table rather than in a column, unless it coincides with an interest rate adjustment or other payment increase such as the expiration of an interest-only option. Section 226.38(c)(5)(i) would clarify that a payment is a balloon payment if it is more than twice the amount of other payments. This is consistent with ***how*** balloon payments are defined for purposes of restrictions on balloon payments for higher-priced and HOEPA loans.

Escrows; mortgage insurance premiums. Proposed § 226.38(c)(3)(i)(C) would provide that if an escrow account will be established, the creditor must disclose the estimated payment amount for taxes and insurance, including mortgage insurance. For transactions secured by real property or a dwelling, creditors would no longer have the flexibility provided in existing 226.18(g) to exclude escrow amounts. Consumer testing conducted for the Board ***shows*** that many consumers compare loans based on the monthly payment amount. The Board believes that in order for consumers to fully understand the monthly amount they actually will be required to pay for a particular loan, information about payments for taxes and insurance is necessary. Escrow information would be included in the table to make it easier for consumers to identify whether there is an escrow and ***how*** much of their payment would apply to the escrow.

Proposed comment 38(c)(3)(i)(C)-1 would clarify the types of taxes and insurance that would be required to be included in the estimate. Proposed comment 38(c)(i)(C)-2 would provide guidance on ***how*** to determine the length of time for which mortgage insurance payments must be included in the estimate. Under the proposed comment, which is substantially similar to current comment 18(g)-5, the payment amount should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be canceled earlier.

The Board solicits comment on whether premiums or other amounts for credit life insurance, debt suspension and debt cancellation agreements and other similar products should be included or excluded from the disclosure of escrows for taxes and insurance. Including such amounts in the estimated escrow and monthly payment, particularly on the early TILA disclosures delivered within three days of application, may cause some consumers to believe these products are required as part of the loan agreement. This may affect consumers' ability to weigh the relative merits of credit insurance and other similar products and determine whether the product is appropriate for their circumstances.

Total periodic payments. Proposed § 226.38(c)(3)(i)(D) would require disclosure of the total estimated monthly payment. The total estimated monthly payment is the sum of the principal and interest payments and the estimated taxes and insurance payments required to be disclosed in § 226.38(c)(3)(i)(C).

38(c)(4) Periodic Payments for Loans With Negative Amortization

For each interest rate disclosed under § 226.38(c)(2)(ii), the creditor would disclose a corresponding payment. One row of the table would ***show*** the fully amortizing payment for each interest rate; for purposes of calculating these payments the creditor would assume the interest rate reaches the maximum at the earliest date, and that the consumer makes only fully amortizing payments. The other row of the table would ***show*** the minimum required payment for each rate, until the recast point. At the recast point, the minimum payment row would ***show*** the fully amortizing payment. For purposes of the minimum payment row, creditors must assume the interest rate reaches the maximum at the earliest date, and that the consumer makes only the minimum required payment for as long as permitted under the terms of the legal obligation.

Minimum payment amounts. Proposed § 226.38(c)(4)(i)(A) would require disclosure of the minimum required payment at consummation. The proposal would require a disclosure of the amount of the minimum payment applicable for each interest rate required to be disclosed under § 226.38(c)(2)(ii), and the date. Under proposed § 226.38(c)(4)(i)(C), the creditor must provide a statement that the minimum payment will cover only some of the interest accrued and none of the principal, and will cause the principal balance to increase. The Board proposes this required statement to ensure that consumers are informed about the consequences of making minimum payments. As stated above, participants in the Board's consumer testing were unfamiliar with the concept of negative amortization and struggled to understand why a loan's balance would increase when payments were made.

Payment increases. As noted above, many payment option loans do not have interest rate caps, and thus the interest rate may reach its maximum possible amount at the first interest rate adjustment. However, such loans may have limits on the amount that the minimum payment may increase following an interest rate adjustment. For example, a minimum payment increase may be limited by a certain percentage, such as 7.5% greater than the previous minimum payment. (Such limits are generally subject to conditions and will not apply either at a specific time, such as at the fifth year of the loan, or when the loan balance reaches a certain maximum.) Under proposed § 226.38(c)(2)(ii)(D), if adjustments in the minimum payment amount are limited such that the payment will not fully amortize the loan even after the interest rate has reached the maximum, a disclosure of the minimum payment amount at the first and second payment adjustments would be required. That is, in cases where the *first* interest rate adjustment will be the *only* interest rate adjustment, but payment adjustments will continue to occur before the minimum payment recasts to a fully amortizing payment, a disclosure of one additional minimum payment adjustment would be required.

Fully amortizing payment amount. Proposed § 226.38(c)(4)(iii) would require disclosure of the amount of the fully amortizing payment, assuming that the consumer makes only fully amortizing payments beginning at consummation. The fully amortizing payment row must be filled in for each interest rate required to be disclosed under § 226.38(c)(4)(ii) and (iv). The Board believes that contrasting the fully amortizing payment with the minimum required payment will help consumers to understand the implications of making the fully amortizing payment and the minimum payment. In consumer testing, participants understood from the table that if they made the fully amortizing payment each month they would pay their loan off, and that if they instead made the minimum payment they would not pay the loan off and in fact would increase the amount that they owe.

Statement of balance increase and other information. Proposed § 226.38(c)(4)(vi) would require a statement of the amount of the increase in the loan's principal balance if the consumer makes only minimum payments and the earliest month and year in which the minimum payment will recast to a fully amortizing payment under the terms of the legal obligation, assuming that the interest-rate reaches its maximum at the earliest possible time. As noted, participants in testing expressed confusion about negative amortization; the Board believes this disclosure and the other required disclosures in the table should help consumers understand the risks of making minimum payments.

In addition, the explanation preceding the table would provide the consumer's option to make fully amortizing payments or to make minimum payments, the maximum possible interest rate, the earliest number of months or years in which the interest rate could reach its maximum, and the amount of estimated taxes and insurance included in each payment disclosed. If the maximum interest rate may be reached in less than a year the statement would be required to provide the number of months after consummation in which the interest rate may reach its maximum, otherwise the statement would provide the number of years. In addition, the creditor would disclose whether an escrow account will be established and if so, an estimate of the amount for taxes and insurance included in each periodic payment.

38(c)(6) Special Disclosures for Loans With Negative Amortization

Some mortgage transactions permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the loan's balance. Thus, although the borrower is making payments, the loan balance is increasing instead of decreasing. Negative amortization could occur on a fixed-rate mortgage or an adjustable-rate mortgage. Mortgages with negative amortization were relatively rare until the early part of this decade, when the "payment option" loan began to grow in popularity. [82] Payment option loans have adjustable rates, and allow the borrower to choose among up to five monthly payment options, including a minimum payment that would result in negative amortization. Other options would include an interest-only option, a fully amortizing option, and the option to make extra payments of principal and pay the loan off early. Typically, payment option loans permit consumers to make minimum payments for a limited time, such as for the first five years following consummation or until the loan's principal balance reaches 115 percent of the original balance, whichever occurs first. Upon either event, the consumer must begin to make fully amortizing payments.

Payment option loans and other nontraditional mortgages can result in significant "payment shock" for borrowers, particularly when the loan "recasts" and a fully amortizing payment must be made. Concerns about payment shock led the Board, OCC, OTS, FDIC and NCUA to propose supervisory guidance on nontraditional mortgages in 2005, and issue final guidance in October 2006. [83] The guidance emphasizes that institutions should use prudence in underwriting nontraditional mortgages, and should provide accurate and balanced information to consumers before the consumer is obligated on such a mortgage. The agencies published illustrations to assist financial institutions in providing information that would help consumers understand the risks involved in nontraditional mortgages. [84] Those illustrations were not consumer tested.

The Board's consumer testing indicates that the unusual and complex nature of negative amortization loans requires a different approach to the disclosure of interest rates and payments than for amortizing loans. Nearly all participants in the Board's consumer testing were unfamiliar with the concept of negative amortization, and technical explanations of negative amortization proved challenging for them. The Board believes that selected information about payment option loans may be more effective in conveying the risks of such mortgages than extensive text explaining negative amortization and its impact.

Accordingly, the Board developed and tested an interest rate and payment summary table designed to inform consumers about the risks of a payment option loan. The proposed rules would also require disclosure of the interest rate and payment for a loan with negative amortization that is not an adjustable rate mortgage. However,

[82] Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609; October 4, 2006.

[83] *Id*.

[84] 72 FR 31825, 318231; Jun. 8, 2007

the Board found no examples of such loans in the marketplace, and seeks comment on whether such loans are offered and if so, whether proposed § 226.38(c) provides sufficient guidance on disclosing such loans.

The interest rate and payment summary would display only two payment options, even if the terms of the legal obligation provide for others, such as an option to make interest-only payments. The table would ***show*** only the option to make minimum payments that would result in negative amortization, and the option to make fully amortizing payments. The Board believes that displaying all of the options in the table would have the unintended consequence of confusion and information overload for consumers. Creditors would be free to provide information on options not displayed in the table, outside the segregated information required under this subsection.

In addition, to help consumers navigate the information in the table, proposed § 226.38(c)(6) would require a statement directly above the interest rate and payment summary table explaining that the loan offers payment options. A disclosure of the maximum possible balance would also be required, directly below the table, to help ensure that consumers understand the nature and risks involved in loans with negative amortization.

38(d) Key Questions About Risk

Based on consumer testing, as discussed in greater detail in § 226.19(b)(2) above, the Board proposes to require creditors to disclose certain information grouped together under the heading "Key Questions about Risk," using that term. This disclosure would be specific to the loan program for which the consumer applied. Proposed § 226.38(d)(1) would require the creditor to disclose information about the following three terms: (1) Rate increases, (2) payment increases, and (3) prepayment penalties. Proposed § 226.38(d)(2) would require the creditor to disclose information about the following six terms, but only if they are applicable to the loan program: (1) interest-only payments, (2) negative amortization, (3) balloon payment, (4) demand feature, (5) no-documentation or low-documentation loans, and (6) shared-equity or shared-appreciation. The "Key Questions about Risk" disclosure would be subject to special format requirements, including a tabular format and a question and answer format, as described under proposed § 226.38(d)(3).

38(d)(1) Required Disclosures

As noted above, proposed § 226.38(d)(1) would require the creditor to disclose information about the following three terms: (1) Rate increases, (2) payment increases, and (3) prepayment penalties. The Board believes that these three factors should always be disclosed. Rate and payment increases pose the most direct risk of payment shock. In addition, consumer testing consistently ***showed*** that interest rate and monthly payment were the two most common terms that participants used to shop for a mortgage. The Board also believes that the prepayment penalty is a key risk factor because it is critical to the consumer's ability to sell the home or refinance the loan to obtain a lower rate and payments. While the other risk factors are important if contained in the loan program, the Board believes it appropriate to include those factors only as applicable to ***avoid*** information overload.

Rate increases. Proposed § 226.38(d)(1)(i) would require the creditor to indicate whether or not the interest rate on the loan may increase. If the interest rate on the loan may increase, then the creditor would indicate the frequency with which the interest rate may increase and the date on which the first interest rate increase may occur. Proposed comment 38(d)(1)-1 would clarify that disclosing the date means that the creditor must disclose the calendar month and year.

Payment increases. Proposed § 226.38(d)(1)(ii) would require the creditor to indicate whether or not the periodic payment on the loan may increase. If the periodic payment on the loan may increase, then the creditor would be required to indicate the date on which the first payment increase may occur. For payment option loans, the creditor would be required to disclose the dates on which the full and *minimum* payments may increase. Proposed comment 38(d)(1)-1 would clarify that disclosing the date means that the creditor must disclose the calendar month and year.

Prepayment penalty. As currently required under TILA Section 128(a)(11), 15 U.S.C. 1638(a)(11), and § 226.18(k)(1), if the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, proposed § 226.38(d)(1)(iii) would require the creditor to indicate whether or not a penalty will be imposed if the obligation is prepaid in full. If the creditor may impose a prepayment penalty, the creditor would disclose the circumstances under which and period in which the creditor would impose the penalty and the amount of the maximum penalty. Because of the importance of prepayment penalties, the proposed rule would also require disclosure of prepayment penalties, if applicable, under proposed § 226.38(a)(5). To ***avoid*** duplication, proposed comments 38(d)(1)(iii)-1 to -3 would cross-reference proposed comments 38(a)(5)-1 to -3 for information about whether there is a prepayment penalty, and examples of charges that are or are not prepayment penalties. In addition, proposed comment 38(d)(1)(iii)-4 would cross-reference comment 38(a)(5)-6 to determine the maximum prepayment penalty. Proposed comment 38(d)(1)(iii)-5 would cross-reference comment 38(a)(5)-7 for information about any differences resulting from the consumer's payment patterns and basing disclosures on the required payment for a negative amortization loan. Although under proposed § 226.38(a)(5) the disclosure of the prepayment penalty would appear on the first page of the transaction-specific TILA disclosure only if this feature were present in the loan, the disclosure would always appear on the second page in the "Key Questions" disclosure in order for the consumer to verify whether or not there is a prepayment penalty associated with the loan. 38(d)(2) Additional Disclosures

As noted above, proposed § 226.38(d)(2) would require the creditor to disclose information about the following six terms, as applicable: (1) Interest-only payments, (2) negative amortization, (3) balloon payment, (4) demand feature, (5) no-documentation or low-documentation loans, and (6) shared-equity or shared-appreciation. Proposed comment 38(d)(2)-1 would clarify that "as applicable" means that any disclosure not relevant to a particular loan may be omitted. Although consumer testing ***showed*** that some participants felt reassured by seeing all of the risk factors whether the factors were a feature of the loan or not, the Board is concerned about the potential for information overload if the entire list is included.

Interest-only payments. Proposed § 226.38(d)(2)(i) would require the creditor to disclose that periodic payments will be applied only toward interest on the loan. The creditor would also disclose any limitation on the number of periodic payments that will be applied only toward interest on the loan, that such payments will cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will be not have paid any of the loan amount. For payment option loans, the creditor would disclose that the loan gives the consumer the choice to make periodic payments that cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount.

Negative amortization. Proposed § 226.38(d)(2)(ii) would require the creditor to disclose that the loan balance may increase even if the consumer makes the periodic payments. In addition, the creditor would be required to disclose that the minimum payment covers only a part of the interest the consumer owes each period and none of the principal, that the unpaid interest will be added to the consumer's loan amount, and that over time this will increase the total amount the consumer is borrowing and cause the consumer to lose equity in the home.

Balloon payment. Proposed § 226.38(d)(2)(iii) would require the creditor to disclose that the consumer will owe a balloon payment, along with a statement of the amount that will be due and the date on which it will be due. Proposed comment 38(d)(2)(iii)-1 would clarify that the creditor must make this disclosure if the loan program includes a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

Demand feature. As currently required under § 226.18(i), proposed § 226.38(d)(2)(iv) would require the creditor to disclose a statement that the creditor may demand full repayment of the loan, along with a statement of the timing of any advance notice the creditor is required to give the consumer before the creditor exercises such right. Proposed comment 38(d)(2)(iv)-1 would clarify that this requirement would apply not only to transactions payable on demand from the outset, but also to transactions that convert to a demand status after a stated period. Proposed comment 38(d)(2)(iv)-2 would cross-reference comment 18(i)-2 regarding covered demand features.

No-documentation or low-documentation loans. Proposed § 226.38(d)(2)(v) would require the creditor to disclose that the consumer's loan will have a higher rate or fees because the consumer did not document employment, income, or other assets. In addition, the creditor would disclose that if the consumer provides more documentation, the consumer could decrease the interest rate or fees.

Shared-equity or shared-appreciation. Proposed § 226.38(d)(2)(vi) would require the creditor to disclose a statement that any future equity or appreciation in the real property or dwelling that secures the loan must be shared, along with a statement of the events that may trigger such obligation.

38(d)(3) Format Requirements

Based on consumer testing, as discussed more fully in §§ 226.19(b)(2) and 226.37, proposed § 226.38(d)(3) would require the creditor to disclose the "Key Questions about Risk" using a special format. Proposed § 226.38(d)(3)(i) would require the creditor to provide the disclosures required in § 226.38(d)(1) and (d)(2), as applicable, in the form of a table with headings, content and format substantially similar to Model Forms H--19(A), H--19(B), or H--19(C) in Appendix H. Only the information required or permitted by § 226.38(d)(1) and (2) would be permitted in this table. In addition, under § 226.38(d)(3)(ii), the disclosures would be required to be grouped together and presented in the format of a question and answer in a manner substantially similar to Model Form H--19(A), H--19(B), or H--19(C) in Appendix H. Proposed § 226.38(d)(3)(iii) would further require the creditor to disclose each affirmative answer in bold text and in all capitalized letters, but negative answers would be disclosed in nonbold text. Finally, proposed 226.38(d)(3)(iv) would require the creditor to make the disclosures, as applicable, in the following order: rate increases under § 226.38(d)(1)(i), payment increases under § 226.38(d)(1)(ii), interest-only payments under § 226.38(d)(2)(i), negative amortization under § 226.38(d)(2)(ii), balloon payments under § 226.38(d)(2)(iii), prepayment penalties under § 226.38(d)(1)(iiii), demand feature under § 226.38(d)(2)(iv), no-documentation or low-documentation loans under § 226.38(d)(2)(v), and shared-equity or shared-appreciation under § 226.38(d)(2)(vi). This order would ensure that consumers receive critical information about their payments first.

38(e) Information About Payments

Proposed § 226.38(e) would require disclosure of additional information about interest rates and payments, including disclosure of the amount financed, the "interest and settlement charges," (currently the "finance charge"), the total of payments, and the number of payments. Proposed § 226.38(e) would also require disclosure of whether or not an escrow account for taxes and insurance is required, a disclosure about private mortgage insurance, if applicable, and information about limitations on rate and payment changes. In the consumer testing conducted by the Board, consumers did not find certain terms that are prominently disclosed on the current transaction-specific TILA form to be useful. Specifically, the amount financed, the total of payments, and the finance charge were less useful to consumers than other information such as information about the loan amount, interest rates, and monthly payments. The Board believes that it would enhance consumers' overall understanding of the disclosures if these items were placed less prominently on the form. In addition, by placing these terms in the context of a larger explanatory statement, some consumers may better be able to understand these terms. At the same time, consumer testing conducted for the Board has ***shown*** that there is other information about the loan terms that consumers find beneficial that is not currently disclosed on the transaction-specific form. Specifically, the Board believes that consumers would find it beneficial to have explanations of ***how*** the interest rate or payment amounts can change and whether there are limits on those changes, and notification of whether an escrow account or private mortgage insurance are required.

38(e)(1) and (2) Rate Calculation; Rate and Payment Change Limits

Proposed §§ 226.38(e)(1) and 226.38(e)(2) would require disclosures of ***how*** the consumer's variable interest rate is calculated, of any limitations on adjustments to the interest rate, and of any limitations on payment adjustments in negatively amortizing loans. The requirements under proposed §§ 226.38(e)(1) and 226.38(e)(2) to provide disclosures of ***how*** the rate is calculated and any limitations on adjustments to the interest rate are similar to the requirements of current §§ 226.18(f)(1)(i) and 226.18(f)(1)(ii) for transactions not secured by the consumer's principal dwelling or secured by the consumer's principal dwelling with a term of one year or less. Currently, for transactions secured by the consumer's principal dwelling with a term greater than one year, § 226.19(b)(2) requires information about the variable interest rate to be disclosed at the time an application form is provided to the consumer, or before the consumer pays a nonrefundable fee, whichever is earlier. However, under current § 226.18(f)(2), in the transaction-specific disclosures provided before consummation, only a statement that the transaction contains a variable-rate feature, and a statement that variable-rate disclosures have been provided earlier, are required. The Board believes that providing information about ***how*** the interest rate is calculated and about limitations on interest rate adjustments along with other transaction-specific disclosures would provide consumers with meaningful information about their particular interest rate in the context of the entire transaction being disclosed. For adjustable-rate mortgages, proposed § 226.38(e)(1) would require a statement of ***how*** the interest rate is calculated. In addition, if the interest rate at consummation is not based on the index and margin that will be used to make later interest rate adjustments, the statement would be required to include the time period when the initial interest rate expires.

Proposed comment 38(e)(1)-1 is similar to current comment 18(f)(1)(i)-1 for credit not secured by the consumer's principal dwelling, or secured by the consumer's principal dwelling with a term of one year or less. The proposed comment would clarify that if the interest rate is calculated based on the addition of a margin to an index the statement would have to identify the index to which the rate is tied and the margin that will be added to the index, as well as any conditions or events on which the increase is contingent. When no specific index is used, the factors used to determine whether to increase the rate would be required to be disclosed. When the increase in the rate is discretionary, the fact that any increase is within the creditor's discretion would be required to be disclosed. When the index is internal (for example, the creditor's prime rate), the creditor would be permitted to comply with the disclosure requirement by providing either a brief description of that index or a statement that any increase is in the discretion of the creditor. An external index, however, would be required to be identified.

Proposed § 226.38(e)(2) would require a statement of any limitations on the increase in the interest rate in a variable-rate transaction, and, for negatively amortizing loans, a statement of any limitations on the increase in the minimum payment amount and the circumstances under which the minimum payment required may recast to a fully amortizing payment. Proposed comment 38(e)(2)-1, covering variable-rate transactions, would be similar to current comment 18(f)(1)(ii)-1 and would clarify that the disclosure of limitations on adjustments to the interest rate must provide any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the transaction's term to maturity.

Proposed comment 38(e)(2)-2, covering negatively amortizing loans, would clarify that any limit imposed on the change of a minimum payment amount, whether or not the change follows an adjustment to the interest rate, would be required to be disclosed. In addition, any conditions to the limitation on payment increases would also be required to be disclosed. For example, some loan programs provide that the minimum payment will not increase by more than a certain percentage, regardless of the corresponding increase in the interest rate. However, there may be exceptions to the limitation on the payment increase, such as if the consumer's principal balance reaches a certain threshold, or if the legal obligation sets out a scheduled time when payment increases will not be limited.

38(e)(3) Escrow

Proposed § 226.38(e)(3) would require, if applicable, a statement substantially similar to the following: "An escrow account is required for property taxes and insurance (such as homeowner's insurance). ***Your*** escrow payment is an estimate and can change at any time. See ***your*** Good Faith Estimate or HUD--1 form for more details." If no escrow is required, the creditor would be required to state that fact and that the consumer must pay property taxes and insurance directly.

38(e)(4) Mortgage Insurance

Proposed § 226.38(e)(4) would require, if applicable, a statement substantially similar to the following: "Private Mortgage Insurance (PMI) is required for this loan. It is included in ***your*** escrow." If other mortgage insurance is required, such as insurance or guaranty obtained from a government agency, the creditor would be required to omit the word "private" from the description.

38(e)(5) Total Payments

38(e)(5)(i) Total Payments

Section 226.18(h), which implements TILA Section 128(a)(5) and (8), requires creditors to disclose the total of payments, using that term, together with a descriptive statement that the disclosed amount reflects the sum of all scheduled payments disclosed under § 226.18(g). [85] 15 U.S.C. 1638(a)(5), (a)(8). Current comment 18(h)-1 allows creditors to revise the total of payments descriptive statement for variable rate transactions to convey that the disclosed amount is based on the annual percentage rate and may change. In addition, current comments 18(h)-3 and --4 permit creditors to omit the total of payments disclosure in certain single-payment transactions and for demand obligations that have no alternate maturity date.

Consumer testing conducted by the Board ***showed*** that participants did not find the total of payments to be helpful in evaluating a loan offer. Most participants understood that the total of payments generally represented the sum of scheduled payments and charges, including interest; several suggested that an explanation of ***how*** the total of payments is calculated would facilitate comprehension of the term. Some participants expressed interest in knowing the total of payments required to pay off the loan obligation, but regarded this information as marginally useful to their shopping and decision-making process. On the other hand, some participants commented that information about the total of payments was unnecessary and therefore, could be removed from the form entirely.

As part of consumer testing, the Board shortened the term "total of payments" to "total payments" because it is a more direct and simple term to communicate to consumers what the dollar amount represented. In addition, an explanation of the assumptions underlying the total payments calculation was added with an explicit reference to whether the amount included escrowed amounts. The total payment amount was disclosed with a statement explaining that a portion of it goes towards interest and settlement charges. This approach enhanced consumer comprehension of the total payments and, as discussed more fully below, the interest and settlement charges disclosure.

The Board proposes to rename "total of payments" as "total payments," and require that it be disclosed with a descriptive statement, for transactions secured by real property or a dwelling. The Board proposes to make this adjustment pursuant to its exception authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that proposing the exception is appropriate. Consumer testing indicates that "total payments" is more understandable to consumers than "total of payments."

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[85] Section 128(a)(5) of TILA states that the total of payments should be disclosed as the sum of the amount financed and finance charge. 15 U.S.C. 1638(a)(5). Since 1969, the Board has required that the total of payments equal the sum of payments disclosed in the payment schedule under TILA Section 128(a)(6) and § 226.18(g), which can include amounts beyond the amount financed and the finance charge. 15 U.S.C. 1638(a)(6). Thus, if a creditor includes escrowed taxes and insurance in its disclosure of scheduled payments under § 226.18(g), it must also include those amounts in the total of payments disclosed under § 226.18(h). 34 FR 02002; Feb. 11, 1969.

The Board proposes to add new § 226.38(e)(5)(i), which would implement TILA Sections 128(a)(5), 128(a)(6), in part, and 128(a)(8) for transactions secured by real property or a dwelling. 15 U.S.C. 1638(a)(5), (a)(6), and (a)(8). Proposed § 226.38(e)(5)(i) would require creditors to disclose for transactions secured by real property or a dwelling, the number and total amount of payments that the consumer would make over the full term of the loan. The Board proposes that this disclosure be made together with a brief statement that the amount is calculated assuming market rates will not change, and that the consumer will make all payments as scheduled for the full term of the loan. The Board believes that although the total payments disclosure is not critical to the shopping or decision-making process for many consumers, it provides information about the total cost of the loan that provides context for, and increases understanding of, other required disclosures, such as interest and settlement charges (formerly finance charge) and amount financed.

Proposed comments 38(e)(5)(i)-1 through --3 would be added to provide guidance to creditors on ***how*** to calculate and disclose the total payments amount and the number of payments. As discussed more fully under proposed § 226.38(c), the Board is proposing to require creditors to provide interest rate and monthly payment disclosures in a tabular format for transactions secured by real property or a dwelling. As a result, creditors would not be subject to the disclosure requirements for payment schedules under current § 226.18(g). However, proposed comment 38(e)(5)(i)-1 would clarify that creditors should continue to follow the rules in § 226.18(g) and associated commentary, and comments 17(c)(1)-8 and -10 for adjustable rate transactions, to calculate the total payments for transactions secured by real property or a dwelling. New comment 38(e)(5)(i)-2 would cross-reference to comment 18(g)-3, which the Board proposes to revise to require creditors to disclose the total number of payments for all payment levels as a single figure for transactions secured by real property or a dwelling. Proposed comment 38(e)(5)(i)-3 would provide guidance regarding demand obligations. In technical revisions, the text from current footnote 44 would be moved to the regulation text in § 226.18(h); however, this text is not included in proposed § 226.38(e)(5)(ii) because it is not applicable to transactions secured by real property or a dwelling.

As discussed more fully under proposed § 226.38(e)(5)(ii) for interest and settlement charges (formerly "finance charge"), creditors would be required to group the total payments disclosure together with the interest and settlement charges and amount financed disclosures under proposed § 226.38(e)(5)(ii) and (iii), respectively.

38(e)(5)(ii) Finance Charge: Interest and Charges

Section 226.18(d), which implements TILA Sections 128(a)(3) and (a)(8), requires creditors to disclose the "finance charge," using that term, and a brief description such as "the dollar amount the credit will cost you." 15 U.S.C. 1638(a)(3), (a)(8). Current comment 18(d)-1 allows creditors to modify this description for variable rate transactions with a phrase that the disclosed amount is subject to change. In addition, § 226.17(a)(2), which implements TILA Section 122(a), requires creditors to disclose the finance charge, and the annual percentage rate, more conspicuously than any other required disclosure, except the creditor's identity. 15 U.S.C. 1633(a). The rules addressing which charges must be included in the finance charge are set forth under TILA Section 106 and § 226.4, and are discussed more fully under § 226.4 of this proposal. 15 U.S.C. 1605.

Consumer testing conducted by the Board indicated that many participants could not correctly explain the term "finance charge." [86] Most participants thought that the finance charge represented the amount of interest the borrower would pay over the life of the loan, but did not realize that it also included fees until directed to read a statement that explained fees were included. Consumer testing ***showed*** that comprehension of the finance charge improved when it was renamed to reflect the costs it actually represented--the interest and settlement charges paid

[86] *See also Improving Consumer Mortgage Disclosures* (stating that a number of respondents misinterpreted the finance charge).

over the life of the loan. However, even when participants understood what the finance charge signified they tended to disregard it, often because it was such a large dollar amount. Several participants commented that it is helpful to know the total amount of interest and fees that would be paid, but that they could not otherwise purchase a home, or refinance an existing obligation, in cash and therefore, already understood they would pay a significant amount in interest and fees when repaying the loan. Still, participants expressed an interest in knowing the total amount of interest and other charges they would pay over the full term of the loan.

The Board proposes to exercise its authority under TILA Section 105(a) to rename "finance charge" as "interest and settlement charges," except it from the requirement under TILA Section 122(a) that it be disclosed more conspicuously, and require that it be disclosed with a descriptive statement. 15 U.S.C. 1632(a); 1604(a), (f). Section 105(a) authorizes the Board to make exceptions or adjustments to TILA for any class of transactions to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). In this case, the Board believes an exception from TILA's requirements are necessary to effectuate the Act's purposes for transactions secured by real property or a dwelling. Although some consumers expressed interest in the finance charge when evaluating a loan offer, consumer testing ***showed*** that for most consumers it is not as useful in the shopping or decision-making process as other terms, and therefore, should be de-emphasized relative to other disclosed terms. Consumer testing also ***showed*** that participants had a better understanding of the finance charge when it was disclosed as a portion of the total payments amount, accompanied by a statement that explained the finance charge amount plus the amount financed is used to calculate the APR. Thus, based on consumer testing, the Board believes that consumers will find the finance charge disclosure more meaningful when described in a manner consistent with consumers' general understanding, and disclosed in context with other information that relate to loan payments, such as the total payments.

The Board proposes to add new § 226.38(e)(5)(ii), which would implement TILA Section 128(a)(3) and (8) for closed-end mortgage loans covered by § 226.38. 15 U.S.C. 1638(a)(3), (8). Section 226.38(e)(5)(ii) would require creditors to disclose the "interest and settlement charges," using that term, together with a brief statement that the disclosed amount represents part of the total payments amount disclosed. Creditors would also be required to disclose the "interest and settlement charges" grouped together with the "total payments" and "amount financed" disclosures under proposed § 226.38(e)(5)(i) and (iii), respectively, under the subheading "Total Payments," using that term. Based on consumer testing, the Board believes this approach is appropriate to help serve TILA's purpose of assuring a meaningful disclosure of credit terms. Consumer testing suggests that providing the disclosure of "interest and settlement charges" in context of the total payments improves consumers' ability to understand that this disclosure represents the cost (*i.e*., interest and fees) of borrowing the loan amount.

The Board also proposes comment 38(e)(5)(ii)-1 to provide guidance on ***how*** creditors must calculate and disclose the interest and settlement charges. However, the proposed rule would not allow creditors to modify the description that accompanies the disclosure for variable-rate transactions. The Board proposes this restriction under TILA Section 105(a) to help serve TILA's purpose of meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available, and ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a). Consumer testing ***showed*** that the simple disclosure aided consumer understanding. The Board believes that adding language that states the disclosed amount is subject to change could dilute the significance of the disclosure.

38(e)(5)(iii) Amount Financed

Disclosure of amount financed. Section 226.18(b), which implements TILA Section 128(a)(2)(A) and (a)(8), requires creditors to disclose the amount financed, using that term, together with a brief description that it represents the amount of credit of which the consumer has actual use. 15 U.S.C. 1638(a)(2)(A), (a)(8). Section 226.18(b) delineates ***how*** creditors should calculate the amount financed so that it reflects the net amount of credit being extended.

In consumer testing conducted for the Board, virtually no participant understood the disclosure of the amount financed. [87] The Board tested several versions of the amount financed disclosure, with alternative formatting and descriptions, to explain briefly that it represents the amount of credit of which the consumer has actual use to purchase a home or refinance an existing loan. However, these changes made no difference in participants' understanding of the term. In addition, consumer testing ***showed*** that the amount financed disclosure actually detracted from consumers' understanding of other disclosures. Many consumers mistook the amount financed for the loan amount. Some of these consumers were confused, however, because the amount financed was slightly lower than the amount borrowed in the hypothetical loan offer. Consumers offered various explanations regarding the difference in the disclosed amounts, including that the amount financed was the cost of purchasing a home less a down payment. Other participants stated that the amount financed represented escrowed amounts. Sample disclosures were used to try to explain that the difference between the loan amount and amount financed is attributable to prepaid finance charges, but this explanation did not appear to improve consumer comprehension. Consumer testing also indicated that participants would not consider the amount financed when shopping for a mortgage or evaluating competing loan offers.

For these reasons, the Board proposes to add new § 226.38(e)(5)(iii), which would implement TILA Section 128(a)(2)(A) and (a)(8) for transactions secured by real property or a dwelling. 15 U.S.C. 1638(a)(2)(A), (a)(8). Section 226.38(e)(5)(iii) would require creditors to disclose the amount financed with a brief statement that the amount financed, plus the interest and settlement charges, is the amount used to calculate the annual percentage rate. As noted above, creditors would be required to disclose the amount financed grouped together with the total payments and interest and settlement charges required under proposed § 226.38(e)(5)(i) and (ii).

The Board proposes this approach pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to prescribe regulations to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). Based on consumer testing, the Board believes this proposal is appropriate to help serve TILA's purpose of assuring a meaningful disclosure of credit terms. The Board believes that requiring creditors to disclose the amount financed in the loan summary with other key loan terms would add unnecessary complexity and result in "information overload." Consumer testing ***showed*** that when the amount financed was disclosed with the total payments and interest and settlement charges, that consumer comprehension of the term improved slightly, and confusion over other key loan terms, such as the loan amount, was eliminated. The Board believes that disclosing the amount financed as one component in the APR calculation provided consumers with a better understanding of its significance to the loan transaction. The Board also proposes new comment 38(e)(5)(iii)-3 to provide guidance regarding disclosure of the "amount financed."

Calculation of amount financed. The Board proposes to simplify the calculation of the amount financed for transactions subject to the disclosure requirements of proposed § 226.38, pursuant to the Board's authority under TILA Section 105(a). The Board believes that the proposed simplification would improve understanding of the rules and facilitate compliance with Regulation Z. Under proposed § 226.38(e)(5)(iii), for a transaction secured by real property or a consumer's dwelling, the creditor would determine the amount financed by subtracting all prepaid finance charges from the loan amount as defined in proposed § 226.38(a)(1), discussed above. Under existing § 226.18(b) and its staff commentary, creditors may elect from among multiple alternatives in calculating the amount financed. All of the permissible methods yield the same mathematical result.

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[87] *See also Improving Consumer Mortgage Disclosures* at 35 (finding that most respondents in consumer testing did not understand the term "amount financed," and confused it for the loan amount, and discussing the risks of falling subject to predatory lending practices as a result of this confusion).

The Board has received input from bank examiners and others that providing multiple approaches to calculation of the amount financed creates unnecessary complication. Examiners also indicate that, of the permissible approaches, mortgage lenders generally use the one that is simplest and most straightforward. The Board is now proposing to require that approach and to eliminate the alternatives. The Board also is proposing to make a conforming amendment to the staff commentary under § 226.18(b) to reflect the fact that it would not apply to mortgages.

TILA provides that the amount financed is calculated as follows:

(1) Take the principal amount of the loan (or cash price less downpayment);

(2) Add any charges that are not part of the finance charge or of the principal amount and that are financed by the consumer; and

(3) Subtract any prepaid finance charge.

TILA Section 128(a)(2)(A), 15 U.S.C. 1638(a)(2)(A). Regulation Z provides a substantially identical calculation. *See* § 226.18(b). Neither the statute nor Regulation Z defines "principal amount of the loan." As a result, more than one understanding of that term is possible, and Regulation Z seeks to address several of those understandings rather than to define principal amount definitively.

Current Regulation Z permits non-finance charges and prepaid finance charges that are financed to be included in the principal loan amount under step (1) or not, at the creditor's option. The creditor then must add in under step (2) any financed non-finance charges that were not included under step (1). *See* comment 18(b)(2)-1. Similarly, the creditor must subtract under step (3) any financed prepaid finance charges only if they were included under step (1). *See* comment 18(b)(3)-1. Proposed § 226.38(e)(5)(iii) effectively would define "principal loan amount" as the loan amount, as that is defined in proposed § 226.38(a)(1), which would mean the principal amount the consumer will borrow reflected in the loan contract. Under that definition, all amounts that are financed necessarily would be included in step (1), whether they are finance charges or not. Consequently, no amount ever would be added under step (2). The new provision therefore would streamline the calculation to eliminate that step. Similarly, the current commentary providing that financed prepaid finance charges should be subtracted in step (3) only if they were included in step (1) would be unnecessary, as such finance charges always would be included in step (1). Proposed § 226.38(e)(5)(iii) would provide definitively that the amount financed is determined simply by subtracting the prepaid finance charge from the loan amount.

The Board also is proposing comment 38(e)(5)(iii)-2 to clarify ***how*** to treat creditor or third-party premiums and buy-downs for purposes of the amount financed calculation. This proposed comment is based on existing comment 18(b)-2, which relates to rebates and loan premiums. The discussion in comment 18(b)-2 was primarily intended to address situations that are more common in non-mortgage transactions, especially credit sales, such as automobile financing. It provides that creditor-paid premiums and seller- or manufacturer-paid rebates may be reflected in the disclosures under § 226.18 or not, at the creditor's option. Although such premiums and rebates are less likely to exist in mortgage transactions precisely as they are described in comment 18(b)-2, analogous situations can apply to mortgage financing. For example, real estate developers may offer to pay some or all closing costs or to buy down the consumer's interest rate, and creditors may agree to pay certain closing costs in return for a particular interest rate. Rather than permit any treatment at the creditor's option, however, proposed comment 38(e)(5)(iii)-2 would reflect the Board's belief that such situations are analogous to buydowns. Like buydowns, such premiums and rebates may or may not be funded by the creditor and reduce costs otherwise borne by the consumer. Accordingly, their impact on the amount financed, like that of buydowns, properly depends on whether they are part of the legal obligation. *See* comments 17(c)(1)-1 through -5. Proposed comment 38(e)(5)(iii)-2 would clarify that the disclosures, including the amount financed, must reflect loan premiums and rebates regardless of their source, but only if they are part of the terms of the legal obligation between the creditor and the consumer. As noted above, the Board also is proposing similar revisions to existing comment 18(b)-2.

38(f) Additional Disclosures

38(f)(1) No Obligation Statement

The MDIA amended Section 128(b)(2) of TILA to require creditors to disclose, in conspicuous type size and format, that receiving and signing a TILA disclosure does not obligate a consumer to accept the loan ("the MDIA statement"). 15 U.S.C. 1638(b)(2). The MDIA sets forth the following language for creditors to use in making this disclosure: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." 88 The Board proposes to modify this statutory language to facilitate consumers' use and understanding of the MDIA statement pursuant to its authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). Based on consumer testing, the Board believes that using plain language principles to revise the statutory language improves consumers' ability to understand the disclosure and would help serve TILA's purpose to provide meaningful disclosure of credit terms.

As part of consumer testing, the Board included the MDIA statement on the front page of the TILA, modified to replace legalistic phrasing with more common word usage. On the second page, the Board included a signature line and date, as most creditors require the consumer to sign the disclosure form to establish compliance with TILA. Most participants did not notice the MDIA statement, but indicated that they understood they were under no obligation to accept the loan; participants who did notice the text similarly understood they were under no obligation to accept the loan. However, upon seeing the signature line, some participants believed they would be obligated to accept the loan if they signed or initialized the disclosure. Based on consumer testing, the Board is concerned that although consumers may initially understand they are not obligated to accept a loan, this belief may be altered by creditors' practice of requiring consumers to sign or initial receipt of the disclosures. This may further discourage negotiation and shopping among loan products and lenders.

To implement the new disclosure required by the MDIA, the Board proposes to add new § 226.38(f)(1) for all transactions secured by real property or a dwelling. Proposed § 226.38(f)(1) would require a statement that a consumer is not obligated to accept the loan because he or she has signed the disclosure. In addition, the Board proposes that if a creditor provides space for the consumer to sign or initial the TILA disclosures, then the creditor must place the statement in close proximity to the space provided for the consumer's signature or initials. The statement must also specify that a signature only confirms receipt of the disclosure statement.

The Board proposes this approach pursuant to its authority under TILA Section 105(a) to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that this proposal is necessary to encourage consumers to shop among available credit alternatives. The Board tested the disclosure as proposed under § 226.38(f)(1). Most participants understood they were not obligated to accept the loan and could refuse to accept the loan offer even after signing. As a result, the Board believes the disclosure proposed by new § 226.38(f)(1) is necessary to ensure that consumers are not discouraged from shopping or negotiating with the lender.

38(f)(2) Security Interest

TILA Section 128(a)(9), 15 U.S.C. 1638(a)(9), and § 226.18(m) require the creditor to disclose whether it has a security interest in the property securing the transaction. During consumer testing of the current TILA disclosure, participants were ***shown*** the following language: "Security: You are giving a security interest in the real property, and fixtures and rents if indicated in the rider mortgage." Very few participants understood the current language regarding a security interest. The Board is concerned that consumers might not understand that the creditor can take the consumer's home if the consumer defaults on the loan agreement. To clarify the significance of the security interest disclosure to consumers, the Board proposes § 226.38(f)(2) to require the creditor to state that the consumer could lose the home if the consumer is unable to make the payments on the loan. This would provide a clearer disclosure regarding the effect of the lender taking a security interest in the home.

38(f)(3) No Guarantee to Refinance Statement

The MDIA also amended Section 128(b)(2) of TILA to require creditors to disclose for variable rate transactions, in conspicuous type size and format, that there is no guarantee that the consumer will be able to refinance the transaction to lower the interest rate or monthly payments ("MDIA refinancing warning"). [89] 15 U.S.C. 1638(b)(2). To implement the disclosure required by the MDIA, the Board proposes to add § 226.38(f)(3) to require that creditors disclose that there is no guarantee that the consumer will be able to refinance the loan to obtain a lower interest rate and payment. The Board believes that including such a statement on the TILA disclosure form will alert consumers to consider the impact of future rate adjustments and increased monthly payments

Although the MDIA requires this refinancing warning only for variable rate transactions secured by a dwelling, the Board proposes to expand the scope of the requirement to also include fixed-rate transactions secured by a dwelling, as well as transactions secured by real property without a dwelling. The Board proposes this approach pursuant to its authority under TILA Section 105(a) to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers ***avoid*** the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board is concerned that some consumers may accept loan terms that could present refinancing concerns similar to variable rate transactions, such as a three-year fixed-rate mortgage with a balloon payment. Based on consumer testing, the Board believes all consumers, regardless of transaction-type, would benefit from a statement that encourages consideration of future possible market rate increases.

38(f)(4) Tax Deductibility

The Board is also proposing changes to the closed-end disclosures to implement provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Act") which requires disclosure of the tax implications for home-secured credit that may exceed the dwelling's fair market value. *See* Public Law 109-8, 119 Stat. 23. The Bankruptcy Act primarily amended the federal bankruptcy code, but also contained several provisions amending TILA. Section 1302 of the Bankruptcy Act amendments requires that advertisements and applications for credit (either open-end or closed-end) that may exceed the fair market value of the dwelling include a statement that the interest on the portion of the credit extension that exceeds the fair market value is not tax-deductible and a statement that the consumer should consult a tax advisor for further information on tax deductibility.

The Board stated its intent to implement the Bankruptcy Act amendments in an ANPR published in October 2005 as part of the Board's ongoing review of Regulation Z (October 2005 ANPR). 70 FR 60235; Oct. 17, 2005. The Board received approximately 50 comment letters: forty-five letters were submitted by financial institutions and their trade groups, and five letters were submitted by consumer groups. In general, creditors ***asked*** for flexibility in providing the disclosure regarding the tax implications for home-secured credit that may exceed the dwelling's fair market value, either by permitting the notice to be provided to all mortgage applicants, or to be provided later in the approval process after creditors have determined whether the disclosure is triggered. Creditor commenters ***asked*** for guidance on loan-to-value calculations and safe harbors for ***how*** creditors should determine property values. Consumer advocates favored triggering the disclosure when negative amortization could occur. A number of

[89] Specifically, the MDIA requires that the Board use consumer testing to develop disclosures for variable rate transactions, including the fact that "there is no guarantee that the borrower will be able to refinance to a lower amount." Public Law 109-8, 119 Stat. 23, § 2502(a)(6).

commenters stated that in order for the disclosure to be effective and useful to the borrower, it should be given when the new extension of credit, combined with existing credit secured by the dwelling (if any), may exceed the fair market value of the dwelling. A few industry comments took the opposite view that the disclosure should be limited only to when a new extension of credit itself exceeds fair market value, citing the difficulty in determining ***how*** much debt is already secured by the dwelling at the time of application.

The Board implemented section 1302 with regard to advertisements in its 2008 HOEPA Final Rule. *See* 73 FR 44522, 44600; July 30, 2008. In the supplementary information to that rule, the Board stated that it intends to implement the application disclosure portion of the Bankruptcy Act during its forthcoming review of closed-end and HELOC disclosures under TILA. Proposed § 226.38(f)(4) would implement provisions of the Bankruptcy Act by requiring creditors to include the disclosure of the tax implications for a loan secured by a dwelling, if extension of credit may, by its terms, exceed the fair market value of the dwelling. The text of the proposed disclosure is based on the Board's consumer testing of model HELOC disclosure forms. The disclosure would be segregated and located directly below the table.

The Board recognizes that creditors may not be able to determine whether the amount of credit extended exceeds the fair market value of the dwelling, especially three days after application when they are required to provide an early transaction-specific disclosures. The creditor may not be able to verify the value on the property until later in the loan underwriting process. The Board has considered whether the disclosure should be provided later in the approval process after the creditor has determined that the disclosure is triggered, for instance, after receiving the appraisal report or completing the underwriting process. However, such late timing of the disclosure would not satisfy the requirements of the Bankruptcy Act which requires that the disclosures be provided *at the time* of application. *See* 15 U.S.C. 1638(a)(15).

The Board also considered whether the disclosure should be provided to all mortgage applicants, regardless of whether the amount of credit extended exceeds the fair market value of the dwelling. To address the situations in which the creditor is not certain whether the credit extended may exceed the fair market value of the dwelling, comment 38(f)(4)-2 permits the disclosure to be provided to all mortgage applicants at creditors' discretion and provides model language.

The Board recognizes that the scope of the proposed § 226.38(f)(4) is limited to dwellings whereas proposed § 226.38 would apply to real property and dwellings. While the Bankruptcy Act amendment specifically references "consumer's dwelling," the Board believes that it would be unnecessarily burdensome to require creditors to create separate disclosures for the transactions secured by real property and those secured by a dwelling solely for the purposes of the tax implications disclosure. For that reason, a creditor would be permitted, but not required, to provide the disclosures about the tax implications in connection with transactions secured by both real property and dwellings.

38(f)(5) Additional Information and Web Site

Consumer testing ***showed*** that many participants educated themselves about the mortgage process through informal networking with family, friends, and colleagues, while others relied on the Internet for information. To improve consumers' ability to make informed decisions about credit, the Board proposes § 226.38(f)(5) to require the creditor to disclose that if the consumer does not understand any of the disclosures, then the consumer should ***ask*** questions. The creditor would also disclose that the consumer may obtain additional information at the Web site of the Federal Reserve Board and disclose a reference to that Web site. The Board will enhance its Web site to further assist consumers in shopping for a mortgage. Although it is hard to predict from the results of the consumer testing ***how*** many consumers might use the Board's Web site, and recognizing that not all consumers have access to the Internet, the Board believes that this Web site may be helpful to some consumers as they shop for a mortgage. The Board seeks comment on the content for the Web site.

38(f)(6) Format

The Board is proposing to specify precise formatting requirements for the disclosures required by § 226.38(f)(1) through (5). Proposed § 226.38(f)(6)(i) would set forth location requirements, providing that the no obligation and confirmation of receipt statements must be disclosed together, the security interest and no guarantee to refinance statements must be disclosed together, and the recommendation to ***ask*** questions and statement regarding the Board's Web site must be disclosed together. Proposed § 226.38(f)(6)(ii) would set forth highlighting requirements, providing that the no obligation and security interest statements, and the advice to ***ask*** questions, must be disclosed in bold text.

38(g) Identification of Originator and Creditor

38(g)(1) Creditor

Currently, § 226.18(a), which implements TILA Section 128(a)(1), 15 U.S.C. 1638(a)(1), requires the creditor to disclose the identity of the creditor making the disclosure. Proposed § 226.38(g)(1) would require the same disclosure. In addition, proposed comment 38(g)(1)-1 would parallel existing comment 18(a)-1 to clarify that use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures, but the one doing so must be identified. The Board solicits comment on whether the creditor making the disclosures should be required to disclose its contact information, such as its address and/or telephone number.

Existing footnote 38 to § 226.17(a), which implements TILA Section 128(b)(1), 15 U.S.C. 1638(b)(1), states that the creditor's identity may be made together with or separately from the other required disclosures. The Board proposes to amend the substance of current footnote 38 to remove the reference to the creditor's identity disclosure required under § 226.18(a), thereby making it subject to the grouped-together and segregation requirement for all non-mortgage closed-end credit. Similarly, § 226.37(a)(2) would require the disclosure of the creditor's identity to be subject to the grouped-together and segregation requirement for closed-end credit transactions secured by real property or a dwelling.

The Board proposes to make this adjustment pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms, and ***avoid*** the uninformed use of credit. 15 U.S.C. 1604(a), 15 U.S.C. 1601(a). The Board believes it is important to disclose the creditor's identity so that consumers can more easily identify the appropriate entity. Thus, the Board believes this proposal would help serve TILA's purpose to provide meaningful disclosure of credit terms.

38(g)(2) Loan Originator

On July 30, 2008, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), 12 U.S.C. 5101-5116, was enacted to create a Nationwide Mortgage Licensing System and Registry of loan originators to increase uniformity, reduce fraud and regulatory burden, and enhance consumer protection. 12 U.S.C. 5102. Under the SAFE Act, a "loan originator" is defined as "an individual who (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain." 12 U.S.C. 5102(3)(A)(i). Each loan originator is required to obtain a unique identifier through the Nationwide Mortgage Licensing System and Registry. 12 U.S.C. 5103(a)(2). The term "unique identifier" is defined as "a number or other identifier that (i) permanently identifies a loan originator; (ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and (iii) shall not be used for purposes other than those set forth under this title." 15 U.S.C. 5102(12)(A). The system is intended to provide consumers with easily accessible information to research a loan originator's history of employment and any disciplinary or enforcement actions against that person. 12 U.S.C. 5101(7).

To facilitate the use of the Nationwide Mortgage Licensing System and Registry and promote the informed use of credit, the Board proposes § 226.38(g)(2) to require the loan originator to disclose his or her unique identifier on the TILA disclosure, as defined by the SAFE Act. Proposed comment 38(g)(2)-1 would clarify that in transactions with multiple loan originators, each loan originator's unique identifier must be listed on the disclosure. For example, in a transaction where a mortgage broker meets the SAFE Act definition of a loan originator, the identifiers for the broker and for its employee loan originator meeting that definition would be listed on the disclosure.

The Board notes that the Board, FDIC, OCC, OTS, NCUA, and Farm Credit Administration have published a proposed rule to implement the SAFE Act. *See* 74 FR 27386; June 9, 2009. In this proposed rule, the federal banking agencies have requested comment on whether there are mortgage loans for which there may be no mortgage loan originator. For example, the agencies query whether there are situations where a consumer applies for and is offered a loan through an automated process without contact with a mortgage loan originator. *See id*. at 27397. The Board solicits comments on the scope of this problem and its impact on the requirements of proposed § 226.38(g)(2).

38(h) Credit Insurance and Debt Cancellation and Debt Suspension Coverage

As discussed more fully in § 226.4(d)(1) and (3), concerns have been raised that consumers do not understand the voluntary nature, costs, and eligibility restrictions of credit insurance and debt cancellation and debt suspension coverage. For this reason, the Board proposes § 226.38(h) to require creditors to provide certain disclosures, which would be grouped together and substantially similar in headings, content and format to Model Clause H-17(C) in Appendix H to this part. Proposed comment 38(h)-1 would clarify that this disclosure may, at the creditor's option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by State law, or other information. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

The proposed disclosures seek to address concerns that consumers may not understand that some products are voluntary and not required as a condition of receiving credit. If the product is optional, proposed § 226.38(h)(1)(i) would require the creditor to disclose the term "OPTIONAL COSTS," in capitalized and bold letters, along with the name of the program in bold letters. If the product is required, then proposed § 226.38(h)(1)(ii) would require the creditor to disclose only the name of the program in bold letters. In addition, if the product is optional, proposed § 226.38(h)(2) would require the creditor to disclose the term "STOP," in capitalized and bold letters, along with a statement that the consumer does not have to buy the product to get the loan. The term "not" would be in bold letters and underlined.

Concerns have also been raised that consumers may not realize that there are alternatives to the product. Therefore, under proposed § 226.38(h)(3), the creditor would disclose that if the consumer already has insurance, then the policy or coverage may not provide the consumer with additional benefits. Under proposed § 226.38(h)(4), the creditor would disclose that other types of insurance may give the consumer similar benefits and are often less expensive.

As described more fully in § 226.4(d)(1) and (3), concerns have been raised that consumers are not aware that they could incur a cost for a product that may offer no benefit if the eligibility criteria are not met at the time of enrollment. That is, consumers may not be aware that if they do not meet the eligibility criteria at the time of enrollment, the product would not pay off, cancel, or suspend the credit obligation. Although the creditor typically has information about the consumer's age or employment status, some creditors do not use this information to determine whether the consumer meets the age or employment eligibility restrictions at the time of enrollment. Some consumers are later denied benefits based on these eligibility restrictions.

For these reasons, the Board is proposing under § 226.38(h)(5)(i) to require the creditor to disclose a statement that based on the creditor's review of the consumer's age and/or employment status at the time of enrollment, the consumer would be eligible to receive benefits. However, if there are other eligibility restrictions, such as pre-existing health conditions, the creditor would be required to make certain other disclosures. Under proposed §

226.38(h)(5)(ii), the creditor would disclose that based on the creditor's review of the consumer's age and/or employment status at the time of enrollment, the consumer may be eligible to receive benefits. Under proposed § 226.38(h)(6), the creditor would also disclose that the consumer may not be eligible to receive any benefits because of other eligibility restrictions.

Proposed comment 38(h)(5)-1 would state that if, based on the creditor's review of the consumer's age and/or employment status at the time of enrollment in the product, the consumer would not qualify for the benefits of the product, then providing the disclosure under § 226.38(h)(5) would not comply with this provision. That is, if the consumer does not meet the age and/or employment eligibility criteria, then the creditor cannot state that the consumer may be eligible to receive benefits and cannot comply with this provision. In addition, the proposed comment would clarify that if the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer is not eligible for all of the bundled products, then the disclosure under § 226.38(h)(5) would not comply with this provision. Finally, the proposed comment would clarify that the disclosure would still satisfy this provision if an event subsequent to enrollment, such as the consumer passing the age limit of the product, made the consumer ineligible for the product based on the product's age or employment eligibility restrictions.

Proposed comment 38(h)(5)-2 would clarify that the disclosure under § 226.38(h)(5) would be deemed to comply with this provision if the creditor used reasonably reliable evidence to determine whether the consumer met the age or employment eligibility criteria of the product. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include a consumer's statement on a credit application form, an Internal Revenue Service Form W-2, tax returns, payroll receipts, or other written evidence such as a letter or e-mail from the consumer or the consumer's employer.

Finally, the disclosure would contain the debt suspension coverage disclosure, a Web site reference, cost information, and a space for the consumer's signature and the date. To ensure consistency with the debt suspension coverage provisions of the December 2008 Open-End Final Rule, proposed § 226.38(h)(7) would require the creditor to disclose, as applicable, a statement that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. To provide more information to consumers, proposed § 226.38(h)(8) would require the creditor to disclose a statement that the consumer may obtain additional information about credit insurance or debt suspension or debt cancellation coverage at the Web site of the Federal Reserve Board, and a reference to that Web site. If the product is optional, proposed § 226.38(h)(9)(i) would require the creditor to disclose a statement of the consumer's request to purchase or enroll in the optional product and a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years. This disclosure parallels § 226.4(d)(1) and (3), which requires cost disclosures in order to exclude from the finance charge the credit insurance premium or debt cancellation or debt suspension coverage charge. If the product is required, proposed § 226.38(h)(9)(ii) would require the creditor to disclose that fact, along with a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years. The cost, month or year, loan amount, and term of the product would be underlined. The provisions regarding required products would be applicable to the extent Regulation Y, 12 CFR part 225, or State or other law would not prohibit requiring the product. Finally, proposed § 226.38(h)(10) would require the creditor to provide a designation for the signature of the consumer and the date of the signing.

The Board proposes to require this disclosure using its authority under TILA Section 105(a), 15 U.S.C. 1604(a). Because proposed § 226.4(g) would treat a premium or charge for credit insurance or debt cancellation or debt suspension as a finance charge for closed-end credit transactions secured by real property or a dwelling, the creditor would not be required to provide the disclosure under § 226.4(d)(1) and (3) to exclude the premium or charge from the finance charge. The Board believes, however, that the consumer would still benefit from a disclosure of the voluntary nature, costs, and eligibility restrictions of credit insurance or debt cancellation or debt suspension coverage, and thus the proposal would require a substantially similar disclosure.

TILA Section 105(a), 15 U.S.C. 1604(a), authorizes the Board to prescribe regulations to carry out the purposes of the act. TILA's purpose includes promoting "the informed use of credit," which "results from an awareness of the cost thereof by consumers." TILA Section 102(a), 15 U.S.C. 1601(a). A premium or charge for credit insurance or debt cancellation or debt suspension coverage is a cost assessed in connection with credit. The credit transaction and the relationship between the creditor and the consumer are the reasons the product is offered or available. Because the merits of this product have long been debated, [90] the Board believes that consumers would benefit from clear and meaningful disclosures regarding the costs, benefits, and risks associated with this product. As discussed more fully in § 226.4(d)(1) and (3), consumer testing ***showed*** that without clear disclosures participants were unaware of the voluntary nature, costs, and eligibility restrictions. For these reasons, the Board believes that this proposed rule would serve to inform consumers of the cost of this credit product.

38(i) Required Deposit

Proposed § 226.38(i) addresses disclosure requirements when creditors require consumers to maintain deposits as a condition to the specific transaction, for transactions secured by real property or a dwelling. Proposed § 226.38(i) is consistent with § 226.18(r), which applies to transactions not secured by real property or a dwelling. The Board is proposing to revise § 226.18(r) and associated commentary, as discussed above, and proposed § 226.38(i) reflects the revised text and associated commentary.

38(j) Separate Disclosures

Consumer testing indicated that participants generally felt overwhelmed by the amount of information presented throughout the loan process and especially at consummation. As a result, the Board seeks to streamline the TILA disclosures and focus on the terms that participants stated were important for shopping and for understanding their loan terms. Currently, TILA and Regulation Z mandate that the following disclosures be grouped together with the required disclosures and segregated from everything else: rebate, late payment, property insurance, contract reference, and assumption policy. *See* TILA Sections 128(a)(9), (10), (11), (12), (13) and (b) and 106(c); 15 U.S.C. §§ 1638(a)(9), (10), (11), (12), (13) and (b) and 1605(c); §§ 226.4(d)(2), 226.17(a)(1), and 226.18(k)(2), (l), (n), (p), and (q). Consumer testing ***showed*** that these terms were not of primary importance to consumers in choosing a mortgage. With respect to assumption, for example, very few participants understood the language indicating that the loan was assumable, and even fewer felt it was important information. With respect to property insurance, most participants understood the language indicating that the borrower can obtain property insurance from anyone that is acceptable to the lender, but the participants felt that this was not important to their decision making.

TILA Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which includes promoting the informed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that requiring these disclosures to appear separately from the other required disclosures would improve the consumer's ability to focus on the terms most useful to evaluating the proposed credit transaction.

TILA Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). TILA Section 105(f) directs the Board to make this determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and

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[90] *See, e.g.*, Credit CARD Act of 2009, Public Law No. 111-24, § 509; 123 Stat. 1734, 1763 (2009) (requiring the General Accounting Office to provide a report to Congress by December 31, 2010, of the suitability of credit insurance, debt cancellation agreements, and debt suspension agreements for target customers, the "predatory nature" of such offers, and the loss rates compared to more traditional insurance products).

whether the disclosure provides a benefit to consumers who are parties to the transaction; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process for the class of transactions; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the consumer; and (5) whether the exemption would undermine the goal of consumer protection. Although a credit transaction secured by real property or a dwelling is important to the borrower, the Board believes that removing these disclosures from the other segregated information would further, rather than undermine, the goal of consumer protection because consumers would then focus on the terms that are most important to their decision making process. The proposed rule would still require that the information be disclosed but would simply no longer require the disclosures to be provided with the segregated information.

38(j)(1) Itemization of Amount Financed

TILA Section 128(a)(2)(B), 15 U.S.C. 1638(a)(2)(B), and § 226.18(c) currently require that the creditor provide the consumer with a notice that an itemization of amount financed is available on request and to provide it when the consumer so requests. Regulation Z also provides that the good faith estimate of settlement costs (GFE) provided pursuant to RESPA suffices to satisfy the itemization of amount financed requirement. *See* § 226.18(c)(1), fn. 40. The staff commentary provides further that the HUD-1 settlement statement provided at settlement under RESPA also may be substituted for the itemization in connection with later disclosures made pursuant to § 226.19(a). *See* comment 18(c)-4.

Proposed § 226.38(j)(1) would mirror the rules currently found under § 226.18(c) permitting a creditor to provide disclosures pursuant to RESPA in lieu of the itemization of amount financed. These rules originally were established by the Board pursuant to its authority under TILA Section 105(a) to make exceptions to facilitate compliance with TILA, and the Board is proposing to permit similar treatment under the same authority. Proposed § 226.38(j)(1) would differ from current § 226.18(c), as discussed below, to reflect recent changes to Regulation Z.

Under the proposal, the provisions permitting substitution of RESPA disclosures for the itemization of amount financed would be removed from § 226.18 and included under proposed § 226.38(j)(1). That section would govern the itemization disclosure contents for mortgage transactions, including all those subject to RESPA. As noted above, the Board also is proposing to make certain technical and conforming amendments under § 226.18(c).

Proposed § 226.38(j)(1)(i) would provide the same four categories of the itemization as currently appear in § 226.18(c)(1)--the amount of proceeds distributed directly to the consumer, the amount credited to the consumer's account, amounts paid to other persons on the consumer's behalf, and the prepaid finance charge. Proposed § 226.38(j)(1)(ii) similarly would provide to creditors the alternative under current § 226.18(c)(2) of disclosing the right to receive an itemization and providing it when the consumer so requests, instead of delivering the itemization routinely. Finally, proposed § 226.38(j)(1)(iii) would provide the alternative of substituting the RESPA GFE for the itemization. It also would state a parallel alternative of substituting the HUD-1 settlement statement for the itemization when a creditor provides later disclosures pursuant to § 226.19(a)(2), which currently is addressed only in the staff commentary under § 226.18(c). And proposed § 226.38(j)(1)(iii) would provide that the substitution is permissible for any transaction subject to § 226.38, whether subject to RESPA or not.

The Board notes that the timing of the HUD-1 settlement statement no longer is consistent with the timing of the TILA redisclosure under § 226.19(a)(2). Regulation X under RESPA requires the HUD-1 to be provided at settlement, [91] which generally corresponds with consummation of the transaction under Regulation Z. Under the

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[91] 24 CFR 3500.10(b). The settlement agent must provide the borrower with an opportunity to inspect the HUD-1 during the business day preceding settlement, but only completed to reflect all information known to the settlement agent at the time.*Id*. 3500.10(a).

MIDA final rule, and the proposed revisions to § 226.19 under this proposal, the redisclosure required under § 226.19(a)(2) must be received by the consumer at least three business days before consummation of the transaction. As current comment 18(c)-1 provides, and proposed § 226.38(j)(1) also would require, the itemization must be provided at the same time as the segregated disclosures. Accordingly, proposed § 226.38(j)(1)(iii) would provide that the HUD-1 settlement statement is a permissible substitute for the itemization of amount financed only if it is received by the consumer at least three business days prior to consummation, in accordance with § 226.19(a)(2).

The Board realizes that, in general, consumers currently receive a fully completed HUD-1 settlement statement only at consummation, in accordance with RESPA's requirements. For this reason, mortgage creditors might not take advantage of the alternative in proposed § 226.38(j)(1)(iii) as widely as they historically have done under § 226.18(c)(1), fn. 40. On the other hand, the Board notes that a creditor that does not avail itself of that alternative must follow one of the other two alternatives. Under proposed §§ 226.19(a) and 226.38(j)(1)(i), the creditor still must provide substantially the same information three business days before consummation. Under proposed §§ 226.19(a) and 226.38(j)(1)(ii), the creditor also must do so, at least in those cases where the consumer requests the itemization. Further, given the proposed expansion of the finance charge under § 226.4, discussed above, all of the information contained in either the good faith estimate or the itemization would have to be firmly established by three business days before consummation so that the creditor can comply with the timing requirements of proposed § 226.19(a)(2).

In any event, the Board believes that to permit substitution of the HUD-1 settlement statement for the itemization without requiring that it be delivered three business days before consummation would be inconsistent with the purposes of the MDIA amendments. The Board seeks comment on whether creditors would continue to make significant use of this alternative as proposed § 226.38(j)(1)(iii) would implement it and, if not, whether the alternative should be retained. If it should be retained, the Board seeks comment on ***how*** it might be structured without requiring that the HUD-1 settlement statement be received by the consumer earlier than RESPA requires while also preserving the purposes of the MDIA.

38(j)(2) Through (6) Rebate; Late Payment; Property Insurance; Contract Reference; Assumption Policy

The Board proposes to use its exception and exemption authorities under TILA Section 105(a), 15 U.S.C. 1604(a), to require creditors to provide the following disclosures separately from the other required disclosures: rebate under proposed § 226.38(j)(2), late payment under proposed § 226.38(j)(3), property insurance under proposed § 226.38(j)(4), contract reference under proposed § 226.38(j)(5), and assumption policy under proposed § 226.38(j)(6). The Board is not proposing to change the substantive content of these disclosures. Proposed § 226.38(j) would mirror § 226.18, except that the proposed requirement would be provided separately from the other required disclosures. The proposed comments for these disclosures would also parallel the applicable comments under § 226.18.

In addition, the Board proposes Model Clauses at Appendix H-23 for the following non-segregated disclosures: rebate, late payment, property insurance, contract reference, and assumption policy. The Model Clauses are based on the Board's consumer testing and the Board believes that model clauses will enhance consumer understanding of the information, helping consumers to ***avoid*** the uninformed use of credit.

Appendices G and H--Open-End and Closed-End Model Forms and Clauses

Appendices G and H set forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z. Appendix G contains model forms, model clauses and sample forms applicable to open-end plans. Appendix H contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. As discussed above, the Board proposes to revise or add several model forms, model clauses and sample forms to Appendix H for transactions secured by real property or a dwelling. The revised or new model forms and clauses, and sample forms, are discussed above in the section-by-section analysis applicable to the regulatory provisions to which the forms or clauses relate. *See* discussion under §§ 226.19(b), 226.20(c)-(e), and 226.38(a)-(j). In addition, the Board proposes to add new model clauses and a sample form relating to credit insurance, debt cancellation and debt suspension coverage to both Appendix G and H for open-end and closed-end loans. These model clauses and sample forms are discussed under proposed § 226.4(d)(1) and (3) and 226.38(h). In Appendix H, all other existing forms and clauses applicable to transactions not secured by real property or a dwelling have been retained without revision.

The Board also proposes to revise or add commentary to the model forms, model clauses and sample forms in Appendix H, as discussed below. The Board solicits comments on the proposed revisions below, as well as whether any additional commentary should be added to explain the forms and clauses contained in Appendix H.

Permissible Changes

The commentary to appendices G and H currently states that creditors may make certain changes in the format and content of the model forms and clauses, and may delete any disclosures that are inapplicable to a transaction or a plan without losing the Act's protection from liability. However, certain formatting changes may not be made with respect to certain model and sample forms in Appendix G. *See* comment app. G and H-1. As discussed above, the Board is proposing format and content requirements with respect to disclosures for transactions secured by real property or a dwelling, such as a tabular requirement for ARM loan program disclosures and ARM adjustment notices, and transaction-specific disclosures required for loans secured by real property or a dwelling. *See* proposed §§ 226.19(b), 226.20(c), and 226.38(a)-(j). Accordingly, the Board would amend comment app. G and H-1 to indicate that certain formatting changes may not be made with respect to certain model forms, model clauses and sample forms in Appendix H. In addition, as discussed more fully under § 226.38, the Board proposes to require creditors to provide disclosures for transactions secured by real property or a dwelling only as applicable. As a result, the Board would not allow creditors to use multi-purpose forms; the Board would amend comment app. G and H-1(vi) to clarify that the use of multi-purpose standard forms is not permitted for transactions secured by real property or a dwelling. *See* discussion under § 226.37(a)(2).

Debt Cancellation Coverage

Currently, commentary to appendices G and H states that creditors are not authorized to characterize debt-cancellation fees as insurance premiums for purposes of the regulation. The Board proposes to amend comment app. G and H-2 to clarify that the commentary also applies to debt suspension fees.

Appendix H--Closed-End Model Forms and Clauses

Model Forms, Model Clauses, and Sample Forms for Closed-End Disclosures

As noted above, the Board proposes a new disclosure regime under § 226.38 for transactions secured by real property or a dwelling. As a result, the following sample forms are rendered unnecessary and deleted: Sample H-13 (mortgage with demand feature sample); Sample H-14 (variable-rate mortgage sample); and Sample H-15 (graduated-payment mortgage sample). Comment app. H-1 would be revised to reflect the deletion of Samples H-13 through H-15. The Board would further amend comment app. H-1 to reflect that, under the proposal, new model clauses are added regarding credit life insurance, debt cancellation, or debt suspension disclosures, and creditor-placed property insurance disclosures. *See* discussion under §§ 226.4(d)(1) and (3), 226.38(h), and 226.20(e). These deleted samples forms and new model clauses are discussed more fully below.

Currently, comment app. H-2 addresses the flexibility given to creditors in providing the itemization of amount financed disclosure required under current § 226.18(c) and illustrated by Model Clause H-3. As discussed above, the Board is proposing new § 226.38(j)(1) regarding disclosure of the itemization of amount financed for transactions secured by real property or a dwelling. As a result, the Board would amend comment app. H-2 to update cross-references. In a technical revision, the Board would amend comment app. H-3 to clarify that the guidance applies to new Model Clauses H-4(B) and H-4(C), H-4(H), H-16, H-17(A) and H-17(C), H-18, and H-20 through H-23. These new model clauses are discussed more fully below.

Model Forms, Model Clauses, and Sample Forms for ARM Loan Program Disclosures

Currently, Appendix H contains several model clauses, and a sample form, related to variable-rate loan program disclosures required under current § 226.18(f)(1), 226.18(f)(2) and 226.19(b). Current Model Clause H-4(A) contains model clauses for variable-rate disclosures required under § 226.18(f)(1) for transactions not secured by a principal dwelling, or transactions secured by a dwelling with a term of one year or less. Current Model Clause H-4(B) contains model clauses for variable-rate disclosures for transactions that are secured by a principal dwelling with a term greater than one year. Current Model Clause H-4(C) contains model clauses related to variable-rate loan program disclosures required under § 226.19(b). Current Sample H-14 is a sample disclosure illustrating required disclosures under current § 226.19(b) of interest rate and monthly payment changes, as well as an historical example, for variable-rate loan programs.

Under the proposal, the Board would require new disclosures under § 226.19(b) for adjustable-rate loan programs, and would revise § 226.18(f)(1) and delete § 226.18(f)(2) to reflect such proposed changes to § 226.19(b). Accordingly, the Board proposes to delete current Model Clause H-4(B) and add new Model H-4(B) to illustrate, in the tabular format, the disclosures required under § 226.19(b) for adjustable-rate transactions secured by real property or a dwelling. The Board also would delete current Model Clause H-4(C) and add new Model Clauses H-4(C) to reflect the proposed changes to § 226.19(b), as discussed above, and to provide model clauses regarding interest rate carryover, conversion features, and preferred rates. The Board proposes to add Samples H-4(D) through H-4(F) to provide examples of ***how*** certain disclosures under § 226.19(b) may be provided, in the tabular format, for adjustable-rate loan programs that contain a hybrid, interest only, or payment option feature, respectively. In addition, the heading to Model Clause H-4(A) would be revised to update the *cross-reference* to § 226.18(f), and current Sample H-14 regarding variable-rate disclosures would be deleted and reserved.

The Board also proposes to revise existing commentary that provides guidance to creditors on ***how*** to use current Model Clauses H-4(A) through (C). Currently, comments app. H-4 through H-6 provide guidance regarding variable-rate loan program disclosures required under current §§ 226.18(f)(1)-(2) and 226.19(b). Under the proposal, the Board would delete guidance contained in current comment app. H-5 regarding disclosures under § 226.18(f)(2) as unnecessary, and instead provide that disclosures required under § 226.19(b) for adjustable-rate transactions be provided in the tabular format, as illustrated by Model H-4(B), and Samples H-4(D) through H-4(F). The Board also would delete guidance currently contained in comment app. H-6 relating to variable-rate disclosures, and instead provide guidance regarding model clauses on carryover interest, a conversion feature, or a preferred rate. In a technical revision, the Board would revise comment app. H-4 to update the cross-reference to § 226.18(f).

Model Forms, Model Clauses, and Sample Forms for ARM Adjustment Notices

Currently, Appendix H contains Model Clause H-4(D), which contains model clauses regarding interest rate and payment adjustment notices required for variable-rate transactions under current § 226.20(c). As discussed above under proposed § 226.20(c), the Board proposes new timing and disclosure requirements regarding interest rate and payment changes for adjustable-rate transactions secured by real property or a dwelling.

Accordingly, the Board would add a model form and two samples forms to illustrate, in the tabular format, the disclosures required under proposed § 226.20(c)(2) for ARM adjustment notices when there is an interest rate and payment change. *See* proposed Model H-4(G) and Samples H-4(I) and H-4(J). In addition, the Board proposes to add a model form to illustrate disclosures required under proposed § 226.20(c)(3) when there is an interest rate adjustment without any change to payment. *See* proposed Model H-4(K). Current Model Clause H-4(D) would be deleted and new Model Clauses H-4(H) would be added to reflect the proposed changes to § 226.20(c), as discussed above. The Board also proposes to revise current comment app. H-7 to provide that disclosures required under § 226.20(c) be provided in the tabular format, as illustrated by new Model H-4(G), and Samples H-4(I) and H-4(J).

Model Forms, Model Clauses, and Sample Forms for Periodic Statements

Currently, creditors are not required to provide certain disclosures with respect to periodic statements for loans that are negatively amortizing. As discussed under proposed § 226.20(d), the Board would require creditors to disclose periodic payment options on a monthly basis for transactions secured by real property or a dwelling that offer payment options and are negatively amortizing. Accordingly, the Board is proposing to add new Model Form H-4(L) that creditors may use to comply with the requirements in proposed § 226.20(d).

Model Clauses for Section 32 (HOEPA) Disclosures

Currently, Appendix H contains Mortgage Sample H-16, which provides model clauses for disclosures required under § 226.32(c), such as a notice to the borrower that he or she is not obligated to accept the terms of the loan and security interest disclosures. As discussed under proposed § 226.32(c)(1), the Board would require creditors to provide plain-language versions of the "no obligation" and "security interest" disclosures to better inform consumers who are considering obtaining HOEPA loans. The Board would revise Mortgage Sample H-16 accordingly. In addition, the Board proposes to revise commentary currently contained in comment app. H-20 to clarify that these disclosures are required for all HOEPA loans, and as noted below, would move this commentary to current comment app. H-17. In a technical revision, the Board would revise the heading to Mortgage Sample H-16 to reflect that it contains model clauses.

Model Clause for Credit Insurance, Debt Cancellation, or Debt Suspension

Currently, Appendix H contains a model clause and sample form that creditors may use to comply with the disclosure requirements under current § 226.4(d)(3) for debt suspension. *See* Model Clause H-17(A) and Sample H-17(B). As discussed above, the Board proposes new disclosure requirements for credit insurance, debt cancellation and debt suspension for all closed-end loans. *See* proposed §§ 226.4(d)(1), (d)(3) and 226.38(h). Accordingly, the Board proposes to add Model Clause H-17(C) and Sample H-17(D) that creditors may use to comply with the proposed requirements under §§ 226.4(d)(1), (d)(3) and 226.38(h).

Model Clause for Creditor-Placed Property Insurance

Currently, creditors are not required to provide any disclosures to the consumer with respect to creditor-placed property insurance. As discussed under proposed § 226.20(e), the Board would require creditors to provide notice of the cost and coverage of creditor-placed property insurance before charging the consumer for such insurance for transactions secured by real property or a dwelling. For all other closed-end loans, these disclosures would be required if creditors intend to exclude the creditor-placed property insurance fee from the finance charge under § 226.4(d). Accordingly, the Board proposes to add Model Clause H-18 that creditors may use to comply with the proposed requirements under § 226.20(e).

Model Forms, Model Clauses, and Sample Forms for Transaction-Specific Disclosures for Loans Secured by Real Property or a Dwelling

Currently, Appendix H contains several model forms, model clauses and samples that creditors may use to comply with the disclosures required under current § 226.18 for transactions secured by real property or a dwelling. Current Model H-2 illustrates the format and content of disclosures currently required under § 226.18 for mortgages. Current Model Clause H-6 contains a model clause for an assumption policy. Current Samples H-13 and H-15 are sample disclosures illustrating a mortgage with a demand feature and a graduated-payment mortgage, respectively.

As discussed under proposed § 226.38, the Board proposes a new disclosure regime for transactions secured by real property or a dwelling. Accordingly, the Board proposes to add new Model Forms, Model Clauses, and Sample Forms H-19 through H-23 that creditors may use to comply with the requirements in proposed § 226.38(a) through (j). The Board proposes to add Models H-19(A) through H-19(C) to illustrate the format and content of disclosures required under proposed § 226.38 for fixed-rate, hybrid adjustable-rate, and payment option mortgages, respectively. In addition, the Board would add Model Clauses H-20 and H-21 to provide guidance to creditors on ***how*** to disclose a balloon payment or introductory rate feature, respectively. Model Clause H-22 would be added to provide model clauses relating to key questions about risk disclosures required under proposed § 226.38(d)(2). Model Clause H-23 would be added to provide model clauses for the following disclosures required under proposed § 226.38(j)(2)-(6) for transactions secured by real property or a dwelling: rebate; late payment; property insurance; contract reference; and assumption policy. Under the proposal, current Samples H-13 and H-15 would be rendered unnecessary and therefore, are deleted and reserved. Model Clause H-6, which contains the current model clause for assumption, would be deleted because assumption policies are only applicable to transactions secured by real property or a dwelling; H-6 would be reserved.

In addition, the Board proposes to add several sample forms to provide examples of ***how*** creditors can provide certain disclosures required under proposed § 226.38 in the tabular format or scaled graph, as applicable, for various transaction types secured by real property or a dwelling. Specifically, proposed Samples H-19(D) through H-19(I) illustrate disclosures required under proposed § 226.38 for the following transaction-types, respectively: a fixed mortgage with balloon payment; an interest only, fixed mortgage; a step-payment mortgage; a hybrid adjustable-rate mortgage; an interest-only ARM; and a payment option ARM.

The Board also proposes to add or revise commentary to provide guidance to creditors on the purpose of the sample forms, and ***how*** to use Model Forms, Model Clauses, and Sample Forms H-19 through H-23 for transactions secured by real property or a dwelling. Current comment app. H-12 provides guidance to creditors regarding the purpose of sample forms generally. Under the proposal, the Board would update the cross-references contained in current comment app. H-12 to clarify that the commentary applies to proposed Sample H-4(D) through-4(F) for ARM loan program disclosures required under proposed § 226.19(b); Samples H-4(I) and H-4(J) for ARM adjustment notice disclosures required under § 226.20(c); Sample H-17(D) for credit insurance, debt cancellation or debt suspension disclosures required under § 226.4(d)(1), (d)(3) and 226.38(h); and Samples H-19(D) through H-19(I) for disclosures required under § 226.38 for transactions secured by real property or a dwelling.

Current comment app. H-16 provides guidance regarding the sample forms that creditors may use to illustrate required disclosures for mortgages subject to RESPA and would be updated to include cross-references to proposed Samples H-19(D) through H-19(I), and to the itemization of amount financed disclosure under proposed § 226.38(j)(1)(iii). Under the proposal, guidance contained in current comment app. H-17 regarding disclosure of a mortgage with a demand feature under § 226.18 would be deleted as unnecessary. As noted above, commentary regarding disclosures required under § 226.32(c) for HOEPA loans would be moved from comment app. H-20 to comment app. H-17.

In addition, under the proposal, current comment app. H-18, which contains guidance relating to variable-rate disclosures required under current § 226.19(b), would be deleted. New commentary would be added to comment app. H-18 to provide format details about proposed sample forms that illustrate the disclosures required for transactions secured by real property or a dwelling under proposed § 226.19(b) or 226.38, as applicable. For example, the commentary indicates that Samples H-4(D) through H-4(F), and H-19(D) through H-19(I) are designed to be printed on an 8 1/2 x11 inch sheet of ***paper***. In addition, the following formatting techniques were used in presenting the information in the table to ensure that the information was readable:

1. A readable font style and font size (10-point Ariel font style, except for the APR which is ***shown*** in 16-point type).

2. Sufficient spacing between lines of the text. That is, words were not compressed to appear smaller than 10-point type, except for headings used to provide interest rate and payment summary disclosures required under proposed § 226.28(c), in the tabular format, which are ***shown*** in 9-point type.

3. Standard spacing between words and characters.

4. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

5. Sufficient contrast between the text and the background. Black text was used on white ***paper***.

Although the Board is not requiring creditors to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font size), the Board encourages creditors to consider these techniques when disclosing information in the tabular format, or scaled graph, to ensure that the information is presented in a readable format.

Under the proposal, commentary currently contained in comment app. H-19 regarding the terms of a graduated-payment mortgage would be deleted, and would instead indicate the terms of the fixed-rate mortgage illustrated in Sample H-19(D). As noted above, guidance contained in current app.

H-20 regarding disclosures required under § 226.32(c) would be moved to comment app. H-17. The Board proposes to add new commentary to comment app. H-20 to indicate the terms of the interest-only, fixed-rate mortgage illustrated in Sample H-19(E). The Board also proposes to add comments app. H-21 through -24 to indicate the terms of the following transaction types, which are illustrated in Samples H-19(F) through 19(I), respectively: a step-payment mortgage; a hybrid ARM; an interest-only ARM; and a payment option ARM. The transactions discussed in revised comments app. H-19 and H-20, and new comments app. H-21 through -24, all assume the average prime offer rates (APORs) that would be used in providing the disclosures required under proposed § 226.38(b), and are not representative of the actual APORs for the respective weeks.

Further, the Board proposes to add comments app. H-25 through-28 relating to the following, respectively: the disclosure required under proposed § 226.38(c) for a balloon payment feature; the disclosure required under proposed § 226.38(c)(2)(iii) for transactions that have an initial discounted rate that later adjusts; disclosures required under proposed § 226.19(d)(2) for key questions about risk that would be provided only as applicable; and disclosures required under proposed § 226.38(j)(2)-(6) that would be provided separately from disclosures required under proposed § 226.38(a)-(j). In a technical revision, current comments app. H-21 through -24, which contain guidance relating to forms issued by the U.S. Department of Health and Human Services and approved for certain student loans, would be redesignated as comments app. H-29 through-32, respectively; no substantive change is intended.

VII. Paperwork Reduction Act In accordance with the Paperwork

Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq*.). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/ recordkeepers are creditors and other entities subject to Regulation Z.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for two years, § 226.25, but Regulation Z identifies only a few specific types of records that must be retained. [92]

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the State member banks and other creditors supervised by the Federal Reserve that engage in consumer credit activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 734,127 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed in the preamble, the Board proposes changes to format, timing, and content requirements for the four main types of credit disclosures for closed-end mortgages governed by Regulation Z: (1) Disclosures at or before application; (2) disclosures within three days after application; (3) disclosures before consummation; and (4) disclosures after consummation. The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 227,600 hours, from 734,127 to 961,727 hours. In addition, the Board estimates that, on a continuing basis, the proposed revisions to the rules would increase the total annual burden on a continuing basis from 734,127 to 1,280,367 hours.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Board expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. Furthermore, the burden estimate for this rulemaking does not include the burden of complying with proposed disclosure and timing requirements that apply to private educational lenders making private education loans as announced in a separate proposed rulemaking (Docket No. R-1353) or the proposed disclosure and timing requirements of the Board's separate notice published simultaneously with this proposal for open-end credit plans secured by real property.

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[92] *See* comments 25(a)-3 and -4 and proposed comment 25(a)-5.

The Board estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 200 hours (five business weeks) to update their systems, internal procedure manuals, and provide training for relevant staff to comply with the proposed disclosure requirements in §§ 226.38 and 226.20(d), and revisions to existing disclosure requirements in §§ 226.19(b) and 226.20(c). This one-time revision would increase the burden by 227,600 hours. On a continuing basis the Board estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 40 hours a month to comply with the closed-end disclosure requirements and would increase the ongoing burden from 304,756 hours to 546,240 hours. To ease the burden and cost of complying with the new and proposed requirements under Regulation Z the Board proposes to revise or add several model forms, model clauses and sample forms to Appendix H.

The other federal financial agencies: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15. U.S.C. 1607(a). These agencies are permitted, but are not required, to use the Board's burden estimation methodology. Using the Board's method, the total current estimated annual burden for the approximately 17,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA would be approximately 13,568,725 hours. The proposed rule would impose a one-time increase in the estimated annual burden for such institutions by 3,440,000 hours to 17,765,525 hours. On a continuing basis the proposed rule would impose an increase in the estimated annual burden by 8,256,000 to 21,824,725 hours. The above estimates represent an average across all respondents; the Board expects variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

VIII. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration, an entity is considered "small" if it has $ 175 million or less in assets for banks and other depository institutions; and $ 7 million or less in revenues for non-bank mortgage lenders and mortgage brokers. [93]

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[93] 13 CFR 121.201.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the following areas.

A. Reasons for the Proposed Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and ***avoid*** the uninformed use of credit. In this regard, the goal of the proposed amendments to Regulation Z is to improve the effectiveness of the disclosures that creditors provide to consumers beginning before application and throughout the life of a closed-end mortgage transaction. Accordingly, the Board is proposing changes to format, timing, and content requirements for closed-end disclosures required by Regulation Z: (1) Program and other educational information provided before application; (2) transaction-specific disclosures provided at or shortly after application; (3) transaction-specific disclosures provided at or three business days before consummation; and notices of changes to the transaction's terms and regarding certain payment options provided during the life of the credit.

Congress enacted HOEPA in 1994 as an amendment to TILA. TILA is implemented by the Board's Regulation Z. HOEPA imposed additional substantive protections on certain high-cost mortgage transactions. HOEPA also charged the Board with prohibiting acts or practices in connection with mortgage loans that are unfair, deceptive, or designed to evade the purposes of HOEPA, and acts or practices in connection with refinancing of mortgage loans that are associated with abusive lending or are otherwise not in the interest of borrowers.

The proposed regulations would revise and enhance many of the closed-end disclosure requirements of Regulation Z for transactions secured by real property or a dwelling. The Board's proposal also would require TILA disclosures for closed-end mortgages to be provided to the consumer earlier in the loan process and would expand on the post-consummation notification requirements concerning changes in mortgage terms. These amendments are proposed in furtherance of the Board's responsibility to prescribe regulations to carry out the purposes of TILA, including promoting consumers' awareness of the cost of credit and their informed use thereof. Finally, the proposal would restrict certain loan originator compensation practices for closed-end mortgage loans to address problems that have been observed in the mortgage market. These restrictions are proposed pursuant to the Board's statutory responsibility to prohibit unfair and deceptive acts and practices in connection with mortgage loans.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** contains this information. In summary, the proposed amendments to Regulation Z are designed to achieve three goals: (1) Revise the disclosures required for closed-end mortgage loans; (2) restrict certain loan originator compensation practices for mortgage loans; and (3) require disclosures for closed-end mortgage loans to be provided earlier in the transaction and additional post-consummation disclosures for certain changes in terms.

The legal basis for the proposed rule is in Sections 105(a), 105(f), and 129(*l*)(2) of TILA. 15 U.S.C. 1604(a), 1604(f), and 1639(*l*)(2). A more detailed discussion of the Board's rulemaking authority is set forth in part IV of the **SUPPLEMENTARY INFORMATION**.

C. Description of Small Entities to Which the Proposed Rule Would Apply

The proposed regulations would apply to all institutions and entities that engage in originating or extending closed-end, home-secured credit. The Board is not aware of a reliable source for the total number of small entities likely to be affected by the proposal, and the credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that originate, extend and service even small numbers of home-secured credit. *See* § 226.1(c)(1). [94] All small entities that originate, extend, or service closed-end loans secured by real property or a dwelling potentially could be subject to at least some aspects of the proposed rule.

The Board can, however, identify through data from Reports of Condition and Income ("call reports") approximate numbers of small depository institutions that would be subject to the proposed rules. Based on December 2008 call report data, approximately 9,418 small institutions would be subject to the proposed rule. Approximately 16,345 depository institutions in the United States filed call report data, approximately 11,907 of which had total domestic assets of $ 175 million or less and thus were considered small entities for purposes of the Regulatory Flexibility Act. Of 4,231 banks, 565 thrifts and 7,111 credit unions that filed call report data and were considered small entities, 4,091 banks, 530 thrifts, and 4,797 credit unions, totaling 9,418 institutions, extended mortgage credit. For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks.

The Board cannot identify with certainty the number of small non-depository institutions that would be subject to the proposed rule. Home Mortgage Disclosure Act (HMDA) [95] data indicate that 1,752 non-depository institutions filed HMDA reports in 2007. [96] Based on the small volume of lending activity reported by these institutions, most are likely to be small.

The proposal's restrictions on compensation of loan originators would apply to mortgage brokers. Loan originators other than mortgage brokers that would be affected by the proposal are employees of creditors (or of brokers) and, as such, are not business entities in their own right. In its 2008 proposed rule under HOEPA, 73 FR 1672, 1720; Jan. 9, 2008, the Board noted that, according to the National Association of Mortgage Brokers (NAMB), in 2004

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[94] Regulation Z generally applies to "each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly, (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes." § 226.1(c)(1).

[95] The 8,610 lenders (both depository institutions and mortgage companies) covered by HMDA in 2007 accounted for an estimated 80% of all home lending in the United States (2008 HMDA data are not yet available). Under HMDA, lenders use a "loan/application register" (HMDA/LAR) to report information annually to their Federal supervisory agencies for each application and loan acted on during the calendar year. Lenders must make their HMDA/LARs available to the public by March 31 following the year to which the data relate, and they must remove the two date-related fields to help preserve applicants' privacy. Only lenders that have offices (or, for non-depository institutions, are deemed to have offices) in metropolitan areas are required to report under HMDA. However, if a lender is required to report, it must report information on all of its home loan applications and loans in all locations, including non-metropolitan areas.

[96] *The 2007 HMDA Data,* *http://www.federalreserve.gov/pubs/bulletin/2008/articles/hmda/default.htm* .

there were 53,000 mortgage brokerage companies that employed an estimated 418,700 people. [97] The Board estimated that most of these companies are small entities. On the other hand, the U.S. Census Bureau's 2002 Economic Census indicates that there were only 17,041 "mortgage and nonmortgage loan brokers" in the United States at that time. [98]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the proposed rules are described in parts V and VI of the **SUPPLEMENTARY INFORMATION**. The effect of the proposed revisions to Regulation Z on small entities is unknown. Some small entities would be required, among other things, to modify their home-secured credit disclosures and processes for delivery thereof to comply with the revised rules. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and to administer and maintain accounts, the complexity of the terms of credit products that they offer, and the range of such product offerings.

Additionally, the proposed rules could affect ***how*** loan originators are compensated and would impose certain related recordkeeping requirements on creditors. The precise costs that the proposed rule would impose on mortgage creditors and loan originators are also difficult to ascertain. Nevertheless, the Board believes that these costs will have a significant economic effect on small entities, including small mortgage creditors and brokers. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small businesses.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Other Federal Rules

The Board has not identified any federal rules that conflict with the proposed revisions to Regulation Z.

Overlap With SAFE Act

The proposed rule's required disclosure contents for closed-end mortgage transactions would overlap with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) by requiring that the disclosure include the loan originator's unique identifier, as defined by that Act, if applicable.

Overlap With RESPA

Certain terms defined in the proposed rule, such as "total settlement charges" cross-reference definitions under the U.S. Department of Housing and Urban Development's (HUD's) Regulation X under the Real Estate Settlement Procedures Act (RESPA). The proposed rule also would modify the existing prerequisites for use of the RESPA

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[97] *http://www.namb.org/namb/Industry_Facts.asp?SnID=719224934* . This page of the NAMB Web site, however, no longer provides an estimate of the number of mortgage brokerage companies.

[98] *http://www.census.gov/prod/ec02/ec0252a1us.pdf* (NAICS code 522310). Data on this industry sector are not yet available from the 2007 Economic Census.

good faith estimate of settlement costs and HUD-1 settlement statement in lieu of the itemization of the amount financed under Regulation Z.

Overlap With HUD's Guidance

The Board recognizes that HUD has issued policy statements regarding creditor payments to mortgage brokers under RESPA and guidance as to disclosure of such payments on the Good Faith Estimate and HUD-1 Settlement Statement. HUD also has published revised disclosures for broker compensation under RESPA to become effective January 1, 2010. The Board intends that its proposal would complement HUD's final rule. The proposed provision regarding creditor payments to loan originators is intended to be consistent with HUD's existing guidance regarding broker compensation under Section 8 of RESPA. The proposed provision regarding record retention to evidence compliance with the provision regarding creditor payments to loan originators would cross-reference the HUD-1 settlement statement as an acceptable record of such compensation paid in a given transaction.

F. Identification of Duplicative, Overlapping, or Conflicting State Laws

State Laws Regulating Creditor Payments to Loan Originators

The Board is aware that many states regulate loan originators, especially mortgage brokers, and their compensation in various respects. Under TILA Section 111, the proposed rule would not preempt such State laws except to the extent they are inconsistent with the proposal's requirements. 15 U.S.C. 1610.

State Equivalents to TILA and HOEPA

Many states regulate consumer credit through statutory disclosure schemes similar to TILA. Similarly to State laws regulating loan originator compensation, such state disclosure laws would be preempted only to the extent they are inconsistent with the proposal's requirements. *Id*.

The Board also is aware that many states regulate "high-cost" or "high-priced" mortgage loans, under laws that resemble HOEPA. Many such State laws set their coverage tests in part on the APR of the transaction. The proposed rule would overlap with these laws indirectly by virtue of the proposal to modify the definition of the finance charge for closed-end mortgage transactions, which would result in APRs being higher generally and potentially more loans being covered under such State laws.

The Board seeks comment regarding any State or local statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

G. Discussion of Significant Alternatives

The Board considered whether improved disclosures could protect consumers against unfair loan originator compensation practices for mortgages as well as the proposed rule. While the Board is proposing improvements to mortgage loan disclosures, it does not appear that better disclosures would address loan originator compensation practices adequately.

The Board welcomes comments on any significant alternatives, consistent with the requirements of TILA, that would minimize the impact of the proposed rule on small entities.

List of Subjects in 12 CFR Part 226

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

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is ***shown*** inside bold arrows, and language that would be deleted is ***shown*** inside bold brackets.

Authority and Issuance

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 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Public Law 111-24 § 2, 123 Stat. 1734.

Subpart A--General

2. Section 226.1, as amended on January 29, 2009 (74 FR 5397) is amended by revising paragraphs (b) and (d)(5) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.
* * * *

(b) *Purpose*. The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by real property or a consumer's [principal] dwelling in § 226.36, and credit secured by a consumer's principal dwelling in § 226.35.
* * * *

(d) * * *

(5) Subpart E contains special rules for mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for closed-end loans that have rates and fees above specified amounts. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with closed-end mortgage transactions that are subject to § 226.32. Section 226.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 226.35(a). Section 226.36 prohibits specific acts and practices in connection with extensions of credit secured by real property or a consumer's [principal] dwelling. Section 226.37 provides general disclosure requirements for closed-end extensions of credit secured by real property or a consumer's dwelling. Section 38

provides the content of disclosures for closed-end extensions of credit secured by real property or a consumer's dwelling.

* * * *

3. Section 226.4, as amended on January 29, 2009 (74 FR 5399) is revised to read as follows:

§ 226.4 Finance charge.

(a) *Definition*. The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties*. The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) Retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges*. Except as provided in § 226.4(g), fees [Fees] charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees*. Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Examples of finance charge*. The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction, whether or not the debt cancellation coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge*. Except as provided in § 226.4(g), the [The] following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees*. The following fees in an open-end credit plan [a transaction] secured by real property or in an open-end [a] residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

(d) *Insurance and debt cancellation and debt suspension coverage. (1) Voluntary credit insurance premiums*. Except as provided in § 226.4(g), premiums [Premiums] for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(iv) The creditor determines at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for insurance coverage.

(2) *Property insurance premiums*. Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer, [5] may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice, [6] and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation or debt suspension fees*. Except as provided in § 226.4(g), charges [Charges] or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(i) The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage.

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[5] [Reserved].

[6] [Reserved].

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(v) The creditor determines at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for the debt cancellation or debt suspension agreement or coverage.

(4) *Telephone purchases*. If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end [(not home-secured)] plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

(e) *Certain security interest charges*. Except as provided in § 226.4(g), if [If] itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments*. Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets*. Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

(g) *Special rule; closed-end mortgage transactions*. Paragraphs (a)(2) and (c) through (e) of this section, other than §§ 226.4(c)(2), 226.4(c)(5) and 226.4(d)(2), do not apply to closed-end transactions secured by real property or a dwelling.

Subpart C-Closed-End Credit

4. Section 226.17 is revised to read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures*. (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. In addition, transactions secured by real property or a dwelling are subject to the requirements under § 226.37. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq*.). For transactions secured by real property or a dwelling, disclosures required by § 226.19(b) or (c) must be provided in electronic form in specified circumstances. The disclosures required by §§ 226.17(g), 226.19(b), 226.19(c), and

226.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures required by § 226.18 or § 226.38 shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related [37] to the disclosures required under § 226.18 [38] or § 226.38; however, the disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the variable-rate example under § 226.18(f)(4), insurance, debt cancellation, or debt suspension under § 226.18(n), and certain security interest charges under § 226.18(o). The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section.

(2) Except for transactions secured by real property or a dwelling subject to § 226.38, t [T]he terms *finance charge and annual percentage rate*, when required to be disclosed under § 226.18(d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a).

(b) *Time of disclosures*. The creditor shall make disclosures before consummation of the transaction. [In certain mortgage transactions, special timing requirements are set forth in § 226.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in § 226.19(b) and § 226.20(c).] Special disclosure timing requirements for transactions secured by real property or a dwelling are set forth in § 226.19(a). Additional disclosure timing requirements for adjustable-rate transactions secured by real property or a dwelling are set forth in § 226.19(b) and § 226.20(c). In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

(c) *Basis of disclosures and use of estimates*. (1) *Legal obligation*. The disclosures required by this subpart shall reflect the terms of the legal obligation between the parties.

(i) *Buydowns*. The creditor shall disclose an annual percentage rate that is a composite rate based on the interest rate in effect during the initial period of the term of the loan and the interest rate in effect for the remainder of the term, if the consumer's interest rate or payments are reduced for all or part of the loan term based on payments made by:

(A) The seller or another third party, if the legal obligation reflects such an arrangement; or

(B) The consumer.

(ii) *Wrap-around financing*. If a transaction involves combining the outstanding balance on an existing loan with additional funds advanced to a consumer without paying off the outstanding balance, the amount financed shall equal the sum of the outstanding balance and the new funds advanced.

(iii) *Variable- or adjustable-rate transactions*. The creditor shall base disclosures for a variable- or adjustable-rate transaction on the full term of the transaction. Except as otherwise provided in § 226.38(a)(3) and (c) for adjustable-rate mortgage transactions secured by real property or a dwelling:

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[37] [Reserved] [The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.]

[38] [Reserved] [The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), the variable-rate example under § 226.18(f)(1)(iv), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).]

(A) If the initial interest rate for a transaction with a variable or adjustable rate is determined using the index or formula used to adjust the interest rate, the disclosures shall reflect the terms in effect at the time of consummation.

(B) If the initial interest rate for a transaction with a variable or adjustable rate is not determined using the index or formula used to adjust the interest rate, the disclosures shall reflect a composite annual percentage rate based on the initial rate for the time it is in effect and, for the remainder of the term, the rate that would have applied if such index or formula had been used at the time of consummation.

(iv) *Repayment upon occurrence of future event*. If disbursements for a transaction secured by real property or a dwelling are made during a specified period but repayment is required only upon the occurrence of a future event, the creditor shall base disclosures on the assumption that repayment will occur when disbursements end.

(v) *Tax refund-anticipation loans*. For a tax refund-anticipation loan, the creditor shall estimate the time a tax refund will be delivered to the consumer and shall include in the finance charge any repayment amount that exceeds the loan amount that is not otherwise excluded from the finance charge under § 226.4.

(vi) *Pawn transactions*. For a pawn transaction, the creditor shall disclose:

(A) The initial sum paid to the consumer as the amount financed;

(B) A finance charge that includes the difference between the initial sum paid to the consumer and the price at which the item is pledged or sold; and

(C) The annual percentage rate is determined using the earliest date on which the item pledged or sold may be redeemed as the end of the loan term.

(2) *Estimates*. (i) *Reasonably available information*. If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer[,] and shall state clearly that the disclosure is an estimate (except that § 226.19(a) limits the circumstances in which creditors may provide estimated disclosures, for mortgage transactions secured by real property or a dwelling).

(ii) *Per-diem interest*. For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

(3) *Disregarded effects*. The creditor may disregard the effects of the following in making calculations and disclosures:

(i) That payments must be collected in whole cents.

(ii) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.

(iii) That months have different numbers of days.

(iv) The occurrence of leap year.

(4) *Disregarded irregularities*. In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any [payment schedule] irregularity in the payment schedule, in a transaction not secured by real property or a dwelling, or payment summary, in a transaction secured by real property or a dwelling, that results from the irregular first period:

(i) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(ii) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(iii) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5) *Demand obligations*. If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

(6) *Multiple advance loans*.

(i) *Series of advances*. A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.

(ii) *Multiple-advance construction loan*. When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

(d) *Multiple creditors; multiple consumers*. If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under § 226.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) *Effect of subsequent events*. If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this regulation, although new disclosures may be required under paragraph (f) of this section, § 226.19, or § 226.20.

(f) *Early disclosures*. If disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation ([subject to the provisions of] except that additional timing requirements apply under § 226.19(a)(2) and alternative timing requirements apply under § 226.19(a)[(5)] (4) (iii)): n39

(1) Any changed term unless the term was based on an estimate in accordance with § 226.17(c)(2) and was labelled an estimate;

(2) All changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction, or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 226.22(a).

(g) *Mail or telephone orders-delay in disclosures*. Except for transactions secured by real property or a dwelling subject to § 226.38, i [I]f a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

(1) The cash price or the principal loan amount.

(2) The total sale price.

(3) The finance charge.

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(5) The terms of repayment.

(h) *Series of sales--delay in disclosures*. If a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of this provision, in the case of items purchased on different dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

(i) *Interim student credit extensions*. For each transaction involving an interim credit extension under a student credit program, the creditor need not make the following disclosures: the finance charge under § 226.18(d), the payment schedule under § 226.18(g), the total of payments under § 226.18(h), or the total sale price under § 226.18(j).

5. Section 226.18 is revised to read as follows:

§ 226.18 General disclosure requirements.

For each transaction, the creditor shall disclose the following information as applicable, except that for each transaction secured by real property or a dwelling, the creditor shall make the disclosures required by § 226.38:

(a) *Creditor*. The identity of the creditor making the disclosures.

(b) *Amount financed*. The amount financed, using that term, and a brief description such as the amount of credit provided to you or on ***your*** behalf. The amount financed is calculated by:

(1) Determining the principal loan amount or the cash price (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

(c) *Itemization of amount financed*. (1) A separate written itemization of the amount financed, including: n40

(i) The amount of any proceeds distributed directly to the consumer.

(ii) The amount credited to the consumer's account with the creditor.

(iii) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons,[.] [41] except that the following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

(iv) The prepaid finance charge.

(2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

(d) *Finance charge*. The *finance charge*, using that term, and a brief description such as "the dollar amount the credit will cost you."

[(1) *Mortgage loans*. In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge--

(i) Is understated by no more than $ 100; or

(ii) Is greater than the amount required to be disclosed.

(2) *Other credit*. In any other transaction, the] The amount disclosed as the finance charge shall be treated as accurate if[,]:

(1) In a transaction involving an amount financed of $ 1,000 or less, it is not more than $ 5 above or below the amount required to be disclosed; or[,]

(2) In a transaction involving an amount financed of more than $ 1,000, it is not more than $ 10 above or below the amount required to be disclosed.

(e) *Annual percentage rate*. The *annual percentage rate*, using that term, and a brief description such as "the cost of ***your*** credit as a yearly rate." [42] For any transaction involving a finance charge of $ 5 or less on an amount financed of $ 75 or less, or a finance charge of $ 7.50 or less on an amount financed of more than $ 75, the creditor need not disclose the annual percentage rate.

(f) *Variable-rate loan [with term of one year or less] not secured by real property or a dwelling*.

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[41] [Reserved] [The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.]

[42] [Reserved] [For any transaction involving a finance charge of $ 5 or less on an amount financed of $ 75 or less, or a finance charge of $ 7.50 or less on an amount financed of more than $ 75, the creditor need not disclose the annual percentage rate.]

[(1)] If the annual percentage rate may increase after consummation in a transaction not secured by [the consumer's principal dwelling or a transaction secured by the consumer's principal dwelling with a term of one year or less] real property or a dwelling, the following disclosures: n43

[(i)] (1) The circumstances under which the interest rate may increase.

[(ii)] (2) Any limitations on the increase.

[(iii)] (3) The effect of an increase.

[(iv)] (4) An example of the payment terms that would result from an increase.

[(2) If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, a following disclosures:

(i) The fact that the transaction contains a variable-rate feature.

(ii) A statement that variable-rate disclosure have been provided earlier.]

(g) *Payment schedule*. The number, amounts, and timing of payments scheduled to repay the obligation.

(1) In a demand obligation with no alternate maturity date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:

(i) The dollar amounts of the largest and smallest payments in the series.

(ii) A reference to the variations in the other payments in the series.

(h) *Total of payments*. The "total of payments," using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments." [44] In any transaction involving a single payment, the creditor need not disclose the total of payments.

(i) *Demand feature*. If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in § 226.17(c)(5), that fact shall also be disclosed.

(j) *Total sale price*. In a credit sale, the total sale price, using that term, and a descriptive explanation (including the amount of any downpayment) such as "the total price of ***your*** purchase on credit, including ***your*** downpayment of $." The total sale price is the sum of the cash price, the items described in paragraph (b)(2), and the finance charge disclosed under paragraph (d) of this section.

(k) *Prepayment*. (1) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full.

[44] [Reserved] [In any transaction involving a single payment, the creditor need not disclose the total of payments.]

(2) When an obligation includes a finance charge other than the finance charge described in paragraph (k)(1) of this section, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.

(l) *Late payment*. Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

(m) *Security interest*. The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

(n) *Insurance, [and] debt cancellation, and debt suspension*. The items required by § 226.4(d) in order to exclude certain insurance premiums, and debt-cancellation or debt suspension fees from the finance charge.

(o) *Certain security interest charges*. The disclosures required by § 226.4(e) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

(p) *Contract reference*. A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

(q) [*Assumption policy*. In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.] [Reserved.]

(r) *Required deposit*. If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit. [45] A required deposit need not include:

(1) An escrow account for items such as taxes, insurance or repairs; or

(2) A deposit that earns not less than 5 percent per year.

6. Section 226.19 is revised to read as follows:

§ 226.19 [Certain mortgage and variable-rate transactions.] Early disclosures and adjustable-rate disclosures for transactions secured by real property or a dwelling.

In connection with a closed-end transaction secured by real property or a dwelling, subject to paragraph (a)(4) of this section, the following requirements shall apply:

(a) *Mortgage transactions [subject to RESPA]--(1)(i) Time of good faith estimates of disclosures*. [In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq*.) that is secured by the consumer's dwelling, other than a home equity line of credit subject to § 226.5b or mortgage transaction subject to

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[45] [Reserved] [A required deposit need not include, for example: (1) An escrow account for items such as taxes, insurance or repairs; (2) a deposit that earns not less than 5 percent per year; or (3) payments under a Morris Plan.]

paragraph (a)(5) of this section, t] The creditor shall make good faith estimates of the disclosures required by [§ 226.18] § 226.38 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

(ii) *Imposition of fees*. Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is considered to have received them three business days after they are mailed or delivered.

(iii) *Exception to fee restriction*. A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is *bona fide* and reasonable in amount.

[(2) *Waiting periods for early disclosures and corrected disclosures. (i)] (2)(i) Seven-business-day waiting period*. The creditor shall deliver or place in the mail the good faith estimates required by paragraph (a)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

(ii) *Three-business-day waiting period*. After providing the disclosures required by paragraph (a)(1)(i) of this section, the creditor shall provide the disclosures required by § 226.38 before consummation. The consumer must receive the new disclosures no later than three business days before consummation. Only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimated disclosures.

Alternative 1--Paragraph (a)(2)(iii)

[(ii) If the annual percentage rate disclosed under paragraph (a)(1)(i) of this section becomes inaccurate, as defined in § 226.22, the creditor shall provide corrected disclosures with all changed terms.] (iii) *Additional three-business-day waiting period*. If a subsequent event makes the disclosures required by paragraph (a)(2)(ii) inaccurate, the creditor shall provide corrected disclosures, subject to paragraph (a)(2)(iv) of this section. The consumer must receive the corrected disclosures no later than three business days before consummation. Only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimated disclosures. [If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.]

Alternative 2--Paragraph (a)(2)(iii)

[(ii)] (iii) *Additional three-business-day waiting period*. If the annual percentage rate disclosed under paragraph [(a)(1)(i)] (a)(2)(ii) of this section becomes inaccurate, as defined in § 226.22, or a transaction that was disclosed as a fixed-rate transaction becomes an adjustable-rate transaction, the creditor shall provide corrected disclosures with all changed terms, subject to paragraph (a)(2)(iv) of this section. The consumer must receive the corrected disclosures no later than three business days before consummation. Only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimated disclosures. [If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.]

(iv) *Annual percentage rate accuracy*. An annual percentage rate disclosed under paragraph (a)(2)(ii) or (a)(2)(iii) shall be considered accurate as provided by § 226.22, except that even if one of the following subsequent events makes the disclosed annual percentage rate inaccurate under § 226.22, the APR shall be considered accurate for purposes of paragraph (a)(2)(ii) and (a)(2)(iii) of this section:

(A) A decrease in the loan's annual percentage rate due to a discount the creditor gives the consumer to induce periodic payments by automated debit from a consumer's deposit or other account.

(B) A decrease in the loan's annual percentage rate due to a discount a title insurer gives the consumer on voluntary owners' title insurance.

(v) *Timing of receipt*. If the disclosures required by paragraph (a)(2)(ii) or paragraph (a)(2)(iii) of this section are mailed to the consumer or delivered by means other than delivery in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered.

(3) *Consumer's waiver of waiting period before consummation*. If the consumer determines that the extension of credit is needed to meet a *bona fide* personal financial emergency, the consumer may modify or waive the seven-business-day waiting period or [the] a three-business-day waiting period required by paragraph (a)(2) of this section, after receiving the disclosures required by [§ 226.18] § 226.38. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

[(4) *Notice*. Disclosures made pursuant to paragraph (a)(1) or paragraph (a)(2) of this section shall contain the following statement: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." The disclosure required by this paragraph shall be grouped together with the disclosures required by paragraph (a)(1) or (a)(2) of this section.]

[(5)] (4) *Timeshare plans*. In a mortgage transaction [subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq*.)] that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)):

(i) The requirements of paragraphs (a)(1) through [(a)(4)] (a)(3) of this section do not apply;

(ii) The creditor shall make good faith estimates of the disclosures required by [§ 226.18] § 226.38 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier; and

(iii) If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed under paragraph (a)[(5)] (4) (ii) of this section by more than 1/8; of 1 percentage point in a regular transaction or 1/4 of 1 percentage point in an irregular transaction, the creditor shall disclose all the changed terms no later than consummation or settlement.

[(b) *Certain variable-rate transactions*. [45a] If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier: n45b

(1) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages* published by the Board and the Federal Home Loan Bank Board, or a suitable substitute.

(2) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

(i) The fact that the interest rate, payment, or term of the loan can change.

[45a] Reserved. [Information provided in accordance with variable-rate regulations of other Federal agencies may be substituted for the disclosures required by paragraph (b) of this section.]

(ii) The index or formula used in making adjustments, and a source of information about the index or formula.

(iii) An explanation of ***how*** the interest rate and payment will be determined, including an explanation of ***how*** the index is adjusted, such as by the addition of a margin.

(iv) A statement that the consumer should ***ask*** about the current margin value and current interest rate.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) At the option of the creditor, either of the following:

(A) A historical example, based on a $ 10,000 loan amount, illustrating ***how*** payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program disclosure. The example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(B) The maximum interest rate and payment for a $ 10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.

(ix) An explanation of ***how*** the consumer may calculate the payments for the loan amount to be borrowed based on either:

(A) The most recent payment ***shown*** in the historical example in paragraph (b)(2)(viii)(A) of this section; or

(B) The initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(viii)(B) of this section.

(x) The fact that the loan program contains a demand feature.

(xi) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.]

(b) *Adjustable-rate loan program disclosures*. For adjustable-rate mortgages described in § 226.38(a)(3) secured by real property or a consumer's dwelling, the creditor shall provide to the consumer an adjustable-rate loan program disclosure for each loan program in which the consumer expresses an interest. The creditor shall disclose the heading "Adjustable-Rate Mortgage" or "ARM" in accordance with § 226.19(b)(4)(iii). The creditor shall provide disclosures under this paragraph (b) in circumstances where an open-end credit account converts to a closed-end mortgage transaction under a written agreement with the consumer. The creditor need not provide such disclosures in circumstances where the consumer assumes an adjustable-rate mortgage originated to another consumer.

(1) *Interest rate and payment*. As applicable, the creditor shall disclose the information required in paragraph (b)(1) of this section, grouped together under the heading "Interest Rate and Payment," using that term:

(i) *Introductory period*. The time period for which the interest rate or payment remains fixed, a statement that the interest rate or payment may increase after that period, and an explanation of the effect on the interest rate of having an initial interest rate that is not determined using the index or formula that applies for interest rate adjustments.

(ii) *Frequency of rate and payment change*. The frequency of interest rate and payment changes permitted under the legal obligation.

(iii) *Index*. The index or formula used in making adjustments, a source of information about the index or formula, and an explanation of ***how*** the interest rate will be determined when adjusted, including an explanation of ***how*** the index is adjusted, such as by the addition of a margin.

(iv) *Limit on rate changes*. An explanation of interest rate or payment limitations and interest rate carryover.

(v) *Conversion feature*. An explanation of any fixed-rate conversion feature that describes any limitations on the period during which the loan may be converted, a statement that the fixed interest rate may be higher than the adjustable rate at the time of conversion, a statement that conversion fees may be charged, and any interest rate and payment limitations that apply if the consumer exercises the conversion option.

(vi) *Preferred rate*. An explanation of the events that will cause the interest rate on an adjustable rate mortgage with a preferred rate to increase, a statement of the increase in the interest rate, and a statement that fees may be charged if one or more of the events occurs.

(2) *Key questions about risk*. The creditor shall disclose the information required in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, grouped together under the heading "Key Questions About Risk," using that term:

(i) *Required disclosures*. The creditor shall disclose the following information--

(A) *Rate increases*. A statement that the interest rate may increase, along with a statement indicating when the first interest rate increase may occur and the frequency with which the interest rate may increase.

(B) *Payment increases*. A statement indicating whether or not the periodic payment on the loan may increase. If the periodic payment may increase, a statement that if the interest rate increases, the periodic payment will increase. For a pay option loan, if the periodic payment may increase, a statement indicating when the first minimum payment may increase.

(C) *Prepayment penalty*. If the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty could be imposed if the obligation is prepaid in full. If the creditor could impose a prepayment penalty, a statement of the circumstances under which and period in which the creditor could impose the penalty.

(ii) *Additional disclosures*. The creditor shall disclose the following information as applicable:

(A) *Interest-only payments*. A statement that periodic payments will be applied only toward interest on the loan, along with a statement of any limitation on the number of periodic payments that will be applied only toward interest on the loan, that such payments will cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount. For payment-option loans, a statement that the loan gives the consumer the choice to make periodic payments that cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount.

(B) *Negative amortization*. A statement that the loan balance may increase even if the consumer makes the periodic payments, along with a statement that the minimum payment covers only a part of the interest the consumer owes each period and none of the principal, that the unpaid interest will be added to the consumer's loan amount, and that over time this will increase the total amount the consumer is borrowing and cause the consumer to lose equity in the home.

(C) *Balloon payment*. A statement that the consumer will owe a balloon payment, along with a statement of when it will be due.

(D) *Demand feature*. A statement that the creditor may demand full repayment of the loan, along with a statement of the timing of any advance notice the creditor will give the consumer before the creditor exercises such right.

(E) *No-documentation or low-documentation loans*. A statement that the consumer's loan could have a higher rate or fees if the consumer does not document employment, income or other assets, along with a statement that if the consumer provides more documentation, the consumer could decrease the interest rate or fees.

(F) *Shared-equity or shared-appreciation*. A statement that any future equity or appreciation in the real property or dwelling that secures the loan must be shared, along with a statement of the percentage of future equity or appreciation to which the creditor is entitled, and the events that may trigger such an obligation.

(3) *Additional information and Web site*. The creditor shall disclose a statement that the consumer may obtain additional information about adjustable-rate mortgages and a list of licensed housing counselors at the Web site of the Federal Reserve Board, and a reference to that Web site.

(4) *Format requirements. (i) Application of § 226.37*. Except as otherwise provided by this paragraph (b)(4), the format requirements in § 226.37 apply to loan program disclosures made under this section.

(ii) *Prominent location*. The disclosures required by paragraphs (b)(1) through (b)(3) of this section shall be grouped together and placed in a prominent location.

(iii) *Disclosure of heading*. The disclosure of the heading required by paragraph (b) of this section shall be more conspicuous than, and shall precede, the other disclosures required by paragraph (b) and shall be located outside of the tables required by paragraph (b)(4)(iv). The creditor may make the heading disclosure using the name of the creditor and the name of the loan program.

(iv) *Form of disclosures; tabular format*. The creditor shall provide the disclosures required by paragraphs (b)(1) and (b)(2) of this section in the form of two tables with headings, content, and format substantially similar to Form H-4(B) in Appendix H to this part. The table shall contain only the information required or permitted by paragraphs (b)(1) and (b)(2). The table containing the disclosures required by paragraph (b)(1) shall precede the table containing the disclosures required by paragraph (b)(2).

(v) *Question and answer format*. The creditor shall provide the disclosures required by paragraph (b)(2) of this section grouped together and presented in the format of question and answer, in a manner substantially similar to Form H-4(B) in Appendix H to this part.

(vi) *Highlighting*. Each affirmative answer for a feature required to be disclosed under paragraph (b)(2) shall be disclosed in bold text and in all capitalized letters. Any negative answer shall be in nonbold text.

(vii) *Order of key questions* disclosure. The key questions disclosure shall be provided, as applicable, in the following order: rate increases under § 226.19(b)(2)(i)(A), payment increases under § 226.19(b)(2)(i)(B), interest-only payments under § 226.19(b)(2)(ii)(A), negative amortization under § 226.19(b)(2)(ii)(B), balloon payment under § 226.19(b)(2)(ii)(C), prepayment penalty under § 226.19(b)(2)(i)(C), demand feature under § 226.19(b)(2)(ii)(D), no-documentation or low-documentation loans under § 226.19(b)(2)(ii)(E), shared-equity or shared-appreciation under § 226.19(b)(2)(ii)(F).

(viii) *Disclosure of additional information and Web site*. The disclosure and Web site information required by paragraph (b)(3) of this section shall be located outside and beneath the tables required by paragraph (b)(4)(iv).

(c) *Publications for transactions secured by real property or a dwelling*. In a closed-end consumer credit transaction secured by real property or a dwelling, the creditor shall provide the following Board publications:

(1) The publication entitled "*Key Questions to **Ask** about **Your** Mortgage*," as published by the Board.

(2) The publication entitled "*Fixed vs. Adjustable Rate Mortgages*," as published by the Board.

(d) *Timing of disclosures*. (1) *General*. Except as otherwise provided by this paragraph (d), the creditor shall provide the disclosures and publications required by paragraphs (b) and (c) of this section at the time an application form is provided to the consumer or before the consumer pays a nonrefundable fee, including a fee for obtaining the consumer's credit history, whichever is earlier.

[(c)] (2) *Electronic disclosures*. For an application that is accessed by the consumer in electronic form, the disclosures and publications required by paragraph (b) and (c) of this section may be provided to the consumer in electronic form on or with the application.

(i) Except as provided in paragraph (d)(2)(ii), if a consumer accesses an ARM loan application electronically, the creditor shall provide the disclosures and publications required under paragraphs (b) and (c) of this section in electronic form.

(ii) If a consumer who is physically present in the creditor's office accesses a loan application electronically, the creditor may provide disclosures and publications required under paragraphs (b) and (c) of this section in either electronic or ***paper*** form.

(3) *Applications made by telephone or through intermediary*. If the creditor receives the consumer's application through an intermediary agent or broker or by telephone, the creditor satisfies the requirements of paragraph (b) or paragraph (c) of this section if the creditor delivers the disclosures and publications or places them in the mail not later than three business days after the creditor receives the consumer's application.

(4) *Adjustable-rate feature added after application*. If the consumer first expresses interest in an adjustable-rate mortgage transaction after an application form has been provided or accessed or the consumer has paid a non-refundable fee, the creditor shall provide to the consumer the disclosures required by paragraph (b) of this section within three business days after the creditor is informed of such interest by the consumer or by an intermediary broker or agent.

(5) *Terms not usually offered*. If the consumer expresses an interest in negotiating loan terms that are not generally offered, the creditor need not provide the disclosures required by paragraph (b) of this section before an application form is provided but shall provide such disclosures as soon as reasonably possible after the terms to be disclosed have been determined and not later than the time the consumer pays a non-refundable fee. In all cases the creditor shall provide the disclosures required by paragraph (c) of this section at the time an application form is provided or before the consumer pays a non-refundable fee, including a fee for obtaining a consumer's credit history, whichever is earlier.

(6) *Additional loan program disclosures*. If, after an application form is provided or the consumer pays a non-refundable fee, a consumer expresses an interest in an adjustable-mortgage loan program for which the creditor has not provided the disclosures required by paragraph (b) of this section, the creditor shall provide such disclosures within a reasonable time after the consumer expresses such interest.

7. Section 226.20 is revised to read as follows:

§ 226.20 Subsequent disclosure requirements.

(a) *Refinancings*. A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:

(1) A renewal of a single payment obligation with no change in the original terms.

(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.

(3) An agreement involving a court proceeding.

(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in § 226.4(d).

(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

(b) *Assumptions*. An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing [residential mortgage transaction] closed-end credit transaction secured by real property or a dwelling. Before the assumption occurs, the creditor shall make new disclosures to the subsequent consumer, based on the remaining obligation. If the finance charge originally imposed on the existing obligation was an add-on or discount finance charge, the creditor need only disclose:

(1) The unpaid balance of the obligation assumed.

(2) The total charges imposed by the creditor in connection with the assumption.

(3) The information required to be disclosed under [§ 226.18(k), (l), (m), and (n)] § 226.38 (a)(5), (f)(2), (h), (j)(2), (j)(3), and (j)(4).

(4) The annual percentage rate originally imposed on the obligation.

(5) The [payment schedule under § 226.18(g)] interest rate and payment summary under § 226.38(c) and the total [of] payments under [§ 226.18(h)], § 226.38(e)(5) based on the remaining obligation.

(c) *[Variable-rate adjustments.] Rate adjustments*. [45c] An adjustment to the interest rate with or without a corresponding adjustment to the payment in [a variable-rate] an adjustable-rate mortgage subject to § 226.19(b) is an event requiring new disclosures to the consumer. An adjustment to the interest rate with a corresponding adjustment to the payment due to the conversion of an adjustable-rate mortgage subject to § 226.19(b) to a fixed-rate mortgage also is an event requiring new disclosures to the consumer. [At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following disclosures, as applicable, must be delivered or placed in the mail:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.]

[45c] Reserved. [Information provided in accordance with variable-rate subsequent disclosure regulations of other Federal agencies may be substituted for the disclosure required by paragraph (c) of this section.]

(1) *Timing of disclosures*. (i) *Payment change*. If an interest rate adjustment is accompanied by a payment change, the creditor shall deliver or place in the mail the disclosures required by paragraph (c)(2) of this section at least 60, but no more than 120, calendar days before a payment at a new level is due.

(ii) *No payment change*. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, the creditor shall deliver or place in the mail the disclosures required by paragraph (c)(3) of this section.

(2) *Content of payment change disclosures*. The creditor must provide the following information on the notice provided pursuant to paragraph (c)(1)(i) of this section:

(i) A statement that changes are being made to the interest rate, the date such change is effective, and a statement that more detailed information is available in the loan agreement(s).

(ii) A table containing the following disclosures--

(A) The current and new interest rates.

(B) If payments on the loan may be interest-only or negatively amortizing, the amount of the current and new payment allocated to pay principal, interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed shall be based on the payment allocation in the last payment period during which the current interest rate applies. The new payment allocation disclosed shall be based on the payment allocation in the first payment period during which the new interest rate applies.

(C) The current and new payment and the due date for the new payment.

(iii) A description of the change in the index or formula and any application of previously foregone interest.

(iv) The extent to which the creditor has foregone any increase in the interest rate and the earliest date the creditor may apply foregone interest to future adjustments, subject to rate caps.

(v) Limits on interest rate or payment increases at each adjustment, if any, and the maximum interest rate or payment over the life of the loan.

(vi) A statement of whether or not part of the new payment will be allocated to pay the loan principal and a statement of the payment required to fully amortize the loan at the new interest rate over the remainder of the loan term or to fully amortize the loan without extending the loan term, if different from the new payment disclosed pursuant to paragraph (c)(2)(ii)(C) of this section.

(vii) A statement of the loan balance as of the date the interest rate change will become effective.

(3) *Content of annual interest rate notice*. The creditor shall provide the following information on the annual notice provided pursuant to paragraph (c)(1)(ii) of this section, as applicable:

(i) The specific time period covered by the disclosure, and a statement that the interest rate on the loan has changed during the past year without changing required payments.

(ii) The highest and lowest interest rates that applied during the period specified under paragraph (c)(3)(i) of this section.

(iii) Any foregone increase in the interest rate or application of previously foregone interest.

(iv) The maximum interest rate that may apply over the life of the loan.

(v) A statement of the loan balance as of the last day of the time period required to be disclosed by paragraph (c)(3)(i) of this section.

(4) *Additional information*. In addition to the disclosures provided under paragraph (c)(2) or (c)(3) of this section, the creditor shall provide the following information:

(i) If the creditor may impose a penalty if the obligation is prepaid in full, a statement of the circumstances under which and period in which the creditor may impose the penalty and the amount of the maximum penalty possible during the period between the date the creditor delivers or mails the disclosures required by this paragraph (c) and the last day the creditor may impose the penalty.

(ii) A telephone number the consumer may call to obtain additional information about the consumer's loan.

(iii) A telephone number and Internet Web site for housing counseling resources maintained by the Department of Housing and Urban Development.

(5) *Format of disclosures*. (i) The disclosures required by this paragraph (c) shall be provided in the form of tables with headings, content and format substantially similar to Form H-4(G) in Appendix H to this part, where an interest rate adjustment is accompanied by a payment change, or Form H-4(K) in Appendix H to this part, where a creditor provides an annual notice of interest rate adjustments without an accompanying payment change. The disclosures required by paragraph (c)(2) or (c)(3) of this section shall be grouped together with the disclosures required by paragraph (c)(4) of this section, and shall be in a prominent location.

(ii) The disclosures required by paragraph (c)(2)(i) or paragraph (c)(3)(i) of this section shall precede the other disclosures required by paragraph (c)(2) or (c)(3). The disclosures required by paragraph (c)(4) shall be located directly beneath the disclosures required by paragraph (c)(2) or (c)(3).

(iii) The disclosures required by paragraph (c)(2)(ii) shall be in the form of a table with headings, content, and format substantially similar to Form H-4(G) in Appendix H to this part. The disclosures required by paragraphs (c)(2)(iii) through (c)(2)(vii) of this section shall be located directly below the table required by paragraph (c)(2)(ii).

(d) *Periodic statement. (1) Timing and content of disclosures*. If a mortgage transaction secured by real property or a dwelling provides a consumer with multiple payment options that include a payment that results in negative amortization, for each period after consummation and not later than fifteen days before payment is due, subject to paragraph (c) of this section, the creditor shall mail or deliver to the consumer a periodic statement that discloses the following information, *as applicable*:

(i) *Payment*. Based on the interest rate in effect at the time the disclosure is made, the payment amount required to--

(A) Pay off the loan balance in full by the end of the term through regular periodic payments without a balloon payment, with a statement that the payment is "recommended to reduce loan balance," using that term;

(B) Prevent negative amortization, if the legal obligation explicitly permits the consumer to elect to pay interest only without paying principal; and

(C) Pay the minimum amount required under the legal obligation.

(ii) *Effects*. A statement of the interest and principal, if any, covered by the payment amounts disclosed under paragraph (d)(1)(i) of this section, a statement describing the effects of making such payments, and the earliest date payments at a higher level may be due.

(iii) *Unpaid interest*. The amount that will be added to the loan balance each period due to unpaid interest.

(2) *Format of disclosures*. (i) *Form of a table*. The disclosures required by paragraph (d)(1) of this section shall be in the form of a table with headings, content and format substantially similar to Form H-4(L) in Appendix H to this part.

(ii) *Location of disclosures*. The disclosures required by this paragraph (d) shall be placed in a prominent location, except that if the disclosures are made concurrently with the disclosures required by paragraph (c) of this section, the disclosures required by paragraph (c) shall precede the disclosures required by this paragraph (d).

(iii) *Segregation of disclosures*. The table described in paragraph (d)(2)(i) of this section shall contain only the information required by paragraph (d)(1). Other information may be presented with the table, provided such information appears outside the required table.

(e) *Creditor-placed property insurance*. (1) "Creditor-placed property insurance" means property insurance coverage obtained by the creditor when the property insurance required by the credit agreement has lapsed.

(2) A creditor may not charge a consumer for obtaining property insurance on property securing a credit transaction, unless:

(i) The creditor has made a reasonable determination that the required property insurance has lapsed;

(ii) The creditor has mailed or delivered a written notice to the consumer with the disclosures set forth in paragraph (e)(3) of this section at least 45 days before a charge is imposed on the consumer for creditor-placed property insurance; and

(iii) During the 45-day notice period, the consumer has not provided the creditor with evidence of adequate property insurance.

(3) The creditor must provide the following information, clearly and conspicuously, on the notice required in paragraph (e)(2)(ii) of this section:

(i) The creditor's name and contact information, the loan number, and the address or description of the property securing the credit transaction;

(ii) That the consumer is obligated to maintain property insurance on the property securing the credit transaction;

(iii) That the required property insurance has lapsed;

(iv) That the creditor is authorized to obtain the property insurance on the consumer's behalf;

(v) The date the creditor can charge the consumer for the cost of creditor-placed property insurance;

(vi) ***How*** the consumer may provide evidence of property insurance;

(vii) The cost of creditor-placed property insurance stated as an annual premium, and that this premium is likely significantly higher than a premium for property insurance purchased by the consumer; and

(viii) That creditor-placed property insurance may not provide as much coverage as homeowner's insurance.

(4) Within 15 days after a creditor charges the consumer for creditor-placed property insurance, the creditor must mail or deliver to the consumer a copy of the individual policy, certificate or other evidence of the creditor-placed property insurance.

Subpart E--Special Rules for Certain Home Mortgage Transactions

8. Section 226.32 is amended by revising paragraphs (b)(1), (c)(1), and (c)(5), to read as follows:

§ 226.32 Requirements for certain closed-end home mortgages.

* * * *

(b) * * *

(1) For purposes of paragraph (a)(1)(ii) of this section, *points and fees* means all items included in the finance charge, pursuant to § 226.4, except interest or the time-price differential.[:]

(i) All items required to be disclosed under § 226.4(a) and 226.4(b), except interest or the time-price differential;

(ii) All compensation paid to mortgage brokers;

(iii) All items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) unless 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

(iv) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.]
* * * *

(c) * * *

(1) *Notices*. The following statement in bold text and minimum 10-point font: ["You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on ***your*** home. You could lose ***your*** home, and any money you have put into it, if you do not meet ***your*** obligations under the loan."] "If you are unable to make the payments on this loan, you could lose ***your*** home. You have no obligation to accept this loan. ***Your*** signature below only confirms that you have received this form."
* * * *

(5) *Amount borrowed*. For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the [face] amount of the note or other loan agreement; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation or debt suspension coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $ 100 above or below the amount required to be disclosed.
* * * *

9. Section 226.36, as added on July 30, 2008 (73 FR 44604), is amended by:

A. Revising the section heading,

B. Revising paragraph (a),

C. Revising paragraphs (b)(1) introductory text, (b)(1)(i)(A) through (D), (b)(1)(ii)(A) and (D), and (b)(2),

D. Revising the introductory text of paragraph (c)(1),

E. Redesignating paragraph (d) as paragraph (f), and

F. Adding new paragraphs (d) and (e). The additions and revisions read as follows:

§ 226.36 Prohibited acts or practices in connection with credit secured by real property or a dwelling [a consumer's principal dwelling].

(a) *Loan originator and mortgage broker defined*. (1) *Loan originator*. For purposes of this section, the term "loan originator" means with respect to a particular transaction, a person [For purposes of this section "mortgage broker" means a person, other than an employee of a creditor,] who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. [The term includes a person meeting this definition, even if the consumer credit obligation is initially payable to such person, unless the person provides] The term "loan originator" includes employees of the creditor. The term includes the creditor if the creditor does not provide the funds for the transaction at consummation out of the creditor's [person's] own resources, out of deposits held by the creditor [person], or by drawing on a bona fide warehouse line of credit.

(2) *Mortgage broker*. For purposes of this section, a mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor.

(b) *Misrepresentation of value of consumer's dwelling*--(1) *Coercion of appraiser*. In connection with a consumer credit transaction secured by real property or a [consumer's principal] dwelling, no creditor or mortgage broker, and no affiliate of a creditor or mortgage broker, shall directly or indirectly coerce, influence, or otherwise encourage an appraiser to misstate or misrepresent the value of such dwelling.

(i) * * *

(A) Implying to an appraiser that current or future retention of the appraiser depends on the amount at which the appraiser values a [consumer's principal] dwelling;

(B) Excluding an appraiser from consideration for future engagement because the appraiser reports a value of a [consumer's principal] dwelling that does not meet or exceed a minimum threshold;

(C) Telling an appraiser a minimum reported value of a [consumer's principal] dwelling that is needed to approve the loan;

(D) Failing to compensate an appraiser because the appraiser does not value a [consumer's principal] dwelling at or above a certain amount; and

* * * *

(ii) * * *

(A) ***<u>Asking</u>*** an appraiser to consider additional information about a [consumer's principal] dwelling or about comparable properties;

* * * *

(D) Obtaining multiple appraisals of a [consumer's principal] dwelling, so long as the creditor adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value;

* * * *

(2) *When extension of credit prohibited*. In connection with a consumer credit transaction secured by real property or a [consumer's principal] dwelling, a creditor who knows, at or before loan consummation, of a violation of paragraph (b)(1) of this section in connection with an appraisal shall not extend credit based on such appraisal unless the creditor documents that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

* * * *

(c) *Servicing practices*. (1) In connection with a consumer credit transaction secured by real property or a [consumer's principal] dwelling, no servicer shall--

* * * *

ALTERNATIVE 1--PARAGRAPH (d).

(d) *Prohibited payments to loan originators*. (1) *Payments based on transaction terms and conditions*. In connection with a consumer credit transaction secured by real property or a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions. For purposes of this paragraph, the principal amount of credit extended is deemed to be a transaction term. This paragraph (d)(1) shall not apply to any transaction in which paragraph (d)(2) of this section applies.

(2) *Payments by persons other than consumer*. If a loan originator receives compensation directly from the consumer in a transaction secured by real property or a dwelling:

(i) The loan originator shall not receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(ii) No person who knows or has reason to know of the consumer-paid compensation to the loan originator, other than the consumer, shall pay any compensation to the loan originator, directly or indirectly, in connection with the transaction.

(3) *Affiliates*. For purposes of paragraph (d) of this section, affiliated entities shall be treated as a single "person."

ALTERNATIVE 2--PARAGRAPH (d).

(d) *Prohibited payments to loan originators*. (1) *Payments based on terms and conditions*. In connection with a consumer credit transaction secured by real property or a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions. For purposes of this paragraph the principal amount of credit extended is not deemed to be a transaction term or condition. This paragraph (d)(1) shall not apply to any transaction in which paragraph (d)(2) applies.

(2) *Payments by persons other than consumer*. If a loan originator receives compensation directly from the consumer in a transaction secured by real property or a dwelling:

(i) The loan originator shall not receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(ii) No person who knows or has reason to know of the consumer-paid compensation to the loan originator, other than the consumer, shall pay any compensation to the loan originator, directly or indirectly, in connection with the transaction.

(3) *Affiliates*. For purposes of paragraph (d) of this section, affiliated entities shall be treated as a single "person."

OPTIONAL PROPOSAL--PARAGRAPH (e).

(e) *Prohibition on steering*. (1) *General*. In connection with a credit transaction secured by real property or a dwelling, a loan originator shall not direct or "steer" a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the transaction is in the consumer's interest.

(2) *Permissible transactions*. A transaction does not violate paragraph (e)(1) of this section if the loan was chosen by the consumer from at least three loan options for each type of transaction in which the consumer expressed an interest, and the conditions specified in paragraph (e)(3) of this section are met. For purposes of paragraph (e) of this section, the phrase "type of transaction" refers to whether a loan has:

(i) An annual percentage rate that cannot increase after consummation, or

(ii) An annual percentage rate that may increase after consummation.

(3) *Loan options presented*. A transaction satisfies paragraph (e)(2) of this section only if the loan originator presents the loan options required by that paragraph and all of the following conditions are met:

(i) The loan originator obtains loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest the originator must present and permit the consumer to choose from at least three loans that include:

(A) The loan with the lowest interest rate;

(B) The loan with the second lowest interest rate; and

(C) The loan with the lowest total dollar amount for origination points or fees and discount points, as offered by the creditors.

(ii) The loan originator must have a good faith belief that the options presented to the consumer pursuant to paragraph (e)(3)(i) of this section are loans for which the consumer likely qualifies.

(iii) For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in paragraph (e)(3)(i) of this section.

(f) [(d)] This section does not apply to a home equity line of credit subject to § 226.5b.

10. A new § 226.37 is added to Subpart E to read as follows:

§ 226.37 Special disclosure requirements for closed-end mortgages.

(a) *Form of disclosures*--(1) *General*. The creditor shall make the disclosures required by §§ 226.19, 226.20(c), 226.20(d) and 226.38 clearly and conspicuously in writing, in a form that the consumer may keep.

(2) *Grouped and segregated*. The disclosures required by § 226.19, as applicable, § 226.20(c), § 226.20(d), or § 226.38 shall be grouped together and segregated from everything else, except as provided in paragraph (b) of this section, and shall not contain any information not directly related to the disclosures required under §§ 226.19, 226.20(c), 226.20(d), or 226.38, except:

(i) The disclosures may include the date of the transaction and the consumer's name, address, and account number; and

(ii) The following disclosures may be made together with or separately from other required disclosures under § 226.38: the tax deductibility disclosure under § 226.38(f)(4); and insurance, debt cancellation, or debt suspension disclosure under § 226.38(h).

(b) *Separate disclosures*. The following disclosures must be provided separately from other required disclosures under § 226.38: itemization of amount financed under § 226.38(j)(1); rebate under § 226.38(j)(2); late payment under § 226.38(j)(3); property insurance under § 226.38(j)(4); contract reference under § 226.38(j)(5); and assumption under § 226.38(j)(6).

(c) *Terminology*. (1) Terminology used in providing the disclosures required by §§ 226.19, 226.20(c), 226.20(d) and 226.38 shall be consistent.

(2) The term *annual percentage rate*, when required to be disclosed under § 226.38(b)(1) together with a corresponding percentage rate, shall be more conspicuous than any other required disclosure, disclosed in at least a 16-point font, and be placed in a prominent location and in close proximity to a scaled graph in accordance with the requirements under § 226.38(b)(2).

(d) *Specific formats*. (1) The disclosures required by § 226.38(a)(1) through (5) shall be provided in accordance with the requirements of § 226.38(a), and precede all other disclosures, except the identification required by § 226.38(g) and the disclosures permitted under paragraph (a)(2)(i) of this section;

(2) The disclosures required by § 226.38(b)(2) shall be provided in the form of a graph with shading, scaling and content in accordance with the requirements of § 228.38(b)(2), placed in a prominent location and in close proximity to the disclosures required by §§ 226.38(b)(1), 226.38(b)(3) and 226.38(b)(4);

(3) The disclosures required by § 226.38(c), as applicable, shall be provided in a tabular format in accordance with the requirements of § 226.38(c), and placed in a prominent location;

(4) The disclosure required by § 226.38(c)(2)(iii) shall be outlined in a box and placed directly beneath the table required by § 226.38(c)(1) in accordance with the requirements of § 226.38(c)(2)(iii);

(5) The disclosures required by § 226.38(d) shall be provided in a question and answer format in a tabular format in accordance with the requirements of § 226.38(d), and shall not precede the disclosures required by § 226.38(a) through (c).

(6) The disclosures required by § 226.38(e) shall be provided in a tabular format in accordance with the requirements of § 226.38(e), and precede any information not directly related to the disclosures required by § 226.38.

(7) The disclosures required by § 226.38(f) shall be provided in accordance with the requirements of § 226.38(f), and precede the disclosures required by § 226.38(j).

(8) The loan program disclosures required by § 226.19(b) for an adjustable-rate mortgage shall be provided in a tabular format in accordance with the requirements of § 226.19(b).

(9) The disclosures required by § 226.20(c)(2)--(4) for an adjustable-rate adjustment notice shall be provided in a tabular format in accordance with the requirements of § 226.20(c)(2)--(5).

(10) The disclosures required by § 226.20(d)(1) for loans with negative amortization shall be provided in a tabular format in accordance with the requirements of § 226.20(d).

(e) *Electronic disclosures*. The disclosures required by § 226.38 may be provided to the consumer in electronic form in accordance with the requirements under § 226.17(a)(1).

11. A new § 226.38 is added to Subpart E to read as follows:

§ 226.38 Content of disclosures for closed-end mortgages.

In connection with a closed-end transaction secured by real property or a dwelling, the creditor shall disclose the following information:

(a) *Loan summary*. A separate section, labeled "Loan Summary."

(1) *Loan amount*. The principal amount the consumer will borrow as reflected in the loan contract.

(2) *Loan term*. The period of time to repay the obligation in full.

(3) *Loan type and features*. The loan types and loan features described in this section.

(i) *Loan type*. The loan type, as applicable:

(A) *Adjustable-rate mortgage*. If the annual percentage rate may increase after consummation, the creditor shall disclose that the loan is an "adjustable-rate mortgage," using that term.

(B) *Step-rate mortgage*. If the interest rate will change after consummation, and the rates and periods in which they will apply are known, the creditor shall disclose that the loan is a "step-rate mortgage," using that term.

(C) *Fixed-rate mortgage*. If the transaction is not an adjustable-rate mortgage or a step-rate mortgage, the creditor shall disclose that the loan is a "fixed-rate mortgage," using that term.

(ii) *Loan features*. No more than two loan features, as applicable:

(A) *Step-payments*. If, under the terms of the legal obligation, the regular periodic payments will gradually increase by a set amount at predetermined times, the creditor shall disclose that the loan has a "step-payment" feature, using that term; and

(B) *Payment option*. If, under the terms of the legal obligation, the consumer may choose to make one or more regular periodic payments that may cause the loan balance to increase, the creditor shall disclose that the loan has a "payment option" feature, using that term;

(C) *Negative amortization*. If, under the terms of the legal obligation, the regular periodic payments will cause the loan balance to increase and the loan is not a loan described in paragraphs (a)(3)(ii)(B) or (a)(3)(ii)(D) of this section, the creditor shall disclose that the loan has a "negative amortization" feature, using that term; or

(D) *Interest-only payments*. If, under the terms of the legal obligation, one or more regular periodic payments may be applied to interest accrued only and not to loan principal, and the loan is not a loan described in paragraphs (a)(3)(ii)(A) or (a)(3)(ii)(B) of this section, the creditor shall disclose that the loan has an "interest-only payment" feature, using that term.

(4) *Total settlement charges*. The "total settlement charges," using that term, as disclosed under Regulation X, 12 CFR part 3500. As applicable, a statement of the amount of the charges already included in the loan amount and a statement that the total does not include a down payment, with a reference to the Good Faith Estimate or HUD--1 for details.

(5) *Prepayment penalty*. If the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance and permits the creditor to impose a penalty if the obligation is prepaid in full, a statement indicating the amount of the maximum penalty and the circumstances and period in which the creditor may impose the penalty.

(6) *Form of disclosures; tabular format*. The disclosures required by paragraphs (a)(1) through (5) of this section shall be in the form of a table, with headings, content and format substantially similar to Forms H--19(A), H--19(B), or H--19(C) in Appendix H to this part. The table shall contain only the information required or permitted by paragraphs (a)(1) through (5).

(b) *Annual percentage rate*. The disclosures specified in paragraph (b)(1)--(4) of this section shall be grouped together with headings, content and format substantially similar to Forms H--19(A), H--19(B), or H--19(C) in Appendix H to this part.

(1) The "annual percentage rate," using that term, and the following description: "overall cost of this loan including interest and settlement charges."

(2) A graph depicting the annual percentage rate (APR) disclosed under paragraph (b)(1) of this section and ***how*** it relates to a range of rates including the average prime offer rate as defined in § 226.35(a)(2) for the week in which the disclosure required under this section is provided, and the higher-priced mortgage loan threshold as defined in § 226.35(a)(1).

(i) The graph shall consist of a horizontal line or axis, with a shaded bar extending above and below the line. The horizontal axis shall be used to depict a range of APRs and the shaded bar shall use lighter shading on the left and darker shading on the right to distinguish between the rates on the graph that are below and above the APR representing the higher-priced mortgage loan threshold.

(ii) The lighter shaded area shall comprise the first two-thirds of the graph to represent the rates that are below the higher-priced mortgage loan threshold. On the horizontal axis, a range of APRs shall be plotted in the lighter shaded area, starting with the average prime offer rate depicted as the lowest APR on the left, and increasing in increments of .50 percentage points, up to the APR that is the higher-priced mortgage loan threshold. The average prime offer rate shall be plotted as the lowest APR on the horizontal axis and shall be labeled as "Average Best APR" or "Avg. Best APR."

(iii) The darker shaded area to the right side of the APR representing the higher-priced mortgage loan threshold shall comprise the last third of the graph, shall contain the words "high cost zone" and the APR that is 4 percentage points higher than the higher-priced mortgage threshold shall be plotted as the highest APR on the horizontal axis. Ellipses shall separate the APR representing the higher-priced mortgage threshold and the highest APR on the graph.

(iv) The graph shall include the APR disclosed under paragraph (b)(1) of this section and:

(A) Identify its location on the horizontal axis, which shall be labeled "this loan: % APR," or

(B) If the APR disclosed under paragraph (b)(1) exceeds the highest APR on the axis, identify its location beyond the rightmost edge of the shaded graph, or

(C) If the APR disclosed under paragraph (b)(1) is below the average prime offer rate, identify its location beyond the leftmost edge of the shaded graph.

(v) The lighter and darker shaded areas shall each extend past the lowest and highest APRs depicted on the axis, with a left pointing arrow to the left of lowest APR and a right-pointing arrow to the right of the highest APR.

(3) A statement of the average prime offer rate as defined in § 226.35(a)(2), and the higher-priced mortgage loan threshold, as defined in § 226.35(a)(1), current as of the week the disclosure is produced.

(4) The average per-period savings from a 1 percentage point reduction in the APR, which shall be calculated as follows:

(i) Reduce the interest rate by 1 percentage point and compute the total of payments that would result from the reduced interest rate;

(ii) Compute the difference between the total of payments in paragraph (b)(4)(i) of this section and the total of payments for the loan disclosed under § 226.38(e)(5)(i), and divide the difference by the total number of payments required to pay the loan off by its maturity.

(5) *Exemptions*. The following transactions are exempt from the disclosures required under paragraphs (b)(2) and (b)(3) of this section:

(i) A transaction to finance the initial construction of a dwelling;

(ii) A temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; and

(iii) A reverse-mortgage transaction subject to § 226.33.

(c) *Interest rate and payment summary*. The creditor shall disclose the following information about the interest rate and periodic payments:

(1) The information in paragraphs (c)(2)--(4) of this section shall be in the form of a table, with no more than five columns, with headings, content and format substantially similar to Forms H--19(A), H--19(B), or H--19(C) in Appendix H to this part. The table shall contain only the information required in paragraphs (c)(2)--(4).

(2) *Interest rates*--(i) *Amortizing loans*. (A) For fixed-rate mortgages, the interest rate at consummation.

(B) For an adjustable-rate mortgage or a step-rate mortgage--

(*1*) The interest rate at consummation and the period of time until the first interest rate adjustment, labeled as the "introductory rate and monthly payment";

(*2*) The maximum possible interest rate at the first scheduled interest rate adjustment and the date on which the adjustment will occur, labeled as "maximum at first adjustment"; and

(3) The maximum possible interest rate at any time and the earliest date on which that rate may apply, labeled as "maximum ever."

(C) If the loan provides for payment increases in paragraph (c)(3)(i)(B) of this section, the interest rate in effect at the time the first payment increase is scheduled to occur and the date on which the increase will occur.

(ii) *Negative amortization loans*. The creditor shall disclose--

(A) The interest rate at consummation and if it will adjust after consummation, the length of time until it will adjust and the label "introductory";

(B) The maximum possible interest rate that could apply when the consumer must begin making fully amortizing payments under the terms of the legal obligation;

(C) If the minimum required payment will increase before the consumer must begin making fully amortizing payments, the maximum possible interest rate that would be in effect at the first payment increase and the date the increase is scheduled to occur; and

(D) If a second payment increase in the minimum required payment may occur before the consumer must begin making fully amortizing payments, the maximum possible interest rate that would in effect at the second payment increase and the date the increase is scheduled to occur.

(iii) *Introductory rate disclosure for amortizing adjustable-rate mortgage*. If the interest rate at consummation is less than the fully-indexed rate--

(A) The interest rate that applies at consummation and the period of time the interest rate applies;

(B) A statement that even if market rates do not change, the interest rate will increase at the first adjustment and the date of such rate adjustment; and

(C) The fully-indexed rate.

(3) *Payments for amortizing loans*--(i) *Principal and interest payments*. If all regular periodic payments will be applied to the interest accrued and the principal, for each interest rate disclosed under paragraph (c)(2)(i) of this section--

(A) The corresponding regular periodic payment of principal and interest, labeled as "principal and interest;"

(B) If the regular periodic payment may increase without regard to an interest rate adjustment, the payment that corresponds to the first increase and the earliest date on which the increase could occur;

(C) That an escrow account is required, if applicable, and an estimate of the amount of taxes and insurance, including any mortgage insurance;

(D) The sum of the amounts disclosed under paragraph (c)(3)(i)(A)--(C) of this section, with a description such as "total estimated monthly payment."

(ii) *Interest-only payments*. If the loan is an interest-only loan, for each interest rate disclosed under paragraph (c)(2)(i) of this section, the corresponding payment and--

(A) If the payment will be applied to only the interest accrued, the amount applied to interest and an indication that none of the payment is being applied to principal;

(B) If the payment will be applied to interest accrued and principal, the earliest date that payment will be required and the payment amount itemized by the amount applied to interest accrued and the amount applied to principal;

(C) The escrow information in paragraph (c)(3)(i)(C) of this section; and

(D) The sum of all amounts required to be disclosed under paragraph (c)(3)(i)(A)--(C) of this section, with a description such as "total estimated monthly payment."

(4) *Payments for negative amortization loans*. (i) The minimum payment--

(A) Required until the first payment increase or interest rate increase;

(B) That would be due at the first payment increase and the second, if any, in paragraphs (c)(2)(ii)(C) and (D) of this section; and

(C) A statement that the minimum payment covers only some interest, does not cover any principal, and will cause the loan amount to increase.

(ii) The fully amortizing payment amount at the earliest time when such a payment must be made; and, if applicable,

(iii) In addition to the payments in paragraphs (c)(4)(i) and (ii) of this section, for each interest rate required under paragraph (c)(2)(ii) of this section, the amount of the fully amortizing payment, labeled as the "full payment option," and a statement that payments cover all principal and interest.

(5) *Balloon payments*. (i) Except as provided in paragraph (c)(5)(ii) of this section, if the transaction will require a balloon payment, defined as a payment that is more than two times a regular periodic payment, the balloon payment must be disclosed separately from other regular periodic payments disclosed under this paragraph (c), in a manner substantially similar to Model Clause H--20 in Appendix H to this part.

(ii) If the balloon payment is scheduled to occur at the same time as another required payment in paragraph (c)(3) or (c)(4) of this section, then the balloon payment must be disclosed in the table.

(6) *Special disclosures for loans with negative amortization*. The following information, in close proximity to the table required in paragraph (c)(1) of this section, with headings, content and format substantially similar to Form H--19(C) in Appendix H to this part:

(i) The maximum possible interest rate, the period of time in which the interest rate could reach its maximum, the amount of estimated taxes and insurance included in each payment disclosed, and a statement that the loan offers payment options, two of which are ***shown***.

(ii) The dollar amount of the increase in the loan's principal balance if the consumer makes only the minimum required payments for the maximum possible time, and the earliest date on which the consumer must make a fully amortizing payment, assuming that the interest rate reaches its maximum at the earliest possible time.

(7) *Definitions*. For the purposes of this paragraph (c):

(i) The terms "adjustable-rate mortgage," "step-rate mortgage," "fixed-rate mortgage," and "interest-only" shall have the meaning given to them in paragraphs (a)(3)(i) and (a)(3)(ii)(D) of this section;

(ii) The term "amortizing loan" means a loan in which the regular periodic payments cannot cause the principal balance to increase under the terms of the legal obligation; the term "negative amortization" means a loan in which the regular periodic payments may or will cause the principal balance to increase under the terms of the legal obligation; and

(iii) The term "fully indexed rate" means the interest rate calculated using the index value and margin at the time of consummation.

(d) *Key questions about risk*. The creditor shall disclose the information required in paragraphs (d)(1) and (d)(2) of this section, grouped together under the heading "Key Questions About Risk," using that term:

(1) *Required disclosures*. The creditor shall disclose the following information--

(i) *Rate increases*. A statement indicating whether or not the interest rate on the loan may increase. If the interest rate on the loan may increase, a statement indicating the frequency with which the interest rate may increase and the date on which the first interest rate increase may occur.

(ii) *Payment increases*. A statement indicating whether or not the periodic payment on the loan may increase. If the periodic payment on the loan may increase, a statement indicating the date on which the first payment increase may occur. For a payment option loan, if the periodic payment on the loan may increase, statements indicating the dates on which the full and minimum payments may increase.

(iii) *Prepayment penalty*. If the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty will be imposed if the obligation is prepaid in full. If the creditor may impose a prepayment penalty, a statement of the circumstances under which and period in which the creditor may impose the penalty and the amount of the maximum penalty.

(2) *Additional disclosures*. The creditor shall disclose the following information, as applicable--

(i) *Interest-only payments*. A statement that periodic payments will be applied only toward interest on the loan, along with a statement of any limitation on the number of periodic payments that will be applied only toward interest on the loan, that such payments will cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount. For payment-option loans, a statement that the loan gives the consumer the choice to make periodic payments that cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount.

(ii) *Negative amortization*. A statement that the loan balance may increase even if the consumer makes the periodic payments, along with a statement that the minimum payment covers only a part of the interest the consumer owes each period and none of the principal, that the unpaid interest will be added to the consumer's loan amount, and that over time this will increase the total amount the consumer is borrowing and cause the consumer to lose equity in the home.

(iii) *Balloon payment*. A statement that the consumer will owe a balloon payment, along with a statement of the amount that will be due and the date on which it will be due.

(iv) *Demand feature*. A statement that the creditor may demand full repayment of the loan, along with a statement of the timing of any advance notice the creditor will give the consumer before the creditor exercises such right.

(v) *No-documentation or low-documentation loans*. A statement that the consumer's loan will have a higher rate or fees because the consumer did not document employment, income or other assets, along with a statement that if the consumer provides more documentation, the consumer could decrease the interest rate or fees.

(vi) *Shared-equity or shared-appreciation*. A statement that any future equity or appreciation in the real property or dwelling that secures the loan must be shared, along with a statement of the percentage of equity or appreciation to which the creditor is entitled, and the events that may trigger such obligation.

(3) *Format requirements*. (i) *Form of disclosures; tabular format*. The creditor shall provide the disclosures required by paragraphs (d)(1) and (2) of this section, as applicable, in the form of a table with headings, content and format substantially similar to Forms H--19(A), H--19(B), or H--19(C) in Appendix H to this part. The table shall contain only the information required or permitted by paragraphs (d)(1) and (2).

(ii) *Question and answer format*. The creditor shall provide the disclosures required by paragraphs (d)(1) through (d)(2) of this section grouped together and presented in the format of question and answer, in a manner substantially similar to Forms H--19(A), H--19(B), or H--19(C) in Appendix H to this part.

(iii) *Highlighting*. Each affirmative answer for a feature required to be disclosed under paragraphs (d)(1) and (2) of this section shall be disclosed in bold text and in all capitalized letters. Any negative answer shall be in nonbold text.

(iv) *Order*. The disclosures shall be provided, as applicable, in the following order: rate increases under § 226.38(d)(1)(i), payment increases under § 226.38(d)(1)(ii), interest-only payments under § 226.38(d)(2)(i), negative amortization under § 226.38(d)(2)(ii), balloon payment under § 226.38(d)(2)(iii), prepayment penalty under § 226.38(d)(1)(iii), demand feature under § 226.38(d)(2)(iv), no-documentation or low-documentation loans under § 226.38(d)(2)(v), and shared-equity or shared-appreciation under § 226.38(d)(2)(vi).

(e) *Information about payments*. A creditor shall disclose the following information, grouped together under the heading "More Information About ***Your*** Payments":

(1) *Rate calculation*. For an adjustable-rate mortgage, a statement labeled "Rate Calculation" that describes the method used to calculate the interest rate and the frequency of interest rate adjustments. If the interest rate that applies at consummation is not based on the index and margin that will be used to make later interest rate adjustments, the statement must include the time period when the initial interest rate expires.

(2) *Rate and payment change limits*. (i) For an adjustable-rate mortgage, any limitations on the increase in the interest rate labeled in bold type "Rate Change Limits," together with a statement of the maximum rate that may apply pursuant to such limitations during the transaction's term to maturity.

(ii) If the regular periodic payment required under the terms of the legal obligation may cause the principal balance to increase, any limitations on the increase in the minimum payment amount and an identification of the circumstances under which the minimum required payment may recast to a fully amortizing payment labeled, in bold type, "Payment Change Limits."

(3) *Escrow*. If applicable, a statement, labeled in bold type "Escrow," that explains that an escrow account is required for property taxes and insurance, that the escrow payment is an estimate that can change at any time, and that the consumer should consult the good faith estimate of settlement costs and HUD--1 settlement statement for more details. If no escrow is required, a statement of that fact and that the consumer will have to pay property taxes, homeowners', and other insurance directly.

(4) *Mortgage insurance*. If applicable, a statement, labeled in bold type, "Private Mortgage Insurance," that private mortgage insurance is required and, if applicable, whether such insurance is included in any escrow account. If other mortgage insurance is required, for example, for a transaction insured by a government entity, the statement shall be labeled, in bold type, "Mortgage Insurance."

(5) *Total payments*. A creditor shall disclose the following information, grouped together under the subheading "Total Payments," using that term:

(i) *Total payments*. The total payments amount, calculated based on the number and amount of scheduled payments in accordance with the requirements of § 226.18(g), together with a statement that the total payments is calculated on the assumption that market rates do not change, if applicable, and that the consumer makes all payments as scheduled. The statement must also specify the total number of payments and whether the total payments amount includes estimated escrow.

(ii) *Interest and settlement charges*. The *interest and settlement charges*, using that term, calculated as the finance charge in accordance with the requirements of § 226.4 and expressed as a dollar figure, together with a brief statement that the interest and settlement charges amount represents part of the total payments amount. The disclosed interest and settlement charges, and other disclosures affected by the disclosed interest and settlement charges (including the amount financed and annual percentage rate), shall be treated as accurate if the amount disclosed as the interest and settlement charges--

(A) Is understated by no more than $ 100;

(B) Is greater than the amount required to be disclosed.

(iii) *Amount financed*. The *amount financed*, using that term and expressed as a dollar figure, together with a brief statement that the interest and settlement charges and the amount financed are used to calculate the annual percentage rate. The amount financed is calculated by subtracting all prepaid finance charges from the loan amount required to be disclosed under § 226.38(a)(1).

(6) *Form of disclosures; tabular format*. The creditor must provide the disclosures required by paragraphs (e)(1) through (5) of this section in the form of a table, with headings, content, and format substantially similar to Forms H--19(A), H--19(B), or H--19(C) in Appendix H to this part. The table shall contain only the information required or permitted by paragraphs (e)(1) through (e)(5).

(f) *Additional disclosures*. The creditor shall disclose the following information, grouped together:

(1) *No obligation statement*. A statement that the consumer has no obligation to accept the loan. If the creditor provides space for a consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement.

(2) *Security interest*. A statement that the consumer could lose the home if he or she is unable to make payments on the loan.

(3) *No guarantee to refinance statement*. A statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or monthly payments.

(4) *Tax deductibility*. For a transaction secured by a dwelling, if the extension of credit may exceed the fair market value of the dwelling, the creditor shall disclose that:

(i) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes; and

(ii) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(5) *Additional information and Web site*. A statement that if the consumer does not understand any disclosure required by this section the consumer should ***ask*** questions, a statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board, and a reference to that Web site.

(6) *Format*--(i) *Location*. The statements required by paragraph (f)(1) of this section must be disclosed together. The disclosure required by paragraph (f)(2) of this section must be made together with the disclosure paragraph (f)(3) of this section. The statements required by paragraph (f)(5) of this section must be made together.

(ii) *Highlighting*. The first statement required to be disclosed by paragraphs (f)(1) and (f)(5) of this section, and the statement required to be disclosed by paragraph (f)(2), must be disclosed in bold text.

(iii) *Form of disclosures*. The creditor must provide the disclosures required by paragraphs (f)(1) through (5) of this section in a manner substantially similar to Forms H--19(A), H--19(B), or H--19(C) in Appendix H to this part.

(g) *Identification of creditor and loan originator*--(1) *Creditor*. The identity of the creditor making the disclosures.

(2) *Loan originator*. The loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 Sections 1503(3) and (12), 12 U.S.C. 5102(3) and (12).

(h) *Credit insurance and debt cancellation and debt suspension coverage*. The disclosures specified in paragraphs (h)(1)--(10) of this section, which shall be grouped together and substantially similar in headings, content and format to Model Clauses H--17(A) and H--17(C) in Appendix H to this part.

(1)(i) If the product is optional, the term "OPTIONAL COSTS," in capitalized and bold letters, along with the name of the program, in bold letters; or

(ii) If the product is required, the name of the program, in bold letters.

(2) If the product is optional, the term "STOP," in capitalized and bold letters, along with a statement that the consumer does not have to buy the product to get the loan. The term "not" shall be in bold text and underlined.

(3) A statement that if the consumer already has insurance, then the policy or coverage may not provide the consumer with additional benefits.

(4) A statement that other types of insurance may give the consumer similar benefits and are often less expensive.

(5) (i) If the eligibility restrictions are limited to age and/or employment, a statement that based on the creditor's review of the consumer's age and/or employment status at this time, the consumer would be eligible to receive benefits.

(ii) If there are other eligibility restrictions in addition to age and/or employment, a statement that based on the creditor's review of the consumer's age and/or employment status at this time, the consumer may be eligible to receive benefits.

(6) If there are other eligibility restrictions in addition to age and/or employment, such as pre-existing health conditions, a statement that the consumer may not qualify to receive any benefits because of other eligibility restrictions.

(7) If the product is a debt suspension agreement, a statement that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(8) A statement that the consumer may obtain additional information about the product at the Web site of the Federal Reserve Board, and reference to that Web site.

(9)(i) If the product is optional, a statement of the consumer's request to purchase or enroll in the optional product and a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years; or

(ii) If the product is required, a statement that the product is required, along with a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years.

(iii) The cost, month or year, loan amount, and term of the product shall be underlined.

(10) A designation for the signature of the consumer and the date of the signing.

(i) *Required deposit*. If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit. A required deposit need not include:

(1) An escrow account for items such as taxes, insurance or repairs; or

(2) A deposit that earns not less than 5 percent per year.

(j) *Separate disclosures*. The following information must be provided separately from the other information required to be disclosed under this section.

(1) *Itemization of amount financed*. The creditor shall provide one of the following disclosures:

(i) A separate written itemization of the amount financed, including:

(A) The amount of any proceeds distributed directly to the consumer.

(B) The amount credited to the consumer's account with the creditor.

(C) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons, except that the following payees may be described using general terms and need not be further identified: Public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

(D) The prepaid finance charge.

(ii) A statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired. If the consumer requests it, the creditor shall provide an itemization that satisfies paragraph (j)(1)(i) of this section at the same time as the other disclosures required by this section.

(iii) A good faith estimate of settlement costs provided under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq*. (RESPA), in connection with disclosures under this section delivered within three business days of application pursuant to § 226.19(a)(1), or the HUD--1 settlement statement provided under RESPA, in connection with disclosures under this section delivered three business days before consummation pursuant to § 226.19(a)(2). The alternative provided by this paragraph (j)(1)(iii) is available whether or not those disclosures are required by RESPA, but the HUD--1 settlement statement satisfies this requirement only if it is provided to the consumer at the time required by § 226.19(a)(2).

(2) *Rebate*. If the obligation includes a finance charge other than one computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.

(3) *Late payment*. Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

(4) *Property insurance*. A statement that the consumer may obtain property insurance from any insurer that is acceptable to the creditor.

(5) *Contract reference*. A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and about the creditor's policy regarding assumption of the obligation.

(6) *Assumption policy*. A statement whether or not a subsequent purchaser of the real property or dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.

12. Appendix G to Part 226, as amended on January 29, 2009 (74 FR 5422) is amended by:

A. Adding entries for G--16(C) and G--16(D) to the table of contents at the beginning of the appendix; and

B. Adding new Model Clause G--16(C) and new Sample G--16(D) in numerical order.

Appendix G to Part 226--Open-End Model Forms and Clauses

* * * *

G--16(C) Credit Insurance, Debt Cancellation or Debt Suspension Model Clause (§ 226.4(d)(1) and (d)(3))

G--16(D) Credit Insurance, Debt Cancellation or Debt Suspension Sample (§ 226.4(d)(1) and (d)(3))

* * * *

G--16(C) Credit Insurance, Debt Cancellation or Debt Suspension Model Clause

OPTIONAL COSTS

(*Name of Program*)

STOP. You do *not* have to buy this product to get this loan.

. If you have insurance already, this policy may not provide you with any additional benefits.

. Other types of insurance can give you similar benefits and are often less expensive.

. Based on our review of ***your*** age and/or employment status at this time, you [would][may] be eligible to receive benefits.

. [However, you may not qualify to receive any benefits because of other eligibility restrictions.]

To learn more about [credit insurance][debt cancellation coverage][debt suspension coverage], go to (*Board's Web site*).

[] Yes, I want to purchase optional (*name of program*) at an additional cost of (*cost*) per (*month or year*) for a loan of (*loan amount*) with a [policy/coverage] term of (*term in years*) years.

Signature of Borrower(s)

Date

G--16(D) Credit Insurance, Debt Cancellation or Debt Suspension Sample

OPTIONAL COSTS

Credit Life Insurance

STOP. You do *not* have to buy this product to get this loan.

. If you have insurance already, this policy may not provide you with any additional benefits.

. Other types of insurance can give you similar benefits and are often less expensive.

. Based on our review of ***<u>your</u>*** age and/or employment status at this time, you may be eligible to receive benefits.

. However, you may not qualify to receive any benefits because of other eligibility restrictions.

To learn more about credit insurance, go to *http://www.xxx.gov*.

[] Yes, I want to purchase optional credit life insurance at an additional cost of *$ 72 per month* for a loan of *$ 100,000* with a policy term of *10* years.

Signature of Borrower(s)

Date

13. Appendix H to Part 226, as amended on January 29, 2009 (74 FR 5441) is amended by:

A. Revising the table of contents at the beginning of the appendix;

B. Republishing H--4(A);

C. Removing H--4(B), H--4(C) and H--4(D);

D. Republishing H--5;

E. Removing and reserving H--6;

F. Republishing H--7;

G. Removing and reserving H--13 through H--15;

H. Revising H--16; and

I. Adding new H--4(B) through H--4(L), H--17(C) and H--17(D), and H--18 through H--23 in numerical order.

Appendix H to Part 226--Closed-End Model Forms and Clauses

* * * *

H--4(A)--Variable-Rate Model Clauses (§ 226.18(f)[(1)])

H--4(B)--[Variable-Rate Model Clauses (§ 226.18(f)(2)] Adjustable-Rate Loan Program Model Form (§ 226.19(b))

H--4(C)--[Variable-Rate Model Clauses (§ 226.19(b))] Adjustable-Rate Loan Program Model Clauses (§ 226.19(b))

H--4(D)--[Variable-Rate Model Clauses (§ 226.20(c))] Adjustable-Rate Loan Program Sample (Hybrid ARM) (§ 226.19(b))

H--4(E)--Adjustable-Rate Loan Program Sample (Interest Only ARM) (§ 226.19(b))

H--4(F)--Adjustable-Rate Loan Program Sample (Payment Option ARM) (§ 226.19(b))

H--4(G)--Adjustable-Rate Adjustment Notice Model Form (§ 226.20(c))

H--4(H)--Adjustable-Rate Adjustment Notice Model Clauses (§ 226.20(c))

H--4(I)--Adjustable-Rate Adjustment Notice Sample (Interest Only ARM) (§ 226.20(c))

H--4(J)--Adjustable-Rate Adjustment Notice Sample (Hybrid ARM) (§ 226.20(c))

H--4(K)--Adjustable-Rate Annual Notice Model Form (§ 226.20(c))

H--4(L)--Negative Amortization Monthly Disclosure Model Form (§ 226.20(d))

* * * *

H--6--[Assumption Policy Model Clause (§ 226.18(q))] Reserved

* * * *

H--13--[Mortgage with Demand Feature Sample] Reserved

H--14--[Variable-Rate Mortgage Sample (§ 226.19(b))] Reserved

H--15--[Graduated-Payment Mortgage Sample] Reserved

H--16--[Mortgage Sample (§ 226.32)] Section 32 Loan Model Clauses (§ 226.32(c))

* * * *

H--17(C)--Credit Insurance, Debt Cancellation or Debt Suspension Model Clause (§ 226.4(d)(1), (d)(3) and § 226.38(h))

H--17(D)--Credit Insurance, Debt Cancellation or Debt Suspension Sample (§ 226.4(d)(1), (d)(3), and § 226.38(h))

H--18--Creditor-Placed Property Insurance Model Clause (§ 226.20(e))

H--19(A)--Fixed Rate Mortgage Model Form (§ 226.38)

H--19(B)--Adjustable-Rate Mortgage Model Form (§ 226.38)

H--19(C)--Mortgage with Negative Amortization Model Form (§ 226.38)

H--19(D)--Fixed Rate Mortgage with Balloon Payment Sample (§ 226.38)

H--19(E)--Fixed Rate Mortgage with Interest Only Sample (§ 226.38)

H--19(F)--Step-Payment Mortgage Sample (§ 226.38)

H--19(G)--Hybrid Adjustable-Rate Mortgage Sample (§ 226.38)

H--19(H)--Adjustable-Rate Mortgage with Interest Only Sample (§ 226.38)

H--19(I)--Adjustable-Rate Mortgage with Payment Options Sample (§ 226.38)

H--20--Balloon Payment Model Clause (§ 226.38(c)(5))

H--21--Introductory Rate Model Clause (§ 226.38(c)(2)(iii))

H--22--Key Questions About Risk Model Clauses (§ 226.38(d))

H--23--Separate Disclosure Model Clauses (§ 226.38(j)(2)--(6))

* * * *

H--4(A)--Variable Rate Model Clauses

The annual percentage rate may increase during the term of this transaction if:

[the prime interest rate of (creditor) increases.]

[the balance in ***your*** deposit account falls below $.]

[you terminate ***your*** employment with (employer).]

[The interest rate will not increase above %.]

[The maximum interest rate increase at one time will bell %.]

[The rate will not increase more than once every (time period).]

Any increase will take the form of:

[higher payment amounts.]

[more payments of the same amount.]

[a larger amount due at maturity.]

Example based on the specific transaction

[If the interest rate increases by % in (time period),

[***your*** regular payments will increase to $.]

[you will have to make additional payments.]

[***your*** final payment will increase to $.]]

Example based on a typical transaction

[If ***your*** loan were for $ at % for (term) and the rate increased to % in (time period),

[***your*** regular payments would increase by $.]

[you would have to make additional payments.] [***your*** final payment would increase by $.]]

H-4(B) Adjustable-Rate Loan Program Model Form

(Name of Creditor)

(Name of Loan Program)

Introductory Period	(Length of Time) The interest rate [is discounted and] will stay the same for [a] (length of time) [introductory period]. After this initial period, [the interest rate could increase][even if market rates do not change, this rate will [increase][decrease] by %].
Frequency of Rate [and Payment] Change	(Frequency) The interest rate [and payment] will adjust (frequency) [after the introductory period].

	[The payment will adjust (frequency) [after the introductory period].]
[Index] [Formula]	[(Index)][(Formula)] After the initial (length of time) period, ***your*** interest rate will be based on [the (index) plus a margin. The (index) is published in the (source of index)] [(formula). Information about this formula can be found at (source of formula)].
Limits on [Rate] [and Payment] Changes	[% (Frequency) Cap][% Lifetime Cap] ***Your*** [interest rate][payment] can increase [no more than % in any (time period)][, and] [no more than % over the life of the loan].]
Can my interest rate increase?	YES. ***Your*** interest rate could increase at the end of the (length of time) [introductory period], and (frequency) after that.
Can my monthly payment increase?	[No.] [YES. [If ***your*** interest rate increases, ***your*** monthly payment will increase.][***Your*** minimum payment can increase after (period).]]
[Will any of my monthly payments be interest-only?]	[YES. [***Your*** (frequency) payments for the first (period) of the loan][This loan would give you the choice to make (frequency) payments that] cover the interest you owe each month, bat none of the principal. Making these (frequency) payments means ***your*** loan amount will stay the same and you will be no closer to having it paid off.]
[Even if I make my monthly payments, could my loan balance increase?)	[YES. ***Your*** minimum payment covers only part of the interest you owe each (period) and none of the principal. The unpaid interest will be added to ***your*** loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in ***your*** home.]
[Will I owe a balloon	[YES. You would owe a balloon payment due

payment?]	(period).]
Could I owe a prepayment penalty?	[No.][YES. If you pay off ***your*** loan, refinance, or sell ***your*** home within (period) you could pay a large penalty.]
(Can my lender demand full repayment at any time?)	[YES. We can demand that you pay off the full amount of ***your*** loan at any time. We would give you at least (period) notice.]
[Could my loan have a higher rate or fees if I do not document my employment, income or other assets?]	[YES. If you provide more documentation, you could decrease ***your*** interest rate or fees.)
[Do I have to share any equity I gain?]	[YES. We are entitled to % of any gain you make when you sell or refinance this property.]

For more information about ARMs, or for a list of licensed housing counselors in ***your*** area that can help you understand risks and benefits of this loan, visit (*Web site of the Federal Reserve Board*).

H-4(C)--Adjustable-Rate Loan Program Model Clauses

Interest Rate and Payment

(a) Limits on rate or payment changes

[If a rate cap prevents us from adding part of an interest rate, we can add that increase at a later adjustment date.]

(b) Conversion feature

[*Conversion Feature*

You have the option to convert ***your*** loan to a fixed rate loan for (*length of time*). If you convert ***your*** loan to a fixed rate loan, the [rate] [payment] may not increase more than (*frequency*)[or % overall]. [You may have a higher interest rate when you convert to a fixed rate loan.]

[You may have to pay fees when you convert to a fixed rate loan.]]

(c) Preferred rate

[*Preferred Rate*

The interest rate is a preferred rate that could [increase] [decrease] by % if (description of event).] [You could pay fees if [one or more] (description of event(s)) occur(s).]

H-4(D) Adjustable-Rate Loan Program Sample (Hybrid ARM)

XXX Bank

3/1 Adjustable Rate Mortgage (ARM)

	3 Years The interest rate is discounted and will stay the same for a 3-year introductory period. After this initial period, the interest rate could increase.
Frequency of Rate Change	Annually The interest rate will adjust once each year after the introductory period.
Index	LIBOR Index After the initial 3-year period, ***your*** interest rate will be based on the 1-year LIBOR Index plus a margin. The LIBOR is published daily in the Wall Street Journal.
Limits on Rate Changes	2% Annual Cap; 6% Lifetime Cap ***Your*** interest rate can increase no more than 2% in any one year, and no more than 6% over the life of the loan.

Can my interest rate increase?	YES. ***Your*** interest rate could increase at the end of the 3-year introductory period, and annually after that.
Can my monthly payment increase?	YES. If ***your*** interest rate increases, ***your*** monthly payment will increase.
Could I owe a prepayment penalty?	YES. If you pay off ***your*** loan, refinance, or sell ***your*** home within 2 years you could pay a large penalty.

For more information about ARMs, or for a list of licensed housing counselors in ***your*** area that can help you understand the risks and benefits of this loan, visit www.xxx.gov.

H-4(E) Adjustable-Rate Loan Program Sample (Interest Only ARM)

XXX Bank

5/1 Interest-Only Adjustable Rate Mortgage (ARM)

Introductory Period	5 Years The interest rate is discounted and will stay the same for a 5-year introductory period. After this initial period, the interest rate could increase.
Frequency of Rate Change	Annually The interest rate will adjust once each year after the introductory period
Index	LIBOR Index After the initial 5-year period, ***your*** interest rate will be based on the 1-year LIBOR Index plus a margin. The LIBOR is published daily in the Wall Street Journal.
Limits on Rate Changes	2% Annual Cap; 6% Lifetime Cap ***Your*** interest rate can increase no more than 2% in any one year, and no more than 6% over the life of the loan.
Can my interest rate increase?	YES. ***Your*** interest rate could increase at the end of the 5-year introductory period, and annually after that.
Can my monthly payment increase?	YES. If ***your*** interest rate increases, ***your*** monthly payment will increase.
Will any of my monthly payments be interest-only?	YES. ***Your*** monthly payments for the first 5 years of the loan cover the interest you owe each month, but none of the principal. Making these monthly payments means ***your*** loan amount will stay the same and you will he no closer to having

	it paid off.
Could I owe a prepayment penalty?	YES. If you pay off ***your*** loan, refinance, or sell ***your*** home within 2 years you could pay a large penalty.

For more information about ARMS, or for a list of licensed housing counselors in ***your*** area that can help you understand the risks and benefits of this loan, visit www.xxx.gov.

H-4(F) Adjustable-Rate Loan Program Sample (Payment Option ARM)

XXX Bank

1-Month Payment Option Adjustable Rate Mortgage (ARM)

Introductory Period	1 Month The interest rate is discounted and will stay the same for a 1-month introductory period. After this initial period, the interest rate could increase.
Frequency of Rate Change	Monthly The interest rate will adjust once each month after the introductory period.
Index	LIBOR index After the initial I-month period, ***your*** interest rate will he based on the I-year LIBOR Index plus a margin. The LIBOR is published daily in the Wall Street Journal
Limits on Rate Changes	10.5% Maximum Rate ***Your*** interest rate can increase up to a maximum of 10.5% over the life of the loan.

Can my interest rate increase?	YES. ***Your*** interest rate could increase at the end of the 1 -month introductory period, and monthly after that.
Can my monthly payment increase?	YES. ***Your*** minimum payment can increase after one year.
Will any of my monthly payments be interest-only?	YES. This loan would give you the choice to make monthly payments that cover the interest you owe each

	month, but none of the principal. Making these monthly payments means ***your*** loan amount will stay the same and you will be no closer to having it paid off.
Even if I make my monthly payments, could my loan balance increase?	YES. ***Your*** minimum payment covers only part of the interest you owe each month and none of the principal The unpaid interest will be added to ***your*** loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in ***your*** home.
Could I owe a prepayment penalty?	No.

For more information about ARMs, or for a list of licensed housing counselors in ***your*** area that can help you understand the risks and benefits of this loan, visit www.xxx.gov.

H-4(G) Adjustable-Rate Adjustment Notice Model Form

Important Changes to ***Your*** Loan Terms

The following is a summary of changes that are being made to ***your*** loan terms as a result of changes to ***your*** interest rate, effective (*date*). For more detailed information, please refer to ***your*** loan agreement(s).

The changes are as follows:

	Current Rate and Monthly Payment	**New Rate and Monthly Payment**
Interest Rate	%	%
[Principal]	[$]	[$]
[Interest]	[$]	[$]
[Taxes + Insurance (Escrow)]	[$]	[$]
Total Monthly Payment	$	$ (due on (date))

Interest Rate: ***Your*** interest rate will change due to an [increase][decrease] in the (*index*). [(%) is being added (interest carried over) to ***your*** interest rate because the rate cap prevented this increase at ***your*** last interest rate adjustment.] [We could have increased ***your*** interest rate another % but did not because a rate cap applied. We can add this to ***your*** interest rate when the interest rate adjusts again on (*date*).]

[Maximum] [Rate] [Payment] [Limits]: [***Your*** [rate] [payment] can change each (*frequency*), by no more than %.] [***Your*** rate can not go higher than % over the life of the loan.]

New Monthly Payment: [***Your*** new payment will cover all of ***your*** interest and some of ***your*** loan's principal, and therefore will reduce ***your*** loan balance.]

Loan Balance: ***Your*** new loan balance as of (*date of rate adjustment*) is $.

[**Prepayment Penalty**: If you pay off ***your*** loan, refinance or sell ***your*** home before (*date*) you could pay a penalty of up to $.]

If you have trouble paying ***your*** mortgage, contact us at (*telephone number*) [or (*email address*)] as soon as possible.

If you would like to talk with a licensed housing counselor, you can find a list of counselors in ***your*** area on the (*Web site of the U.S. Department of Housing and Urban Development*).

H-4(H) Adjustable-Rate Adjustment Notice Model Clauses

Disclosure of New Monthly Payment

Important Changes to ***Your*** Loan Terms [***Your*** new payment covers all of the interest that you owe this month, but none of the principal, and therefore will not reduce ***your*** loan balance. The payment needed to fully pay off ***your*** loan by the end of the loan term at the new interest rate is $.]

[***Your*** new payment covers only part of the interest that you owe this month, and therefore unpaid interest will be added to ***your*** loan balance. The payment needed to fully pay off ***your*** loan by the end of the loan term at the new interest rate is $.]

[***Your*** new payment covers only part of the interest that you owe this month, and therefore the term of ***your*** loan will increase. The payment needed to fully pay off ***your*** loan by the end of the previous loan term at the new interest rate is $.]

H-4(I) Adjustable-Rate Adjustment Notice Sample (Interest Only ARM)

Important Changes to ***Your*** Loan Terms

The following is a summary of changes that are being made to ***your*** loan terms as a result of changes to ***your*** interest rate, effective April 1, 2009. For more detailed information, please refer to ***your*** loan agreement(s).

The changes are as follows:

	Current Rate and Monthly Payment	New Rate and Monthly Payment

	Current Rate and Monthly Payment	**New Rate and Monthly Payment**
Interest Rate	6.875%	7.75%
Principal	-none-	$ 218.99
Interest	$ 1,145.83	$ 1,291.67
Taxes + Insurance (Escrow)	$ 345.00	$ 400.00
Total Monthly Payment	$ 1,490.83	$ 1,910.66 (due on May 1, 2009)

Interest Rate: ***Your*** interest rate will change due to an increase in the 1-year LIBOR index.

Rate Limits: ***Your*** rate can change each year, by no more than 2.00%. ***Your*** rate can not go higher than 12.875% over the life of the loan.

New Monthly Payment: ***Your*** new payment will cover all of ***your*** interest and some of ***your*** loan's principal, and therefore will reduce ***your*** loan balance.

Loan Balance: ***Your*** new, loan balance as of April 1, 2009 is $ 200,000.

If you have trouble paying ***your*** mortgage, contact us at 1-800-XXX-XXXX or www.xxx.com as soon as possible.

If you would like to talk with a licensed housing counselor, you can find a list of counselors in ***your*** area on the U.S. Department of Housing and Urban Development's website at www.xxx.gov.

H-4(J) Adjustable-Rate Adjustment Notice Sample (Hybrid ARM)

Important Changes to *Your* Loan Terms

The following is a summary of changes that are being made to ***your*** loan terms as a result of changes to ***your*** interest rate, effective April 1, 2009. For more detailed information, please refer to ***your*** loan agreement(s).

The changes areas follows:

	Current Rate and Monthly Payment	**New Rate and Monthly Payment**
Interest Rate	5.625%	5.125%
Total Monthly Payment	$ 1,151.31	$ 1,093.27 (due on May 1, 2009)

Interest Rate: ***Your*** interest rate will change due to a decrease in the 1-year LIBOR index.

Rate Limits: ***Your*** rate can change each year by no more than 2.00%. ***Your*** rate can not go higher than 11.625% over the life of the loan.

New Monthly Payment: ***Your*** new payment will cover all of ***your*** interest and some of ***your*** loan's principal, and therefore will reduce ***your*** loan balance.

Loan Balance: ***Your*** new loan balance as of April 1, 2009 is $ 191,888.37.

Prepayment Penalty: If you pay off ***your*** loan, refinance or sell ***your*** home before May 1, 2010 you could pay a penalty of up to $ 4,323.13.

If you have trouble paying ***your*** mortgage, contact us at 1-800-XXX-XXXX as soon as possible.

If you would like to talk with a licensed housing counselor, you can find a list of counselors in ***your*** area on the U.S. Department of Housing and Urban Development's (HUD) website at www.xxx.gov.

H-4(K) Adjustable-Rate Annual Notice Model Form

Important Interest Rate Notice

Your interest rate changed between (*date period begins*) and (*date period ends*) without changing ***your*** payment.

Highest and Lowest Rates: The lowest interest rate this (*period*) was % and the highest interest, rate was %. [This includes a % interest rate increase we did not make previously because a rate cap applied.] [We could have increased ***your*** interest rate another % but did not because a rate cap applied.] We can add this to ***your*** interest rate when the interest rate adjusts again on (*date*).]

Maximum Rate: ***Your*** rate can not go higher than % over the life of the loan.

Loan Balance: ***Your*** new loan balance as of (*last date of period*) is $. [**Prepayment Penalty**: If you pay off ***your*** loan, refinance or sell ***your*** home before (*date*) you could pay a penalty of up to $.]

If you have trouble paying ***your*** mortgage, contact us at (*telephone number*) [or (*email address*)] as soon as possible.

If you would like to talk with a licensed housing counselor, you can find a list of counselors in ***your*** area on the (*Web site of the U.S. Department of Housing and Urban Development*).

* * * *

H-4(L) Negative Amortization Monthly Disclosure Model Form

Your Payment Options This Month

Payment Option	This Payment Covers	If you make this payment this month
[] $ Full Payment (recommended to reduce loan balance)	All the interest that you owe this month, plus some principal.	***Your*** balance will decrease. You will be closer to having it paid off.
[] $ Interest-Only Payment	All the interest that you owe this month, but none of the principal.	***Your*** balance will stay the same. You will be no closer to having it paid off.
[] $ Minimum Payment	Just part of the interest that you owe this month.	$ in unpaid interest will be added to ***your*** loan balance this month. You are borrowing more money, and you will be losing equity in ***your*** home.

Payment Option	If you make this payment every month
[] $ Full Payment (recommended to reduce loan balance)	***Your*** balance will steadily decrease and you will pay off ***your*** loan on schedule.
[] $ Interest-Only Payment	As early as (date), you will have to make monthly payments much larger than today's "Full Payment" amount.
[] $ Minimum Payment	As early as (date), you will have to make payments significantly large than today's "Full Payment" amount to pay off ***your*** loan.

* * * *

H--5--Demand Feature Model Clauses

This obligation [is payable on demand.][has a demand feature.]

[All disclosures are based on an assumed maturity of one year.]

H--6--[Assumption Policy Model Clause] Reserved

[Assumption: Someone buying ***your*** house [may, subject to conditions, be allowed to][cannot] assume the remainder of the mortgage on the original terms.]

H--7--Required Deposit Model Clause

The annual percentage rate does not take into account ***your*** required deposit.

* * * *

H--13--[Mortgage With Demand Feature Sample] Reserved

H--14--[Variable-Rate Mortgage Sample] Reserved

H--15--[Graduated-Payment Mortgage Sample] Reserved

H--16--[Mortgage Sample] Section 32 Loan Model Clauses

[You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.

If you obtain this loan, the lender will have a mortgage on ***your*** home.

YOU COULD LOSE ***YOUR*** HOME, AND ANY MONEY YOU HAVE PUT INTO IT, IF YOU DO NOT MEET ***YOUR*** OBLIGATIONS UNDER THE LOAN.]

IF YOU ARE UNABLE TO MAKE THE PAYMENTS ON THIS LOAN, YOU COULD LOSE ***YOUR*** HOME.

You have no obligation to accept this loan. ***Your*** signature below only confirms that you have received this form.

You are borrowing $ (optional credit insurance is [] is not [] included in this amount).

The annual percentage rate on ***your*** loan will be: %.

Your regular (*frequency*) payment will be: $.

[At the end of ***your*** loan, will still owe use: $ (*balloon payment*).]

[***Your*** interest rate may increase. Increase in the interest rate could increase ***your*** payment. The highest amount ***your*** payment could increase is to $.]

* * * *

H--17(C)--Credit Insurance, Debt Cancellation or Debt Suspension Model Clause

[OPTIONAL COSTS]

(*Name of Program*)

[STOP. You do not have to buy this product to get this loan.]

. If you have insurance already, this policy may not provide you with any additional benefits.

. Other types of insurance can give you similar benefits and are often less expensive.

. Based on our review of ***your*** age and/or employment status at this time, you [would][may] be eligible to receive benefits.

. [However, you may not qualify to receive any benefits because of other eligibility restrictions.]

To learn more about [credit insurance][debt cancellation coverage][debt suspension coverage], go to (*Web site of the Federal Reserve Board*).

[] [Yes, I want to purchase optional (*name of program*) at an additional cost of (*cost*) per (*month or year*) for a loan of (*loan amount*) with a (policy/coverage) term of (*term in years*) years.]

[(*Name of program*) is required and costs (*cost*) per (*month or year*) for a loan of (*loan amount*) with a [policy/coverage] term of (*term in years*) years.]

Signature of Borrower(s)

Date

H--17(D)--Credit Insurance, Debt Cancellation or Debt Suspension Sample

OPTIONAL COSTS

Credit Life Insurance

STOP. You do *not* have to buy this product to get this loan.

. If you have insurance already, this policy may not provide you with any additional benefits.

. Other types of insurance can give you similar benefits and are often less expensive.

. Based on our review of ***your*** age and/or employment status at this time, you may be eligible to receive benefits.

. However, you may not qualify to receive any benefits because of other eligibility restrictions.

To learn more about credit insurance, go to *www.xxx.gov*.

[] Yes, I want to purchase optional credit life insurance at an additional cost of *$ 72* per *month* for a loan of *$ 100,000* with a policy term of *10* years.

Signature of Borrower(s)

Date

H--18--Creditor-Placed Property Insurance Model Clause

(*Creditor name and contact information*)

Re: (loan number) and (property address/ description)

Under our agreement, you must maintain adequate insurance coverage on the property. Our records ***show*** that ***your*** insurance policy has expired or been cancelled, and we do not have evidence that you have obtained new insurance coverage. Under our agreement, we can buy property insurance on ***your*** behalf and charge you for the cost as early as (*date*). Therefore, we request that you provide us with proof of insurance by (*description of procedure for providing proof of insurance*).

Please consider the following facts about the insurance policy that we buy:

. The cost of this insurance policy is $ per year and is probably significantly higher than the cost of insurance you can buy through ***your*** own insurance agent.

. This insurance policy may not provide as much coverage as an insurance policy you buy through ***your*** own insurance agent].

If you have any questions, please contact us at (*contact information*).

H-19(A) Fixed Rate Mortgage Model Form

(*Name of Creditor*)

(*Loan Originator Unique Identifier*)

LOAN SUMMARY

Loan Amount:	$
Loan Term:	(length of term)
Loan Type and Features:	Fixed Rate Mortgage . [Includes [interest-only payments][step-payments]]
Total Settlement Charges:	$. [$ of these charges are already included in ***your*** loan amount above.] . [This total does not include a down payment. See ***your*** Good Faith Estimate or HUD-1 for details.]

[Prepayment Penalty:	Up to $ if you pay off ***your*** loan, refinance, or sell this property within (period).]

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: % APR

Avg. Best APR

high cost zone

How **does this loan compare**? For the week of (*date*), the average APR on similar [but]conforming loans offered to applicants with excellent credit was %. Today, an APR of % or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a % reduction in the APR could save you an average of $ each month.

INTEREST RATE AND PAYMENT SUMMARY

	Rate & Monthly Payment
Interest Rate	%
Principal + Interest Payment	$
Est. Taxes + Insurance (Escrow)	$
. [Includes [Private] Mortgage Insurance]	$
Total Est. Monthly Payment	$

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	No.
Can my monthly payment increase?	[No.][YES. ***Your*** payment can increase beginning in (date).]
Could I owe a prepayment penalty?	[No.][YES. If you pay off ***your*** loan, refinance, or sell ***your*** home within (period) you could pay a penalty of up to $]

MORE INFORMATION ABOUT *YOUR* PAYMENTS

[Payment Change Limits]	[***Your*** minimum payments due cannot increase more than % each

	(period) until (description of recast event). [When this happens][Beginning in (period)], you must make full monthly payments that cover all principal and interest owed on the loan.]
Escrow	[An escrow account is required for property taxes and insurance (such as homeowner's insurance). ***Your*** escrow payment is an estimate and can change at any time. See ***your*** Good Faith Estimate or HUD-1 form for more details.][An escrow account is not required on this loan. You must pay ***your*** property taxes, homeowners, and other insurance on ***your*** own.]
[[Private] Mortgage Insurance]	[[Private] Mortgage Insurance [(PMI)] is required for this loan. It is included in ***your*** escrow.]
Total Payments	If you made all payments as scheduled, you would make (number) payments totaling $ [, including estimated escrow]. Of this amount, $ would go to interest and settlement charges. This amount, and ***your*** amount financed of $, are used to calculate ***your*** APR.

--> You have no obligation to accept this loan. [***Your*** signature below only confirms that you have received this form.]

--> If you are unable to make the payments on this loan, you could lose ***your*** home. There is no guarantee that you will be able to refinance to lower ***your*** rate and payments.

--> [If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.]

--> If you do not understand any part of this form, ***ask*** questions. For more information, go to (*Web site of the Federal Reserve Board*).

H-19(B) Adjustable-Rate Mortgage Model Form

(Name of Creditor)

(Loan Originator Unique Identifier)

LOAN SUMMARY

Loan Amount:	$
Loan Term:	(length of term)
Loan Type and Features:	[Step-Rate Mortgage][Adjustable Rate Mortgage]: rate [is fixed for first (period), then] adjusts every (frequency).] . [Includes [interest-only payments][step-payments]]
Total Settlement Charges:	$. [$ of these charges are already included in ***your*** loan amount above.] . [This total does not include a down payment. See ***your*** Good Faith Estimate or HUD-1 for details.]
[Prepayment Penalty:	Up to $ if you pay off ***your*** loan, refinance, or sell this property within (period).]

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **% APR**

Avg. Best APR   high cost zone

How **does this loan compare**? For the week of (date), the average APR on similar [but] conforming loans offered to applicants with excellent credit was %. Today, an APR of % or above is considered high cost and is usually available to applicants with poor credit history.

How **much could I save by lowering my APR**? For this loan, a % reduction in the APR could save you an average of $ **each month**.

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first (period))	**[MAXIMUM at FIRST ADJUSTMENT (date)]**	**MAXIMUM EVER (as early as (date))**
Interest Rate	%	[%]	%
Principal + Interest Payment	$	[$]	$
Est. Taxes + Insurance [(Escrow)]	[$]	[$]	[$]
. [Includes [Private] Mortgage Insurance]	[$]	[$]	[$]
Total Est. Monthly Payment	$	[$]	$

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	[No.][YES. ***Your*** interest rate can increase (frequency) beginning in (date)]
Can my monthly payment increase?	[No][YES ***Your*** payment can increase beginning in (date).]
Could I owe a prepayment penalty?	[No][YES. If you pay off ***your*** loan, refinance, or sell ***your*** home within (period) you could pay a penalty of up to $.]

MORE INFORMATION ABOUT *YOUR* PAYMENTS

Rate Calculation	[When the (length of time) introductory period ends] ***your*** rate will be determined (frequency) based on the (identification of index) (the market rate) plus %.]
Sate Change Limits]	[When the (length at time) introductory period ends] ***your*** interest rate can increase up to % from (period) to the next, and no

	more than % total for the life of the loan, which would result in a maximum ever rate of %.]
Escrow	(An escrow account is required for property taxes and insurance (such as homeowner's insurance). ***Your*** escrow payment is an estimate and can change at any time. See ***your*** Good Faith Estimate or HUD-1 form for nom details] [An escrow account is not required on this loan. You must pay ***your*** property taxes, homeowners, and other insurance on ***your*** own.]
[[Private] Mortgage Insurance]	[[Private] Mortgage Insurance [(PMI)] Is required for this loan. It is included in ***your*** escrow.]
Total Payments	If [the market rate did not change and] you made an payments as scheduled, you would make (number) payments totaling $ [, including estimated escrow]. Of this amount, $ would go to interest and settlement charges. This amount, and ***your*** amount financed of $, are used to calculate ***your*** APR.

--> You have no obligation to accept this loan. [***Your*** signature below only confirms that you have received this form.)

--> If you are unable to make the payments on this loan, you could lose ***your*** home. There is no guarantee that you will be able to refinance to lower ***your*** rate and payments.

--> [If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.]

--> If you do not understand any part of this form, ***ask*** questions. For more information, go to (Web site of the *Federal Reserve Board*).

H-19(C) Mortgage with Negative Amortization Model Form

(*Name of Creditor*)

(*Loan Originator Unique Identifier*)

LOAN SUMMARY

Loan Amount	**$**
Loan Term:	(length of term)
Loan Type and Features:	[Fixed Rate Mortgage][Step-Rate Mortgage] [Adjustable Rate Mortgage]: rate [is fixed for first (period), then] adjusts every (frequency).] . [includes [Step-Payments][Payment Options][Negative Amortization]]
Total Settlement Charges:	$. [of these charges are already included in ***your*** loan amount above.] . [This total does not include a down payment. See ***your*** Good Faith Estimate or HUD-1 for details.]
[Prepayment Penalty:	Up to $ if you pay off ***your*** loan, refinance, or sell this property within (period).]

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges:	% APR	Avg. Best APR	high cost zone

How **does this loan compare**? For the week of (*date*), the average APR on similar [but]conforming loans offered to applicants with excellent credit was %. Today, an APR of % or above is considered high cost and is usually available to applicants with poor credit history.

How **much could I save by lowering my APR**? For this loan, a % reduction in the APR could save you an average of $ each month.

INTEREST RATE AND PAYMENT SUMMARY

[This loan offers you several monthly payment options. The table below ***shows*** you what ***your*** payments would be under two of these options if the interest rate reached its maximum of % in the (period) of this loan.]

[All payments ***shown*** in the table include $ for estimated taxes and insurance [(escrow)].

	(Date) [((period) [intro])]	**[(Date) (1st adjustment)]**	**[(Date) (2nd adjustment)]**	**(Date) + every (period) after**
Maximum Interest Rate	% [(intro rate)]	[%]	[%]	% (max. ever)
Full Payment Option Monthly payments cover at principal and interest.	$	[$]	[$]	$
Minimum Payment Option Initial monthly payments cover no principal and only some interest and increase ***your*** loan amount.	$	[$]	[$]	$

You will borrow an additional $ by (date)

If you make only minimum payments on this loan.

Can my interest rate increase?	[No.] [YES. ***Your*** interest rate can increase (frequency) beginning in (dale).]
Can my monthly payment increase?	[No.] [YES. ***Your*** [full] payment can increase beginning in (date). [***Your*** minimum payment can increase beginning in (date).]]
Could I owe a prepayment penalty?	[No] [YES. If you pay off ***your*** loan, refinance, or sell ***your*** home within (period) you could pay a penalty of up to $.]

Rate Calculation	[When the (length of time) introductory period ends,] ***<u>your</u>*** rate will be determined (frequency) based on the (identification of index) (the market rate) plus %,]
[Rate Change Limits]	[When the (period) introductory period ends,] ***<u>your</u>*** interest rate can increase up to [% from (period) to the next, and no more than % total][a maximum of %] for the life of the loan[, which would result in a maximum ever rate of %).]
[Payment Change Limits]	***<u>Your</u>*** minimum payments due [will increase][cannot increase more than] % each (period) with (description of recast event). [When this happens][Beginning in (period)], you must make full monthly payments that cover all principal and interest owed on the loan.)
Escrow	[An escrow account is required for property taxes and Insurance (such as homeowner's Insurance). ***<u>Your</u>*** escrow payment is an estimate and can change at any time. See ***<u>your</u>*** Good Faith Estimate or HUD-1 form for more details.][An escrow account is not required on this loan. You must pay ***<u>your</u>*** property taxes, homeowners, and other Insurance on ***<u>your</u>*** own.]
[[Private] Mortgage Insurance	[Private] Mortgage Insurance [(PMI)] is required for this loan. It is included in ***<u>your</u>*** escrow.]

Total Payments	If [the market rate did not change and] you made all payments as scheduled, you would make (number) payments totaling $ [, including estimated escrow]. Of this amount, $ would go to interest and settlement charges. This amount, and ***your*** amount financed of $, are used to calculate ***your*** APR.

--> You have no obligation to accept this loan. [***Your*** signature below only confirms that you have received this form.]

--> If you are unable to make the payments on this loan, you could lose ***your*** home. There is no guarantee that you will be able to refinance to lower ***your*** rate and payments.

--> [If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.]

--> If you do not understand any part of this form, ***ask*** questions. For more information, go to (*Web site of the Federal Reserve Board*).

H-19(D) Fixed Rate Mortgage with Balloon Payment Sample

Jane Smith
1234 Main Street,
Anytown, ST 12345

March 26, 2009

XXX Bank

Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount	$ 210,000.00
Loan Term:	3 years
Loan Type and Features:	Fixed Rate Mortgage
Total Settlement Charges:	$ 7,472.00 . $ 3,000.00 of these charges are already included in ***your*** loan amount above. . This total does not include a down payment.

See ***your*** Good Faith Estimate or HUD-1 for details.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charge: 6.50% APR

How does this loan compare? For the week of March 23, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was 5.66%. Today, an APR of 7.16% or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a 1% reduction in the APR could save you an average of $ 175 each month.

INTEREST RATE AND PAYMENT SUMMARY

	Rate & Monthly Payment
Interest Rate	5.50%
Principal + Interest Payment	$ 1,192.36
Est. Taxes + Insurance (Escrow)	not included
Total Est. Monthly Payment	$ 1,192.36
Final Balloon Payment due March 2012: $ 202,217.84	

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	No.
Can my monthly payment increase?	No.
Will I owe a balloon payment?	YES. You will owe a balloon payment of $ 202,217.84, due in March 2012.
Could I owe a prepayment penalty?	No.
Do I have to share any equity I gain?	YES. We are entitled to 50% of any gain you make when you sell or refinance this property.

MORE INFORMATION ABOUT *YOUR* PAYMENTS

Escrow	An escrow account is not required on this loan. You must pay ***your*** property taxes, homeowners, and other insurance on ***your*** own.
Total Payments	If you made all payments as scheduled, you would make 36 payments totaling $ 243,950.44. Of this amount, $ 39,530.44 would go to interest and settlement charges.

This amount, and ***your*** amount financed of

$ 204,420.00, are used to calculate ***your*** APR.

--> You have no obligation to accept this loan. ***Your*** signature below only confirms that you have received this form.

--> If you are unable to make the payments on this loan, you could lose ***your*** home. There is no guarantee that you will be able to refinance to lower ***your*** rate and payments.

--> If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

--> If you do not understand any part of this form, ***ask*** questions. For more information, go to www.xxx.gov.

Applicant's Signature

Date

H-19(E) Fixed Rate Mortgage with Interest Only Sample

Jane Smith
1234 Main Street
Anytown, ST 12345

February 26, 2009

XXX Bank

Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount:	$ 200,000.00
Loan Term:	30 years
Loan Type and	Fixed Rate Mortgage
Features:	. Includes interest-only payments
Total Settlement	$ 7,654.00
Charges:	. This total does not include a down payment. See
	your Good Faith Estimate or HUD-1 for details.

ANNUAL PERCENTAGE RATE (APR)

[SEE FIGURE IN ORIGINAL]

How does this loan compare? For the week of February 23, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was 6.19%. Today, an APR of 7.69% or above is considered high cost and is usually offered to applicants with poor credit.

How much could I save by lowering my APR? For this loan, a 1 % reduction in the APR could save you an average of $ 132 each month.

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first 10 years)	**MAXIMUM EVER (as early as 2019)**
Interest Rate	6.50%	6.50%
Principal Payment	-none-	$ 407.82
Interest Payment	$ 1,083.33	$ 1,083.33
Est. Taxes + Insurance (Escrow)	$ 279.00	$ 279.00
Total Est. Monthly Payment	$ 1,362. 33	$ 1,770.15

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	No.
Can my monthly payment increase?	YES. ***Your*** payment can increase beginning in April 2019.
Will any of my monthly payments be interest-only?	YES. ***Your*** monthly payments for the first 10 years of the loan cover the interest you owe each month, but none of the principal. Making these monthly payments means ***your*** loan amount will stay the same and you will be no closer to having it paid off.
Could I owe a prepayment penalty?	No.

MORE INFORMATION ABOUT *YOUR* PAYMENTS

Escrow	An escrow account is required for property taxes and insurance (such as homeowner's insurance). ***Your*** escrow payment is an estimate and can change at any time. See ***your*** Good Faith Estimate or HUD-1 form for more details.

Total Payments	If you made all payments as scheduled, you would make 360 payments totaling $ 588,313.89, including estimated escrow. Of this amount, $ 293,757.89 would go to interest and settlement charges.
	This amount, and ***your*** amount financed of
	$ 194,116.00, are used to calculate ***your*** APR.

--> **You have no obligation to accept this loan**. ***Your*** signature below only confirms that you have received this form.

--> **If you are unable to make the payments on this loan, you could lose *your* home**. There is no guarantee that you will be able to refinance to lower ***your*** rate and payments.

--> **If you do not understand any part of this form, *ask* questions**. For more information, go to www.xxx.gov.

Applicant's Signature

Date

H-19(F) Step-Payment Mortgage Sample

Jane Smith

1234 Main Street,

Anytown, ST 12345

February 4, 2009

XXX Bank

Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount:	$ 200,000.00
Loan Term:	30 years
Loan Type and Features:	Fixed Rate Mortgage . Includes Step-Payments . Includes Negative Amortization
Total Settlement Charges:	$ 8,010.00 . This total does not include a

down payment. See ***__your__*** Good
Faith Estimate or HUD-1 for details.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **6.83% APR**

[SEE ILLUSTRATION IN ORIGINAL]

__How__ **does this loan compare**? For the week of February 2, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was **5.75%**. Today, an APR of **7.25%** or above is considered high cost and is usually available to applicants with poor credit history**.**

__How__ **much could I save by lowering my APR**? For this loan, a 1% reduction in the APR could save you an average of $ 138 each month.

INTEREST RATE AND PAYMENT SUMMARY

All payments ***__shown__*** in the table include **$ 305** for estimated taxes and insurance (escrow).

	March 2009	**March 2010 (1st adjustment)**
Interest Rate	6.5%	6.5%
Minimum Payment		
Initial monthly payments cover no principal and only some interest and increase ***__your__*** loan amount.	$ 1,318.37	$ 1,358.90

	March 2011 (2nd adjustment)	**March 2017 + every month after**
Interest Rate	6.5%	6.5%
Minimum Payment		
Initial monthly payments cover no principal and only some interest and increase ***__your__*** loan amount.	$ 1,401.06	$ 1,669.69

You will borrow an additional ***$ 1,286.87*** *by February 2011 if you make only minimum payments on this loan*.

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	No.
Can my monthly payment increase?	YES. ***Your*** payment can increase beginning in March 2010.
Even if I make my monthly payments, could my loan balance increase?	YES. ***Your*** minimum payment covers only part of the interest You owe each month and none of the principal. The unpaid interest will be added to ***your*** loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in ***your*** home.
Could I owe a prepayment penalty?	No.

MORE INFORMATION ABOUT *YOUR* PAYMENTS

Payment Change Limits	***Your*** minimum payments due will increase 4% each year for the first 7 years. Beginning in year 8, you must make full monthly payments that cover all principal and interest owed on the loan.
Escrow	An escrow account is required for property taxes and insurance (such as homeowner's insurance). ***Your*** escrow payment is an estimate and can change at any time. See ***your*** Good Faith Estimate or HUD-1 form for more details.
Total Payments	If you made all payments as scheduled, you would make 360 payments totaling $ 582,126.45, including estimated escrow. Of this amount, $ 279,444.45 would go to interest and settlement charges. This amount, and ***your*** amount financed of $ 192,882, are used to calculate ***your*** APR.

. You have no obligation to accept this loan. ***Your*** signature below only confirms that you have received this form.

. If you are unable to make the payments on this loan, you could lose ***your*** home. There is no guarantee that you will be able to refinance to lower ***your*** rate and payments.

. If you borrow more than ***<u>your</u>*** home is worth, the interest on the extra amount may not be deductible for Federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

. If you do not understand any part of this form, ***<u>ask</u>*** questions. For more information, go to www.xxx.gov.

Applicant's Signature

Date

<u>H-19(G) Hybrid Adjustable-Rate Mortgage Sample</u>

LOAN SUMMARY

Loan Amount	$ 200,000.00
Loan Term:	30 years
Loan Type and Features:	Adjustable Rate Mortgage: rate is fixed for first 3 years, then adjusts every year.
Total Settlement Charges:	$ 6,642.00 . $ 2,000.00 of these charges are already included in ***<u>your</u>*** loan amount above . This total does not include a down payment. See ***<u>your</u>*** Good Faith Estimate or HUD-1 for details.
Prepayment Penalty:	Up to $ 4,000.00 if you pay off ***<u>your</u>*** loan, refinance, or sell this property within 2 years.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **7.41% APR**

[SEE ILLUSTRATION IN ORIGINAL]

<u>How</u> **does this loan compare?** For the week of February 23, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was 6.50%. Today, an APR of 8.00% or above is considered high cost and is usually available to applicants with poor credit history.

<u>How</u> **much could I save by lowering my APR?** For this loan, a 1% reduction in the APR could save you an average of **$ 135 each month**.

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY	MAXIMUM	MAXIMUM
	Rate & Monthly	**at FIRST**	**EVER**

	Payment (for first 3 years)	ADJUSTMENT (March 2012)	(as early as 2014)
Interest Rate	5.625%	7.625%	11.625%
Principal + Interest Payment	$ 1,151.31	$ 1,397.15	$ 1,924.97
Est. Taxes + Insurance (Escrow)	$ 241.00	$ 241.00	$ 241.00
Total Est. Monthly Payment	$ 1,392.31	$ 1,638.15	$ 2,165.97

Introductory Rate Notice

You have a discounted introductory rate of 5.625% that ends after 3 years.
In the fourth year, even if market rates do not change, this rate will increase to 7.625%.

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	YES. ***Your*** interest rate can increase annually beginning in March 2012.
Can my monthly payment increase?	YES. ***Your*** payment can Increase beginning in March 2012.
Could I owe a prepayment penalty?	YES. If you pay off ***your*** loan, refinance, or sell ***your*** home within 2 years you could pay a penalty of up to $ 4,000.

MORE INFORMATION ABOUT *YOUR* PAYMENTS

Rate Calculation	When the 3-year introductory period ends, ***your*** rate will be determined annually based on the one-year LIBOR index (the market rate) plus 2125%.
Rate Change Limits	When the 3-year Introductory period ends, ***your*** interest rate can increase up to 2.00% from one year to the next, and no more than 6.00% total for the life of the loan, which would result in a maximum ever rate of 111.625%.
Escrow	An escrow account a required for property taxes and insurance (such as homeowner's insurance) ***Your*** escrow payment is an estimate and can change at any time. See ***your*** Good Faith Estimate or HUD-1 form for more details.

Total Payments	If the market rate did not change and you made all payments as scheduled, you would make 360 payments totaling $ 585,778.09, including estimated escrow. Of this amount, $ 303,767.47 would go to interest and settlement charges. This amount, and ***your*** amount financed of $ 195,250.00, are used to calculate ***your*** APR.

--> You have no obligation to accept this loan. ***Your*** signature below only confirms that you have received this form.

--> If you are unable to make the payments on this loan, you could lose ***your*** home. There is no guarantee that you will be able to refinance to lower ***your*** rate and payments.

--> If you do not understand any part of this form, ***ask*** questions. For more information, go to www.xxx.gov.

Applicant's Signature

Date

Jane Smith

1234 Main Street,

Anytown, ST 12345

February 26, 2009

XXX Bank

Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount:	$ 200,000.00
Loan Term:	30 years
Loan Type and Features:	Adjustable Rate Mortgage: rate is fixed for first 5 years, then adjusts every year. . includes interest-only payments
Total Settlement Charges:	$ 8,625.00 . $ 2,000.00 of these charges are already included in ***your*** loan amount above. . This total does not include a down payment See ***your*** Good Faith Estimate or HUD-1 for details.
Prepayment Penalty:	Up to $ 4,000.00 if you pay off ***your*** loan, refinance, or sell this property within 2 years.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **7.59% APR**

[SEE ILLUSTRATION IN ORIGINAL]

How does this loan compare? For the week of February 23, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was 4.09%. Today, an APR of 5.50% or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a 1% reduction in the APR could save you an average of $ 133 each month.

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate Monthly payment (for first 5 years)	**MAXIMUM at FIRST ADJUSTMENT (April 2014)**
Interest Rate	6.875%	8.875%
Principal Payment	-none-	$ 182.14
Interest Payment	$ 1,145.83	$ 1,479.17
Est. Taxes + Insurance (Escrow)	$ 332.00	$ 332.00
. Includes Private Mortgage Insurance		
Total Est. Monthly Payment	$ 1,477.83	$ 1,993.31

	MAXIMUM EVER (as early as 2016)
Interest Rate	12.875%
Principal Payment	$ 116.64
Interest Payment	$ 2,101.91
Est. Taxes + Insurance (Escrow)	$ 297.00
. Includes Private Mortgage Insurance	
Total Est. Monthly Payment	$ 2,515.55

Introductory Rate Notice
You have a discounted introductory 6.875% that ends after 5 years.
In the sixth year, even if market rates do not change, this rate will increase to 7.00%.

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?

YES. ***Your*** interest rate can increase

	annually beginning in April 2014.
Can my monthly payment increase?	YES. ***<u>Your</u>*** payment can increase beginning in April 2014.
Will any of my monthly payments be interest-only?	YES. ***<u>Your</u>*** monthly payments for the first 5 years of the loan cover the interest you owe each month, but none of the principal. Making these monthly payments means ***<u>your</u>*** loan amount will stay the same and you will be no closer to having it paid off.
Could I owe a prepayment penalty?	YES. If you pay off ***<u>your</u>*** loan, refinance, or sell ***<u>your</u>*** home within 2 years you could pay a penalty of up to $ 4,000.

MORE INFORMATION ABOUT *<u>YOUR</u>* PAYMENTS

Rate Calculation	When the 5-year introductory period ends, ***<u>your</u>*** rate will be determined annually based on the one-year LIBOR index (the market rate) plus 5.00%.
Rate Change Limits	When the 5-year introductory period ends, ***<u>your</u>*** interest rate can increase up to 2.00% from one year to the next, and no more than 6.00% total for the life of the loan, which would result in a maximum ever rate of 12.875%.
Escrow	An escrow account is required for property taxes and insurance (such as homeowner's insurance). ***<u>Your</u>*** escrow payment is an estimate and can change at any time. See ***<u>your</u>*** Good Faith Estimate or HUD-1 form for more details.
Private Mortgage Insurance	Private Mortgage Insurance (PMI) is required for this loan. It is included in ***<u>your</u>*** escrow
Total Payments	If the market rate did not change and you made all payments as scheduled, you would make 360 payments totaling $ 589,385.69,

including estimated escrow. Of this amount, $ 307,935.69 would go to interest and

settlement charges. This amount, and ***your*** amount financed of $ 193,250.00, are used

to calculate ***your*** APR.

--> You have no obligation to accept this loan. ***Your*** signature below only confirms that you have received this form.

--> If you are unable to make the payments on this loan, you could lose ***your*** home. There is no guarantee that you will be able to refinance to lower ***your*** rate and payments.

--> If you do not understand any part of this form, ***ask*** questions. For more information, go to www.xxx.gov.

Applicant's Signature

Date

H-19(I) Adjustable-Rate Mortgage with Payment Option Sample

Jane Smith

1234 Main Street,

Anytown, ST 12345

February 4, 2009

XXX Bank

Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount:	$ 200,000.00
Loan Term:	30 years
Loan Type and Features:	Adjustable Rate Mortgage: rate is fixed for the first month, then adjusts every month. . includes Payment Options
Total Settlement Charges:	$ 7,426.00 . $ 1,000.00 of these charges are already included in ***your*** loan amount above. . This total does not include a down payment. See ***your*** Good Faith Estimate or HUD-1 for details.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **6.01% APR**

[SEE FIGURE IN ORIGINAL]

How does this loan compare? For the week of February 2, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was 4.75%. Today, an APR of 6.25% or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a 1 % reduction in the APR could save you an average of $ 142 each month.

INTEREST RATE AND PAYMENT SUMMARY

This loan offers you several monthly payment options. The table below ***shows*** you what ***your*** payments would be under two of these options if the interest rate reached its maximum of 10.5% in the second month of this loan.

All payments ***shown*** in the table include $ 280 for estimated taxes and insurance (escrow).

	March 2009 (1 month intro)	**April 2009 (1st adjustment)**
Maximum Interest Rate	**1.5% (intro rate)**	**10.5%**
Full Payment Option Monthly payments cover all principal and interest.	$ 970.24	$ 2,106.18
Minimum Payment Option Initial monthly payments cover no principal and only some interest and increase ***your*** loan amount.	$ 970.24	$ 970.24

	March 2010 (2nd adjustment)	**June 2011 + every month after**
Maximum Interest Rate	**10.5%**	**10.5% (max. ever)**
Full Payment Option Monthly payments cover all principal and interest.	$ 2,106.18	$ 2,106.18
Minimum Payment Option Initial monthly payments cover no principal and only some interest and increase ***your*** loan amount.	$ 1,022.01	$ 2,402.54

*You will borrow an additional **$ 29,242.91** by June 2011 if you make only minimum payments on this loan*.

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	YES. ***Your*** interest rate can increase monthly beginning in April 2009.
Can my monthly payment increase?	YES. ***Your*** full payment can increase beginning in April 2009. ***Your*** minimum payment can increase beginning in March 2010.
Will any of my monthly payments be interest-only?	YES. This loan gives you the choice to make monthly payments that cover the interest you owe each month, but none of the principal. Making these monthly payments means ***your*** loan amount will stay the same and you will be no closer to having it paid off.
Even if I make my monthly payments, could my loan balance increase?	YES. ***Your*** minimum payment covers only part of the interest you owe each month and none of the principal. The unpaid interest will be added to ***your*** loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in ***your*** home.
Could I owe a prepayment penalty?	No.

MORE INFORMATION ABOUT *YOUR* PAYMENTS

Rate Calculation	When the 1-month introductory period ends, ***your*** rate will be determined monthly based on the one-year LIBOR index (the market rate) plus 3.75%.
Rate Change Limits	When the 1-month introductory period ends, ***your*** interest rate can increase up to a maximum of 10.5% for the life of the loan.

Payment Change Limits	***Your*** minimum payments due cannot increase more than 7.5% each year until the total loan amount has increased by 15%. When this happens, you must make full monthly payments that cover all principal and interest owed on the loan.
Escrow	An escrow account is required for property taxes and insurance (such as homeowner's insurance). ***Your*** escrow payment is an estimate and can change at any time. See ***your*** Good Faith Estimate or HUD-1 form for more details.
Total Payments	If the market rate did not change and you made all payments as scheduled, you would make 360 payments totaling $ 545,943.97, including estimated escrow. Of this amount, $ 251,893.97 would go to interest and settlement charges. This amount, and ***your*** amount financed of $ 193,250.00, are used to calculate ***your*** APR.

--> You have no obligation to accept this loan. ***Your*** signature below only confirms that you have received this form.

--> If you are unable to make the payments on this loan, you could lose ***your*** home. There is no guarantee that you will be able to refinance to lower ***your*** rate and payments.

--> If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for Federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

--> If you do not understand any part of this form, ***ask*** questions. For more information, go to www.xxx.gov.

Applicant's Signature

Date

H-20--Balloon Payment Model Clause

[Final Balloon Payment due (*date*): $]

H-21--Introductory Rate Model Clause

[Introductory Rate Notice You have a discounted introductory rate of % that ends after (*period*).

In the (*date*), even if market rates do not change, this rate will increase to %.]

H-22--Key Questions About Risk Model Clauses

(a) Interest only feature

[Will any of my monthly payments be interest-only?]

[YES. ***Your*** (frequency) payments for the first (*period*) of the loan][This loan gives you the choice to make (*frequency*) payments that] cover the interest you owe each month, but none of the principal. Making these (*frequency*) payments means ***your*** loan amount will stay the same and you will be no closer to having it paid off.]

(b) Negative amortization feature

[Even if I make my monthly payments, could my loan balance increase?]

[YES. ***Your*** minimum payment covers only part of the interest you owe each (*period*) and none of the principal. The unpaid interest will be added to ***your*** loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in ***your*** home.]

(c) Balloon payment feature

[Will I owe a balloon payment?]

[YES. You will owe a balloon payment of $, due in (*date of payment*).]

(d) Demand feature

[Can my lender demand full repayment at any time?]

[YES. We can demand that you pay off the full amount of ***your*** loan. We will give you at least (*period*) notice.]

(e) No-documentation or low-documentation feature

[Will my loan have a higher rate or fees because I did not document my employment, income or other assets?]

[YES. If you provide more documentation, you could decrease ***your*** interest rate or fees.]

(f) Shared-equity or shared-appreciation feature

[Do I have to share any equity I gain?]

[YES. We are entitled to % of any gain you make when you sell or refinance this property.]

H-23--Separate Disclosure Model Clauses

(a) Rebate

[If you pay off or refinance ***your*** loan, or sell this property early, you will receive a refund of some of the interest and fees you have paid on ***your*** loan.]

(b) Late Payment

[If you make a payment more than (number of days) days late, you may be charged a penalty equal to [$][%].]

(c) Property Insurance

[You may get property insurance from any insurer that is acceptable to us.]

(d) Contract Reference

Read ***your*** loan contract to find out what happens if you stop making payments, default, or pay off or refinance the loan early.

(e) Assumption Policy

[If you sell ***your*** home after you take out this loan, we may permit the new buyer to take over the payments on ***your*** mortgage.]

14. In Supplement I to Part 226, as amended on July 30, 2008 (73 FR 44604), and on January 29, 2009 (74 FR 5450):

A. Under *Section 226.2--Definitions and Rules of Construction, 2(a)(24) Residential mortgage transaction*, paragraphs 1, 2, and 5(ii) and 5(iii) are revised.

B. *Section 226.4--Finance Charge, Section 226.17--General Disclosure Requirements, Section 226.18--Content of Disclosures, Section 226.19--Certain Mortgage and Variable-Rate Transactions, and Section 226.20--Subsequent Disclosure* Requirements are revised.

C. Under *Section 226.24--Advertising, 24(c) Advertisement of rate of finance charge*, paragraph 4 is revised.

D. Under *Section 226.25--Record Retention, 25(a) General rule*, new paragraph 5 is added.

E. Under *Section 226.30--Limitation on Rates*, paragraph 1 is revised.

F. Under *Section 226.32--Requirements for Certain Closed-End Home Mortgages, 32(b) Definitions* is removed, *32(c) Disclosures*, paragraph 1 is removed, and *32(c)(5) Amount borrowed*, paragraph 1 is revised.

G. Under *Section 226.35--Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans, 35(a) Higher-priced mortgage loans, Paragraph 35(a)(2)*, paragraph 4 is revised and new paragraph 5 is added.

H. Under *Section 226.36--Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Principal Dwelling*, the heading is revised, *36(a) Mortgage broker defined*, the heading is revised, paragraph 1 is revised, and new paragraph 2 is added, *36(b) Misrepresentation of value of consumer's principal dwelling*, the heading is revised, and new *36(d) Prohibited payments to loan originators* and *36(e) Prohibition on steering* are added.

I. New *Section 226.37--Special Disclosure Requirements for Closed-End Mortgages and Section 226.38--Content of Disclosures for Closed-End Mortgages* are added.

J. Under Appendices G and H--Open-End and Closed-End Model Forms and Clauses, paragraphs 1 and 2 are revised.

K. Appendix H--Closed-End Model Forms and Clauses is revised.

Supplement I to Part 226--Official Staff Interpretations

* * * *

SUBPART A--GENERAL

* * * *

Section 226.2--Definitions and Rules of Construction

* * * *

2(a)(24) Residential mortgage transaction.

1. *Relation to other sections*. This term is important in [five] three provisions in the regulation:

i. Section 226.4(c)(7)--exclusions from the finance charge

ii. Section 226.15(f)--exemption from the right of rescission

[Section 226.18(q)--whether or not the obligation is assumable]

[Section 226.20(b)--disclosure requirements for assumptions]

iii. Section 226.23(f)--exemption from the right of rescission

2. *Lien status*. The definition is not limited to first-lien transactions. [For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a "residential mortgage transaction" if the dwelling purchased is the consumer's principal residence.]

* * * *

5. *Acquisition*. * * *

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. [In these instances, disclosures are not required under § 226.18(q (assumability policies). However, the] The rescission rules of §§ 226.15 and 226.23 do apply to these new transactions.

[iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, § 226.20(b) does not apply (assumptions involving residential mortgages).]

* * * *

§ 226.4--Finance Charge.

4(a) Definition.

1. *Charges in comparable cash transactions*. Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction-loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $ 100 in a cash transaction and $ 150 in a credit transaction, only $ 50 is a finance charge.

2. *Costs of doing business*. Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:

i. A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (See § 226.4(b)(6).)

ii. A tax imposed by a State or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to § 226.4(a).)

3. *Forfeitures of interest*. If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to § 226.4(c)(6).) For example:

i. A consumer borrows $ 5,000 for 90 days and secures it with a $ 10,000 certificate of deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on $ 5,000 of the $ 10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.

ii. However, the consumer must be entitled to the interest that is not paid in order for the lost interest to be a finance charge. For example:

A. A consumer wishes to buy from a financial institution a $ 10,000 certificate of deposit paying 15% interest but has only $ 4,000. The financial institution offers to lend the consumer $ 6,000 at an interest rate of 6% but will pay the 15% interest only on the amount of the consumer's deposit, $ 4,000. The creditor's failure to pay interest on the $ 6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.

B. A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).

4. *Treatment of transaction fees on credit card plans*. Any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example:

i. Any charge imposed on a credit cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account.

ii. Any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States, with a foreign merchant, or in a foreign currency is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. The following principles apply in determining what is a foreign transaction fee and the amount of the fee:

A. Included are fees imposed when transactions are made in a foreign currency and converted to U.S. dollars; fees imposed when transactions are made in U.S. dollars outside the U.S.; and fees imposed when transactions are made (whether in a foreign currency or in U.S. dollars) with a foreign merchant, such as via a merchant's Web site. For example, a consumer may use a credit card to make a purchase in Bermuda, in U.S. dollars, and the card issuer may impose a fee because the transaction took place outside the United States.

B. Included are fees imposed by the card issuer and fees imposed by a third party that performs the conversion, such as a credit card network or the card issuer's corporate parent. (For example, in a transaction processed through a credit card network, the network may impose a 1 percent charge and the card-issuing bank may impose an additional 2 percent charge, for a total of a 3 percentage point foreign transaction fee being imposed on the consumer.)

C. Fees imposed by a third party are included only if they are directly passed on to the consumer. For example, if a credit card network imposes a 1 percent fee on the card issuer, but the card issuer absorbs the fee as a cost of doing business (and only passes it on to consumers in the general sense that the interest and fees are imposed on all its customers to recover its costs), then the fee is not a foreign transaction fee and need not be disclosed. In another example, if the credit card network imposes a 1 percent fee for a foreign transaction on the card issuer, and the card issuer imposes this same fee on the consumer who engaged in the foreign transaction, then the fee is a foreign transaction fee and a finance charge.

D. A card issuer is not required to disclose a fee imposed by a merchant. For example, if the merchant itself performs the currency conversion and adds a fee, this fee need not be disclosed by the card issuer. Under § 226.9(d), a card issuer is not obligated to disclose finance charges imposed by a party honoring a credit card, such as a merchant, although the merchant is required to disclose such a finance charge if the merchant is subject to the Truth in Lending Act and Regulation Z.

E. The foreign transaction fee is determined by first calculating the dollar amount of the transaction by using a currency conversion rate outside the card issuer's and third party's control. Any amount in excess of that dollar amount is a foreign transaction fee. Conversion rates outside the card issuer's and third party's control include, for example, a rate selected from the range of rates available in the wholesale currency exchange markets, an average of the highest and lowest rates available in such markets, or a government-mandated or government-managed exchange rate (or a rate selected from a range of such rates).

F. The rate used for a particular transaction need not be the same rate that the card issuer (or third party) itself obtains in its currency conversion operations. In addition, the rate used for a particular transaction need not be the rate in effect on the date of the transaction (purchase or cash advance).

5. *Taxes*.

i. Generally, a tax imposed by a State or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly;

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other State or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by another provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

6. *Transactions with no seller*. In a transaction where there is no seller, such as a refinancing of an existing extension of credit described in § 226.20(a), there is no comparable cash transaction. Thus, the exclusion from the finance charge of charges of a type payable in a comparable cash transaction does not apply to such transactions.

4(a)(1) Charges by third parties.

1. *Choosing the provider of a required service*. An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages*. Some creditors offer annuities in connection with a reverse-mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

4(a)(2) Special rule; closing agent charges.

1. *General*. This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. *Required closing agent*. If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum fee excluded under § 226.4(c)(7).

3. *Closed-end mortgage transactions*. Comments 4(a)(2)-1 and 4(a)(2)-2 do not apply to closed-end transactions secured by real property or a dwelling, pursuant to § 226.4(g).fi

4(a)(3) Special rule; mortgage broker fees.

1. *General*. A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under § 226.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Coverage*. This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.

3. *Compensation by lender*. The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

4(b) Examples of finance charges.

1. *Relationship to other provisions*. Charges or fees ***shown*** as examples of finance charges in § 226.4(b) may be excludable under § 226.4(c), (d), or (e). For example[:

i. Premiums], premiums for credit life insurance, ***shown*** as an example of a finance charge under § 226.4(b)(7), may be excluded if the requirements of § 226.4(d)(1) are met. They may not be excluded, however, in transactions subject to § 226.4(g).

[ii. Appraisal fees mentioned in § 226.4(b)(4) are excluded for real property or residential mortgage transactions under § 226.4(c)(7).]

Paragraph 4(b)(2).

1. *Checking account charges*. A checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 226.4(b)(2). To illustrate:

i. A $ 5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $ 3 service charge is imposed on an account without a credit feature; the $ 2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 226.4(c)(4).

ii. A $ 5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $ 25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $ 5 charge is not a finance charge.

Paragraph 4(b)(3).

1. *Assumption fees*. The assumption fees mentioned in § 226.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.

Paragraph 4(b)(5).

1. *Credit loss insurance*. Common examples of the insurance against credit loss mentioned in § 226.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.

2. *Residual value insurance*. Where a creditor requires a consumer to maintain residual value insurance or where the creditor is a beneficiary of a residual value insurance policy written in connection with an extension of credit (as is the case in some forms of automobile balloon-payment financing, for example), the premiums for the insurance must be included in the finance charge for the period that the insurance is to be maintained. If a creditor pays for residual value insurance and absorbs the payment as a cost of doing business, such costs are not considered finance charges. (See comment 4(a)-2.)

Paragraphs 4(b)(7) and (b)(8).

1. *Pre-existing insurance policy*. The insurance discussed in § 226.4(b)(7) and (b)(8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not "written in connection with" the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.

2. *Insurance written in connection with a transaction*. Credit insurance sold before or after an open-end [(not home-secured)] plan is opened is considered "written in connection with a credit transaction." Insurance sold after consummation in closed-end credit transactions [or after the opening of a home-equity plan subject to the requirements of § 226.5b] is not considered "written in connection with" the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation [or the opening of a home-equity plan subject to the requirements of § 226.5b] (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed).

3. *Substitution of life insurance*. The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.

4. *Other insurance*. Fees for required insurance not of the types described in § 226.4(b)(7) and (b)(8) are finance charges and are not excludable. For example:

i. The premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

Paragraph 4(b)(9).

1. *Discounts for payment by other than credit*. The discounts to induce payment by other than credit mentioned in § 226.4(b)(9) include, for example, the following situation:

i. The seller of land offers individual tracts for $ 10,000 each. If the purchaser pays cash, the price is $ 9,000, but if the purchaser finances the tract with the seller the price is $ 10,000. The $ 1,000 difference is a finance charge for those who buy the tracts on credit.

2. *Exception for cash discounts*.

i. Creditors may exclude from the finance charge discounts offered to consumers for using cash or another means of payment instead of using a credit card or an open-end plan. The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the act, as amended) or a dollar amount. Pursuant to section 167(b) of the act, this provision applies only to transactions involving an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card). The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:

A. The merchant may limit the discount to payment by cash and not offer it for payment by check or by use of a debit card.

B. The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.

ii. Pursuant to section 171(c) of the act, discounts excluded from the finance charge under this paragraph are also excluded from treatment as a finance charge or other charge for credit under any State usury or disclosure laws.

3. *Determination of the regular price*.

i. The *regular price* is critical in determining whether the difference between the price charged to cash customers and credit customers is a *discount* or a *surcharge*, as these terms are defined in amended section 103 of the act. The *regular price* is defined in section 103 of the act as "* * * the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted * * *."

ii. For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps. If a pump is capable of displaying on its meter either a cash or a credit price depending upon the consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.

4(b)(10) Debt cancellation and debt suspension fees.

1. *Definition*. Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term "debt cancellation coverage" includes guaranteed automobile protection, or "GAP," agreements, which pay or satisfy the remaining debt after property insurance benefits are exhausted. Debt suspension coverage provides for suspension of the obligation to make one or more payments on the date(s)

otherwise required by the credit agreement, when a specified event occurs. The term "debt suspension" does not include loan payment deferral arrangements in which the triggering event is the bank's unilateral decision to allow a deferral of payment and the borrower's unilateral election to do so, such as by skipping or reducing one or more payments ("skip payments").

2. *Coverage written in connection with a transaction*. Coverage sold after consummation in closed-end credit transactions [or after the opening of a home-equity plan subject to the requirements of § 226.5b] is not "written in connection with" the credit transaction if the coverage is written because the consumer requests coverage after consummation [or the opening of a home-equity plan subject to the requirements of § 226.5b] (although credit-sale disclosures may be required for the coverage sold after consummation if it is financed). Coverage sold before or after an open-end [(not home-secured)] plan is opened is considered "written in connection with a credit transaction."

4(c) Charges excluded from the finance charge.

Paragraph 4(c)(1).

1. *Application fees*. An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as automobile [mortgage] loans. However, if the fee is to be excluded from the finance charge under § 226.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

Paragraph 4(c)(2).

1. *Late-payment charges*.

i. Late-payment charges can be excluded from the finance charge under § 226.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:

A. The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.

B. The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.

ii. Section 226.4(c)(2) applies to late-payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. *Other excluded charges*. Charges for "delinquency, default, or a similar occurrence" include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

Paragraph 4(c)(3).

1. *Assessing interest on an overdraft balance*. A charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

Paragraph 4(c)(4).

1. *Participation fees--periodic basis*. The participation fees described in § 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which

payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, nonrecurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

2. *Participation fees--exclusions*. Minimum monthly charges, charges for nonuse of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by § 226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to § 226.4(b)(2). Also, see comment 14(c)-2 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)

Paragraph 4(c)(5).

1. *Seller's points*. The seller's points mentioned in § 226.4(c)(5) include any charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A *commitment fee* paid by a non-creditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. *Other seller-paid amounts*. Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a non-creditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

Paragraph 4(c)(6).

1. *Lost interest*. Certain federal and State laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations, because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under § 226.4(c)(6), such "lost interest" need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to § 226.4(a).)

Paragraph 4(c)(7).

1. *[Real estate or residential mortgage transaction] Open-end real-property-secured credit charges*. The list of charges in § 226.4(c)(7) applies to open-end credit plans secured by real property and open-end residential mortgage transactions [both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate.] The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

2. *Lump-sum charges*. If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing

or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. *Charges assessed during the loan term*. Charges [Real estate or residential mortgage transaction charges] excluded under § 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

4(d) Insurance and debt cancellation and debt suspension coverage.

1. *General*. Section 226.4(d) permits insurance premiums and charges and debt cancellation and debt suspension charges to be excluded from the finance charge. The required disclosures must be made in writing, except as provided in § 226.4(d)(4). The rules on location of insurance and debt cancellation and debt suspension disclosures for closed-end transactions are in § 226.17(a). For purposes of § 226.4(d), all references to insurance also include debt cancellation and debt suspension coverage unless the context indicates otherwise.

2. *Timing of disclosures*. If disclosures are given early, for example under § 226.17(f)[or § 226.19(a)], the creditor must redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge.

3. *Premium rate increases*. The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.

4. *Unit-cost disclosures*.

i. *Open-end credit*. The premium or fee for insurance or debt cancellation or debt suspension for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)-12 is available.

ii. *Closed-end credit*. One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $ 100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $ 8,000 is covered by a plan of credit life insurance coverage with a maximum of $ 10,000. The consumer requests an additional $ 4,000 loan to be covered by the same insurance plan. Since the $ 4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance-cost disclosures on the $ 4,000 loan on a unit-cost basis.

5. *Required credit life insurance; debt cancellation or suspension coverage*. Credit life, accident, health, or loss-of-income insurance, and debt cancellation and suspension coverage described in § 226.4(b)(10), must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance or coverage is in fact required or optional is a factual question. If the insurance or coverage is required, the premiums must be included in the finance charge, whether the insurance or coverage is purchased from the creditor or from a third party. If the consumer is required to elect one of several options--such as to purchase credit life insurance, or to assign an existing life insurance policy, or to pledge security such as a certificate of deposit--and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer

assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under § 226.6(a)(4), § 226.6(b)(5)(ii), or § 226.18(m). See the commentary to § 226.4(b)(7) and (b)(8).)

6. *Other types of voluntary insurance*. Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If the premium for such insurance is not imposed by the creditor as an incident to or a condition of credit, it is not covered by § 226.4.

7. *Signatures*. If the creditor offers a number of insurance options under § 226.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance authorization may be signed or initialed by any consumer, as defined in § 226.2(a)(11), or by an authorized user on a credit card account.

8. *Property insurance*. To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from or through the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation. Insurance is available "from or through a creditor" if it is available from the creditor's affiliate, as defined under the Bank Holding Company Act, 12 U.S.C. 1841(k).

9. *Single-interest insurance*. Blanket and specific single-interest coverage are treated the same for purposes of the regulation. A charge for either type of single-interest insurance may be excluded from the finance charge if:

i. The insurer waives any right of subrogation.

ii. The other requirements of § 226.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. *Single-interest insurance defined*. The term *single-interest insurance* as used in the regulation refers only to the types of coverage traditionally included in the term vendor's *single-interest insurance* (or *VSI*), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the non-excludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $ 1.00 or less (or $ 5.00 or less in the case of a multiyear policy).

11. *Initial term*.

i. The initial term of insurance or debt cancellation or debt suspension coverage determines the period for which a premium amount must be disclosed, unless one of the options discussed under comment 4(d)-12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. *Initial term; alternative*.

i. *General*. A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation or debt suspension coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-end plans*. For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples*. To illustrate:

A. A credit life insurance policy providing coverage for a seven-year automobile [30-year mortgage] loan has an initial term of seven [30] years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. *Loss-of-income insurance*. The loss-of-income insurance mentioned in § 226.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.

14. *Age or employment eligibility criteria*. A premium or charge for credit life, accident, health, or loss-of-income insurance, or debt cancellation or debt suspension coverage is voluntary and can be excluded from the finance charge only if the consumer meets the product's age or employment eligibility criteria at the time of enrollment. To exclude such a premium or charge from the finance charge, the creditor must determine at the time of enrollment that the consumer is eligible for the product under the product's age or employment eligibility restrictions. The creditor may use reasonably reliable evidence of the consumer's age or employment status to satisfy this condition. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include the consumer's information on a credit application, an Internal Revenue Service Form W-2, tax returns, payroll receipts, or other evidence such as a letter or e-mail from the consumer or the consumer's employer. If the consumer does not meet the product's age or employment eligibility criteria at the time of enrollment, then the premium or charge is not voluntary. In such circumstances, the premium or charge is a finance charge. If the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer is not eligible for all of the bundled products, then the creditor must either: (1) treat the entire premium or charge for the bundled product as a finance charge, or (2) offer the consumer the option of selecting only the products for which the consumer is eligible and exclude the premium or charge from the finance charge if the consumer chooses an optional product for which the consumer meets the age or employment eligibility criteria at the time of enrollment.

4(d)(3) Voluntary debt cancellation or debt suspension fees.

1. *General*. Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection ("GAP") agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. *Disclosures*. Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation or debt suspension coverage constitutes insurance under State law. (See Model Clauses and Samples at G-16 and H-17 in Appendix G and Appendix H to part 226 for guidance on ***how*** to provide the disclosure required by § 226.4(d)(3)(iii) for debt suspension products.)

3. *Multiple events*. If debt cancellation or debt suspension coverage for two or more events is provided at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income and the conditions specified in § 226.4(d)(3) or, as applicable, § 226.4(d)(4), are satisfied.

4. *Disclosures in programs combining debt cancellation and debt suspension features*. If the consumer's debt can be cancelled under certain circumstances, the disclosure may be modified to reflect that fact. The disclosure could, for example, state (in addition to the language required by § 226.4(d)(3)(iii)) that "In some circumstances, my debt may be cancelled." However, the disclosure would not be permitted to list the specific events that would result in debt cancellation.

4(d)(4) Telephone purchases.

1. *Affirmative request*. A creditor would not satisfy the requirement to obtain a consumer's affirmative request if the "request" was a response to a script that uses leading questions or negative consent. A question ***asking*** whether the consumer wishes to enroll in the credit insurance or debt cancellation or suspension plan and seeking a yes-or-no response (such as "Do you want to enroll in this optional debt cancellation plan?") would not be considered leading.

4(e) Certain security interest charges.

1. *Examples*.

i. *Excludable charges*. Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1) and (e)(3). Examples are charges or other fees required for filing or recording security agreements, mortgages (for open-end credit; but see § 226.4(g) regarding closed-end mortgage credit), continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). (See comment 4(a)-5 regarding the treatment of taxes, generally.)

ii. *Charges not excludable*. If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

2. *Itemization*. The various charges described in § 226.4(e)(1) and (e)(3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

3. *Notary fees*. In order for a notary fee to be excluded under § 226.4(e)(1), all of the following conditions must be met:

i. The document to be notarized is one used to perfect, release, or continue a security interest.

ii. The document is required by law to be notarized.

iii. A notary is considered a public official under applicable law.

iv. The amount of the fee is set or authorized by law.

4. *Non-filing insurance*. The exclusion in § 226.4(e)(2) is available only if non-filing insurance is purchased. If the creditor collects and simply retains a fee as a sort of "self-insurance" against non-filing, it may not be excluded from the finance charge. If the non-filing insurance premium exceeds the amount of the fees excludable from the finance charge under § 226.4(e)(1), only the excess is a finance charge. For example:

i. The fee for perfecting a security interest is $ 5.00 and the fee for releasing the security interest is $ 3.00. The creditor charges $ 10.00 for non-filing insurance. Only $ 8.00 of the $ 10.00 is excludable from the finance charge.

4(f) Prohibited offsets.

1. *Earnings on deposits or investments*. The rule that the creditor shall not deduct any earnings by the consumer on deposits or investments applies whether or not the creditor has a security interest in the property.

4(g) Special rule; mortgage transactions.

1. *Applicability of commentary to mortgages*. The staff commentary under §§ 226.4(a)(2) and 226.4(c) through (e) (other than that under §§ 226.4(c)(2), 226.4(c)(5), and 226.4(d)(2)) does not apply to closed-end transactions secured by real property or a dwelling. The staff commentary under §§ 226.4(a) (other than paragraph (2) of that section), 226.4(c)(2), 226.4(c)(5), and 226.4(d)(2), however, does apply to such transactions.

2. *Third-party charges*. Charges imposed by third parties are finance charges if they fit the general definition under § 226.4(a). Thus, if a third-party charge is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the extension of credit, it is a finance charge unless it would be payable in a comparable cash transaction. For example, appraisal and credit report fees are finance charges because they meet the definition in § 226.4(a). This test generally does not depend on whether the creditor requires the service for which the charge is imposed. In addition, charges imposed by closing agents required by the creditor, whether their own or those of third parties they retain, generally are finance charges unless otherwise excluded. (Note that § 226.4(a)(2) does not apply to closed-end transactions secured by real property or a dwelling, pursuant to § 226.4(g).) Insurance premiums generally are finance charges, whether imposed by a closing agent or another insurer, although premiums for property insurance are excluded if § 226.4(d)(2) is satisfied. Premiums for credit insurance (or fees for debt cancellation or debt suspension agreements) and premiums for lender's coverage under a title insurance policy are finance charges because they are imposed as an incident to the extension of credit. In contrast, premiums for owner's title insurance coverage are not finance charges because they are not imposed as an incident to the extension of credit.

3. *Charges in comparable cash transactions*. While the exclusions in § 226.4(c) through (e), other than §§ 226.4(c)(5) and 226.4(d)(2) are inapplicable to closed-end transactions secured by real property or a dwelling, charges in connection with such transactions that are payable in a comparable cash transaction are not finance charges. *See* comment 4(a)-1. For example, property taxes and fees or taxes imposed to record the deed evidencing transfer from the seller to the buyer of title to the property securing the transaction are not finance charges because they would be paid even if no credit were extended to finance the purchase. In contrast, fees or taxes imposed to record the mortgage, deed of trust, or other security instrument evidencing the creditor's security interest in the property securing the transaction are finance charges because they would not be incurred were it not for the extension of credit.
* * * *

Subpart C--Closed-End Credit

§ 226.17--General Disclosure Requirements.

17(a) Form of Disclosures Paragraph 17(a)(1)

1. *Clear and conspicuous*. This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. In addition, although no minimum type size is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

2. *Segregation of disclosures*. The disclosures may be grouped together and segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of ***paper*** or may be set off from other information on the contract or other documents:

[.]i. By outlining them in a box

[.]ii. By bold print dividing lines

[.]iii. By a different color background

[.]iv. By a different type style

[(The general segregation requirement described in this subparagraph does not apply to the disclosures required under §§ 226.19(b) and 226.20(c) although the disclosures must be clear and conspicuous.)]

3. *Location*. The regulation imposes no specific location requirements on the segregated disclosures. For example:

[.]i. They may appear on a disclosure statement separate from all other material.

[.]ii. They may be placed on the same document with the credit contract or other information, so long as they are segregated from that information.

[.]iii. They may be ***shown*** on the front or back of a document.

[.]iv. They need not begin at the top of a page.

[.]v. They may be continued from one page to another.

4. *Content of segregated disclosures*. Footnotes 37 and 38 contain exceptions to the requirement that the disclosures under § 226.18 be segregated from material that is not directly related to those disclosures. Footnote 37 lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Footnote 38 lists the items required under § 226.18 that may be deleted from the segregated disclosures and appear elsewhere. Any one or more of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures. The itemization of the amount financed under § 226.18(c), however, must be separate from the other segregated disclosures under § 226.18. If a creditor chooses to include the security interest charges required to be itemized under § 226.4(e) and § 226.18(o) in the amount financed itemization, it need not list these charges elsewhere.

5. *Directly Related*. Except in a transaction secured by real property or a dwelling, t[T]he segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. (See the commentary to § 226.37(a)(2) for a discussion of directly related information for transactions secured by real property or a dwelling.) The following is directly related information for a transaction not secured by real property or a dwelling:

i. A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under § 226.18(l) may state that a late charge will apply to "any payment received more than 15 days after the due date."

ii. A statement that the transaction is not secured. For example, the creditor may add a category labelled "unsecured" or "not secured" to the security interest disclosures given under § 226.18(m).

iii. The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.

iv. The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.

v. An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, "'You' refers to the customer and 'we' refers to the creditor."

vi. Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, "Check box if applicable."

vii. A statement that the borrower may pay a minimum finance charge upon prepayment in a simple-interest transaction. For example, when State law prohibits penalties, but would allow a minimum finance charge in the event of prepayment, the creditor may make the § 226.18(k)(1) disclosure by stating, "You may be charged a minimum finance charge."

viii. A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosures, the creditor may include a short statement such as "Unpaid interest will be added to principal." (See the commentary to § 226.18(f)[(1)(iii)](3).)

ix. A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as "Federal Truth in Lending Disclosures" or a descriptive title such as "Real Estate Loan Disclosures."

x. A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under § 226.18(q) may state, "Someone buying ***your*** home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."

xi. If a State or Federal law prohibits prepayment penalties and excludes the charging of interest after prepayment from coverage as a penalty, a statement that the borrower may have to pay interest for some period after prepayment in full. The disclosure may state, for example, "If you prepay ***your*** loan on other than the regular installment date, you may be assessed interest charges until the end of the month."

xii. More than one hypothetical example under § 226.18(f)[(1)(iv)](4) in transactions with more than one variable-rate feature. For example, in a variable-rate transaction with an option permitting consumers to convert to a fixed-rate transaction, the disclosures may include an example illustrating the effects of an increase resulting from conversion in addition to the example illustrating an increase resulting from changes in the index.

xiii. Reserved.[The disclosures set forth under section 226.18(f)(1) for variable-rate transactions subject to section 226.18(f)(2).]

xiv. [Reserved][A statement whether or not a subsequent purchase of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.]

xv. A late-payment fee disclosure under § 226.18(l) on a single payment loan.

xvi. The notice set forth in [§ 226.19(a)(4)]§ 226.38(f)(1), in a closed-end transaction not subject to § 226.19(a)(1)(i). In a mortgage transaction subject to § 19(a)(1)(i), the creditor must disclose the notice contained in [§ 226.19(a)(4)]§ 226.38(f)(1) grouped together with the disclosures made under [§ 226.18. See comment 19(a)(4)-1.]§ 226.38.

6. *Multiple-purpose forms*. Except for transactions secured by real property or a dwelling, t[T]he creditor may design a disclosure statement that can be used for more than one type of transaction, so long as the required disclosures for individual transactions are clear and conspicuous. (See the Commentary to appendices G and H for a discussion of the treatment of disclosures that do not apply to specific transactions.) Any disclosure listed in § 226.18 (except the itemization of the amount financed under § 226.18(c)) may be included on a standard disclosure statement even though not all of the creditor's transactions include those features. For example, the statement may include:

[.]i. The variable rate disclosure under § 226.18(f).

[.]ii. The demand feature disclosure under § 226.18(i).

[.]iii. A reference to the possibility of a security interest arising from a spreader clause, under § 226.18(m).

[. The assumption policy disclosure under § 226.18(q).]

[.]iv. The required deposit disclosure under § 226.18(r).

7. Balloon payment financing with leasing characteristics. In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M, but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership upon consummation. These transactions are governed by the disclosure requirements of this regulation instead of Regulation M. Creditors should not include in the segregated Truth in Lending disclosures additional information. Thus, disclosures should ***show*** the large final payment in the payment schedule and should not, for example, reflect the other options available to the consumer at maturity. For extensions of credit secured by real property or a dwelling, the large final payment in the payment schedule should be disclosed in accordance with the requirements under section 226.38(c), as applicable.

Paragraph 17(a)(2).

1. *When disclosures must be more conspicuous*. The following rules apply to the requirement that the terms annual percentage rate and finance charge be ***shown*** more conspicuously:

[.]i. The terms must be more conspicuous only in relation to the other required disclosures under § 226.18. For example, when the disclosures are included on the contract document, those 2 terms need not be more conspicuous as compared to the heading on the contract document or information required by State law.

[.]ii. The terms need not be more conspicuous except as part of the finance charge and annual percentage rate disclosures under § 226.18(d) and (e), although they may, at the creditor's option, be highlighted wherever used in the required disclosures. For example, the terms may, but need not, be highlighted when used in disclosing a prepayment penalty under § 226.18(k) or a required deposit under § 226.18(r).

[.]iii. The creditor's identity under § 226.18(a) may, but need not, be more prominently displayed than the finance charge and annual percentage rate.

[.]iv. The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs)

2. *Making disclosures more conspicuous*. The terms *finance charge* and *annual percentage rate* may be made more conspicuous in any way that highlights them in relation to the other required disclosures. For example, they may be:

[.]i. Capitalized when other disclosures are printed in capital and lower case.

[.]ii. Printed in larger type, bold print or different type face.

[.]iii. Printed in a contrasting color.

[.]iv. Underlined. [.]flv.fi Set off with asterisks.

17(b) Time of disclosures.

1. *Consummation*. As a general rule, disclosures must be made before "consummation" of the transaction. The disclosures for transactions not secured by real property or a dwelling need not be given by any particular time before consummation[, except in certain mortgage transactions and variable-rate transactions secured by the consumer's principal dwelling with a term greater than one year under § 226.19.] Pre-consummation disclosures for transactions secured by real property or a dwelling must be provided in accordance with the timing requirements in § 226.19. (See the commentary to § 226.2(a)(13) regarding the definition of consummation.)

2. *Converting open-end to closed-end credit*. Except for home equity plans subject to § 226.5b in which the agreement provides for a repayment phase, if an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction. (See the commentary to § 226.19(a) for a discussion of disclosure timing requirements for closed-end transactions secured by real property or a dwelling. See the commentary to § 226.19(b) for the timing rules for additional disclosures required upon the conversion to [a variable-rate transaction secured by a consumer's principal dwelling with a term greater than one year]an adjustable-rate transaction secured by real property or a dwelling.) If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion. If disclosures are delayed until conversion and the closed-end transaction has a variable-rate feature, disclosures should be based on the rate in effect at the time of conversion. (See the commentary to § 226.5 regarding conversion of closed-end to open-end credit.)

3. *Disclosures provided on credit contracts*. Creditors must give the required disclosures to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction. *See* § 226.17(a)(1) and (b). Sometimes the disclosures are placed on the same document with the credit contract. Creditors are not required to give the consumer two separate copies of the document before consummation, one for the consumer to keep and a second copy for the consumer to execute. The disclosure requirement is satisfied if the creditor gives a copy of the document containing the unexecuted credit contract and disclosures to the consumer to read and sign; and the consumer receives a copy to keep at the time the consumer becomes obligated. It is not sufficient for the creditor merely to ***show*** the consumer the document containing the disclosures before the consumer signs and becomes obligated. The consumer must be free to take possession of and review the document in its entirety before signing.

i. Example. To illustrate:

A. A creditor gives a consumer a multiple-copy form containing a credit agreement and TILA disclosures. The consumer reviews and signs the form and returns it to the creditor, who separates the copies and gives one copy to the consumer to keep. The creditor has satisfied the disclosure requirement.

17(c) Basis of disclosures and use of estimates.

[*Paragraph*]*17(c)(1)Legal obligation*.

1. [*Legal obligation*.]General. The disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under § 226.20(c), the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided. The legal obligation is determined by applicable State law or other law. The disclosures should be based on the assumption that the consumer will abide by the terms of the legal obligation throughout the term of the transaction. For example, the disclosures should be based on the assumption that the consumer makes payments on time and in full. In the case of an adjustable-rate mortgage described in § 226.38(a)(3)(i)(A), the creditor shall make the disclosure required by § 226.38(c) based on the assumption that the interest rate increases as fast as it can, taking into account any limitations on increases under the legal obligation. (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to § 226.17(c).)

[.]i. The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

2. *Modification of obligation*. The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement. But this presumption is rebutted if another agreement between the parties legally modifies that note or contract. If the parties informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:

[.]i. If the creditor offers a preferential rate, such as an employee preferred rate, the disclosures should reflect the terms of the legal obligation, subject to special disclosure rules for transactions secured by real property or a dwelling in § 226.38(a)(3) and (c). [(See the commentary to § 226.19(b) for an example of a preferred-rate transaction that is a variable-rate transaction.)]

[.]ii. If the contract provides for a certain monthly payment schedule but payments are made on a voluntary payroll deduction plan or an informal principal-reduction agreement, the disclosures should reflect the schedule in the contract.

[.]iii. If the contract provides for regular monthly payments but the creditor informally permits the consumer to defer payments from time to time, for instance, to take account of holiday seasons or seasonal employment, the disclosures should reflect the regular monthly payments.

3. *Number of transactions*. Creditors have flexibility in handling credit extensions that may be viewed as multiple transactions. For example:

i. When a creditor finances the credit sale of a radio and a television on the same day, the creditor may disclose the sales as either 1 or 2 credit sale transactions.

ii. When a creditor finances a loan along with a credit sale of health insurance, the creditor may disclose in one of several ways: a single credit sale transaction, a single loan transaction, or a loan and a credit sale transaction.

iii. The separate financing of a downpayment in a credit sale transaction may, but need not, be disclosed as 2 transactions (a credit sale and a separate transaction for the financing of the downpayment).

[3. *Third-party buydown.] 17(c)(1)(i) Buydowns*.

1. *Third-party buydown*. In certain transactions, a seller or other third party may pay an amount, either to the creditor or to the consumer, in order to reduce the consumer's payments or buy down the interest rate for all or a portion of the credit term. For example, a consumer and a bank agree to a mortgage with an interest rate of 15% and level payments over 25 years. By a separate agreement, the seller of the property agrees to subsidize the

consumer's payments for the first 2 years of the mortgage, giving the consumer an effective rate of 12% for that period.

[.]i. If the lower rate is reflected in the credit contract between the consumer and the bank, the disclosures must take the buydown into account. For example, the annual percentage rate must be a composite rate that takes account of both the lower initial rate and the higher subsequent rate, and if the loan is not secured by real property or a dwelling, the payment schedule disclosures must reflect the 2 payment levels. However, the amount paid by the seller would not be specifically reflected in the disclosures given by the bank, since that amount constitutes seller's points and thus is not part of the finance charge.

[.]ii. If the lower rate is not reflected in the credit contract between the consumer and the bank and the consumer is legally bound to the 15% rate from the outset, the disclosures given by the bank must not reflect the seller buydown in any way. For example, the annual percentage rate and, in a transaction not secured by real property, the payment schedule, would not take into account the reduction in the interest rate and payment level for the first 2 years resulting from the buydown.

[4.]2. *Consumer buydowns*. In certain transactions, the consumer may pay an amount to the creditor to reduce the payments or obtain a lower interest rate on the transaction. Consumer buydowns must be reflected in the disclosures given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay an amount to the creditor at consummation in return for a reduction in the interest rate to 12 percent for a portion of the mortgage term. The amount paid by the consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer. In the disclosures given for the mortgage, the creditor must reflect the terms of the buydown agreement. For example:

[.]i. The amount paid by the consumer is a prepaid finance charge [(], even if deposited in an escrow account[)]. (In transactions secured by real property or a dwelling, "finance charges" are referred to as "interest and settlement charges" under § 226.38(e)(5)(ii).)

[.]ii. A composite annual percentage rate must be calculated, taking into account both interest rates, as well as the effect of the prepaid finance charge.

[.]iii. The payment schedule must reflect the multiple payment levels resulting from a buydown, in a transaction not secured by real property or a dwelling.

3. *Lender buydown*. The rules regarding consumer buydowns do not apply to transactions known as "lender buydowns." In lender buydowns. a creditor pays an amount (either into an account or to the party to whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for the remainder of the term. The disclosures for lender buydowns should be based on the terms of the legal obligation between the consumer and the creditor. See comment [17(c)(1)-3] 17(c)(1)(i)-1 for the analogous rules concerning third-party buydowns.

[5.]4. *Split buydowns*. In certain transactions, a third party (such as a seller) and a consumer both pay an amount to the creditor to reduce the interest rate. The creditor must include the portion paid by the consumer in the finance charge and disclose the corresponding multiple payment levels and composite annual percentage rate. The portion paid by the third party and the corresponding reduction in interest rate, however, should not be reflected in the disclosures unless the lower rate is reflected in the credit contract. See the discussion on third-party and consumer buydown transactions [elsewhere in the commentary to § 226.17(c)] in comments 17(c)(1)(i)-1 and 17(c)(1)(i)-2, respectively.

17(c)(1)(ii) Wrap-around financing.

[6. *Wraparound financing*.] 1. *General*. Wrap-around transactions, usually loans, involve the creditor's wrapping the outstanding balance on an existing loan and advancing additional funds to the consumer. The pre-existing loan, which is wrapped, may be to the same consumer or to a different consumer. In either case, the consumer makes a single payment to the new creditor, whom makes the payments on the pre-existing loan to the original creditor. Wrap-around loans or sales are considered new single-advance transactions, with an amount financed equaling the sum of the new funds advanced by the wrap creditor and the remaining principal owed to the original creditor on the pre-existing loan. In disclosing the itemization of the amount financed, the creditor may use a label such as "the amount that will be paid to creditor X" to describe the remaining principal balance on the pre-existing loan. This approach to Truth in Lending calculations has no effect on calculations required by other statutes, such as State usury laws.

[7.]2. *Wrap-around financing with balloon payments*. For wrap-around transactions involving a large final payment of the new funds before the maturity of the pre-existing loan, the amount financed is the sum of the new funds and the remaining principal on the pre-existing loan. The disclosures should be based on the shorter term of the wrap loan, with a large final payment of both the new funds and the total remaining principal on the pre-existing loan (although only the wrap loan will actually be paid off at that time).

17(c)(1)(iii) Variable-or adjustable-rate transactions.

[8.]1. *Basis of disclosures [in variable-rate transactions]*. The disclosures for a variable-or adjustable-rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors generally should base the disclosures only on the initial rate and should not assume that this rate will increase (except as provided in § 226.38(c) for transactions secured by real property or a dwelling). For example, in a a variable-or adjustable-rate loan with an initial interest rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that the rate will increase 5 percentage points. However, in a variable-rate transaction with a seller buydown that is reflected in the credit contract, a consumer buydown, or a discounted or premium rate, disclosures should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term. (See the commentary to section 226.17(c)(1) for a discussion of buydown, discounted, and premium transactions and the commentary to section 226.19(a)(2) for a discussion of [the] redisclosure in [certain mortgage transactions with a variable-rate] transactions secured by real property or a dwelling with an adjustable-rate feature.

[9.]2. *Use of estimates in variable-or adjustable-rate transactions*. The variable-or adjustable-rate feature does not, by itself, make the disclosures estimates.

[10.]3. *Discounted and premium variable-or adjustable-rate transactions*. In some variable-or adjustable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

i. When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The interest rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that interest rate changes are based on the index value in effect 45 days before the interest rate change date, creditors may use any index value in effect during the 45-day period before consummation in calculating a composite annual percentage rate.

ii. The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule. (In transactions secured by real property or a dwelling, creditors disclose the "interest and settlement charges" rather than the "finance charge" and the "payment summary" rather than the "payment schedule." *See* § 226.38(c) and (e)(5).

iii. If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

iv. Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of <14>; of 1 percent applies, in accordance with § 226.22(a)(3).

v. Examples of discounted [variable] adjustable-rate transactions secured by real property or a dwelling include:

A. A 30-year loan for $ 100,000 with no prepaid [finance charges] interest and settlement charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. [Reflecting those two rate levels, the payment schedule should ***show*** 12 payments of $ 804.62 and 348 payments of $ 1,025.31.] The [finance charge] interest and settlement charges should be $ 266,463.32 and the total of payments $ 366,463.32.

B. Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. [Reflecting those three rate levels, the payment schedule should ***show*** 12 payments of $ 804.62, 12 payments of $ 950,09, and 336 payments of $ 365,234.76.] The [finance charge] interest and settlement charges should be $ 265,234.76 and the total of payments should be $ 365,234.76.

C. Same loan as above, except with a 7 1/2; percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. [Because of the payment cap, five levels of payments should be reflected.] The [finance charge] interest and settlement charges should be $ 277,040.60, and the total of payments $ 377,040.60.

vi. A loan in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation is not a discounted or premium variable-or adjustable-rate loan. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

[11. *Examples of variable-rate transactions*.] 4. *General*. In general, v [V]ariable-rate transactions include:

[.]i. Renewable balloon-payment instruments with a fixed interest rate where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (However, a transaction secured by real property or a dwelling with a balloon payment and a fixed interest rate must be disclosed as a fixed-rate transaction under § 226.38(a)(3) whether or not the transaction is renewable.) Disclosures must be based on the payment amortization (unless the specified term of the obligation with renewals is shorter) and on the rate in effect at the time of consummation of the transaction. (Examples of conditions within a consumer's control include requirements that a consumer be current in payments or continue to reside in the mortgaged property. In contrast, setting a limit on the rate at which the creditor would be obligated to renew or reserving the right to change the credit standards at the time of renewal are examples of conditions outside a consumer's control.) If, however, a creditor is not obligated to renew as described above, disclosures must be based on the term of the balloon-payment loan. Disclosures also must be based on the term of the balloon-payment loan in balloon-payment instruments in which the legal obligation provides that the loan will be renewed by a "refinancing" of the obligation, as that term is defined by § 226.20(a). If it cannot be determined from the legal obligation that the loan will be renewed by a "refinancing," disclosures must be based either on the term of the balloon-payment loan or on the payment amortization, depending on whether the creditor is unconditionally obligated to renew the loan as described above. (This discussion does not apply to construction loans subject to § 226.17(c)(6).)

[. "Shared-equity" or "shared-appreciation" mortgages that have a fixed rate of interest and an appreciation share based on the consumer's equity in the mortgaged property, in a transaction not secured by real property or a dwelling. The appreciation share is payable in a lump sum at a specified time. Disclosures must be based on the fixed interest rate. (As discussed in the commentary to § 226.2, other types of shared-equity arrangements are not considered "credit" and are not subject to Regulation Z.)]

[.]ii. Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures are to be based on the preferred rate.

[. Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions. "Shared-equity" or "shared-appreciation" mortgages are not considered variable-rate transactions.]

[.]iii. "Price level adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. Disclosures are to be based on the fixed interest rate.

5. *Not variable-or adjustable-rate transactions*. Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-or adjustable-rate transactions.

[12.]6. *Graduated-payment adjustable-rate mortgage*. Graduated payment adjustable rate mortgages involve both [a variable] an adjustable interest rate and scheduled [variations] adjustments in payment amounts during the loan term. For example, under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In any case, the initial payment amount may be insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, the disclosures should treat these features as follows:

[.]i. The finance charge includes the amount of negative amortization based on the assumption that the rate in effect at consummation remains unchanged.

[.]ii. The amount financed does not include the amount of negative amortization.

[.]iii. As in any variable-or adjustable-rate transaction, the annual percentage rate is based on the terms in effect at consummation.

[. The schedule of payments discloses the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the payment schedule in a transaction not secured by real property or a dwelling, or payment summary, in a transaction secured by real property or a dwelling may require several different levels of payments, even with the assumption that the original interest rate does not increase.]

[13.]7. *Growth-equity mortgages*. Growth-equity mortgages, a [A]lso referred to as payment-escalated mortgages, [these mortgage plans involve] scheduled payment increases to prematurely amortize the loan. The initial payment amount is determined as for a long-term loan with a fixed interest rate. Payment increases are scheduled periodically, based on changes in an index. The larger payments result in accelerated amortization of the loan. In disclosing these mortgage plans, creditors [may either--

. Estimate] must estimate the amount of payment increases, based on the best information reasonably available[, or

. Disclose by analogy to the variable-rate disclosures in section 226.18(f)(1)]. (This discussion does not apply to growth-equity mortgages in which the amount of payment increases can be accurately determined at the time of disclosure. For these mortgages, [as for graduated-payment mortgages,] disclosures should reflect the scheduled increases in payments.)

[14. Reverse mortgages.] *17(c)(1)(iv) Repayment upon occurrence of future event*.

1. *General*. Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, typically involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the loan (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. (However, a reverse mortgage is covered by § 226.33 only if the consumer's death is one of the conditions of repayment, as provided under § 226.33(a).) In disclosing these transactions, creditors must apply the following rules, as applicable:

[.]i. If the reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the loan at the time our payments to you end. As provided in ***your*** agreement, ***your*** repayment may be required at a different time."

[.]ii. If the reverse mortgage has neither a specified period for disbursements nor a specified repayment date and these terms will be determined solely by reference to future events including the consumer's death, the creditor may assume that the disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

[.]iii. In making the disclosures, the creditor must assume that all disbursements and accrued interest will be paid by the consumer. For example, if the note has a nonrecourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by ***your*** agreement."

[.]iv. Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. [Such loans are considered variable-rate mortgages, as described in comment 17(c)(1)-11, and the appreciation feature must be disclosed in accordance with § 226.18(f)(1). If the reverse mortgage has a variable interest rate, is written for a term greater than one year, and is secured by the consumer's principal dwelling, the shared appreciation feature must be described under § 226.19(b)(2)(vii).] If the reverse mortgage has an adjustable interest rate and is secured by real property or a dwelling, the creditor must disclose the shared-equity or shared-appreciation feature as required by §§ 226.19(b)(3)(iii) and 226.38(d)(2)(iii).

[15. *Morris Plan transactions*. When a deposit account is created for the sole purpose of accumulating payments and then is applied to satisfy entirely the consumer's obligation in the transaction, each deposit made into the account is considered the same as a payment on a loan for purposes of making disclosures.

16. *Number of transactions*. Creditors have flexibility in handling credit extensions that may be viewed as multiple transactions. For example:

. When a creditor finances the credit sale of a radio and a television on the same day, the creditor may disclose the sales as either 1 or 2 credit sale transactions.

. When a creditor finances a loan along with a credit sale of health insurance, the creditor may disclose in one of several ways: a single credit sale transaction, a single loan transaction, or a loan and a credit sale transaction.

. The separate financing of a downpayment in a credit sale transaction may, but need not, be disclosed as 2 transactions (a credit sale and a separate transaction for the financing of the downpayment).]

[17. *Special rules for tax refund anticipation loans.] 17(c)(1)(v) Tax refund-anticipation loan*.

1. *General*. Tax refund loans, also known as refund anticipation loans (RALs), are transactions in which a creditor will lend up to the amount of a consumer's expected tax refund. RAL agreements typically require repayment upon demand, but also may provide that repayment is required when the refund is made. The agreements also typically provide that if the amount of the refund is less than the payment due, the consumer must pay the difference. Repayment often is made by a preauthorized offset to a consumer's account held with the creditor when the refund has been deposited by electronic transfer. Creditors may charge fees for RALs in addition to fees for filing the consumer's tax return electronically. In RAL transactions subject to the regulation the following special rules apply:

[.]i. If, under the terms of the legal obligation, repayment of the loan is required when the refund is received by the consumer (such as by deposit into the consumer's account), the disclosures should be based on the creditor's estimate of the time the refund will be delivered even if the loan also contains a demand clause. The practice of a creditor to demand repayment upon delivery of refunds does not determine whether the legal obligation requires that repayment be made at that time; this determination must be made according to applicable State or other law. (See comment 17(c)(5)-1 for the rules regarding disclosures if the loan is payable solely on demand or is payable either on demand or on an alternate maturity date.)

[.]ii. If the consumer is required to repay more than the amount borrowed, the difference is a finance charge unless excluded under § 226.4. In addition, to the extent that any fees charged in connection with the loan (such as for filing the tax return electronically) exceed those fees for a comparable cash transaction (that is, filing the tax return electronically without a loan), the difference must be included in the finance charge.

[18.] *17(c)(1)(vi) Pawn transactions*.

1. *General*. When, in connection with an extension of credit, a consumer pledges or sells an item to a pawnbroker creditor in return for a sum of money and retains the right to redeem the item for a greater sum (the redemption price) within a specified period of time, disclosures are required. In addition to other disclosure requirements that may be applicable under § 226.18, for purposes of pawn transactions:

i. The amount financed is the initial sum paid to the consumer. The pawnbroker creditor need not provide a separate itemization of the amount financed if that entire amount is paid directly to the consumer and the disclosed description of the amount financed is "the amount of cash given directly to you" or a similar phrase.

ii. The finance charge is the difference between the initial sum paid to the consumer and the redemption price plus any other finance charges paid in connection with the transaction. (See § 226.4.)

iii. The term of the transaction, for calculating the annual percentage rate, is the period of time agreed to by the pawnbroker creditor and the consumer. The term of the transaction does not include a grace period (including any statutory grace period) after the agreed redemption date.

Paragraph 17(c)(2)(i).

1. *Basis for estimates*. Disclosures may be estimated when the exact information is unknown at the time disclosures are made, except that creditors may not provide estimated disclosures in disclosures required by § 226.19(a)(2)(ii) and (iii). Information is unknown if it is not reasonably available to the creditor at the time the disclosures are made.

The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. For example, the creditor must at a minimum utilize generally accepted calculation tools, but need not invest in the most sophisticated computer program to make a particular type of calculation. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, or to realtors for taxes and escrow fees. The creditor may utilize estimates in making disclosures even though the creditor knows that more precise information will be available by the point of consummation. However, new disclosures may be required under § 226.17(f) or § 226.19.

2. *Labelling estimates*. Estimates must be designated as such in the segregated disclosures, except that creditors may not provide estimated disclosures in the disclosures required by § 226.19(a)(2)(ii) and (iii). Even though other disclosures are based on the same assumption on which a specific estimated disclosure was based, the creditor has some flexibility in labelling the estimates. Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, when several disclosures are affected because of the unknown information, the creditor has the option of labelling either every affected disclosure or only the disclosure primarily affected. For example, when the finance charge is unknown because the date of consummation is unknown, the creditor must label the finance charge as an estimate and may also label as estimates the total of payments and the payment schedule. When many numerical disclosures are estimates, the creditor may use a general statement, such as "all numerical disclosures except the late payment disclosure are estimates," as a method to label those disclosures as estimates.

3. *Simple-interest transactions*. If consumers do not make timely payments in a simple-interest transaction, some of the amounts calculated for Truth in Lending disclosures will differ from amounts that consumers will actually pay over the term of the transaction. Creditors may label disclosures as estimates in these transactions[.] except as otherwise provided by § 226.19(a)(2). (See the commentary on § 226.19(a)(2) for a discussion of circumstances where creditors may not disclose estimates for transactions secured by real property or a dwelling.) For example, because the finance charge and total of payments may be larger than disclosed if consumers make late payments, creditors may label the finance charge and total of payments as estimates. On the other hand, creditors may choose not to label disclosures as estimates. In all cases, creditors [and] may base [all] disclosures on the assumption that payments will be made on time and in the amounts required by the terms of the legal obligation, disregarding any possible [inaccuracies] differences resulting from consumers' payment patterns.

Paragraph 17(c)(2)(ii)

1. *Per diem interest*. This paragraph applies to any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures are not labeled as estimates. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by $ 200, the disclosed finance charge is considered accurate even though the understatement is not within the $ 100 tolerance of § 226.18(d)(1), and the finance charge was not labeled as an estimate. In this example, if in addition to the understatement related to the per-diem interest, a $ 90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of $ 290, the finance charge is considered accurate because the $ 90 fee is within the tolerance in § 226.18(d)(1).

Paragraph 17(c)(3)

1. *Minor variations*. Section 226.17(c)(3) allows creditors to disregard certain factors in calculating and making disclosures. For example:

[.]i. Creditors may ignore the effects of collecting payments in whole cents. Because payments cannot be collected in fractional cents, it is often difficult to amortize exactly an obligation with equal payments; the amount of the last payment may require adjustment to account for the rounding of the other payments to whole cents.

[.]ii. Creditors may base their disclosures on calculation tools that assume that all months have an equal number of days, even if their practice is to take account of the variations in months for purposes of collecting interest. For example, a creditor may use a calculation tool based on a 360-day year, when it in fact collects interest by applying a factor of 1/365 of the annual rate to 365 days. This rule does not, however, authorize creditors to ignore, for disclosure purposes, the effects of applying 1/360 of an annual rate to 365 days.

2. *Use of special rules*. A creditor may utilize the special rules in § 226.17(c)(3) for purposes of calculating and making all disclosures for a transaction or may, at its option, use the special rules for some disclosures and not others.

Paragraph 17(c)(4).

1. *Payment schedule irregularities*. When one or more payments in a transaction differ from the others because of a long or short first period, the variations may be ignored in disclosing the payment schedule, finance charge, annual percentage rate, and other terms. For example:

[.]i. A 36-month auto loan might be consummated on June 8 with payments due on July 1 and the first of each succeeding month. The creditor may base its calculations on a payment schedule that assumes 36 equal intervals and 36 equal installment payments, even though a precise computation would produce slightly different amounts because of the shorter first period.

[.]ii. By contrast, in the same example, if the first payment were not scheduled until August 1, the irregular first period would exceed the limits in § 226.17(c)(4); the creditor could not use the special rule and could not ignore the extra days in the first period in calculating its disclosures.

2. *Measuring odd periods*. In determining whether a transaction may take advantage of the rule in § 226.17(c)(4), the creditor must measure the variation against a regular period. For purposes of that rule:

[.]i. The first period is the period from the date on which the finance charge begins to be earned to the date of the first payment.

[.]ii. The term is the period from the date on which the finance charge begins to be earned to the date of the final payment.

[.]iii. The regular period is the most common interval between payments in the transaction. In transactions involving regular periods that are monthly, semimonthly or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of days or an assumed 30-day month. In other transactions, the length of the periods is based on the actual number of days.

3. *Use of special rules*. A creditor may utilize the special rules in § 226.17(c)(4) for purposes of calculating and making some disclosures but may elect not to do so for all of the disclosures. For example, the variations may be ignored in calculating and disclosing the annual percentage rate but taken into account in calculating and disclosing the finance charge and payment schedule.

4. *Relation to prepaid finance charges*. Prepaid finance charges, including "odd-days" or "per-diem" interest, paid prior to or at closing may not be treated as the first payment on a loan. Thus, creditors may not disregard an irregularity in disclosing such finance charges.

Paragraph 17(c)(5).

1. *Demand disclosures*. Disclosures for demand obligations are based on an assumed 1-year term, unless an alternate maturity date is stated in the legal obligation. Whether an alternate maturity date is stated in the legal obligation is determined by applicable law. An alternate maturity date is not inferred from an informal principal reduction agreement or a similar understanding between the parties. However, when the note itself specifies a principal reduction schedule (for example, "payable on demand or $ 2,000 plus interest quarterly"), an alternate maturity is stated and the disclosures must reflect that date. See §§ 226.19(b)(2)(ii)(D) and 226.38(d)(2)(iv) and associated commentary to determine ***how*** to disclose a demand feature for a transaction secured by real property or a dwelling.

2. *Future event as maturity date*. An obligation whose maturity date is determined solely by a future event, as for example, a loan payable only on the sale of property, is not a demand obligation. Because no demand feature is contained in the obligation, demand disclosures under § 226.18(i) are inapplicable. The disclosures should be based on the creditor's estimate of the time at which the specified event will occur, and in a transaction not secured by real property or a dwelling may indicate the basis for the creditor's estimate, as noted in the commentary to § 226.17(a).

3. *Demand after stated period*. Most demand transactions contain a demand feature that may be exercised at any point during the term, but [certain transactions] a transaction may convert to demand status only after a fixed period. [For example, in States prohibiting due-on-sale clauses, the Federal National Mortgage Association (FNMA) requires mortgages that it purchases to include a call option rider that may be exercised after 7 years. These mortgages are generally written as long-term obligations, but contain a demand feature that may be exercised only within a 30-day period at 7 years.] The disclosures for [these transactions] a transaction that converts to demand status after a fixed period should be based upon the legally agreed-upon maturity date. Thus, for example, if a mortgage containing [the 7-year FNMA call option] a call option the creditor may exercise during the first 30 days of the eighth year after loan origination is written as a 20-year obligation, the disclosures should be based on the 20-year term, with the demand feature disclosed under [§ 226.18(i)] § 226.38(d)(2)(iv).

4. *Balloon mortgages*. Balloon payment mortgages, with payments based on a long-term amortization schedule and a large final payment due after a shorter term, are not demand obligations unless a demand feature is specifically contained in the contract. For example, a mortgage with a term of 5 years and a payment [schedule] summary based on 20 years would not be treated as a mortgage with a demand feature, in the absence of any contractual demand provisions. [In this type of mortgage, disclosures should be based on the 5-year term.] (See § 226.38(c)(3) for requirements for interest rate and payment summary disclosures for balloon payment mortgages.)

Paragraph 17(c)(6).

1. *Series of advances*. Section 226.17(c)(6)(i) deals with a series of advances under an agreement to extend credit up to a certain amount. A creditor may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If these advances are treated as 1 transaction and the timing and amounts of advances are unknown, creditors must make disclosures based on estimates, as provided in § 226.17(c)(2). If the advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided by consummation.

2. *Construction loans*. Section 226.17(c)(6)(ii) provides a flexible rule for disclosure of construction loans that may be permanently financed. These transactions have 2 distinct phases, similar to 2 separate transactions. The construction loan may be for initial construction or subsequent construction, such as rehabilitation or remodelling. The construction period usually involves several disbursements of funds at times and in amounts that are unknown at the beginning of that period, with the consumer paying only accrued interest until construction is completed. Unless the obligation is paid at that time, the loan then converts to permanent financing in which the loan amount is amortized just as in a standard mortgage transaction. Section 226.17(c)(6)(ii) permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for the 2 phases. This rule is available whether the consumer is initially obligated to accept construction financing only or is obligated to accept both construction and permanent financing from the outset. If the consumer

is obligated on both phases and the creditor chooses to give 2 sets of disclosures, both sets must be given to the consumer initially, because both transactions would be consummated at that time. (Appendix D provides a method of calculating the annual percentage rate and other disclosures for construction loans, which may be used, at the creditor's option, in disclosing construction financing.)

3. *Multiple-advance construction loans*. Section 226.17(c)(6)(i) and (ii) are not mutually exclusive. For example, in a transaction that finances the construction of a dwelling that may be permanently financed by the same creditor, the construction phase may consist of a series of advances under an agreement to extend credit up to a certain amount. In these cases, the creditor may disclose the construction phase as either 1 or more than 1 transaction and also disclose the permanent financing as a separate transaction.

4. *Residential mortgage transaction*. See the commentary to § 226.2(a)(24) for a discussion of the effect of § 226.17(c)(6) on the definition of a residential mortgage transaction.

5. *Allocation of points*. When a creditor utilizes the special rule in § 226.17(c)(6) to disclose credit extensions as multiple transactions, buyers points or similar amounts imposed on the consumer must be allocated for purposes of calculating disclosures. While such amounts should not be taken into account more than once in making calculations, they may be allocated between the transactions in any manner the creditor chooses. For example, if a construction-permanent loan is subject to 5 points imposed on the consumer and the creditor chooses to disclose the 2 phases separately, the 5 points may be allocated entirely to the construction loan, entirely to the permanent loan, or divided in any manner between the two. However, the entire 5 points may not be applied twice, that is, to both the construction and the permanent phases.

17(d) Multiple creditors; multiple consumers.

1. *Multiple creditors*. If a credit transaction involves more than one creditor:

[.]i. The creditors must choose which of them will make the disclosures.

[.]ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

[.]iii. All disclosures for the transaction must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure. For example, if one of the creditors is the seller, the total sale price disclosure under § 226.18(j) must be made, even though the disclosing creditor is not the seller.

2. *Multiple consumers*. When two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. If one consumer is merely a surety or guarantor, the disclosures must be given to the principal debtor. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.23, although the disclosures required under § 226.19(b) need only be provided to the consumer who expresses an interest in a variable-rate loan program.

17(e) Effect of subsequent events.

1. *Events causing inaccuracies*. Inaccuracies in disclosures are not violations if attributable to events occurring after the disclosures are made. [For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate.] The creditor may, however, be required to make new disclosures under § 226.17(f) or § 226.19 if the events occurred between disclosure and consummation or under § 226.20 if the events occurred after consummation. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. However, the creditor would be required to provide the notice required under § 226.20(e).

17(f) Early disclosures.

1. *Change in rate or other terms*. Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in this section, even if the [initial] prior disclosures would be considered accurate under the tolerances in § 226.18(d) or § 226.22(a). To illustrate:

i. [*General*.] *Non-mortgage loan*. A. If disclosures are made in a regular transaction not secured by real property or a dwelling on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than 1/8 of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction not secured by real property or a dwelling, if early disclosures are marked as estimates and the disclosed annual percentage rate is within 1/8 of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

[ii. *Nonmortgage loan*.] C. If disclosures for a transaction not secured by real property or a dwelling are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $ 35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. (See § 226.18(d)(2) of this part.)

[iii.]ii. *Mortgage loan*. At the time [TILA disclosures] the disclosures required by § 226.19(a)(2)(ii) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. [Assuming there were no other changes requiring redisclosure, t] The creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

2. *Variable or adjustable rate*. The addition of a variable or adjustable rate feature to the credit terms, after early disclosures are given, requires new disclosures. (See § 226.19(a)(2) to determine when new disclosures are required for transactions secured by real property or a dwelling.

3. *Content of new disclosures*. Subject to § 226.19(a), i[I]f redisclosure is required in a transaction not secured by real property or a dwelling, the creditor has the option of either providing a complete set of new disclosures, or providing disclosures of only the terms that vary from those originally disclosed. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a). If the creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the only differences involve estimates other than the annual percentage rate, and no variable rate feature has been added (see comment 17(f)-2). If a transaction is secured by real property or a dwelling, the creditor must provide a complete set of new disclosures in all cases, however. (See the commentary to § 226.19(a)(2).)

4. *Special rules*. [In mortgage transactions subject to § 226.19, the creditor must redisclose if, between the delivery of the required early disclosures and consummation, the annual percentage rate changes by more than a stated tolerance.] Special disclosure timing and content requirements apply under § 226.19(a)(2) to disclosures provided before consummation for mortgage transactions secured by real property or a dwelling. When subsequent events occur after consummation, new disclosures are required only if there is a refinancing or an assumption within the meaning of § 226.20.

Paragraph 17(f)(2).

1. *Irregular transactions*. For purposes of this paragraph, a transaction is deemed to be "irregular" according to the definition in footnote 46 of § 226.22(a)(3).

17(g) Mail or telephone orders--delay in disclosures.

1. *Conditions for use*. When the creditor receives a mail or telephone request for credit, except for extensions of credit covered by sections 226.19(a) and 226.19(b), the creditor may delay making the disclosures until the first payment is due if the following conditions are met:

[.]i. The credit request is initiated without face-to-face or direct telephone solicitation. (Creditors may, however, use the special rule when credit requests are solicited by mail.)

[.]ii. The creditor has supplied the specified credit information about its credit terms either to the individual consumer or to the public generally. That information may be distributed through advertisements, catalogs, brochures, special mailers, or similar means.

2. *Insurance*. The location requirements for the insurance disclosures under § 226.18(n) permit them to appear apart from the other disclosures. Therefore, a creditor may mail an insurance authorization to the consumer and then prepare the other disclosures to reflect whether or not the authorization is completed by the consumer. Creditors may also disclose the insurance cost on a unit-cost basis, if the transaction meets the requirements of § 226.17(g).

17(h) Series of sales--delay in disclosures.

1. *Applicability*. The creditor may delay the disclosures for individual credit sales in a series of such sales until the first payment is due on the current sale, assuming the 2 conditions in this paragraph are met. If those conditions are not met, the general timing rules in [§ 266.17(b)] § 226.17(b) apply.

2. *Basis of disclosures*. Creditors structuring disclosures for a series of sales under § 226.17(h) may compute the total sale price as either:

[.]i. The cash price for the sale plus that portion of the finance charge and other charges applicable to that sale; or

[.]ii. The cash price for the sale, other charges applicable to the sale, and the total finance charge and outstanding principal.

17(i) Interim student credit extensions.

1. Definition. Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. *See* § 226.3(f).) Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under § 226.18.

2. *Basis of disclosures*. The disclosures given at the time of execution of the interim note should reflect two annual percentage rates, one for the interim period and one for the repayment period. The use of § 226.17(i) in making disclosures does not, by itself, make those disclosures estimates. Any portion of the finance charge, such as statutory interest, that is attributable to the interim period and is paid by the student (either as a prepaid finance charge, periodically during the interim period, in one payment at the end of the interim period, or capitalized at the beginning of the repayment period) must be reflected in the interim annual percentage rate. Interest subsidies, such as payments made by either a State or the Federal government on an interim loan, must be excluded in computing the annual percentage rate on the interim obligation, when the consumer has no contingent liability for payment of

those amounts. Any finance charges that are paid separately by the student at the outset or withheld from the proceeds of the loan are prepaid finance charges. An example of this type of charge is the loan guarantee fee. The sum of the prepaid finance charges is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge.

3. *Consolidation*. Consolidation of the interim student credit extensions through a renewal note with a set repayment schedule is treated as a new transaction with disclosures made as they would be for a refinancing. Any unearned portion of the finance charge must be reflected in the new finance charge and annual percentage rate, and is not added to the new amount financed. In itemizing the amount financed under § 226.18(c), the creditor may combine the principal balances remaining on the interim extensions at the time of consolidation and categorize them as the amount paid on the consumer's account.

4. *Approved student credit forms*. See the commentary to appendix H regarding disclosure forms approved for use in certain student credit programs.

§ 226.18--Content of Disclosures.

1. *As applicable*. i. The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example:

[.]A. In a loan transaction, the creditor may delete disclosure of the total sale price.

[.]B. In a credit sale requiring disclosure of the total sale price under § 226.18(j), the creditor may delete any reference to a downpayment where no downpayment is involved.

ii. Where the amounts of several numerical disclosures are the same, the "as applicable" language also permits creditors to combine the terms, so long as it is done in a clear and conspicuous manner. For example:

[.]A. In a transaction in which the amount financed equals the total of payments, the creditor may disclose "amount financed/total of payments," together with descriptive language, followed by a single amount.

[.]B. However, if the terms are separated on the disclosure statement and separate space is provided for each amount, both disclosures must be completed, even though the same amount is entered in each space.

2. *Format*. See the commentary to § 226.17 and appendix H for a discussion of the format to be used in making these disclosures, as well as acceptable modifications.

18(a) Creditor.

1. *Identification of creditor*. The creditor making the disclosures must be identified. [This disclosure may, at the creditor's option, appear apart from the other disclosures.] Use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

18(b) Amount financed.

1. *Disclosure required*. The net amount of credit extended must be disclosed using the term amount financed and a descriptive explanation similar to the phrase in the regulation.

2. *Rebates and loan premiums*. In a loan transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, in a credit sale transaction, a seller's or manufacturer's rebate may be offered to prospective purchasers of the creditor's goods or services. Such premiums and rebates must be reflected in accordance with the terms of the legal obligation between the parties. *See* § 226.17(c)(1) and its commentary. Thus, if the creditor is legally obligated to provide the premium or rebate to the consumer as part of the credit transaction, the disclosures should reflect its value in the manner and at the time the creditor is obligated

to provide it. [At the creditor's option, these amounts may be either reflected in the Truth in Lending disclosures or disregarded in the disclosures. If the creditor chooses to reflect them in the § 226.18 disclosures, rather than disregard them, they may be taken into account in any manner as part of those disclosures.]

Paragraph 18(b)(1).

1. *Downpayments*. A downpayment is defined in § 226.2(a)(18) to include, at the creditor's option, certain deferred downpayments or pick-up payments. A deferred downpayment that meets the criteria set forth in the definition may be treated as part of the downpayment, at the creditor's option.

[.]i. Deferred downpayments that are not treated as part of the downpayment (either because they do not meet the definition or because the creditor simply chooses not to treat them as downpayments) are included in the amount financed.

[.]ii. Deferred downpayments that are treated as part of the downpayment are not part of the amount financed under § 226.18(b)(1).

Paragraph 18(b)(2).

1. *Adding other amounts*. Fees or other charges that are not part of the finance charge and that are financed rather than paid separately at consummation of the transaction are included in the amount financed. Typical examples are [real estate settlement charges and] premiums for voluntary credit life and disability insurance excluded from the finance charge under § 226.4. This paragraph does not include any amounts already accounted for under § 226.18(b)(1), such as taxes, tag and title fees, or the costs of accessories or service policies that the creditor includes in the cash price.

Paragraph 18(b)(3).

1. *Prepaid finance charges*. i. Prepaid finance charges that are paid separately in cash or by check should be deducted under § 226.18(b)(3) in calculating the amount financed. To illustrate[. A], a consumer applies for a loan of $ 2,500 with a $ 40 loan fee. The face amount of the note is $ 2,500 and the consumer pays the loan fee separately by cash or check at closing. The principal loan amount for purposes of § 226.18(b)(1) is $ 2,500 and $ 40 should be deducted under § 226.18(b(3), thereby yielding an amount financed of $ 2,460.

ii. In some instances, as when loan fees are financed by the creditor, finance charges are incorporated in the face amount of the note. Creditors have the option, when the charges are not add-on or discount charges, of determining a principal loan amount under § 226.18(b)(1) that either includes or does not include the amount of the finance charges. (Thus the principal loan amount may, but need not, be determined to equal the face amount of the note.) When the finance charges are included in the principal loan amount, they should be deducted as prepaid finance charges under § 226.18(b)(3). When the finance charges are not included in the principal loan amount, they should not be deducted under § 226.18(b)(3). The following examples illustrate the application of § 226.18(b) to this type of transaction. Each example assumes a loan request of $ 2,500 with a loan fee of $ 40; the creditor assesses the loan fee by increasing the face amount of the note to $ 2,540.

[.]A. If the creditor determines the principal loan amount under § 226.18(b)(1) to be $ 2,540, it has included the loan fee in the principal loan amount and should deduct $ 40 as a prepaid finance charge under § 226.18(b)(3), thereby obtaining an amount financed of $ 2,500.

[.]B. If the creditor determines the principal loan amount under § 226.18(b)(1) to be $ 2,500, it has not included the loan fee in the principal loan amount and should not deduct any amount under § 226.18(b)(3), thereby obtaining an amount financed of $ 2,500.

iii. The same rules apply when the creditor does not increase the face amount of the note by the amount of the charge but collects the charge by withholding it from the amount advanced to the consumer. To illustrate, the following examples assume a loan request of $ 2,500 with a loan fee of $ 40; the creditor prepares a note for $ 2,500 and advances $ 2,460 to the consumer.

[.]A. If the creditor determines the principal loan amount under § 226.18(b)(1) to be $ 2,500, it has included the loan fee in the principal loan amount and should deduct $ 40 as a prepaid finance charge under § 226.18(b)(3), thereby obtaining an amount financed of $ 2,460.

[.]B. If the creditor determines the principal loan amount under § 226.18(b)(1) to be $ 2,460, it has not included the loan fee in the principal loan amount and should not deduct any amount under § 226.18(b)(3), thereby obtaining an amount financed of $ 2,460.

iv. Thus in the examples where the creditor derives the net amount of credit by determining a principal loan amount that does not include the amount of the finance charge, no subtraction is appropriate. Creditors should note, however, that although the charges are not subtracted as prepaid finance charges in those examples, they are nonetheless finance charges and must be treated as such.

2. *Add-on or discount charges*. All finance charges must be deducted from the amount of credit in calculating the amount financed. If the principal loan amount reflects finance charges that meet the definition of a prepaid finance charge in § 226.2, those charges are included in the § 226.18(b)(1) amount and deducted under § 226.18(b)(3). However, if the principal loan amount includes finance charges that do not meet the definition of a prepaid finance charge, the § 226.18(b)(1) amount must exclude those finance charges. The following examples illustrate the application of § 226.18(b) to these types of transactions. Each example assumes a loan request of $ 1000 for 1 year, subject to a 6 percent precomputed interest rate, with a $ 10 loan fee paid separately at consummation.

[.]i. The creditor assesses add-on interest of $ 60 which is added to the $ 1000 in loan proceeds for an obligation with a face amount of $ 1060. The principal for purposes of § 226.18(b)(1) is $ 1000, no amounts are added under § 226.18(b)(2), and the $ 10 loan fee is a prepaid finance charge to be deducted under § 226.18(b)(3). The amount financed is $ 990.

[.]ii. The creditor assesses discount interest of $ 60 and distributes $ 940 to the consumer, who is liable for an obligation with a face amount of $ 1000. The principal under § 226.18(b)(1) is $ 940, which results in an amount financed of $ 930, after deduction of the $ 10 prepaid finance charge under § 226.18(b)(3).

[.]iii. The creditor assesses $ 60 in discount interest by increasing the face amount of the obligation to $ 1060, with the consumer receiving $ 1000. The principal under § 226.18(b)(1) is thus $ 1000 and the amount financed $ 990, after deducting the $ 10 prepaid finance charge under § 226.18(b)(3).

18(c) Itemization of amount financed.

1. *Disclosure required*. i. The creditor has 2 alternatives in complying with § 226.18(c):

[.]A. The creditor may inform the consumer, on the segregated disclosures, that a written itemization of the amount financed will be provided on request, furnishing the itemization only if the customer in fact requests it.

[.]B. The creditor may provide an itemization as a matter of course, without notifying the consumer of the right to receive it or waiting for a request.

ii. Whether given as a matter of course or only on request, the itemization must be provided at the same time as the other disclosures required by § 226.18, although separate from those disclosures.

2. *Additional information*. Section 226.18(c) establishes only a minimum standard for the material to be included in the itemization of the amount financed. Creditors have considerable flexibility in revising or supplementing the information listed in § 226.18(c) and ***shown*** in model form H-3, although no changes are required. The creditor may, for example, do one or more of the following:

i. Include amounts that reflect payments not part of the amount financed. For example, [escrow items and] certain insurance premiums may be included, even though they are neither part of the amount financed nor prepaid finance charges. [as discussed in the commentary to § 226.18(g).]

ii. Organize the categories in any order. For example, the creditor may rearrange the terms in a mathematical progression that depicts the arithmetic relationship of the terms.

iii. Add categories. For example, in a credit sale, the creditor may include the cash price and the downpayment. If the credit sale involves a trade-in of the consumer's car and an existing lien on that car exceeds the value of the tradein amount, the creditor may disclose the consumer's trade-in value, the creditor's payoff of the existing lien, and the resulting additional amount financed.

iv. Further itemize each category. For example, the amount paid directly to the consumer may be subdivided into the amount given by check and the amount credited to the consumer's savings account.

v. Label categories with different language from that ***shown*** in § 226.18(c). For example, an amount paid on the consumer's account may be revised to specifically identify the account as "***your*** auto loan with us."

vi. Delete, leave blank, mark "N/A," or otherwise note [not] inapplicable categories in the itemization. For example, in a credit sale with no prepaid finance charges or amounts paid to others, the amount financed may consist of only the cash price less downpayment. In this case, the itemization may be composed of only a single category and all other categories may be eliminated.

3. *Amounts appropriate to more than one category*. When an amount may appropriately be placed in any of several categories and the creditor does not wish to revise the categories ***shown*** in § 226.18(c), the creditor has considerable flexibility in determining where to ***show*** the amount. For example[:], [.][I]in a credit sale, the portion of the purchase price being financed by the creditor may be viewed as either an amount paid to the consumer or an amount paid on the consumer's account.

[4. *RESPA transactions*. The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. Transactions subject to RESPA are exempt from the requirements of § 226.18(c) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate and settlement statement under RESPA differ from the requirements of §§ 226.18(c) and 226.19(a)(2). If a creditor chooses to substitute RESPA's settlement statement for the itemization when redisclosure is required under § 226.19(a)(2), the statement must be delivered to the consumer at or prior to consummation. The disclosures required by §§ 226.18(c) and 226.19(a)(2) may appear on the same page or on the same document as the good faith estimate or the settlement statement, so long as the requirements of § 226.17(a) are met.]

Paragraph 18(c)(1)(i).

1. *Amounts paid to consumer*. This encompasses funds given to the consumer in the form of cash or a check, including joint proceeds checks, as well as funds placed in an asset account. It may include money in an interest-bearing account even if that amount is considered a required deposit under § 226.18(r). For example, in a transaction with total loan proceeds of $ 500, the consumer receives a check for $ 300 and $ 200 is required by the creditor to be put into an interest-bearing account. Whether or not the $ 200 is a required deposit, it is part of the amount financed. At the creditor's option, it may be broken out and labeled in the itemization of the amount financed.

Paragraph 18(c)(1)(ii).

1. *Amounts credited to consumer's account*. The term consumer's account refers to an account in the nature of a debt with that creditor. It may include, for example, an unpaid balance on a prior loan, a credit sale balance or other

amounts owing to that creditor. It does not include asset accounts of the consumer such as savings or checking accounts.

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 41, third parties must be identified by name.

2. *Charges added to amounts paid to others*. A sum is sometimes added to the amount of a fee charged to a consumer for a service provided by a third party (such as for an extended warranty or a service contract) that is payable in the same amount in comparable cash and credit transactions. In the credit transaction, the amount is retained by the creditor. Given the flexibility permitted in meeting the requirements of the amount financed itemization (see the commentary to § 226.18(c)), the creditor in such cases may reflect that the creditor has retained a portion of the amount paid to others. For example, the creditor could add to the category "amount paid to others" language such as "(we may be retaining a portion of this amount)."

Paragraph 18(c)(1)(iv).

1. *Prepaid finance charge*. Prepaid finance charges that are deducted under § 226.18(b)(3) must be disclosed under this section. The prepaid finance charges must be ***shown*** as a total amount but may, at the creditor's option, also be further itemized and described. All amounts must be reflected in this total, even if portions of the prepaid finance charge are also reflected elsewhere. For example, if at consummation the creditor collects interim interest of $ 30 and a credit report fee of $ 10, a total prepaid finance charge of $ 40 must be ***shown***. At the creditor's option, the credit report fee paid to a third party may also be ***shown*** elsewhere as an amount included in § 226.18(c)(1)(iii). The creditor may also further describe the 2 components of the prepaid finance charge, although no itemization of this element is required by § 226.18(c)(1)(iv).

[2. *Prepaid mortgage insurance premiums*. RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement, which are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1002 on HUD--1 or HUD 1--A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.]

18(d) Finance charge.

1. *Disclosure required*. The creditor must disclose the finance charge as a dollar amount, using the term "finance charge," and must include a brief description similar to that in § 226.18(d). The creditor may, but need not, further modify the descriptor for variable rate transactions with a phrase such as "which is subject to change." The finance charge must be ***shown*** on the disclosures only as a total amount; the elements of the finance charge must not be itemized in the segregated disclosures, although the regulation does not prohibit their itemization elsewhere.

[2. [Reserved]]

(18(d)(2) Other Credit]

[1] 2. *Tolerance*. When a finance-charge error results in a misstatement of the amount financed, or some other dollar amount for which the regulation provides no specific tolerance, the misstated disclosure does not violate the act or the regulation if the finance-charge error is within the permissible tolerance in this paragraph.

18(e) Annual percentage rate.

1. *Disclosure required*. The creditor must disclose the cost of the credit as an annual rate, using the term "annual percentage rate," plus a brief descriptive phrase comparable to that used in § 226.18(e). For variable rate transactions, the descriptor may be further modified with a phrase such as "which is subject to change." Under § 226.17(a), the terms "annual percentage rate" and "finance charge" must be more conspicuous than the other required disclosures.

2. *Exception*. [Footnote 42] Section 226.18(e) provides an exception for certain transactions in which no annual percentage rate disclosure is required.

18(f) Variable rate.

1. *Coverage*. The requirements of § 226.18(f) apply to [all] transactions not secured by real property or a dwelling in which the terms of the legal obligation allow the creditor to increase the rate [originally disclosed to the consumer. It includes] charged when the transaction is consummated. Increases in rate include not only increases in the interest rate but also increases in other components, such as the rate of required credit life insurance. [The provisions, however, do not apply to] However, increases in rate do not include increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral, because creditors may assume that consumers abide by the terms of the legal obligation. *See* comment 17(c)(1)-1. [Section 226.18(f)(1) applies to variable-rate transactions that are not secured by the consumer's principal dwelling and to those that are secured by the principal dwelling but have a term of one year or less. Section 226.18(f)(2) applies to variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Moreover, transactions subject to section 226.18(f)(2) are subject to the special early-disclosure requirements of section 226.19(b). (However, "shared-equity" or "shared-appreciation" mortgages are subject to the disclosure requirements of section 226.18(f)(1) and not to the requirements of sections 226.18(f)(2) and 226.19(b) regardless of the general coverage of those sections.) Creditors are permitted under footnote 43 to substitute in any variable-rate transaction the disclosures required under Section 226.19(b) for those disclosures ordinarily required under Section 226.18(f)(1). Creditors who provide variable-rate disclosures under section 226.19(b) must comply with all of the requirements of that section, including the timing of disclosures, and must also provide the disclosures required under section 226.18(f)(2). Creditors utilizing footnote 43 may, but need not, also provide disclosures pursuant to section 226.20(c). (Substitution of disclosures under section 226.18(f)(1) in transactions subject to section 226.19(b) is not permitted under the footnote.)]

[*Paragraph 18(f)(1)*.]

[1.] 2. *Terms used in disclosure*. In describing the variable rate feature, the creditor need not use any prescribed terminology. For example, limitations and hypothetical examples may be described in terms of interest rates rather than annual percentage rates. The model forms in appendix H provide examples of ways in which the variable rate disclosures may be made.

[2.] 3. *Conversion feature*. In variable-rate transactions with an option permitting consumers to convert to a fixed-rate transaction, the conversion option is a variable-rate feature that must be disclosed. In making disclosures under § 226.18(f)[(1)], creditors should disclose the fact that the rate may increase upon conversion; identify the index or formula used to set the fixed rate; and state any limitations on and effects of an increase resulting from conversion that differ from other variable-rate features. Because § 226.18(0[(1)(iv)] (4) requires only one hypothetical example (such as an example of the effect on payments resulting from changes in the index), a second hypothetical example need not be given.

Paragraph 18(f)(1)((i)].

1. *Circumstances*. The circumstances under which the rate may increase include identification of any index to which the rate is tied, as well as any conditions or events on which the increase is contingent.

i. When no specific index is used, any identifiable factors used to determine whether to increase the rate must be disclosed.

ii. When the increase in the rate is purely discretionary, the fact that any increase is within the creditor's discretion must be disclosed.

iii. When the index is internally defined (for example, by that creditor's prime rate), the creditor may comply with this requirement by either a brief description of that index or a statement that any increase is in the discretion of the creditor. An externally defined index, however, must be identified.

Paragraph 18(f)[(1)(ii)](2).

1. *Limitations*. This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. When there are no limitations, the creditor may, but need not, disclose that fact. Limitations do not include legal limits in the nature of usury or rate ceilings under State or Federal statutes or regulations. (See § 226.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.)

Paragraph 18(f)[(1)(iii)](3).

1. *Effects*. Disclosure of the effect of an increase refers to an increase in the number or amount of payments or an increase in the final payment. In addition, the creditor may make a brief reference to negative amortization that may result from a rate increase. (See the commentary to § 226.17(a)(1) regarding directly related information.) If the effect cannot be determined, the creditor must provide a statement of the possible effects. For example, if the exercise of the variable-rate feature may result in either more or larger payments, both possibilities must be noted.

Paragraph 18(f)[(1)(iv)](4).

1. *Hypothetical example*. The example may, at the creditor's option appear apart from the other disclosures. The creditor may provide either a standard example that illustrates the terms and conditions of that type of credit offered by that creditor or an example that directly reflects the terms and conditions of the particular transaction. In transactions with more than one variable-rate feature, only one hypothetical example need be provided. (See the commentary to § 226.17(a)(1) regarding disclosure of more than one hypothetical example as directly related information.)

2. *Hypothetical example not required*. The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

i. Demand obligations with no alternate maturity date.

ii. Interim student credit extensions.

iii. Multiple-advance construction loans disclosed pursuant to appendix D, Part I.

[*Paragraph 18(f)(2)*.

1. *Disclosure required*. In variable-rate transactions that have a term greater than one year and are secured by the consumer's principal dwelling, the creditor must give special early disclosures under section 226.19(b) in addition to the later disclosures required under section 226.18(f)(2). The disclosures under section 226.18(f)(2) must state that the transaction has a variable-rate feature and that variable-rate disclosures have been provided earlier. (See the commentary to section 226.17(a)(1) regarding the disclosure of certain directly related information in addition to the variable-rate disclosures required under section 226.18(f)(2).)]

18(g) Payment schedule.

1. *Amounts included in repayment schedule*. The repayment schedule should reflect all components of the finance charge, not merely the portion attributable to interest. A prepaid finance charge, however, should not be ***shown*** in the repayment schedule as a separate payment. The payments may include amounts beyond the amount financed and finance charge. For example, the disclosed payments may, at the creditor's option, reflect certain insurance premiums where the premiums are not part of either the amount financed or the finance charge, as well as real estate escrow amounts such as taxes added to the payment in mortgage transactions.

2. *Deferred downpayments*. As discussed in the commentary to § 226.2(a)(18), deferred downpayments or pick-up payments that meet the conditions set forth in the definition of downpayment may be treated as part of the downpayment. Even if treated as a downpayment, that amount may nevertheless be disclosed as part of the payment schedule, at the creditor's option.

3. *Total number of payments*.

Except for transactions secured by real property or a dwelling, i[I]n disclosing the number of payments for transactions with more than one payment level, creditors may but need not disclose as a single figure the total number of payments for all levels. For example, in a transaction calling for 108 payments of $ 350, 240 payments of $ 335, and 12 payments of $ 330, the creditors need not state that there will be a total of 360 payments. For transactions secured by real property or a dwelling, creditors must disclose as a single figure the total number of payments for all levels. See § 226.38(e)(5)(i).

4. *Timing of payments*. i. *General rule*. Section 226.18(g) requires creditors to disclose the timing of payments. To meet this requirement, creditors may list all of the payment due dates. They also have the option of specifying the "period of payments" scheduled to repay the obligation. As a general rule, creditors that choose this option must disclose the payment intervals or frequency, such as "monthly" or "biweekly," and the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due "monthly beginning on July 1, 1998." This information, when combined with the number of payments, is necessary to define the repayment period and enable a consumer to determine all of the payment due dates.

ii. *Exception*. In a limited number of circumstances, the beginning-payment date is unknown and difficult to determine at the time disclosures are made. For example, a consumer may become obligated on a credit contract that contemplates the delayed disbursement of funds based on a contingent event, such as the completion of home repairs. Disclosures may also accompany loan checks that are sent by mail, in which case the initial disbursement and repayment dates are solely within the consumer's control. In such cases, if the beginning-payment date is unknown the creditor may use an estimated date and label the disclosure as an estimate pursuant to § 226.17(c). Alternatively, the disclosure may refer to the occurrence of a particular event, for example, by disclosing that the beginning payment is due "30 days after the first loan disbursement." This information also may be included with an estimated date to explain the basis for the creditor's estimate. See comment 17(a)(1)-5(iii).

5. *Mortgage insurance*. The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment schedule must reflect the legal obligation, as determined by applicable State or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, the payment schedule should reflect 130 premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, the payment schedule should reflect 128 monthly premium payments. (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments [17(c)(1)-8 and 17(c)(1)-10] 17(c)(1)(iii)-1 and 17(c)(1)(iii)-3.)

[*Paragraph]18(h) Total of payments*.

1. *Disclosure required*. The total of payments must be disclosed using that term, along with a descriptive phrase similar to the one in the regulation. The descriptive explanation may be revised to reflect a variable rate feature with a brief phrase such as "based on the current annual percentage rate which may change."

2. *Calculation of total of payments*. The total of payments is the sum of the payments disclosed under § 226.18(g). For example, if the creditor disclosed a deferred portion of the downpayment as part of the payment schedule, that payment must be reflected in the total disclosed under this paragraph.

3. *Exception*. [Footnote 44] Section 226.18(h) permits creditors to omit disclosure of the total of payments in single-payment transactions. This exception does not apply to a transaction calling for a single payment of principal combined with periodic payments of interest.

4. *Demand obligations*. In demand obligations with no alternate maturity date, the creditor may omit disclosure of payment amounts under § 226.18(g)(1). In those transactions, the creditor need not disclose the total of payments.

[Paragraph] 18(i) Demand feature.

1. *Disclosure requirements*. The disclosure requirements of this provision apply not only to transactions payable on demand from the outset, but also to transactions that are not payable on demand at the time of consummation but convert to a demand status after a stated period. In demand obligations in which the disclosures are based on an assumed maturity of 1 year under § 226.17(c)(5), that fact must also be stated. Appendix H contains model clauses that may be used in making this disclosure.

2. *Covered demand features*. The type of demand feature triggering the disclosures required by section 226.18(i), or section 226.38(d)(2)(iv) for transactions secured by real property or a dwelling, includes only those demand features contemplated by the parties as part of the legal obligation. For example, [this provision] section 226.18(i), or section 226.38(d)(2)(iv) for transactions secured by real property or a dwelling, do[es] not apply to transactions that convert to a demand status as a result of the consumer's default. A due-on-sale clause is not considered a demand feature. A creditor may, but need not, treat its contractual right to demand payment of a loan made to its executive officers as a demand feature to the extent that the contractual right is required by Regulation O (12 CFR 215.5) or other federal law.

3. *Relationship to payment schedule disclosures*. As provided in section 226.18(g)(1), or section 226.38(c) for transactions secured by real property or a dwelling, in demand obligations with no alternate maturity date, the creditor need only disclose the due dates or payment periods of any scheduled interest payments for the first year. If the demand obligation states an alternate maturity, however, the disclosed payment schedule must reflect that stated term; the special rule in section 226.18(g)(1), or section 226.38(c) for transactions secured by real property or a dwelling, is not available.

[Paragraph] 18(j) Total sale price.

1. *Disclosure required*. In a credit sale transaction, the total sale price must be disclosed using that term, along with a descriptive explanation similar to the one in the regulation. For variable rate transactions, the descriptive phrase may, at the creditor's option, be modified to reflect the variable rate feature. For example, the descriptor may read: "The total cost of ***your*** purchase on credit, which is subject to change, including ***your*** downpayment of * * *." The reference to a downpayment may be eliminated in transactions calling for no downpayment.

2. *Calculation of total sale price*. The figure to be disclosed is the sum of the cash price, other charges added under § 226.18(b)(2), and the finance charge disclosed under § 226.18(d).

3. *Effect of existing liens*. When a credit sale transaction involves property that is being used as a trade-in (an automobile, for example) and that has a lien exceeding the value of the trade-in, the total sale price is affected by the amount of any cash provided. (See comment 2(a)(18)-3.) To illustrate, assume a consumer finances the

purchase of an automobile with a cash price of $ 20,000. Another vehicle used as a trade-in has a value of $ 8,000 but has an existing lien of $ 10,000, leaving a $ 2,000 deficit that the consumer must finance.

i. If the consumer pays $ 1,500 in cash, the creditor may apply the cash first to the lien, leaving a $ 500 deficit, and reflect a downpayment of $ 0. The total sale price would include the $ 20,000 cash price, an additional $ 500 financed under § 226.18(b)(2), and the amount of the finance charge. Alternatively, the creditor may reflect a downpayment of $ 1,500 and finance the $ 2,000 deficit. In that case, the total sale price would include the sum of the $ 20,000 cash price, the $ 2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

ii. If the consumer pays $ 3,000 in cash, the creditor may apply the cash first to extinguish the lien and reflect the remainder as a downpayment of $ 1,000. The total sale price would reflect the $ 20,000 cash price and the amount of the finance charge. (The cash payment extinguishes the trade-in deficit and no charges are added under § 226.18(b)(2).) Alternatively, the creditor may elect to reflect a downpayment of $ 3,000 and finance the $ 2,000 deficit. In that case, the total sale price would include the sum of the $ 20,000 cash price, the $ 2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

[Paragraph] 18(k) Prepayment.

1. *Disclosure required*. The creditor must give a definitive statement of whether or not a penalty will be imposed or a rebate will be given.

[.] iii. The fact that no penalty will be imposed may not simply be inferred from the absence of a penalty disclosure; the creditor must indicate that prepayment will not result in a penalty.

[.] ii. If a penalty or refund is possible for one type of prepayment, even though not for all, a positive disclosure is required. This applies to any type of prepayment, whether voluntary or involuntary as in the case of prepayments resulting from acceleration.

[.] iii. Any difference in rebate or penalty policy, depending on whether prepayment is voluntary or not, must not be disclosed with the segregated disclosures.

2. *Rebate-penalty disclosure*. A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H-15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

3. *Prepaid finance charge*. The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure under § 226.18(k). A prepaid finance charge is not considered a penalty under § 226.18(k)(1), nor does it require a disclosure under § 226.18(k)(2). At its option, however, a creditor may consider a prepaid finance charge to be under § 226.18(k)(2). If a disclosure is made under § 226.18(k)(2) with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower "will not be entitled to a refund of the prepaid finance charge" or some other term that describes the finance charge.

Paragraph 18(k)(1).

1. *Penalty*. [This] Section 226.18(k)(1) applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term *penalty* as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

[. Interest charges for any period after prepayment in full is made.] i. Charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such "balance." (See the commentary to § 226.17(a)(1) regarding disclosure of [interest] such charges assessed for periods after prepayment in full as directly related information, for transactions not secured by real property or a dwelling.)

[.] ii. A minimum finance charge in a simple-interest transaction. (See the commentary to § 226.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.) Items which are not penalties include, for example[:],

[. L] loan guarantee fees. [. Interim interest on a student loan.]

Paragraph 18(k)(2).

1. *Rebate of finance charge*. This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation. This category includes, for example:

[.] i. Precomputed finance charges such as add-on charges.

[.] ii. Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.

2. *Methodology of computing*. No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under this section.

[Paragraph] 18(l) Late payment.

1. *Definition*. This paragraph requires a disclosure only if charges are added to individual delinquent installments by a creditor who otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

[.]i. The right of acceleration. [.] ii. Fees imposed for actual collection costs, such as repossession charges or attorney's fees.

[.] iii. Deferral and extension charges.

[.] iv. The continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate is a late payment charge to the extent of the increase.

2. *Content of disclosure*. Many State laws authorize the calculation of late charges on the basis of either a percentage or a specified dollar amount, and permit imposition of the lesser or greater of the 2 charges. The disclosure made under § 226.18(l) may reflect this alternative. For example, stating that the charge in the event of a late payment is 5% of the late amount, not to exceed $ 5.00, is sufficient. Many creditors also permit a grace period during which no late charge will be assessed; this fact may be disclosed as directly related information. (See the commentary to § 226.17(a).)

[Paragraph] 18(m) Security interest.

1. *Purchase money transactions*. When the collateral is the item purchased as part of, or with the proceeds of, the credit transaction, section 226.18(m) requires only a general identification such as "the property purchased in this transaction." However, the creditor may identify the property by item or type instead of identifying it more generally with a phrase such as "the property purchased in this transaction." For example, a creditor may identify collateral as "a motor vehicle," or as "the property purchased in this transaction." Any transaction in which the credit is being used to purchase the collateral is considered a purchase money transaction and the abbreviated identification may be used, whether the obligation is treated as a loan or a credit sale.

2. *Nonpurchase money transactions*. In nonpurchase money transactions, the property subject to the security interest must be identified by item or type. This disclosure is satisfied by a general disclosure of the category of property subject to the security interest, such as "motor vehicles," "securities," "certain household items," or

"household goods." (Creditors should be aware, however, that the Federal credit practices rules, as well as some State laws, prohibit certain security interests in household goods.) At the creditor's option, however, a more precise identification of the property or goods may be provided.

3. *Mixed collateral*. In some transactions in which the credit is used to purchase the collateral, the creditor may also take other property of the consumer as security. In those cases, a combined disclosure must be provided, consisting of an identification of the purchase money collateral consistent with comment 18(m)--1 and a specific identification of the other collateral consistent with comment 18(m)--2.

4. *After-acquired property*. An after-acquired property clause is not a security interest to be disclosed under § 226.18(m).

5. *Spreader clause*. The fact that collateral for pre-existing credit with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. (Such security interests may be known as "spreader" or "dragnet" clauses, or as "cross-collateralization" clauses.) A specific identification of that collateral is unnecessary but a reminder of the interest arising from the prior indebtedness is required. The disclosure may be made by using language such as "collateral securing other loans with us may also secure this loan." At the creditor's option, a more specific description of the property involved may be given.

6. *Terms used in disclosure*. No specified terminology is required in disclosing a security interest. Although the disclosure may, at the creditor's option, use the term security interest, the creditor may designate its interest by using, for example, pledge, lien, or mortgage.

7. *Collateral from third party*. In certain transactions, the consumer's obligation may be secured by collateral belonging to a third party. For example, a loan to a student may be secured by an interest in the property of the student's parents. In such cases, the security interest is taken in connection with the transaction and must be disclosed, even though the property encumbered is owned by someone other than the consumer.

18(n) Insurance, [and] debt cancellation, and debt suspension.

1. *Location*. This disclosure may, at the creditor's option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by State law, or other supplementary material. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

2. *Debt cancellation and debt suspension*. Creditors may use the model credit-insurance disclosures only if the debt-cancellation or debt suspension coverage constitutes insurance under State law. Otherwise, they may provide a parallel disclosure that refers to debt-cancellation or debt suspension coverage.

[Paragraph] 18(o) Certain security interest charges.

1. *Format*. No special format is required for these disclosures; under § 226.4(e), taxes and fees paid to government officials with respect to a security interest may be aggregated, or may be broken down by individual charge. For example, the disclosure could be labeled "filing fees and taxes" and all funds disbursed for such purposes may be aggregated in a single disclosure. This disclosure may appear, at the creditor's option, apart from the other required disclosures. The inclusion of this information on a statement required under the Real Estate Settlement Procedures Act is sufficient disclosure for purposes of Truth in Lending.

[Paragraph] 18(p) Contract reference.

1. *Content*. Creditors may substitute, for the phrase "appropriate contract document," a reference to specific transaction documents in which the additional information is found, such as "promissory note" or "retail installment sale contract." A creditor may, at its option, delete inapplicable items in the contract reference, as for example when the contract documents contain no information regarding the right of acceleration.

[18(q) Assumption policy

1. *Policy statement*. In many mortgages, the creditor cannot determine, at the time disclosure must be made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors such as the creditworthiness of the subsequent borrower, the potential for impairment of the lender's security, and execution of an assumption agreement by the subsequent borrower. In cases where uncertainty exists as to the future assumability of a mortgage, the disclosure under § 226.18(q) should reflect that fact. In making disclosures in such cases, the creditor may use phrases such as "subject to conditions," "under certain circumstances," or "depending on future conditions." The creditor may provide a brief reference to more specific criteria such as a due-on-sale clause, although a complete explanation of all conditions is not appropriate. For example, the disclosure may state, "Someone buying ***your*** home may be allowed to assume the mortgage on its original terms, subject to certain conditions, such as payment of an assumption fee." See comment 17(a)(1)-5 for an example of a reference to a due-on-sale clause.

2. *Original terms*. The phrase *original terms* for purposes of § 226.18(q) does not preclude the imposition of an assumption fee, but a modification of the basic credit agreement, such as a change in the contract interest rate, represents different terms.]

[Paragraph] 18(r) Required deposit.

1. *Disclosure required*. The creditor must inform the consumer of the existence of a required deposit. (Appendix H provides a model clause that may be used in making that disclosure.) [Footnote 45 describes three] § 226.18(r)(1) and (2) describe two types of deposits that need not be considered required deposits. Use of the phrase "need not" permits creditors to include the disclosure even in cases where there is doubt as to whether the deposit constitutes a required deposit.

[2. *Pledged-account mortgages*. In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from that account to supplement the consumer's periodic payments. Creditors may treat these pledged accounts as required deposits or they may treat them as consumer buydowns in accordance with the commentary to section 226.17(c)(1).]

3. *Escrow accounts*. The escrow exception in [footnote 45] § 226.18(r)(1) applies, for example, to accounts for such items as maintenance fees, repairs, or improvements, whether in a realty or a nonrealty transaction. (See the commentary to section 226.17(c)(1) regarding the use of escrow accounts in consumer buydown transactions.)

4. *Interest-bearing accounts*. When a deposit earns at least 5 percent interest per year, no disclosure is required under § 226.18(r). This exception applies whether the deposit is held by the creditor or by a third party.

5. *[Morris Plan transactions] Deposits applied solely to pay obligation*. A deposit [under a Morris Plan, in which] to a deposit account [is] created for the sole purpose of accumulating payments and [this is] applied to satisfy entirely the consumer's obligation in the transaction[,] is not a required deposit.

[6.] *Examples of amounts excluded*. The following are among the types of deposits that need not be treated as required deposits:

[.] i. Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.

[.] ii. Required property insurance escrow on a mobile home transaction.

[.] iii. Refund of interest when the obligation is paid in full.

[.] iv. Deposits that are immediately available to the consumer.

[.] v. Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.

[.] vi. Escrow of condominium fees.

[.] vii. Escrow of loan proceeds to be released when the repairs are completed.

§ 226.19-Certain Mortgage and Variable-Rate Transactions.

19 Coverage.

1. *General*. Section 226.19 applies to transactions secured by real property or a dwelling, other than home equity lines of credit subject to § 226.5b. Creditors must make the disclosures required by § 226.19 even if the transaction is not subject to the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2602 *et seq*., and its implementing Regulation X, 24 CFR 3500.1 *et seq*., administered by the Department of Housing and Urban Development (HUD). For example, disclosures are required for construction loans that are not covered by RESPA or Regulation X because they are not considered "federally related mortgage loans." *See* 12 U.S.C. 2602(1); 15 CFR 3500.2(b). However, § 226.19 only applies to transactions that are offered or extended to a consumer primarily for personal, family, or household purposes, even if the transactions are secured by real property or a dwelling. TILA and Regulation Z do not apply to transactions that are primarily for business, commercial, or agricultural purposes. *See* 15 U.S.C. 1603(1); § 226.3(a)(2). *See also* § 226.2(a)(12) and (b)(2). Section 226.19(a)(4) contains special disclosure timing requirements for mortgage transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)).

19(a)(1)(i) Time of disclosure.

[1. *Coverage*. This section requires early disclosure of credit terms in mortgage transactions that are secured by a consumer's dwelling (other than home equity lines of credit subject to § 226.5b or mortgage transactions secured by an interest in a timeshare plan) that are also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X, administered by the Department of Housing and Urban Development (HUD). To be covered by § 226.19, a transaction must be a Federally related mortgage loan under RESPA. "Federally related mortgage loan" is defined under RESPA (12 U.S.C. 2602) and Regulation X (24 CFR 3500.2), and is subject to any interpretations by HUD.]

[2.] 1. *Timing and use of estimates*. The disclosures required by § 226.19(a)(1)(i) must be delivered or mailed not later than three business days after the creditor receives the consumer's written application. The general definition of "business day" in § 226.2(a)(6)--a day on which the creditor's offices are open to the public for substantially all of its business functions--is used for purposes of § 226.19(a)(1)(i). *See* comment 2(a)(6)-1. This general definition is consistent with the definition of "business day" in HUD's Regulation X--a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. *See* 24 CFR 3500.2. Accordingly, the three-business-day period in § 226.19(a)(1)(i) for making early disclosures coincides with the time period within which creditors [subject to RESPA] must provide good faith estimates of settlement costs for transactions subject to RESPA. If the creditor does not know the precise credit terms, the creditor must base the disclosures required by § 226.19(a)(1)(i) on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as "all numerical disclosures [except the late-payment disclosure] are estimates") instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1)[.] and § 226.37. The disclosures required by § 226.19(a)(2) may not contain estimates, however, with limited exceptions. See the commentary on § 226.19(a)(2) for a discussion of limitations on estimates in disclosures made under that subsection.

[3.] 2. *Written application*. Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. In general, Regulation X defines an "application" to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a [F] federally related mortgage loan. *See 24* CFR 3500.2(b). Creditors may rely on RESPA and Regulation X even for a transaction not subject to RESPA. An application is received when it reaches the creditor in any of the ways applications are normally transmitted--by mail, hand delivery, or through an intermediary agent or broker. (*See* [comment 19(b)-3] the commentary on § 19(d)(3) for guidance in determining whether or not the transaction involves an intermediary agent or broker.) If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

[4.] 3. *Denied or withdrawn application*. The creditor may determine within the three-business-day period that the application will not or cannot be approved on the terms requested, as, for example, when a consumer applies for a type or amount of credit that the creditor does not offer, or the consumer's application cannot be approved for some other reason. In that case, or if the consumer withdraws the application within the three-business-day waiting period, the creditor need not make the disclosures under this section. If the creditor fails to provide early disclosures and the transaction is later consummated on the original terms, the creditor will be in violation of this provision. If, however, the consumer amends the application because of the creditor's unwillingness to approve it on its original terms, no violation occurs for not providing disclosures based on the original terms. But the amended application is a new application subject to § 226.19(a)(1)(i).

[5.] 4. *Itemization of amount financed*. In many mortgage transactions subject to RESPA, the itemization of the amount financed required by [§ 226.18(c)] § 226.38(j) will contain items, such as origination fees or points, that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Creditors furnishing the RESPA good faith estimates need not give consumers any itemization of the amount financed, whether or not a transaction is subject to RESPA.

19(a)(1)(ii) Imposition of fees.

1. *Timing of fees*. The consumer must receive the disclosures required by this section before paying or incurring any fee imposed by a creditor or other person in connection with the consumer's application for a mortgage transaction that is subject to § 226.19(a)(1)(i), except as provided in § 226.19(a)(1)(iii). If the creditor delivers the disclosures to the consumer in person, a fee may be imposed anytime after delivery. If the creditor places the disclosures in the mail, the creditor may impose a fee after the consumer receives the disclosures or, in all cases, after midnight [on the third business day] following the third business day after mailing of the disclosures. Creditors that use electronic mail or a courier to provide disclosures may also follow this approach. Whatever method is used to provide disclosures, creditors may rely on documentation of receipt in determining when a fee may be imposed. For purposes of § 226.19(a)(1)(ii), the term "business day" means all calendar days except Sundays and legal public holidays referred to in § 226.2(a)(6). *See* [C]comment 2(a)(6)-2. For example, assuming that there are no intervening legal public holidays, a creditor that receives the consumer's written application on Monday and mails the early mortgage loan disclosure on Tuesday may impose a fee on the consumer [after midnight on Friday] on Saturday.

19(a)(2) Waiting period(s) required

1. *Business day definition*. For purposes of § 226.19(a)(2), "business day" means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 2(a)(6)-2.

2. *Consummation after [both] all waiting periods expire*. Consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period(s) have expired. For example, assume a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, and the creditor then delivers [corrected] new disclosures in person to the consumer on **Wednesday**, June 3. Although Saturday, June 6 is the third business day after the consumer received the [corrected] new disclosures,

consummation may not occur before Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

19(a)(2)(i) Seven-business-day waiting period.

1. *Timing*. The disclosures required by § 226.19(a)(1)(i) must be delivered or placed in the mail no later than the seventh business day before consummation. The seven-business-day waiting period begins when the creditor delivers the early disclosures or places them in the mail, not when the consumer receives or is deemed to have received the early disclosures. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

19(a)(2)(ii) Three-business-day waiting period.

1. *New disclosures in all cases*. The creditor must provide new disclosures under § 226.38 so that the consumer receives them not later than the third business day before consummation, even if the new disclosures are identical to the early disclosures provided under § 226.19(a)(1)(i).

2. *Content of disclosures*. Disclosures made under § 226.19(a)(2)(ii) must contain each of the applicable disclosures required by § 226.38.

3. *Estimates*. Section 226.19(a)(2)(ii) provides that only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i), and 226.38(e)(5)(i) may be estimated disclosures. Because estimated amounts of escrowed taxes and insurance premiums and mortgage insurance premiums disclosed (as applicable) under §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), and 226.38(c)(6)(i) are components of the total periodic payments disclosure required by §§ 226.38(c)(3)(i)(D) and 226.38(c)(3)(ii)(D) and the total payments disclosure required by § 226.38(e)(5)(i), those disclosures are estimated disclosures. (A total payments disclosure is not required for loans with a negative amortization feature subject to § 226.38(c)(6).) Creditors may estimate components of the total periodic payments disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C) and 226.38(c)(6)(i) and the total payment disclosure required by § 226.38(e)(5)(i) only to the extent the estimated escrowed amounts and mortgage insurance premiums affect those disclosures.

4. *Timing*. The creditor must provide final disclosures so that the consumer receives them not later than the third business day before consummation. For example, for consummation to occur on Thursday, June 11, the consumer must receive the disclosures on or before Monday, June 8.

ALTERNATIVE 1--PARAGRAPH 19(a)(2)(iii)

19(a)(2)(iii) Corrected disclosures.

1. *Conditions for corrected disclosures*. A disclosed annual percentage rate is accurate for purposes of § 226.19(a)(2)(iii) if the disclosure is accurate under § 226.19(a)(2)(iv). If a change occurs that does not render the annual percentage rate inaccurate, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).

2. *Content of corrected disclosures*. Disclosures made under § 226.19(a)(2)(iii) must contain each of the applicable disclosures required by § 226.38.

3. *Estimates*. In disclosures provided under § 226.19(a)(2)(iii), only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimates. *See* comment 19(a)(2)(ii)-3 for a discussion of which of the disclosures required under § 226.38 creditors may estimate.

4. *Timing*. The creditor must provide the corrected disclosures so that the consumer receives them not later than the third business day before consummation. For example, for consummation to occur on Saturday, June 13, the consumer must receive the disclosures on or before Wednesday, June 10.

[*19(a)(2)(ii) Three-business-day waiting period*.

1. *Conditions for redisclosure*. If, at the time of consummation, the annual percentage rate disclosed is accurate under § 226.22, the creditor does not have to make corrected disclosures under § 226.19(a)(2). If, on the other hand, the annual percentage rate disclosed is not accurate under § 226.22, the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them not later than the third business day before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%.

i. On Thursday, June 11, the annual percentage rate will be 7.10%. The creditor is not required to make corrected disclosures under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.15%. The creditor must make corrected disclosures so that the consumer receives them on or before Monday, June 8.

2. *Content of new disclosures*. If redisclosure is required, the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a). If the new creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the only inaccuracies involve estimates other than the annual percentage rate, and no variable-rate feature has been added. *See* § 226.17(f). For a discussion of the requirement to redisclose when a variable-rate feature is added, see comment 17(f)-2. For a discussion of redisclosure requirements in general, see the commentary on § 226.17(f).

3. *Timing*. When redisclosures are necessary because the annual percentage rate has become inaccurate, they must be received by the consumer no later than the third business day before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures before consummation. *See* § 226.17(f).) If the creditor delivers the corrected disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.19(a)(2)(ii) begins. Creditors that use electronic mail or a courier other than the postal service may also follow this approach.

4. *Basis for annual percentage rate comparison*. To determine whether a creditor must make corrected disclosures under § 226.22, a creditor compares (a) what the annual percentage rate will be at consummation to (b) the annual percentage rate stated in the most recent disclosures the creditor made to the consumer. For example, assume consummation for a regular mortgage transaction is scheduled for Thursday, June 11, the early disclosures provided in May stated an annual percentage rate of 7.00%, and corrected disclosures received by the consumer on Friday, June 5 stated an annual percentage rate of 7.15%:

1. On Thursday, June 11, the annual percentage rate will be 7.25%, which exceeds the most recently disclosed annual percentage rate by less than the applicable tolerance. The creditor is not required to make additional corrected disclosures or wait an additional three business days under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.30%, which exceeds the most recently disclosed annual percentage rate by more than the applicable tolerance. The creditor must make corrected disclosures such that the consumer receives them on or before Monday, June 8.]

ALTERNATIVE 2-PARAGRAPH 19(a)(2)(iii)

19(a)(2)(iii) Corrected disclosures.

1. *Conditions for corrected disclosures*. If the annual percentage rate disclosed under § 226.19(a)(2)(ii) changes so that it is not accurate under § 226.19(a)(2)(iv) or an adjustable-rate feature is added (*see* comment 17(f)--2), the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them not later than the third business day before consummation. (If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).) For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%:

[*19(a)(2)(ii) Three-business-day waiting period*. 1. *Conditions for redisclosure*. If, at the time of consummation, the annual percentage rate disclosed is accurate under § 226.22, the creditor does not have to make corrected disclosures under § 226.19(a)(2). If, on the other hand, the annual percentage rate disclosed is not accurate under § 226.22, the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them no later than the third business day before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%:]

i. On Thursday, June 11, the annual percentage rate will be 7.10%. The creditor is not required to make corrected disclosures under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.15%. The creditor must make corrected disclosures so that the consumer receives them on or before Monday, June 8.

2. *Content of [new] corrected disclosures*. If redisclosure is required under § 226.19(a)(2)(iii), the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a) and § 226.37. If the new creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce [a different finance charge, and often a new schedule of payments] different interest and settlement charges, and often a new payment summary; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed or an adjustable-rate feature is added (*see* comment 17(f)--2), the accurate terms must be disclosed. [However, no new disclosures are required if the only inaccuracies involve estimates other than the annual percentage rate, and no variable-rate feature has been added. For a discussion of the requirement to redisclose when a variable-rate feature is added, see comment 17(f)--2. For a discussion of redisclosure requirements in general, see the commentary on § 226.17(f).]

[3. *Timing*. When redisclosures are necessary because the annual percentage rate has become inaccurate, they must be received by the consumer no later than the third business day before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures before consummation. *See* § 226.17(f).) If the creditor delivers the corrected disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting periods required under § 226.19(a)(2)(ii) begins. Creditors that use electronic mail or a courier other than the postal service may also follow this approach.]

3. *Estimates*. In disclosures provided under § 226.19(a)(2)(iii), only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimates. *See* comment 19(a)(2)(ii)--3 for a discussion of which of the disclosures required under § 226.38 creditors may estimate.

4. *Basis for annual percentage rate comparison*. To determine whether a creditor must make corrected disclosures under [§ 226.22] § 226.19(a)(2)(iii), a creditor compares (a) what the annual percentage rate will be at consummation to (b) the annual percentage rate stated in the most recent disclosures the creditor made to the consumer. For example, assume consummation for a regular mortgage transaction is scheduled for Thursday, June 11, the early disclosures provided in May stated an annual percentage rate of 7.00%, and [corrected] new disclosures received by the consumer on Friday, June 5 stated an annual percentage rate of 7.15%:

i. On Thursday, June 11, the annual percentage rate will be 7.25%, which exceeds the most recently disclosed annual percentage rate by less than the applicable tolerance. The creditor is not required to make additional corrected disclosures or wait an additional three business days under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.30%, which exceeds the most recently disclosed annual percentage rate by more than the applicable tolerance. The creditor must make corrected disclosures such that the consumer receives them on or before Monday, June 8.

19(a)(2)(iv) Annual percentage rate accuracy.

1. *Other changed terms*. If a change occurs that does not render the APR inaccurate under § 226.19(a)(iv), the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).

19(a)(2)(v) Timing.

1. *General*. If the creditor delivers the disclosures required by § 226.19(a)(2)(ii) or (a)(2)(iii) to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the disclosures required by § 226.19(a)(2)(ii) or (a)(2)(iii) of this section by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting periods required under § 226.19(a)(2)(ii) and (iii) begin. Creditors that use electronic mail or a courier to provide disclosures may also follow this approach. Whatever method is used to provide disclosures, creditors may rely on documentation of receipt in determining when the three-business-day waiting period begins.

19(a)(3) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver*. A consumer may modify or waive the right to a waiting period required by § 226.19(a)(2) only after the creditor makes the disclosures required by [§ 226.18] § 226.38. A separate waiver is required for each waiting period to be waived. The consumer must have a *bona fide* personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless the loan proceeds are made available to the consumer during the waiting period, is one example of a *bona fide* personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

[2. *Examples of waivers within the seven-business-day waiting period*. Assume the early disclosures are delivered to the consumer in person on Monday, June 1, and at that time the consumer executes a waiver of the seven-business-day waiting period (which would end on Tuesday, June 9) so that the loan can be consummated on Friday, June 5:

i. If the annual percentage rate on the early disclosures is inaccurate under § 226.22, the creditor must provide a corrected disclosure to the consumer before consummation, which triggers the three-business-day waiting period in § 226.19(a)(2)(ii). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 5.

ii. If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger the additional waiting period, and the transaction may be consummated on June 5 without the consumer giving the creditor an additional modification or waiver.]

[3. *Examples of waivers made after the seven-business-day waiting period*. Assume the early disclosures are delivered to the consumer in person on Monday, June 1 and consummation is scheduled for Friday, June 19.] 2. *Examples*. Assume consummation is scheduled for Friday, June 19, the disclosures required by § 226.19(a)(1)(i) are delivered to the consumer in person on Monday, June 1, and the consumer receives the disclosures required by § 226.19(a)(2)(ii) on Monday, June 15. On Wednesday, June 17, a change in the annual percentage rate occurs:

i. If the annual percentage rate on the [early] disclosures required by § 226.19(a)(2)(ii) is [inaccurate under § 226.22] not accurate under § 226.22 nor accurate under § 226.19(a)(2)(iv), the creditor must provide a corrected disclosure before consummation, which triggers the three-business-day-waiting period in § 226.19(a)(2)(iii). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 19.

ii. If a change occurs that does not render the annual percentage rate on the [early] disclosures required by § 226.19(a)(2)(ii) inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger an additional waiting period, and the transaction may be consummated on Friday, June 19 without the consumer giving the creditor an additional modification or waiver.

[*19(a)(4) Notice*.

1. *Inclusion in other disclosures*. The notice required by § 226.19(a)(4) must be grouped together with the disclosures required by § 226.19(a)(1)(i) or § 226.19(a)(2). See comment 17(a)(1)-2 for a discussion of the rules for segregating disclosures. In other cases, the notice set forth in § 226.19(a)(4) may be disclosed together with or separately from the disclosures required under § 226.18. *See* comment 17(a)(1)-5(xvi).]

19(a)[(5)] (4)(ii) Time of disclosures for timeshare plans.

1. *Timing*. A mortgage transaction secured by a consumer's interest in a "timeshare plan," as defined in 11 U.S.C. 101(53D), [that is also a Federally related mortgage loan under RESPA] is subject to the requirements of § 226.19(a)[(5)](4) instead of the requirements of § 226.19(a)(1) through § 226.19(a)[(4)](3). *See* comment 19(a)(1)(i)--1. Early disclosures for transactions subject to § 226.19(a)[(5)](4) must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The general definition of "business day" in § 226.2(a)(6)--a day on which the creditor's offices are open to the public for substantially all of its business functions--applies for purposes of § 226.19(a)(5)(ii). *See* comment 2(a)(6)-1. These timing requirements are different from the timing requirements under § 226.19(a)(1)(i). Timeshare transactions covered by § 226.19(a)[(5)] may be consummated any time after the disclosures required by § 226.19(a)[(5)](4)(ii) are provided.

2. *Use of estimates*. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as "all numerical disclosures [except the late-payment disclosure] are estimates") instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1)[.] and § 226.37. The disclosures required by § 226.19(a)(2) may not contain estimates, however, with limited exceptions. See the commentary on § 226.19(a)(2) for a discussion of limitations on estimates in disclosures made under that subsection.

3. *Written application*. For timeshare transactions, creditors may rely on comment 19(a)(1)(i)-[3] 2 in determining whether a "written application" has been received.

4. *Denied or withdrawn applications*. For timeshare transactions, creditors may rely on comment 19(a)(1)(i)--[4]3 in determining that disclosures are not required by § 226.19(a)[(5)](4)(ii) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application.

5. *Itemization of amount financed*. For timeshare transactions, creditors may rely on comment 19(a)(1)(i)--[5]4 in determining whether providing the good faith estimates of settlement costs required by RESPA satisfies the requirement of § 226.18(c) to provide an itemization of the amount financed.

19(a)[(5)](4)(iii) Redisclosure for timeshare plans.

1. *Consummation or settlement*. For extensions of credit secured by a consumer's timeshare plan, when corrected disclosures are required, they must be given no later than "consummation or settlement." "Consummation" is defined in § 226.2(a). "Settlement" is defined in Regulation X (24 CFR 3500.2(b)) and is subject to any interpretations issued by HUD. In some cases, a creditor may delay redisclosure until settlement, which may be at a time later than consummation. If a creditor chooses to redisclose at settlement, disclosures may be based on the terms in effect at settlement, rather than at consummation. For example, in a variable-rate transaction, a creditor may choose to base disclosures on the terms in effect at settlement, despite the general rule in comment [17(c)(1)-8] § 226.17(c)(1)(iii) that variable-rate disclosures generally should be based on the terms in effect at consummation.

2. *Content of new disclosures*. Creditors may rely on comment 19(a)(2)(ii)--2 in determining the content of corrected disclosures required under § 226.19(a)[(5)](4)(iii).

19(b) [Certain variable-rate transactions] Adjustable-rate mortgages.

[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 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).]

1. *Coverage*. Section 226.19(b) applies to all closed-end adjustable-rate mortgages described in § 226.38(a)(i) that are secured by real property or a dwelling. Closed-end adjustable-rate transactions that are not secured by real property or a dwelling are subject to the disclosure requirements of § 226.18(f) rather than those of § 226.19(b). 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 a single combined transaction. *See* comment 17(c)(6)-2. In any assumption of an adjustable-rate transaction secured by real property or a dwelling, disclosures need not be provided under § 226.19(b).

[2. *Timing*. A creditor must give the disclosures required under this section at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

i. *Intermediary agent or broker*. In cases where a creditor receives a written application through an intermediary agent or broker, however, footnote 45b provides a substitute timing rule requiring the creditor to deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. (See comment 19(b)--3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) This three-day rule also applies where the creditor takes an application over the telephone.

ii. *Telephone request*. In cases where the consumer requests an application form over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.

iii. *Mail solicitations*. In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under this section if an application form is included with the solicitation.

iv. *Conversion*.] 2. *Disclosure at the time of conversion*. In cases where an open-end credit account will convert to a closed-end transaction subject to this section under a written agreement with the consumer, disclosures under this section [may be given at the time of conversion.] must be given at or before the time of conversion. (See the commentary to § 226.20(a) for information on the timing requirements for § 226.19(b)[(2)] disclosures when [a variable-rate] an adjustable-rate feature is later added to a transaction.)

[v. *Form of electronic disclosures provided on or with electronic applications*. Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

A. The disclosures could automatically appear on the screen when the application appears;

B. The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

C. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

D. The disclosures could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

Whatever method is used, a creditor need not confirm that the consumer has read the disclosures.

3. *Intermediary agent or broker*. In certain transactions involving an "intermediary agent or broker," a creditor may delay providing disclosures. A creditor may not delay providing disclosures in transactions involving either a legal agent (as determined by applicable law) or any other third party that is not an "intermediary agent or broker." In determining whether or not a transaction involves an "intermediary agent or broker" the following factors should be considered:

. The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total loan applications submitted by the broker in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.

. The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the broker. (This factor is applicable only if the creditor has such information.) The greater the percentage of total loan applications received by the broker that is submitted to a creditor in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.

. The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications, taking into consideration the customary practice of brokers in a particular area. The more work that the creditor expects the broker to do on an application, in excess of what is usually expected of a broker in that area, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor. An example of an "intermediary agent or broker" is a broker who, customarily within a brief period of time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area).

4. *Other variable-rate regulations*. Transactions in which the creditor is required to comply with and has complied with the disclosure requirements of the variable-rate regulations of other Federal agencies are exempt from the requirements of § 226.19(b), by virtue of footnote 45a, and are exempt from the requirements of § 226.20(c), by virtue of footnote 45c. Those variable-rate regulations include the regulations issued by the Federal Home Loan Bank Board and those issued by the Department of Housing and Urban Development. The exception in footnotes 45a and 45c is also available to creditors that are required by State law to comply with the federal variable-rate regulations noted above and to creditors that are authorized by title VIII of the Depository Institutions Act of 1982 (12 U.S.C. 3801 et seq.) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

5. *Examples of variable-rate transactions*.

(i) The following transactions, if they have a term greater than one year and are secured by the consumer's principal dwelling, constitute variable-rate mortgages subject to the disclosure requirements of § 226.19(b).]

3. *Non-adjustable-rate mortgages*. The following transactions, if they are secured by real property or a dwelling, do not constitute adjustable-rate mortgages subject to the disclosure requirements of § 226.19(b).

[(A)] (i) Renewable balloon-payment instruments [where] that have a fixed rate of interest, even if the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (See comment [17(c)(1)-11] 17(c)(1)(iii)-4 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.)

[(B)] (ii) Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. [The disclosures under §§ 226.19(b)(1) and 226.19(b)(2)(v), (viii), (ix), and (xii) are not applicable to such loans.]

[(C)] (iii) "Price-level-adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. [The disclosures under § 226.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest rate discounts: Section 226.19(b)(2)(i), (iii), (iv), (v), (vi), (vii), (viii), and (ix).] (See comments 20(c)-2 and 30-1 regarding the inapplicability of variable-rate adjustment notices and interest rate limitations to price-level-adjusted or similar mortgages.)

[(ii)] (iv) Graduated-payment mortgages and step-rate transactions without an adjustable-rate feature. [a variable-rate feature are not considered variable-rate transactions].

[*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*.

2. *Applicability*. The *Consumer Handbook* need not be given for variable-rate transactions subject to this section in which the underlying interest rate is fixed. (See comment 19(b)-5 for an example of a variable-rate transaction where the underlying interest rate is fixed.)]

[*Paragraph 19(b)(2)*.

1.] 4. *Disclosure for each [variable] adjustable-rate mortgage program*. A creditor must provide disclosures to the consumer that [fully] describe each of the creditor's [variable] adjustable-rate mortgage programs in which the consumer expresses an interest. If a program is made available only to certain customers of an institution, a creditor need not provide disclosures for that program to other consumers who express a general interest in a creditor's ARM programs. [Disclosures must be given at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier. If program disclosures cannot be provided because a consumer expresses an interest in individually negotiating loan terms that are not generally offered, disclosures reflecting those terms may be provided as soon as reasonably possible after the terms have been decided upon, but not later than the time a non-refundable fee is paid. If a consumer who has received program disclosures subsequently expresses an interest in other available variable-rate mortgage programs subject to 226.19(b)(2), or the creditor and consumer decide on a program for which the consumer has not received disclosures, the creditor must provide appropriate disclosures as soon as reasonably possible. The creditor, of course, is permitted to give the consumer information about additional programs subject to § 226.19(b) initially.]

[2. *Variable-rate loan program disclosure defined*.] 5. *Adjustable-rate mortgage loan program defined*. i.

Generally, if the identification, the presence or absence, or the exact value of a loan feature must be disclosed under this section, [variable] adjustable-rate mortgage loans that differ as to such features constitute separate loan programs. For example, separate loan programs would exist based on differences in any of the following loan features:

A. The index or other formula used to calculate interest rate adjustments.

B. The rules relating to changes in the index value, interest rate, and payments[, and loan balance].

C. The presence or absence of, and the amount of, rate or payment caps.

D. The presence of a demand feature.

E. The possibility of negative amortization.

F. The possibility of interest rate carryover.

G. The frequency of interest rate and payment adjustments.

H. The presence of a discount or premium feature.

I. [In addition, if a loan feature must be taken into account in preparing the disclosures required by § 226.19(b)(2)(viii), variable-rate mortgage loans that differ as to that feature constitute separate programs under § 226.19(b)(2).] The presence of a prepayment penalty provision.

J. The possibility of making interest-only payments.

K. The presence of a balloon payment feature.

L. The presence of a shared-equity or shared-appreciation feature.

M. The possibility of providing less than full documentation of income or assets.

N. The presence of a demand feature.

ii. If, however, [a representative value may be given for a loan feature or the feature need not be disclosed under § 226.19(b)(2), variable-rate] a feature is not required or permitted to be disclosed under § 226.19(b), adjustable-rate mortgage loans that differ as to such features do not constitute separate loan programs. For example, separate programs would not exist based on differences in the following loan features:

A. The amount of a discount or premium.

B. The amount of a margin.

[3. *Form of program disclosures*. A creditor may provide separate program disclosure forms for each ARM loan program it offers or a single disclosure form that describes multiple programs. A disclosure form may consist of more than one page. For example, a creditor may attach a separate page containing the historical payment example for a particular program. A disclosure form describing more than one program need not repeat information applicable to each program that is described. For example, a form describing multiple programs may disclose the information applicable to all of the programs in one place with the various program features (such as options permitting conversion to a fixed rate) disclosed separately. The form, however, must state if any program feature that is described is available only in conjunction with certain other program features. Both the separate and multiple program disclosures may illustrate more than one loan maturity or payment amortization--for example, by including multiple payment and loan balance columns in the historical payment example. Disclosures may be inserted or printed in the *Consumer Handbook* (or a suitable substitute) as long as they are identified as the creditor's loan program disclosures.

4. *As applicable*. The disclosures required by this section need only be made as applicable. Any disclosure not relevant to a particular transaction may be eliminated. For example, if the transaction does not contain a demand feature, the disclosure required under § 226.19(b)(2)(x) need not be given. As used in this section, payment refers only to a payment based on the interest rate, loan balance and loan term, and does not refer to payment of other elements such as mortgage insurance premiums.]

6. *Payment*. As used in this section, payment refers only to a payment based on the interest rate, loan balance and loan term, and does not refer to payment of other elements such as mortgage insurance premiums.

[5.] 7. *Revisions*. A creditor must revise the disclosures required under this section [once a year] as soon as reasonably possible [after the new index value becomes available. Revisions to the disclosures also are required] when the loan program changes.

[*Paragraph 19(b)(2)(i)*.

1. *Change in interest rate, payment, or term*. A creditor must disclose the fact that the terms of the legal obligation permit the creditor, after consummation of the transaction, to increase (or decrease) the interest rate, payment, or term of the loan initially disclosed to the consumer. For example, the disclosures for a variable-rate mortgage loan program in which the interest rate and payment (but not loan term) can change might read, "***Your*** interest rate and

payment can change yearly." In transactions where the term of the loan may change due to rate fluctuations, the creditor must state that fact.

Paragraph 19(b)(2)(ii).

1. *Identification of index or formula*. If a creditor ties interest rate changes to a particular index, this fact must be disclosed, along with a source of information about the index. For example, if a creditor uses the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity as its index, the disclosure might read, "***Your*** index is the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year published weekly in the Wall Street Journal." If no particular index is used, the creditor must briefly describe the formula used to calculate interest rate changes.

2. *Changes at creditor's discretion*. If interest rate changes are at the creditor's discretion, this fact must be disclosed. If an index is internally defined, such as by a creditor's prime rate, the creditor should either briefly describe that index or state that interest rate changes are at the creditor's discretion.

Paragraph 19(b)(2)(iii).

1. *Determination of interest rate and payment*. This provision requires an explanation of ***how*** the creditor will determine the consumer's interest rate and payment. In cases where a creditor bases its interest rate on a specific index and adjusts the index through the addition of a margin, for example, the disclosure might read, "***Your*** interest rate is based on the index plus a margin, and ***your*** payment will be based on the interest rate, loan balance, and remaining loan term." In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor must disclose this fact. For example, the disclosure might read, "***Your*** periodic payments will not fully amortize ***your*** loan and you will be required to make a single payment of the periodic payment plus the remaining unpaid balance at the end of the loan term." The creditor, however, need not reflect any irregular final payment in the historical example or in the disclosure of the initial and maximum rates and payments. If applicable, the creditor should also disclose that the rate and payment will be rounded.

Paragraph 19(b)(2)(iv).

1. *Current margin value and interest rate*. Because the disclosures can be prepared in advance, the interest rate and margin may be several months old when the disclosures are delivered. A statement, therefore, is required alerting consumers to the fact that they should inquire about the current margin value applied to the index and the current interest rate. For example, the disclosure might state, "***Ask*** us for our current interest rate and margin."]

19(b)(1) Interest rate and payment disclosures

1. *As applicable*. The disclosures required by § 226.19(b)(1) need only be made as applicable. Any disclosure not relevant to a particular loan program may be omitted.

[*Paragraph 19(b)(2)(v)*.] *Paragraph 19(b)(1)(i)*

1. *Discounted and premium interest rate*. In some [variable] adjustable-rate mortgage loan transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. If the initial interest rate will be a discount or a premium rate, creditors must alert the consumer to this fact. For example, if a creditor discounted a consumer's initial rate, the disclosure might state, ["***Your*** initial interest rate is not based on the index used to make later adjustments."] "The interest rate is discounted and will stay the same for a 5-year introductory period. After this initial period, the interest rate will increase, even if market rates do not change." (See the commentary to § 226.17(c)(1) for a further discussion of discounted and premium variable-rate transactions.) [In addition, the disclosure must suggest that consumers inquire about the amount that the program is currently discounted. For

example, the disclosure might state, "***__Ask__*** us for the amount our adjustable rate mortgages are currently discounted."] In a transaction with a consumer buydown or with a third-party buydown that will be incorporated in the legal obligation, the creditor should disclose the program as a discounted [variable] adjustable-rate mortgage transaction, but need not disclose additional information regarding the buydown in its program disclosures. [(See the commentary to § 226.19(b)(2)(viii) for a discussion of ***__how__*** to reflect the discount or premium in the historical example or the maximum rate and payment disclosure).]

[*Paragraph 19(b)(2)(vi)*] *Paragraph 19(b)(1)(ii)*.

1. *Frequency*. The frequency of interest rate and payment adjustments must be disclosed. If interest rate changes will be imposed more frequently or at different intervals than payment changes, a creditor must disclose the frequency and timing of both types of changes. For example, in [a variable] an adjustable-rate mortgage transaction where interest rate changes are made monthly, but payment changes occur on an annual basis, this fact must be disclosed. In certain ARM transactions, the interval between loan closing and the initial adjustment is not known and may be different than the regular interval for adjustments. In such cases, the creditor may disclose the initial adjustment period as a range of the minimum and maximum amount of time from consummation or closing. For example, the creditor might state: "The first adjustment to ***__your__*** interest rate and payment will occur no sooner than 6 months and no later than 18 months after closing. Subsequent adjustments may occur once each year after the first adjustment." [(See comments 19(b)(2)(viii)(A)-7 and 19(b)(2)(viii)(B)-4 for guidance on other disclosures when this alternative disclosure rule is used.)]

Paragraph 19(b)(1)(iii).

1. *Identification of index or formula*. If a creditor ties interest rate changes to a particular index, this fact must be disclosed, along with a source of information about the index. If no particular index is used, the creditor must briefly describe the formula used to calculate interest rate changes. To describe the index used, the disclosure might state, for example:

i. "***__Your__*** interest rate will be based on the '1-year CMT' (Constant Maturity Treasury) index plus a margin we determine upon application. That index is published weekly in the *Wall Street Journal* and is available on the Web site of the Federal Reserve Board."

ii. "***__Your__*** interest rate is based on the 1-year LIBOR Index plus a margin that is determined at application. This index is published daily in the *Wall Street Journal*."

iii. "The interest rate is based on the 11th District COFI Index (Cost of Funds Index for 11th District Federal Home Loan Bank (FHLB)) plus a margin determined upon application. The 11th District COFI Index is published monthly on the Web site of the San Francisco FHLB."

2. *Changes at creditor's discretion*. If interest rate changes are at the creditor's discretion, this fact must be disclosed. If an index is internally defined, such as by a creditor's prime rate, the creditor should either briefly describe that index or state that interest rate changes are at the creditor's discretion.

[*Paragraph 19(b)(2)(vii)*] *Paragraph 19(b)(1)(iv)*.

1. *Rate and payment caps*. The creditor must disclose limits on changes (increases or decreases) in the interest rate or payment. If an initial discount is not taken into account in applying overall or periodic rate limitations, that fact must be disclosed. If separate overall or periodic limitations apply to interest rate increases resulting from other events, such as [the exercise of a fixed-rate conversion option or] leaving the creditor's employ, those limitations must also be stated. If separate overall periodic limitations apply to interest rate increases resulting from the consumer's exercise of a fixed-rate conversion option, those limitations must be stated with the disclosures about the option required by § 226.19(b)(1)(v). Limitations do not include legal limits in the nature of usury or rate ceilings under State or Federal statutes or regulations. (See § 226.30 for the rule requiring that a maximum interest rate be included in certain [variable] adjustable-rate mortgage transactions.) The creditor need not disclose each periodic or

overall rate limitation that is currently available. As an alternative, the creditor may disclose the range of the lowest and highest periodic and overall rate limitations that may be applicable to the creditor's ARM transactions. For example, the creditor might state: "***Your*** interest rate can increase between 1 and 2 percentage points in any one year and between 4 and 7 percentage points over the life of the loan. ["The limitation on increases to ***your*** interest rate at each adjustment will be set at an amount in the following range: Between 1 and 2 percentage points at each adjustment. The limitation on increases to ***your*** interest rate over the term of the loan will be set at an amount in the following range: Between 4 and 7 percentage points above the initial interest rate." A creditor using this alternative rule must include a statement in its program disclosures suggesting that the consumer ***ask*** about the overall rate limitations currently offered for the creditor's ARM loan programs. (See comments 19(b)(2)(viii)(A)--6 and 19(b)(2)(viii)(B)--3 for an explanation of the additional requirements for a creditor using this alternative rule for disclosure of periodic and overall rate limitations.)

2. *Negative amortization and interest rate carryover*. A creditor must disclose, where applicable, the possibility of negative amortization. For example, the disclosure might state, "If any of ***your*** payments is not sufficient to cover the interest due, the difference will be added to ***your*** loan amount." Loans that provide for more than one way to trigger negative amortization are separate variable-rate mortgage programs requiring separate disclosures. (See the commentary to § 226.19(b)(2) for a discussion on the definition of a variable-rate mortgage loan program and the format for disclosure.) If a consumer is given the option to cap monthly payments that may result in negative amortization, the creditor must fully disclose the rules relating to the option, including the effects of exercising the option (such as negative amortization will occur and the principal loan balance will increase); however, the disclosure in § 226.19(b)(2)(viii) need not be provided.

3. *Conversion option*. If a loan program permits consumers to convert their variable-rate mortgage loans to fixed-rate loans, the creditor must disclose that the interest rate may increase if the consumer converts the loan to a fixed-rate loan. The creditor must also disclose the rules relating to the conversion feature, such as the period during which the loan may be converted, that fees may be charged at conversion, and ***how*** the fixed rate will be determined. The creditor should identify any index or other measure or formula used to determine the fixed rate and state any margin to be added. In disclosing the period during which the loan may be converted and the margin, the creditor may use information applicable to the conversion feature during the six months preceding preparation of the disclosures and state that the information is representative of conversion features recently offered by the creditor. The information may be used until the program disclosures are otherwise revised. Although the rules relating to the conversion option must be disclosed, the effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example or in the calculation of the initial and maximum interest rate and payments.

4. *Preferred-rate loans*. Section 226.19(b) applies to preferred-rate loans, where the rate will increase upon the occurrence of some event, such as an employee leaving the creditor's employ, whether or not the underlying rate is fixed or variable. In these transactions, the creditor must disclose the event that would allow the creditor to increase the rate such as that the rate may increase if the employee leaves the creditor's employ. The creditor must also disclose the rules relating to termination of the preferred rate, such as that fees may be charged when the rate is changed and ***how*** the new rate will be determined.

Paragraph 19(b)(2)(viii).

1. *Historical example and initial and maximum interest rates and payments*. A creditor may disclose both the historical example and the initial and maximum interest rates and payments.

Paragraph 19(b)(2)(viii)(A).

1. *Index movement*. This section requires a creditor to provide an historical example, based on a $ 10,000 loan amount originating in 1977, ***showing*** ***how*** interest rate changes implemented according to the terms of the loan program would have affected payments and the loan balance at the end of each year during a 15-year period. (In all cases, the creditor need only calculate the payments and loan balance for the term of the loan. For example, in a

five-year loan, a creditor would ***show*** the payments and loan balance for the five-year term, from 1977 to 1981, with a zero loan balance reflected for 1981. For the remaining ten years, 1982-1991, the creditor need only ***show*** the remaining index values, margin and interest rate and must continue to reflect all significant loan program terms such as rate limitations affecting them.) Pursuant to this section, the creditor must provide a history of index values for the preceding 15 years. Initially, the disclosures would give the index values from 1977 to the present. Each year thereafter, the revised program disclosures should include an additional year's index value until 15 years of values are ***shown***. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values are available in giving a history and payment example. In all cases, only one index value per year need be ***shown***. Thus, in transactions where interest rate adjustments are implemented more frequently than once per year, a creditor may assume that the interest rate and payment resulting from the index value chosen will stay in effect for the entire year for purposes of calculating the loan balance as of the end of the year and for reflecting other loan program terms. In cases where interest rate changes are at the creditor's discretion (see the commentary to § 226.19(b)(2)(ii)), the creditor must provide a history of the rates imposed for the preceding 15 years, beginning with the rates in 1977. In giving this history, the creditor need only go back as far as the creditor's rates can reasonably be determined.

2. *Selection of index values*. The historical example must reflect the method by which index values are determined under the program. If a creditor uses an average of index values or any other index formula, the history given should reflect those values. The creditor should select one date or, when an average of single values is used as an index, one period and should base the example on index values measured as of that same date or period for each year ***shown*** in the history. A date or period at any time during the year may be selected, but the same date or period must be used for each year in the historical example. For example, a creditor could use values for the first business day in July or for the first week ending in July for each of the 15 years ***shown*** in the example.

3. *Selection of margin*. For purposes of the disclosure required under § 226.19(b)(2)(viii)(A), a creditor may select a representative margin that has been used during the six months preceding preparation of the disclosures, and should disclose that the margin is one that the creditor has used recently. The margin selected may be used until a creditor revises the disclosure form.

4. *Amount of discount or premium*. For purposes of the disclosure required under § 226.19(b)(2)(viii)(A), a creditor may select a discount or premium (amount and term) that has been used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the historical example for as long as the discount or premium is in effect. A creditor may assume that a discount that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example. For example, a 3-month discount may be treated as being in effect for the entire first year of the example; a 15-month discount may be treated as being in effect for the first two years of the example. In illustrating the effect of the discount or premium, creditors should adjust the value of the interest rate in the historical example, and should not adjust the margin or index values. For example, if during the six months preceding preparation of the disclosures the fully indexed rate would have been 10% but the first year's rate under the program was 8%, the creditor would discount the first interest rate in the historical example by 2 percentage points.

5. *Term of the loan*. In calculating the payments and loan balances in the historical example, a creditor need not base the disclosures on each term to maturity or payment amortization that it offers. Instead, disclosures for ARMs may be based upon terms to maturity or payment amortizations of 5, 15 and 30 years, as follows: ARMs with terms or amortizations from over 1 year to 10 years may be based on a 5-year term or amortization; ARMs with terms or amortizations from over 10 years to 20 years may be based on a 15-year term or amortization; and ARMs with terms or amortizations over 20 years may be based on a 30-year term or amortization. Thus, disclosures for ARMs offered with any term from over 1 year to 40 years may be based solely on terms of 5, 15 and 30 years. Of course, a creditor may always base the disclosures on the actual terms or amortizations offered. If the creditor bases the disclosures on 5-, 15- or 30-year terms or payment amortization as provided above, the term or payment amortization used in making the disclosure must be stated.

6. *Rate caps*. A creditor using the alternative rule described in comment 19(b)(2)(vii)--1 for disclosure of rate limitations must base the historical example upon the highest periodic and overall rate limitations disclosed under section 226.19(b)(2)(vii). In addition, the creditor must state the limitations used in the historical example. (See comment 19(b)(2)(viii)(B)--3 for an explanation of the use of the highest rate limitation in other disclosures.)

7. *Frequency of adjustments*. In certain transactions, creditors may use the alternative rule described in comment 19(b)(2)(vi)--1 for disclosure of the frequency of rate and payment adjustments. In such cases, the creditor may assume for purposes of the historical example that the first adjustment occurred at the end of the first full year in which the adjustment could occur. For example, in an ARM in which the first adjustment may occur between 6 and 18 months after closing and annually thereafter, the creditor may assume that the first adjustment occurred at the end of the first year in the historical example. (See comment 19(b)(2)(viii)(B)--4 for an explanation of ***how*** to compute the maximum interest rate and payment when the initial adjustment period is not known.)

Paragraph 19(b)(2)(viii)(B).

1. *Initial and maximum interest rates and payments*. The disclosure form must state the initial and maximum interest rates and payments for a $ 10,000 loan originated at an initial interest rate (index value plus margin adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure. (See comment 19(b)(2)-5 on revisions to the loan program disclosure.) In calculating the maximum payment under this paragraph, a creditor should assume that the interest rate increases as rapidly as possible under the loan program, and the maximum payment disclosed should reflect the amortization of the loan during this period. Thus, in a loan with 2 percentage point annual (and 5 percentage point overall) interest rate limitations or "caps," the maximum interest rate would be 5 percentage points higher than the initial interest rate disclosed. Moreover, the loan would not reach the maximum interest rate until the fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed would reflect the amortization of the loan during this period. If the loan program includes a discounted or premium initial interest rate, the initial interest rate should be adjusted by the amount of the discount or premium.

2. *Term of the loan*. In calculating the initial and maximum payments, the creditor need not base the disclosures on each term to maturity or payment amortization offered under the program. Instead, the creditor may follow the rules set out in comment 19(b)(2)(viii)(A)--5. If a historical example is provided under § 226.19(b)(2)(viii)(A), the terms to maturity or payment amortization used in the historical example must be used in calculating the initial and maximum payment. In addition, creditors must state the term or payment amortization used in making the disclosures under this section.

3. *Rate caps*. A creditor using the alternative rule for disclosure of interest rate limitations described in comment 19(b)(2)(vii)--1 must calculate the maximum interest rate and payment based upon the highest periodic and overall rate limitations disclosed under § 226.19(b)(2)(vii). In addition, the creditor must state the rate limitations used in calculating the maximum interest rate and payment. (See comment 19(b)(2)(viii)(A)--6 for an explanation of the use of the highest rate limitation in other disclosures.)

4. *Frequency of adjustments*. In certain transactions, a creditor may use the alternative rule for disclosure of the frequency of rate and payment adjustments described in comment 19(b)(2)(vi)--1. In such cases, the creditor must base the calculations of the initial and maximum rates and payments upon the earliest possible first adjustment disclosed under § 226.19(b)(2)(vi). (See comment 19(b)(2)(viii)(A)--7 for an explanation of ***how*** to disclose the historical example when the initial adjustment period is not known.)

5. *Periodic payment statement*. The statement that the periodic payment may increase or decrease substantially may be satisfied by the disclosure in paragraph 19(b)(2)(vi) if it states for example, "***your*** monthly payment can increase or decrease substantially based on annual changes in the interest rate."

Paragraph 19(b)(2)(ix).

1. *Calculation of payments*. A creditor is required to include a statement on the disclosure form that explains ***how*** a consumer may calculate his or her actual monthly payments for a loan amount other than $ 10,000. The example should be based upon the most recent payment ***shown*** in the historical example or upon the initial interest rate reflected in the maximum rate and payment disclosure. In transactions in which the latest payment ***shown*** in the historical example is not for the latest year of index values ***shown*** (such as in a five-year loan), a creditor may provide additional examples based on the initial and maximum payments disclosed under § 226.19(b)(2)(viii)(B). The creditor, however, is not required to calculate the consumer's payments. (See the model clauses in appendix H--4(C).)

Paragraph 19(b)(2)(x).

1. *Demand feature*. If a variable-rate mortgage loan subject to § 226.19(b) requirements contains a demand feature as discussed in the commentary to § 226.18(i), this fact must be disclosed. (Pursuant to § 226.18(i), creditors would also disclose the demand feature in the standard disclosures given later.)

Paragraph 19(b)(2)(xi).

1. *Adjustment notices*. A creditor must disclose to the consumer the type of information that will be contained in subsequent notices of adjustments and when such notices will be provided. (See the commentary to § 226.20(c) regarding notices of adjustments.) For example, the disclosure might state, "You will be notified at least 25, but no more than 120, days before the due date of a payment at a new level. This notice will contain information about the index and interest rates, payment amount, and loan balance." In transactions where there may be interest rate adjustments without accompanying payment adjustments in a year, the disclosure might read, "You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to ***your*** loan. This notice will contain information about the index and interest rates, payment amount, and loan balance."

Paragraph 19(b)(2)(xii).

1. *Multiple loan programs*. A creditor that offers multiple variable-rate mortgage loan programs is required to have disclosures for each variable-rate mortgage loan program subject to § 226.19(b)(2). Unless disclosures for all of its variable-rate programs are provided initially, the creditor must inform the consumer that other closed-end variable-rate programs exist, and that disclosure forms are available for these additional loan programs. For example, the disclosure form might state, "Information on other adjustable rate mortgage programs is available upon request."]

19(b)(2) Key questions about risk.

19(b)(2)(i) Required disclosures.

1. *Disclosure of first rate or payment increase*. The requirement under § 226.19(b)(2)(i)(A) and (B) to disclose when the first interest rate or payment increase may occur refers to the time period in which the increase may occur, not the exact calendar date. For example, the disclosure may state, "***Your*** interest rate may increase at the end of the 3-year introductory period."

19(b)(2)(i)(C) Prepayment penalty as risk factor.

1. *Coverage*. See comment 38(a)(5)-1 to determine whether there is a prepayment penalty.

2. *Penalty*. See comment 38(a)(5)-2 for examples of charges that are prepayment penalties.

3. *Not penalty*. See comment 38(a)(5)-3 for examples of charges that are not prepayment penalties.

19(b)(2)(ii) Additional disclosures.

1. *As applicable*. The disclosures required by § 226.19(b)(2)(ii) need only be made as applicable. Any disclosure not relevant to a particular loan program may be omitted.

19(b)(2)(ii)(C) Balloon payment.

1. *Coverage*. The creditor must make the disclosure required by § 226.19(b)(ii)(B) if the loan program includes a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

2. *Time period*. The requirement to disclose when the balloon payment is due refers to the time period when it is due, not the exact calendar date. For example, the disclosure may state, "You would owe a balloon payment due in seven years."

19(b)(2)(ii)(D) Demand feature.

1. *Disclosure requirements*. The disclosure requirements of § 226.19(b)(2)(ii)(D) apply not only to transactions payable on demand from the outset, but also to transactions that convert to a demand status after a stated period.

2. *Covered demand features*. See comment 18(i)-2 for examples of covered demand features.

19(c) Conversion to closed-end credit.

1. *Disclosure at the time of conversion*. In cases where an open-end credit account will convert to a closed-end transaction under a written agreement with the consumer, disclosures are not required under § 226.19(c). By contrast, disclosures are required in such cases under § 226.19(b). *See* comment 19(b)--2.

19(d) Timing of disclosures.

19(d)(1) General timing.

1. *Oral application*. Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether they have made a written record of a consumer's oral application, even for a transaction not subject to RESPA. In general, Regulation X defines "application" to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan and states that an application may either be in writing or electronically submitted, including a written record of an oral application. *See* 24 CFR 3500.2(b).

[19(c)] 19(d)(2) Electronic disclosures.

Paragraph 19(d)(2)(i).

[1. *Form of disclosures*. Whether disclosures must be in electronic form depends upon the following:]

[i.] 1. *Electronic disclosures required*. If a consumer accesses [an ARM] a loan application electronically (other than as described under [ii. below] § 226.19(d)(ii)), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed ***paper*** disclosures to the consumer, this requirement would not be met.

2. *Timing of electronic disclosures provided on or with electronic applications*. Creditors have flexibility in satisfying the requirement under § 226.19(d) (subject to § 226.19(d)(1)(ii)) to provide disclosures required by § 226.19(b) and (c) in electronic form if a consumer accesses an application electronically. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

i. The disclosures could automatically appear on the screen when the application appears;

ii. The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

iii. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

iv. The disclosures could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

Paragraph 19(d)(2)(ii)

[ii. In contrast, if] 1. *Electronic disclosures optional*. If a consumer is physically present in the creditor's office, and accesses an ARM loan application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or ***paper*** form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

Paragraph 19(d)(3)

1. *Telephone request*. Where a creditor takes a written application by telephone, the creditor must deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. In cases where the consumer only requests an application over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.

2. *Mail solicitations*. In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under § 226.19(b) and (c) if an application form is included with the solicitation.

3. *Intermediary agent or broker*. i. Where a creditor receives a written application through an intermediary agent or broker the creditor must deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. However, a creditor must provide disclosures at the time an application form is provided or the consumer pays a non-refundable fee, whichever is earlier, in a transaction that involves a legal agent, as determined under applicable law, or any other third party that is not an "intermediary agent or broker." In determining whether or not a transaction involves an "intermediary agent or broker" the creditor should consider the following factors:

A. The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total loan applications submitted by the broker in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.

B. The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the broker. (This factor is applicable only if the creditor has such information.) The greater the percentage of total loan applications received by the broker that is submitted to a creditor in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.

C. The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications, taking into consideration the customary practice of brokers in a particular area. The more work that the creditor expects the broker to do on an application, in excess of what is usually expected of a broker in that area, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor.

ii. An example of an "intermediary agent or broker" is a broker who, customarily within a brief period of time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area).

§ 226.20--Subsequent Disclosure Requirements.

20(a) Refinancings.

1. *Definition*. A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

i. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

ii. A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions*. A transaction is subject to § 226.20(a) only if it meets the general definition of a refinancing. Section 226.20(a) (1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate*. i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. Increases the rate based on a variable-rate feature that was not previously disclosed; or

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists.

iii. If either of the events in paragraph 20(a)3.ii.A. or ii.B. occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 226.19(b) also must be given at that time.

4. *Unearned finance charge*. In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage*. Section 226.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A "refinancing" by any other person is a new transaction under the regulation, not a refinancing under this section.

Paragraph 20(a)(1).

1. *Renewal*. This exception applies both to obligations with a single payment of principal and interest and to obligations with periodic payments of interest and a final payment of principal. In determining whether a new obligation replacing an old one is a renewal of the original terms or a refinancing, the creditor may consider it a renewal even if:

i. Accrued unpaid interest is added to the principal balance.

ii. Changes are made in the terms of renewal resulting from the factors listed in § 226.17(c)(3).

iii. The principal at renewal is reduced by a curtailment of the obligation.

Paragraph 20(a)(2).

1. *Annual percentage rate reduction*. A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

2. *Corresponding change*. A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the payment amount or the number of payments of an obligation. The exception in § 226.20(a)(2) does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

Paragraph 20(a)(3).

1. *Court agreements*. This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to § 226.2(a)(14) for a discussion of court-approved agreements that are not considered "credit.")

Paragraph 20(a)(4).

1. *Workout agreements*. A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.

Paragraph 20(a)(5).

1. *Insurance renewal*. The renewal of optional insurance added to an existing credit transaction is not a refinancing, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.

20(b) Assumptions.

1. *General definition*. An assumption as defined in § 226.20(b) is a new transaction and new disclosures must be made to the subsequent consumer. An assumption under the regulation requires the following three elements:

i. [A residential mortgage transaction.] A closed-end credit transaction secured by real property or a dwelling.

ii. An express acceptance of the subsequent consumer by the creditor.

iii. A written agreement.

The assumption of a nonexempt consumer credit obligation requires no disclosures unless all three elements are present. For example, an automobile dealer need not provide Truth in Lending disclosures to a customer who assumes an existing obligation secured by an automobile. However, [a residential mortgage transaction] closed-end credit transaction secured by real property or a dwelling with the elements described in § 226.20(b) is an assumption that calls for new disclosures; the disclosures must be given whether or not the assumption is accompanied by changes in the terms of the obligation. [(See comment 2(a)(24)-5 for a discussion of assumptions that are not considered residential mortgage transactions.)]

[2. *Existing residential mortgage transaction*. A transaction may be a residential mortgage transaction as to one consumer and not to the other consumer. In that case, the creditor must look to the assuming consumer in determining whether a residential mortgage transaction exists. To illustrate:

i. The original consumer obtained a mortgage to purchase a home for vacation purposes. The loan was not a residential mortgage transaction as to that consumer. The mortgage is assumed by a consumer who will use the home as a principal dwelling. As to that consumer, the loan is a residential mortgage transaction. For purposes of § 226.20(b), the assumed loan is an "existing residential mortgage transaction" requiring disclosures, if the other criteria for an assumption are met.]

[3.] 2. *Express agreement*. Expressly agrees means that the creditor's agreement must relate specifically to the new debtor and must unequivocally accept that debtor as a primary obligor. The following events are not construed to be express agreements between the creditor and the subsequent consumer:

i. Approval of creditworthiness.

ii. Notification of a change in records.

iii. Mailing of a coupon book to the subsequent consumer.

iv. Acceptance of payments from the new consumer.

[4.] 3. *Retention of original consumer*. The retention of the original consumer as an obligor in some capacity does not prevent the change from being an assumption, provided the new consumer becomes a primary obligor. But the mere addition of a guarantor to an obligation for which the original consumer remains primarily liable does not give rise to an assumption. However, if neither party is designated as the primary obligor but the creditor accepts payment from the subsequent consumer, an assumption exists for purposes of § 226.20(b).

[5.] 4. *Status of parties*. Section 226.20(b) applies only if the previous debtor was a consumer and the obligation is assumed by another consumer. It does not apply, for example, when an individual takes over the obligation of a corporation.

[6.] 5. *Disclosures*. For transactions that are assumptions within this provision, the creditor must make disclosures based on the "remaining obligation." For example:

i. The amount financed is the remaining principal balance plus any arrearages or other accrued charges from the original transaction.

ii. If the finance charge is computed from time to time by application of a percentage rate to an unpaid balance, in determining the amount of the finance charge and the annual percentage rate to be disclosed, the creditor should disregard any prepaid finance charges paid by the original obligor, but must include in the finance charge any prepaid finance charge imposed in connection with the assumption.

iii. If the creditor requires the assuming consumer to pay any charges as a condition of the assumption, those sums are prepaid finance charges as to that consumer, unless exempt from the finance charge under § 226.4. If a transaction involves add-on or discount finance charges, the creditor may make abbreviated disclosures, as outlined in section 226.20(b)(1) through (5). [Creditors providing disclosures pursuant to this section for assumptions of variable-rate transactions secured by the consumer's principal dwelling with a term longer than one year need not provide new disclosures under sections 226.18(f)(2)(ii) or. In such transactions, a creditor may disclose the variable-rate feature solely in accordance with section 226.18(f)(1).

7. *Abbreviated disclosures*. The abbreviated disclosures permitted for assumptions of transactions involving add-on or discount finance charges must be made clearly and conspicuously in writing in a form that the consumer may keep. However, the creditor need not comply with the segregation requirement of § 226.17(a)(1). The terms *annual percentage rate and total of* payments, when disclosed according to § 226.20(b)(4) and (5), are not subject to the description requirements of § 226.18 (e) and (h). The term *annual percentage rate* disclosed under § 226.20(b)(4) need not be more conspicuous than other disclosures.

Paragraph 20(c) Variable-rate adjustments] 20(c) Rate adjustments.

1. [*Timing of adjustment notices*] *General*. This section requires a creditor (or a subsequent holder) to provide certain disclosures in cases where an adjustment to the interest rate is made in an [variable-rate] adjustable-rate mortgage transaction subject to § 226.19(b). [There are two timing rules, depending on whether payment changes accompany interest rate changes. A creditor is required to provide at least one notice each year during which interest-rate adjustments have occurred without accompanying payment adjustments. For payment adjustments, a creditor must deliver or place in the mail notices to borrowers at least 25, but not more than 120, calendar days before a payment at a new level is due. The timing rules also apply to the notice required to be given in connection with the adjustment to the rate and payment that follows conversion of a transaction subject to § 226.19(b) to a fixed-rate transaction.] This section also requires that notice be given where a transaction subject to § 226.19(b) is converted to a fixed-rate transaction. (In cases where an open-end account is converted to a closed-end transaction subject to § 226.19(b), the requirements of this section do not apply until adjustments are made following conversion.)

2. [*Exceptions*.] *Not applicable*. Section 226.20(c) does not apply to ["shared-equity," "shared-appreciation," or] "price level adjusted" or similar mortgages, because such mortgages are not adjustable-rate mortgages subject to the disclosure requirements of § 226.19(b). *See* comment 19(b)-3.

3. *Basis of disclosures*. The disclosures required under this section shall reflect the terms of the parties' legal obligation, as required under § 226.17(c)(1).

20(c)(1) Timing of disclosures.

1. When required. Payment changes due to changes in property tax obligations or mortgage-related insurance premiums do not trigger the requirement to make disclosures under § 226.20(c)(1)(i).

[*Paragraph 20(c)(1)*] *Paragraph 20(c)(2)(ii)*.

1. *Current and [prior] new interest rates*. The requirements under this paragraph are satisfied by disclosing the interest rate used to compute the new adjusted payment amount [("current rate")] ("new rate") and the adjusted interest rate that was disclosed in the last adjustment notice[, as well as all other interest rates applied to the transaction in the period since the last notice ("prior rates")] ("current rate"). (If there has been no prior adjustment notice, the [prior rates are] current rate is the interest rate applicable to the transaction at consummation.) [, as well as all other interest rates applied to the transaction in the period since consummation.) If no payment adjustment has been made in a year, the current rate is the new adjusted interest rate for the transaction, and the prior rates are the adjusted interest rate applicable to the loan at the time of the last adjustment notice, and all other rates applied to the transaction in the period between the current and last adjustment notices. In disclosing all other rates applied to the transaction during the period between notices, a creditor may disclose a range of the highest and lowest rates applied during that period.]

[*Paragraph 20(c)(2)*.

1. *Current and prior index values*. This section requires disclosure of the index or formula values used to compute the current and prior interest rates disclosed in § 226.20(c)(1). The creditor need not disclose the margin used in computing the rates. If the prior interest rate was not based on an index or formula value, the creditor also need not disclose the value of the index that would otherwise have been used to compute the prior interest rate.]

[*Paragraph 20(c)(3)*] *Paragraph 20(c)(2)(iv)*.

1. *Unapplied index increases*. The requirement that the consumer receive information about the extent to which the creditor has foregone any increase in the interest rate and the earliest date a creditor may apply foregone interest to future adjustments, subject to rate caps, is applicable only to those transactions permitting interest rate carryover. The amount of increase that is foregone at an adjustment is the amount that, subject to rate caps, can be applied to future adjustments independently to increase, or offset decreases in, the rate that is determined according to the index or formula.

[*Paragraph 20(c)(4)*.

1. *Contractual effects of the adjustment*. The contractual effects of an interest rate adjustment must be disclosed including the payment due after the adjustment is made whether or not the payment has been adjusted. A contractual effect of a rate adjustment would include, for example, disclosure of any change in the term or maturity of the loan if the change resulted from the rate adjustment. In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the amount of the adjusted payment must be disclosed if such payment has changed as a result of the rate adjustment. A statement of the loan balance also is required. The balance required to be disclosed is the balance on which the new adjusted payment is based. If no payment adjustment is disclosed in the notice, the balance disclosed should be the loan balance on which the payment disclosed under § 226.20(c)(5) is based, if applicable, or the balance at the time the disclosure is prepared.]

Paragraph 20(c)(5)] *Paragraph 20(c)(2)(vi)*.

1. *Fully-amortizing payment*. This paragraph requires a disclosure of the fully amortizing payment only when negative amortization occurs as a result of the adjustment. A disclosure is not required simply because a loan calls for non-amortizing or partially amortizing payments. For example, in a transaction with a five-year term and payments based on a longer amortization schedule, and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor would not have to disclose the payment necessary to fully amortize the loan in the remainder of the five-year term. A disclosure is required, however, if the new payment disclosed under [§ 226.20(c)(4)]

§ 226.20(c)(2)(ii)(C) is not sufficient to prevent negative amortization in the loan. The adjustment notice must state the payment required to prevent negative amortization. (This paragraph does not apply if the payment disclosed in [§ 226.20(c)(4)]

§ 226.20(c)(2)(ii)(C) is sufficient to prevent negative amortization in the loan but the final payment will be a different amount due to rounding.)

2. *Effect on loan term*. The creditor must disclose any change in the term or maturity of the loan if the change resulted from the rate adjustment. The creditor need not make that disclosure if the loan term or maturity has not changed.

20(c)(2)(vii) Loan balance in payment change notice.

1. *Basis of disclosure*. A statement of the loan balance must be disclosed. The balance required to be disclosed is the balance on which the new adjusted payment is based.

Paragraph 20(c)(3)(iii).

1. *Unapplied index increases*. Creditors may rely on comment 20(c)(2)(iv)--1 in determining which transactions the requirement to disclose foregone interest increases applies to and ***how*** to disclose such increases. Although creditors must disclose the earliest date the creditor may apply foregone interest to future adjustments under § 226.20(c)(2)(iv), creditors need not disclose this information in the disclosures required by § 226.20(c)(3)(iv), which are made when interest rate changes do not cause payment changes during a year.

Paragraph 20(c)(3)(v).

1. *Basis of disclosure*. A statement of the loan balance must be disclosed. The balance required to be disclosed is the balance on the last day of the period for which the creditor discloses the highest and lowest interest rates.

20(d) Periodic statement.

20(d)(1) Timing and content of disclosures.

1. *Timing and content*. Creditors must provide payment summary tables under § 226.20(d) starting with the first period after consummation, even if the initial payments required do not negatively amortize the loan. However, payment summary tables need contain only those disclosures that apply to payment options actually available to a consumer. For example, if a consumer has been making the minimum required payments but must begin making fully amortizing payments because the creditor has recast the loan, the payment summary table need not disclose payments other than the fully amortizing payment.

2. *Assumptions*. Creditors may base all disclosures on the assumption that payments will be made on time and in the amounts required by the terms of the legal obligation, disregarding any possible inaccuracies resulting from consumers' payment patterns. *See* comment 17(c)(1)-1 and comment 17(c)(2)(i)--3. Creditors may not assume that consumers make payments greater than the minimum payment required by the legal obligation. That is, creditors may not base disclosures for loans with a payment option that results in negative amortization on the fully amortizing, interest-only, or other payment unless that payment is the amount the consumer is required to pay under the terms of the legal obligation.

20(d)(1)(i) Payment.

1. *Payment type*. Creditors may rely on comment 38(c)(5)-1 to determine whether a payment is a regular periodic payment or a balloon payment.

20(d)(1)(ii) Effects.

1. *Legal obligation*. The disclosures required by § 226.20(d) must reflect the terms of the legal obligation. For example, the disclosures may not state that making fully amortizing payments on an interest-only loan will reduce a consumer's loan balance if the creditor will not apply payments that exceed the interest-only payment to principal.

20(e) Creditor-placed property insurance.

1. *Notice period timing and charges*. The notice period begins on the day that the creditor mails or delivers the notice to the consumer and expires 45 days later. The creditor may begin to charge the consumer for creditor-placed property insurance on the 46th calendar day after sending the notice if the creditor has fulfilled the requirements of section 226.20(e)(1)-(3). For example, a creditor that mails the required notice on January 2, 2011, may begin to charge the consumer for the cost of the creditor-placed property insurance on February 18, 2011. After expiration of the 45-day notice period, a creditor may retroactively charge a consumer for the cost of any required property insurance obtained during the 45-day notice period if such charge is not prohibited by applicable State or other law.

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§ 226.24--Advertising.

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24(c) Advertisement of rate of finance charge.

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4. *Discounted variable-rate transactions*. The advertised annual percentage rate for discounted variable-rate transactions must be determined in accordance with comment [17(c)(1)-10] 17(c)(1)(iii)--3 regarding the basis of transactional disclosures for such financing.

* * * *

ii. Limits or caps on periodic rate or payment adjustments need not be stated. To illustrate using the second example in comment [17(c)(1)-10] 17(c)(1)(iii)--3, the fact that the rate is presumed to be 11 percent in the second year and 12 percent for the remaining 28 years need not be included in the advertisement.

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Subpart D--Miscellaneous

§ 226.25--Record Retention.

25(a) General rule.

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5. *Prohibited payments to loan originators*. For each transaction secured by real property or a dwelling subject to the loan originator compensation provisions in § 226.36(d)(1), a creditor should maintain records of the compensation it provided to the loan originator for the transaction as well as the compensation agreement in effect on the date the interest rate was set for the transaction. *See* § 226.35(a) and comment 35(a)(2)-3 for additional guidance on when a transaction's rate is set. Where a loan originator is a mortgage broker, a copy of the HUD--1 settlement statement required by the Real Estate Settlement Procedures Act (RESPA) would be presumed to be a record of the amount actually paid to the loan originator in connection with the transaction.

* * * *

§ 226.30--Limitation on Rates.

1. *Scope of coverage*. i. The requirement of this section applies to consumer credit obligations secured by a dwelling (as dwelling is defined in § 226.2(a)(19)) in which the annual percentage rate may increase after consummation (or during the term of the plan, in the case of open-end credit) as a result of an increase in the interest rate component of the finance charge--whether those increases are tied to an index or formula or are within a creditor's discretion. The section applies to credit sales as well as loans. Examples of credit obligations subject to this section include:

[.] A. Dwelling-secured credit obligations that require variable-rate disclosures under the regulation because the interest rate may increase during the term of the obligation.

[.] B. Dwelling-secured open-end credit plans entered into before November 7, 1989 (the effective date of the home equity rules) that are not considered variable-rate obligations for purposes of disclosure under the regulation but where the creditor reserves the contractual right to increase the interest rate--periodic rate and corresponding annual percentage rate--during the term of the plan.

ii. In contrast, credit obligations in which there is no contractual right to increase the interest rate during the term of the obligation are not subject to this section. Examples include:

[.] A. "Shared-equity" or "shared-appreciation" mortgage loans that have a fixed rate of interest and a shared-appreciation feature based on the consumer's equity in the mortgaged property. (The appreciation share is payable in a lump sum at a specified time.)

[.] B. Dwelling-secured fixed-rate closed-end balloon-payment mortgage loans and dwelling-secured fixed-rate open-end plans with a stated term that the creditor may renew at maturity. (Contrast with the renewable balloon-payment mortgage instrument described in comment [17(c)(1)-11.)] 17(c)(1)(iii)--4.

[.] C. Dwelling-secured fixed rate closed-end multiple advance transactions in which each advance is disclosed as a separate transaction.

[.] D. "Price level adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation.

iii. The requirement of this section does not apply to credit obligations entered into prior to December 9, 1987. Consequently, new advances under open-end credit plans existing prior to December 9, 1987, are not subject to this section.

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Subpart E--Special Rules for Certain Home Mortgage Transactions

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§ 226.32--Requirements for Certain Closed-End Home Mortgages.

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[*32(b) Definitions*.

Paragraph 32(b)(1)(i).

1. *General*. Section 226.32(b)(1)(i) includes in the total "points and fees" items defined as finance charges under §§ 226.4(a) and 226.4(b). Items excluded from the finance charge under other provisions of § 226.4 are not included in the total "points and fees" under paragraph 32(b)(1)(i), but may be included in "points and fees" under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii). Interest, including per-diem interest, is excluded from "points and fees" under § 226.32(b)(1).

Paragraph 32(b)(1)(ii).

1. *Mortgage broker fees*. In determining "points and fees" for purposes of this section, compensation paid by a consumer to a mortgage broker (directly or through the creditor for delivery to the broker) is included in the calculation whether or not the amount is disclosed as a finance charge. Mortgage broker fees that are not paid by the consumer are not included. Mortgage broker fees already included in the calculation as finance charges under § 226.32(b)(1)(i) need not be counted again under § 226.32(b)(1)(ii).

2. *Example*. Section 226.32(b)(1)(iii) defines "points and fees" to include all items listed in § 226.4(c)(7), other than amounts held for the future payment of taxes. An item listed in § 226.4(c)(7) may be excluded from the "points and fees" calculation, however, if the charge is reasonable, the creditor receives no direct or indirect compensation from the charge, and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be excluded from the "points and fees" calculation (assuming no compensation is paid to the creditor). A fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation, even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount.

Paragraph 32(b)(1)(iv).

1. *Premium amount*. In determining "points and fees" for purposes of this section, premiums paid at or before closing for credit insurance are included whether they are paid in cash or financed, and whether the amount represents the entire premium for the coverage or an initial payment.]

32(c) Disclosures.

[1. *Format*. The disclosures must be clear and conspicuous but need not be in any particular type size or typeface, nor presented in any particular manner. The disclosures need not be a part of the note or mortgage document.]
* * * *

32(c)(5) Amount borrowed.

1. Optional insurance; debt-cancellation or debt-suspension coverage. This disclosure is required when the amount borrowed in a refinancing includes premiums or other charges for credit life, accident, health, or loss-of-income insurance; [or] debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident; or debt-suspension coverage that provides for suspension of the obligation to make one or more payments on the date(s) otherwise required by the credit agreement in the event of loss of life, health, or income or in the case of accident. See comment 4(d)(3)-2 and comment app. G and H--2 regarding terminology for debt-cancellation and debt-suspension coverage.
* * * *

§ 226.35--Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans.

35(a) Higher-priced mortgage loans. Paragraph 35(a)(2).
* * * *

4. *Board table*. The Board publishes on the FFIEC's Web site, [Internet,] in table form, average prime offer rates for a wide variety of transaction types. *See http://www.ffiec.gov/hmda*. The Board calculates an annual percentage rate, consistent with Regulation Z (see § 226.22 and appendix J), for each transaction type for which pricing terms are available from a survey. The Board estimates annual percentage rates for other types of transactions for which direct survey data are not available based on the loan pricing terms available in the survey and other information. The Board publishes on the FFIEC's Web site [Internet] the methodology it uses to arrive at these estimates.

5. Additional guidance on determination of average prime offer rates. The average prime offer rate has the same meaning in this section as under Regulation C, 12 CFR part 203. See 12 CFR 203.4(a)(12)(ii). Guidance on the average prime offer rate under § 226.35(a)(2), such as when a transaction's rate is set and determination of the comparable transaction, is provided in the staff commentary under Regulation C, the Board's *A Guide to HMDA Reporting: Getting it Right*, and the relevant "Frequently ***Asked*** Questions" on HMDA compliance posted on the FFIEC's Web site at *http://ffiec.gov/ hmda*.
* * * *

§ 226.36--Prohibited Acts or Practices in Connection with Credit Secured by Real Property or a Dwelling [a Consumer's Principal Dwelling].
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36(a) Loan originator and mortgage broker defined.

1. *Meaning of loan originator [mortgage broker]*. Section 226.36(a) provides that a loan originator [mortgage broker] is any person who for compensation or other monetary gain arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term "loan originator" includes employees of the creditor [but is not an employee of a creditor]. In addition, this definition expressly includes any creditor [person] that satisfies this

definition but makes use of "table funding." Table funding occurs when a transaction is consummated with the debt obligation initially payable by its terms to one person, but another person provides the funds for the transaction at consummation and receives an immediate assignment of the note, loan contract, or other evidence of the debt obligation. Although § 226.2(a)(17)(i)(B) provides that a person to whom a debt obligation is initially payable on its face generally is a creditor, § 226.36(a) provides that, solely for the purposes of § 226.36, such a person is also considered a loan originator [considered a mortgage broker]. The creditor is not considered a loan originator unless table funding occurs. In addition, although consumers themselves often arrange, negotiate, or otherwise obtain extensions of consumer credit on their own behalf, they do not do so for compensation or other monetary gain or for another person and, therefore, are not loan originators [mortgage brokers] under this section.

2. *Mortgage broker*. For purposes of § 226.36, with respect to a particular transaction, the term "mortgage broker" refers to a loan originator who is not an employee of the creditor. Accordingly, the term "mortgage broker" includes companies that engage in the activities described in § 226.36(a) and also includes employees of such companies that engage in these activities. Section 226.36(d) prohibits certain payments to a loan originator. These prohibitions apply to payments made to all loan originators, including payments made to mortgage brokers, and payments made by a company acting as a mortgage broker to its employees who are loan originators.

36(b) Misrepresentation of value of consumer's [principal] dwelling.

* * * *

36(d) Prohibited payments to loan originators.

1. *Persons covered*. Section 226.36(d) prohibits any person (including the creditor) from paying compensation to a loan originator in connection with a covered credit transaction, if the amount of the payment is based on any of the transaction's terms or conditions. For example, a person that purchases a loan from the creditor may not compensate the loan originator in a manner that violates this section.

2. *Mortgage brokers*. The payments made by a company acting as a mortgage broker to its employees who are loan originators are subject to the section's prohibitions. For example, a mortgage broker may not pay its employee more for a transaction with a 7 percent interest rate than for a transaction with a 6 percent interest rate.

36(d)(1) Payments based on transaction terms and conditions.

1. Compensation. For purposes of § 226.36(d)(1) and (e) the term "compensation" is not limited to commissions; it includes salaries and any financial or similar incentive provided to a loan originator that is based on any of the terms and conditions of the loan originator's transactions. (*See* comment 36(d)(1)-2 for examples of types of compensation that are not covered by § 226.36(d) and (e)). For example, the term "compensation" includes:

i. An annual or other periodic bonus; or

ii. Awards of merchandise, services, trips, or similar prizes.

2. *Examples of compensation that is based on transaction terms or conditions*. Section 226.36(d)(1) prohibits loan originator compensation that is based on a transaction's terms or conditions. For example, the rule prohibits compensation based on the transaction's interest rate, annual percentage rate, loan-to-value ratio, or the existence of a prepayment penalty. A consumer's credit score or similar representation of credit risk is not one of the transaction's terms and conditions, but a creditor does not necessarily ***<u>avoid</u>*** having based a loan originator's compensation on the interest rate or the annual percentage rate solely because the originator's compensation happens to vary with the consumer's credit score as well.

3. *Examples of compensation not based on transaction terms or conditions*. Compensation would not be based on the transaction's terms or conditions if it were based on, for example:

i. The loan originator's overall loan volume delivered to the creditor.

ii. The long-term performance of the originator's loans.

iii. A fixed hourly rate of pay to compensate the originator for the actual number of hours worked.

iv. Whether the consumer is an existing customer of the creditor or a new customer.

4. *Geographic differences*. Section 226.36(d)(1) does not prohibit the payment of compensation to a loan originator that differs by geographical area, provided such compensation is not based on the transaction's terms or conditions. Any such arrangement must comply with other applicable laws, such as the Equal Credit Opportunity Act, 15 U.S.C. 1691-1691f, and Fair Housing Act, 42 U.S.C. 3601-3619.

5. *Creditor's flexibility in setting loan terms*. Section 226.36(d)(1) does not limit the creditor's ability to offer a higher interest rate in a transaction as a means for the consumer to finance the payment of the loan originator's compensation or other costs that the consumer would otherwise be required to pay directly (either in cash or out of the loan proceeds). Thus, a creditor may charge a higher interest rate to a consumer who will pay fewer of the costs of the transaction directly, or the creditor may offer the consumer a lower rate if the consumer pays more of the costs directly. For example, if the consumer pays half of the transaction costs directly, the creditor may charge an interest rate of 6% but, if the consumer pays none of the transaction costs directly, may charge an interest rate of 6.5%. Section 226.36(d)(1) also does not limit a creditor from offering or providing different loan terms to the consumer based on the creditor's assessment of the credit risk involved. A creditor also may set loan terms by offering varying interest rates to different consumers that include a constant interest rate premium to recoup the loan originator's compensation through increased interest paid by the consumer (such as by adding a constant 1/4 of one percent to the interest rate on each loan).

6. *Effect of modification of loan terms*. Under § 226.36(d)(1), a loan originator's compensation may not vary based on any of a credit transaction's terms and conditions. Thus, a creditor and originator could not agree to set the originator's compensation at a higher level and then subsequently lower it in selective cases (such as where the consumer is able to obtain a lower rate from another creditor). When the creditor offers to extend a loan with specified terms and conditions (such as the rate and points) the amount of the originator's compensation for that transaction is not subject to change (increase or decrease) based on whether different loan terms are negotiated. For example, if the creditor agrees to lower the rate that was initially offered, the new offer may not be accompanied by a reduction in the loan originator's compensation.

7. *Periodic changes in loan originator compensation and transactions' terms and conditions*. This section does not limit a creditor from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must result in payments to the loan originator that do not vary based on the terms or conditions of a credit transaction. A creditor might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first 6 months of the year, a creditor pays $ 3,000 to a particular loan originator for each loan delivered, regardless of the loan terms. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $ 3,250 for each loan delivered by that particular originator, regardless of the loan terms. No violation occurs even if the loans made by the creditor after July 1 generally carry a higher interest rate than loans made before that date, to reflect the higher compensation.

8. *Compensation received directly from a consumer*. The prohibition in § 226.36(d)(1) does not apply to transactions in which the loan originator receives compensation directly from the consumer, in which case no other person may provide any compensation to the loan originator, directly or indirectly, in connection with that particular transaction pursuant to § 226.36(d)(2).

9. *Record retention*. See comment 25(a)--5 for guidance on complying with the record retention requirements of § 226.25(a) as they apply to this section.

ALTERNATIVE COMMENT 36(d)(1)-10, TO ACCOMPANY ALTERNATIVE 2--PARAGRAPH (d):

10. *Principal loan amount*. A loan originator's compensation may be based on the loan amount. Thus, an arrangement that pays a loan originator a fixed percentage of the loan amount does not violate this section even though the dollar amount received by the originator will vary from transaction to transaction and will be greater as the loan amount increases. Section 226.36(d)(1) does not prohibit an arrangement under which a loan originator is paid a fixed percentage of the loan amount, subject to specified minimum or maximum dollar amount. For example, a loan originator's compensation may be set at one percent of the principal loan amount but not less than $ 1,000 or greater than $ 5,000.

36(d)(2) Payments by persons other than consumer.

1. *Compensation in connection with a particular transaction*. Under § 226.36(d)(2), if a loan originator receives compensation directly from a consumer in a transaction, no other person may provide any compensation to the loan originator, directly or indirectly, in connection with that particular credit transaction. The restrictions imposed under § 226.36(d)(2) relate only to payments, such as commissions, that are specific to, and paid solely in connection with, the transaction in which the consumer has paid compensation directly to the loan originator. Thus, compensation paid by a mortgage broker company to an employee in the form of a salary or hourly wage, which is not tied specifically to a single transaction, does not violate § 226.36(d)(2) even if the consumer directly pays a broker a fee in connection with a specific transaction.

2. *Compensation received directly from a consumer*. Under Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), a yield spread premium paid by a creditor to the loan originator may be characterized on the RESPA disclosures as a "credit" that will be applied to reduce the consumer's settlement charges, including origination fees. A yield spread premium disclosed in this manner is not considered to be received by the loan originator directly from the consumer for purposes of § 226.36(d)(2).

36(d)(3) Affiliates.

1. For purposes of § 226.36(d), affiliated entities are treated as a single "person." For example, assume a parent company has two mortgage lending subsidiaries. Under § 226.36(d)(1), subsidiary "A" could not pay a loan originator greater compensation for a loan with an interest rate of 8 percent than it would pay for a loan with an interest rate of 7 percent. If the loan originator may deliver loans to both subsidiaries, they must compensate the loan originator in the same manner. Accordingly, if the loan originator delivers the loan to subsidiary "B" and the interest rate is 8 percent, the originator must receive the same compensation that would have been paid by subsidiary A for a loan with a rate of either 7 or 8 percent. COMMENTS 36(e)-1, 36(e)(1)-1 THROUGH 36(e)(1)-3, 36(e)(2)-1 AND 36(e)(2)-2, and 36(e)(3)-1 THROUGH 36(e)(3)-4, TO ACCOMPANY OPTIONAL PROPOSAL--PARAGRAPH (e).

36(e) Prohibition on steering.

1. *Compensation*. See comment 36(d)(1)-1 for guidance on compensation that is subject to § 226.36(e).

Paragraph 36(e)(1).

1. *Steering*. For purposes of § 226.36(e), directing or "steering" a consumer to a particular credit transaction means advising, counseling, or otherwise influencing a consumer to accept that transaction. For such actions to constitute steering, the consumer must actually consummate the transaction in question. Thus § 226.36(e)(1) does not address the actions of a loan originator if the consumer does not actually obtain a loan through that originator.

2. *Prohibited conduct*. Under § 226.36(e)(1), a loan originator may not direct or steer a consumer to a loan to increase the amount of compensation that the originator will receive for the transaction unless the loan is in the consumer's interest.

i. In determining whether a consummated transaction is in the consumer's interest, that transaction must be compared to other possible loan offers available through the originator, and for which the consumer was likely to qualify, at the time the consummated transaction was offered to the consumer. Possible loan offers are available through the loan originator if they could be obtained from a creditor with which the loan originator regularly does business. Section 226.36(e)(1) does not require a loan originator to establish a business relationship with any creditor with which the loan originator does not already do business. To be considered a "possible loan offer," an offer need not be extended by the creditor; it need only be an offer that the creditor likely would extend upon receiving an application from a qualified applicant, based on the creditor's current rate sheets or other, similar means of communicating its current credit terms to the loan originator. An originator need not inform the consumer about a possible loan offer if the originator is able to make a good faith determination that the consumer is not likely to qualify for the loan.

ii. Section 226.36(e)(1) does not require a loan originator to direct a consumer to the transaction that will result in a creditor paying the least amount of compensation to the originator. However, if the loan originator reviews possible loan offers available from a significant number of the creditors with which the originator regularly does business, and the originator directs the consumer to the transaction that will result in the least amount of creditor-paid compensation for the loan originator, the requirements of § 226.36(e)(1) are deemed to be satisfied. A loan originator who is an employee of the creditor may not obtain compensation that is based on the transaction's terms or conditions pursuant to § 226.36(d)(1), and compliance with that provision by such a loan originator also satisfies the requirements of § 226.36(e)(1).

iii. See the commentary under § 226.36(e)(3) for additional guidance on what constitutes a "significant number of creditors with which a loan originator regularly does business" and guidance on the determination about transactions for which "the consumer likely qualifies."

3. *Examples*. Assume the originator determines that a consumer likely qualifies for a loan from Creditor A that has a fixed interest rate of 7.00 percent, but the loan originator directs the consumer to a loan from Creditor B having a rate of 7.50 percent. If the loan originator receives more in compensation from Creditor B than the amount that would have been paid by Creditor A, the prohibition in § 226.36(e) is violated unless the higher-rate loan is in the consumer's interest. For example, a higher rate loan might be in the consumer's interest if the lower rate loan has a prepayment penalty, or if the lower rate loan requires the consumer to pay more in up-front charges that the consumer is unable or unwilling to pay or finance as part of the loan amount.

36(e)(2) Permissible transactions.

1. *Safe harbors*. A loan originator that complies with § 226.36(e)(2) is deemed to comply with § 226.36(e)(1). A loan originator that does not comply with § 226.36(e)(2) is not subject to any presumption regarding the originator's compliance or noncompliance with § 226.36(e)(1).

2. *Minimum number of loan options*. To obtain the safe harbor, § 226.36(e)(2) requires that the loan originator present at least three loan options for each type of transaction in which the consumer expressed an interest. As required by § 226.36(e)(3)(ii), the loan originator must have a good faith belief that the options presented are loans for which the consumer likely qualifies. If the loan originator is not able to form such a good faith belief for at least three options for a given type of transaction, the loan originator may satisfy the minimum number of loan options set forth in § 226.36(e)(2) by presenting all loan options for which the consumer likely qualifies and that meet the other requirements of § 226.36(e)(3).

36(e)(3) Loan options presented.

1. *Significant number of creditors*. A significant number of the creditors with which a loan originator regularly does business is three or more of those creditors. If the loan originator regularly does business with fewer than three creditors, the originator is deemed to comply by obtaining loan options from all the creditors with which it regularly does business. Under § 226.36(e)(3)(i), the loan originator must obtain loan options from a significant number of creditors with which the loan originator regularly does business, but the loan originator need not present loan options from all such creditors to the consumer to satisfy § 226.36(e)(2). For example, if three loan options available

from one of the creditors with which the loan originator regularly does business satisfy § 226.36(e)(3)(i), presenting those and no options from any other creditor satisfies § 226.36(e)(2).

2. *Creditors with which loan originator regularly does business*. To qualify for the safe harbor in § 226.36(e)(2), the loan originator must obtain and review loan options from a significant number of the creditors with which the loan originator regularly does business. For this purpose, a loan originator regularly does business with a creditor if:

i. There is a written agreement between the originator and the creditor governing the originator's submission of mortgage loan applications to the creditor;

ii. The creditor has extended credit secured by real property or a dwelling to one or more consumers during the current or previous calendar month based on an application submitted by the loan originator; or

iii. The creditor has extended credit secured by real property or a dwelling 25 or more times during the previous twelve calendar months based on applications submitted by the loan originator. For this purpose the previous twelve calendar months begins with the calendar month that precedes the month in which the loan originator accepted the consumer's application.

3. *Lowest interest rate*. To qualify under the safe harbor in § 226.36(e)(2), for each type of transaction in which the consumer has expressed an interest, the loan originator must present the consumer with at least three loans that include the loan with the lowest interest rate, the loan with the second lowest rate, and the loan with the lowest total dollar amount for discount points and origination points. To determine the loan with the lowest interest rate, for any loan that has an initial rate that is fixed for at least five years, the loan originator shall use the initial rate that would be in effect at consummation. For a loan with an initial rate that is not fixed for at least five years:

i. If the interest rate varies based on changes to an index, the originator shall use the fully-indexed rate that would be in effect at consummation without regard to any initial discount.

ii. For a step-rate loan the originator shall use the highest rate that would apply during the first five years.

4. *Transactions for which the consumer likely qualifies*. To qualify under the safe harbor in § 226.36(e)(2), the loan originator must have a good faith belief that the loan options presented to the consumer pursuant to § 226.36(e)(3) are transactions for which the consumer likely qualifies. The loan originator's belief that the consumer likely qualifies should be based on all information reasonably available to the loan originator at the time the loan options are being presented. The loan originator may rely on information provided by the consumer, even if it subsequently is determined to be inaccurate. For purposes of § 226.36(e)(3), a loan originator is not expected to know all aspects of each creditor's underwriting criteria. But pricing or other information that is routinely communicated by creditors to loan originators is considered to be reasonably available to the loan originator, for example, rate sheets ***showing*** creditors' current pricing and the required minimum credit score or other eligibility criteria.

Section 226.37--Special Disclosure Requirements for Closed-End Mortgages 37(a) Form of disclosures.

1. *Controlling standard*. Transactions subject to this part are also subject to the clear and conspicuous standard under § 226.17(a)(1). In some instances, § 226.17(a)(1) provides creditors more flexibility in meeting the clear and conspicuous standard. For example, disclosures for transactions subject only to § 226.17(a)(1) may be grouped together and segregated in a variety of ways and need not be given in a particular type size. In contrast, disclosures required for transactions secured by real property or a dwelling, and therefore, also subject to § 226.37, must be segregated from all other material and be provided in a minimum 10-point font. For such disclosures, creditors must use the standards set forth under § 226.37(a) through (d).

37(a)(1) General.

1. *Clear and conspicuous standard*. The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer.

2. *Clear and conspicuous standard--readily noticeable*. To meet the readily noticeable standard, disclosures required by §§ 226.19, 226.20(c), 226.20(d), and 226.38 must be given in a minimum 10-point font.

3. *Location*. The disclosures required under §§ 226.19 or 226.38 must appear on a document separate from all other material. The disclosures required under §§ 226.19, 226.20(c), 226.20(d) or 226.38 may be made on more than one page, continued from one page to another, and made on the front or back side of a page, except as otherwise specifically required.

37(a)(2) Grouped and Segregated.

1. *Segregation of disclosures*. The disclosures required by §§ 226.19, 226.20(c), 226.20(d) or 226.38 must be segregated from other information. The disclosures under § 226.38 may be grouped together, in accordance with the requirements under § 226.38(a)--(j), and segregated from other required disclosures under § 226.38

i. By outlining them in a box.

ii. By bold print dividing lines.

iii. By a different color background.

iv. By a different type style.

2. *Content of segregated disclosures*. Section 226.37(a)(2)(i)--(ii) contains exceptions to the requirement that the disclosures required under § 226.38 be grouped together and segregated from material that is not directly related to those disclosures. Section 226.37(a)(2)(i) lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Section 226.37(a)(2)(ii) lists the items required under § 226.38 that may be deleted from the segregated disclosures and appear elsewhere. Any of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures.

3. *Directly related*. The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. The following is directly related information:

i. The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.

ii. An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, "'You' refers to the customer and 'we' refers to the creditor."

iii. A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as "Federal Truth in Lending Disclosures" or a descriptive title such as "Real Estate Loan Disclosures."

4. *Balloon payment financing with leasing characteristics*. See comment 17(a)(1)-7.

37(c) Terminology.

1. *Consistent Terminology*. Language used in disclosures required by §§ 226.19, 226.20(c), 226.20(d), and 226.38 must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical, unless the use of specific terminology is required.

2. *Combining terminology*. Where the amounts of several numerical disclosures are the same, creditors may combine the terms, so long as it is done in a clear and conspicuous manner and in accordance with the requirements under § 226.38. For example, in a transaction in which the amount financed equals the total payments, the creditor may disclose a single dollar amount together with the descriptive statement required for total payments under § 226.38(e)(5)(i) and an explanation that the figure represents both the total payments and the amount financed, and is used to calculate the annual percentage rate. However, if the terms are required to be

disclosed separately, both disclosures must be completed even though the same amount is entered into each space.

3. *When disclosures must be more conspicuous*. The following rules apply to the requirement that the annual percentage rate for the loan transaction, when disclosed with the term *annual percentage rate*, be ***shown*** more conspicuously:

i. the annual percentage rate, expressed as a percentage, must be more conspicuous only in relation to other required disclosures under § 226.38.

ii. the annual percentage rate, expressed as a percentage, need not be more conspicuous except as part of the annual percentage rate disclosure required under §§ 226.37(c)(2) and 226.38(b)(1).

iii. the term "annual percentage rate" must not be more conspicuous than the annual percentage rate, expressed as a percentage and disclosed as required under §§ 226.37(c)(2) and 226.38(b)(1).

iv. the creditor's identity under § 226.38(g)(1) may, but need not, be more prominently displayed than the annual percentage rate.

4. *Making disclosures more conspicuous*. The annual percentage rate for the loan transaction, expressed as a percentage, may be made more conspicuous in any way that highlights it in relation to the other required disclosures. For example, it may be:

i. Printed in bold print or different type face; or

ii. Underlined.

37(d) Specific Formats.

1. *Prominent Location*. Disclosures meet the prominent location standard if located on the first page and on the front side of the disclosure statement.

2. *Close Proximity*. If the required disclosures are located immediately next to or directly above or below each other, without any intervening text or graphical displays, the disclosures are deemed to be in close proximity.

Section 226.38--Content of Disclosures for Closed-End Mortgages

1. *As applicable*. The disclosures required by this section should be provided only as applicable. Any provision not relevant to a particular transaction should not be disclosed, except as otherwise required under § 226.38(d)(1).

2. *Format*. See the commentary to §§ 226.17(a)(1) and 226.37 for a discussion of the format to be used in making these disclosures, as well as acceptable modifications.

38(a) Loan summary.

38(a)(3) Loan type and features.

1. *General*. The disclosure of loan type and features should reflect the terms of the legal obligation between the parties.

38(a)(3)(i) Loan type.

1. *General*. Creditors must identify the loan type as required in § 226.38(a)(3)(i). Only one loan type may be disclosed. The categories used in § 226.38(a)(3)(i) are different from the categories in § 226.18(f) and commentary to § 226.17(c)(1).

38(a)(3)(i)(A) Adjustable-rate mortgages.

1. *General*. A transaction is an adjustable-rate mortgage for the purposes of this section if the annual percentage rate may increase after consummation. However, a transaction in which the annual percentage rate may change after consummation solely because of a shared-equity or shared-appreciation feature is not an adjustable-rate mortgage for the purposes of this section. *See* § 226.38(d)(2)(vi). Also, a step-rate mortgage is not an adjustable-rate mortgage for purposes of this section unless the interest rate or the applicable period for each interest rate can change other than as specified in the terms of the legal obligation between the parties. See § 226.38(a)(3)(i)(B). A fixed interest rate loan with a renewable balloon payment is not an adjustable-rate mortgage for purposes of this section. See comment 38(a)(3)(i)(C)--1(v).

2. *Examples*. The following transactions, for which the interest rate is variable, are examples of adjustable-rate mortgages for purposes of this section.

i. the seller or a 3rd party pays an amount either to the creditor or to the consumer to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)--1, regardless of whether the disclosures take the buydown into account.

ii. the consumer pays an amount to the creditor to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)--2.

iii. a third party (such as a seller) and a consumer both pay an amount to the creditor to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)--4.

iv. a rate reduction option permits the consumer to adjust the existing variable interest rate to a lower variable interest rate under certain conditions, in accordance with the terms of the legal obligation between the parties.

v. the renewable balloon-payment option permits the consumer to renew the loan as described in comment 17(c)(1)(iii)--4(i).

vi. the terms of the legal obligation provide that the rate will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, as described in comment 17(c)(1)(iii)--4(ii).

vii. the terms of the legal obligation provide for periodic adjustments to payments and the loan balance, such as "price-level-adjusted mortgages" or other indexed mortgages that have a variable rate of interest and provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation, as described in comment 17(c)(1)(iii)--4(iii).

viii. if the interest rate or the applicable period for each interest rate can change other than as specified in the terms of the legal obligation between the parties, such as certain step-rate mortgages, as described in comment 38(a)(3)(i)(B)--1.

ix. the terms of the legal obligation provide for scheduled adjustments in payment amounts during the loan term, such as certain graduated-payment adjustable-rate mortgages, as described in comment 17(c)(1)(iii)--6.

x. the terms of the legal obligation give the consumer an option to convert the variable interest rate into a fixed interest rate at a designated time or upon satisfaction of certain conditions.

38(a)(3)(i)(B) Step-rate mortgages.

1. *General*. A step-rate mortgage is a transaction for which the annual percentage rate will change after consummation, and all of the interest rates that will apply throughout the term of the loan, including the applicable period for each interest rate, are specified in the terms of the legal obligation between the parties. As discussed in comment 38(a)(3)(i)(A)--1, if the interest rate or the applicable period for each interest rate can change other than

as specified in the terms of the legal obligation between the parties, such mortgage is considered an adjustable-rate mortgage and not a step-rate mortgage for purposes of this section.

2. *Exclusion*. Preferred-rate loans where the terms of the legal obligation provide that the initial interest rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, as described in comment 17(c)(1)(iii)--4, are considered *fixed-rate* mortgages and not *step-rate mortgages* for purposes of this section. *See* comment 38(a)(3)(i)(C)--1(vi).

38(a)(3)(i)(C) Fixed-rate mortgages.

1. *Examples*. The following transactions, for which the interest rate is fixed, are examples of fixed-rate mortgages for purposes of this section.

i. the seller or a third party pays an amount either to the creditor or to the consumer to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)--1, regardless of whether the disclosures take the buydown into account.

ii. the consumer pays an amount to the creditor to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)--2.

iii. a third party (such as a seller) and a consumer both pay an amount to the creditor to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)--4.

iv. a rate reduction option permits the consumer to adjust the existing fixed interest rate to a lower fixed interest rate under certain conditions, in accordance with the terms of the legal obligation between the parties.

v. the renewable balloon-payment option permits the consumer to renew the loan as described in comment 17(c)(1)(iii)--4(i).

vi. the terms of the legal obligation provide that the rate will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, as described in comment 17(c)(1)(iii)--4(ii).

vii. the terms of the legal obligation provide for periodic adjustments to payments and the loan balance, such as "price-level-adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation, as described in comment 17(c)(1)(iii)--4(iii).

38(a)(3)(ii) Loan features.

1. *General*. Creditors must indicate whether a loan has the features specified in § 226.38(a)(3)(ii). Under § 226.38(a)(3)(ii), a creditor should disclose no more than two features for a single loan. A loan may have both a "step-payment" feature in § 226.38(a)(3)(ii)(A) and one of the features in § 226.38(a)(3)(ii)(B)--(D).

38(a)(3)(ii)(A) Step-payments.

1. *General*. If, under the terms of the legal obligation, a periodic monthly payment may increase by a set amount for a specified amount of time, the creditor must disclose that the loan has a "step-payment" feature. For instance, if the consumer is offered a fixed-rate mortgage with 24 monthly payments at $ 1,000 that will later increase to $ 1,200 and remain at that level for a specified period of time, and the loan amortizes fully over the loan term, the creditor would disclose "Fixed-rate mortgage, step-payments" for the loan type in the loan summary. See comment 17(c)(1)(iii)--5 clarifying that graduated-payment mortgages and step-rate transactions without an adjustable-rate mortgage feature are not considered adjustable-rate mortgage transactions. However, if the consumer is offered an adjustable-rate mortgage loan with scheduled variations in payment amounts during the loan term, the creditor would disclose "Adjustable-rate mortgage, step-payments." See comment 17(c)(1)(iii)--6 for a discussion of

graduated-payment adjustable-rate mortgages. Also see comment 38(a)(3)(ii)--2 regarding loans with multiple features.

Paragraphs 38(a)(3)(ii)(B) and (C)

1. *"Payment option" and "negative amortization" features--loans with negative amortization*.

i. Negative amortization occurs when one or more regular periodic payments is not sufficient to cover interest accrued and the unpaid interest is added to the loan balance. For purposes of the loan feature disclosure in § 226.38(a)(3)(ii), features that result in negative amortization are divided into two types:

A. "Payment option" features, in which the terms of the legal obligation *permit* the consumer to make payments that result in negative amortization and other types of payments; and

B. "Negative amortization" features, in which the terms of the legal obligation require the consumer to make payments that result in negative amortization--that is, the legal obligation does not permit the consumer to make payments that would cover all interest accrued or all interest accrued and principal.

ii. Under § 226.38(a)(3)(ii)(B) and (C), a creditor should disclose the loan feature as either "payment option" or "negative amortization" but not both. Under § 226.38(a)(3)(ii)(A), however, a loan may have both a "step-payment" feature and either a "payment option" or a "negative amortization" feature.

2. *Consumer's choice*. For a loan to have a "payment option" feature, all periodic payment choices must be specified in the legal obligation and must include a choice to make payments that may result in negative amortization. For example, if the consumer is offered a loan with minimum monthly payments that will not reduce the loan balance to remain the same (i.e., interest-only payments), but the terms of the legal obligation do not prevent the consumer from making payments that will decrease the loan balance, such a loan would be disclosed as having an "interest-only" feature and not a "payment option" feature for purposes of this section.

Paragraph 38(a)(3)(ii)(D)

1. *Interest-only feature*. The creditor must disclose an "interest-only" feature if the terms of the legal obligation permit or require the consumer to make one or more regular periodic payments of interest accrued and no principal, and the legal obligation does not require or permit any payments that would result in negative amortization. Thus, a creditor should not disclose both an "interest-only" feature and a "payment option" feature or "negative amortization" feature in a single transaction. Under § 226.38(a)(3)(ii)(A), however, a loan may have both an "interest-only" feature and a "step-payment" feature.

38(a)(4) Total settlement charges.

1. *Disclosure required*. For the good faith estimate required by § 226.19(a)(1)(i), the creditor must disclose the amount of the "Total Estimated Settlement Charges" as disclosed on the Good Faith Estimate under Regulation X, 12 CFR part 3500, Appendix C. For the final disclosure required by § 226.19(a)(2)(ii), the creditor must disclose the sum of the final settlement charges. For the final disclosure, the creditor may use the sum of the "Charges That Cannot Increase," "Charges That In Total Cannot Increase By More Than 10%," and "Charges That Can Change" as would be disclosed in the column entitled "HUD--1" on page three of the HUD--1 or on page two of the HUD--1A settlement statement under Regulation X, 12 CFR part 3500, Appendix A. Alternatively, for the final disclosure, the creditor may provide the consumer with the final HUD--1 or HUD--1A settlement statement. For transactions in which a Good Faith Estimate, HUD--1 or HUD--1A are not required, the creditor may look to such documents for guidance on ***how*** to comply with the requirements of this section.

38(a)(5) Prepayment penalty.

1. *Coverage*. Section 226.38 (a)(5) applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily.

2. *Penalty*. The term "penalty" as used in § 226.38(a)(5) encompasses only those charges that are assessed solely because of the prepayment in full of a transaction in which the interest calculation takes account of all scheduled reductions in principal. Charges which are penalties include, for example:

i. Charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such "balance."

ii. A minimum finance charge in a simple-interest transaction.

iii. Fees, such as loan closing costs, that are waived unless the consumer prepays the obligation.

3. *Fees that are not prepayment penalties*. Charges which are not penalties include, for example:

i. Loan guarantee fees.

ii. Fees imposed for preparing and providing documents in connection with prepayment, such as a loan payoff statement, a reconveyance, or other document releasing the creditor's security interest in the property securing the loan.

4. *As applicable*. When the legal obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance and no penalty may be imposed, disclosures made under § 226.38(a)(5) need not be made. In such a case, however, § 226.38(d)(1)(iii) requires the creditor to indicate whether or not the legal obligation permits the creditor to impose a prepayment penalty.

5. *Content of disclosure*. Section 226.38(a)(5) requires creditors to disclose the amount of the maximum penalty, the circumstances under which the creditor may impose the penalty, and the period during which the creditor may impose the penalty. The creditor must state the maximum penalty as a dollar numerical amount. *See* § 226.2(b)(5) and comment 2(b)(5)-2.

6. *Basis of disclosure*. The creditor should assume that the consumer prepays at a time when the prepayment penalty may be charged. For example, if the prepayment penalty on a negatively amortizing loan equals 2% of the amount prepaid during the first two years after loan origination, the creditor should disclose the maximum penalty using the maximum loan balance during those years even if the loan balance, and thus the amount prepaid, may increase thereafter. If more than one type of prepayment penalty applies, the creditor should include the maximum amount of each type of prepayment penalty in the maximum penalty disclosed.

i. If the legal obligation permits the creditor to treat the loan balance as outstanding for a period after prepayment in full and charge amounts determined by applying the interest rate to the "balance" deemed outstanding during that period, the maximum the creditor should include is the maximum such charges in calculating the maximum prepayment penalty.

ii. If a minimum finance charge applies, the creditor should include the minimum finance charge in calculating the maximum prepayment penalty.

iii. If a prepayment penalty is determined by applying to the loan balance at the time of prepayment a rate that does not change, the prepayment penalty amount should be calculated assuming the highest balance possible. For amortizing loans and interest-only loans, the balance is highest at consummation, assuming the consumer makes timely payments in full. However, for loans with negative amortization, the loan's balance may be higher after consummation. For example, assume the principal balance of a negatively amortizing loan is $ 200,000 at consummation. The terms of the legal obligation allow the creditor to impose a fee equal to 3% of the amount prepaid if the consumer prepays during the first three years after consummation. The legal obligation provides that the interest rate for the loan is 1.50% for the first month, the maximum interest rate is 10.50%, and there are no limitations on ***how*** much the interest rate can increase on any adjustment date. Initial minimum payment amounts are based on the 1.5% initial rate. Payment amounts are adjusted yearly, but payments may not increase by more than 7.5% on any adjustment date, except that the consumer must make fully amortizing payments starting with the period in which the principal balance reaches 115% of the original principal balance. Assuming that the interest rate increases to 10.50% in the second month and remains at that rate and that the consumer makes minimum payments, the highest principal balance is $ 229,243, reached in the twenty-eighth month following origination. For purposes of this disclosure, the creditor should assume the consumer prepays in the 28th month, and the maximum prepayment penalty is $ 6,877.29.

iv. In some cases, the legal obligation may allow the creditor to determine the penalty using a penalty rate that may change over time (such as where a prepayment penalty on an adjustable-rate loan equals six months' interest payments.) In such cases, the creditor should disclose (1) the penalty charged when the penalty rate is the highest possible or (2) the penalty charged when the balance is the highest possible, whichever is greater. For example, assume that the interest rate for an adjustable-rate mortgage will remain fixed for the first 3 years after consummation and will adjust annually thereafter. The principal balance will be $ 200,000 at consummation and the loan amortizes. The initial interest rate on the loan is 5.625% and the maximum amount the interest rate can increase upon any rate adjustment is 2 percentage points. The terms of the legal obligation permit the creditor to impose a fee equal to 6 months' interest if the consumer prepays within the first 4 years. To determine the maximum prepayment penalty, the creditor must disclose (1) the penalty when the balance is highest or (2) the penalty when the penalty rate is highest, whichever is greater. The balance would be highest at consummation because the loan amortizes. The interest due the 1st month after consummation is $ 937.50. Six times the interest due in the first month is $ 5,625.00. The penalty rate would be highest in the 37th month after consummation, the first time the interest rate may increase during the period in which a prepayment penalty may be charged. Assuming the interest rate increased as much as possible, by 2 percentage points, the monthly interest due in the 37th month is $ 1,218.69. Six times the interest due in the 37th month is $ 7,312.14. The maximum penalty is the maximum penalty when the balance is highest, or $ 7,312.14, which is greater than the maximum penalty when the penalty rate is highest, or $ 5,625.00.

7. *Timely payment assumed*. The creditor may assume that the consumer makes payments on time and in the amount required by the terms of the legal obligation and may disregard any possible differences resulting from the consumer's payment patterns. See comment 17(c)(2)(i)--3. Where the terms of the obligation require a periodic payment that is not a fully amortizing payment, such as an interest only payment or a minimum payment that causes the loan balance to increase, the creditor must base disclosures on the required periodic payment and may not assume that the consumer will make payments that exceed the required payment.

8. *Rebate-penalty disclosure*. A single transaction may involve both a finance charge computed by application of a rate to the unpaid balance and a finance charge that is precomputed or otherwise does not take into account each reduction in the principal balance (for example, mortgages with mortgage-guarantee insurance for which premiums are calculated on an annual basis and do not take into account monthly declines in the principal balance). See comment 36(j)(6)-1. In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H--15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary, and associated commentary explains the assumptions used in generating the sample.

38(b) Annual percentage rate.

Paragraph 38(b)(1).

1. *Disclosure required*. The creditor must disclose the cost of the credit as an annual rate, expressed as a percentage and using the term "annual percentage rate," plus a brief descriptive phrase as required under § 226.38(b)(1). Under § 226.37(c)(2), the annual rate, expressed as a percentage, must be more conspicuous than the other required disclosures and in at least 16 point font.

Paragraph 38(b)(3).

1. *Applicable average prime offer rate and higher-priced loan threshold*. Creditors must disclose the APR on the loan offered, the average prime offer rate for a comparable transaction, and the higher priced loan threshold, for the week in which the creditor provides the disclosure. The higher-priced loan threshold is 1.5 percentage points above the comparable average prime offer rate for first lien loans, and 3.5 percentage points above the comparable average prime offer rate for subordinate lien loans. The Board publishes a table at least weekly with average prime offer rates by transaction type and loan term. Creditors should follow the guidance on ***how*** to determine the average prime offer rate and the higher-priced loan threshold in § 226.35(a)(2) and comments 35(a)(2)-1 through --4.

Paragraph 38(b)(4).

1. *Average per-period saving for 1 percentage-point reduction in the APR*. Section 226.38(b)(4) requires creditors to disclose the average per-period savings of a 1 percentage-point reduction in the APR disclosed in paragraph (b)(1). The creditor should base this disclosure on the terms of the legal obligation, except that the creditor must reduce the interest rate by one percentage point. If the legal obligation requires monthly payments, the creditor should identify the savings as the "average per-month" savings.

2. *Examples*. In both examples, assume the loan amount is $ 200,000 and the loan has a 30 year term with a total of 360 payments due monthly.

i. *Fixed-rate interest-only mortgage*. Assume that the loan is a fixed-rate mortgage with the option to make interest-only payments for the first 10 years of the loan. The interest rate is 6.5 percent. The total of payments disclosed under § 226.38(e)(5)(i) is $ 588,313.89. To calculate the average per-month savings, the creditor would reduce the interest rate to 5.5 percent for the full 30 year term of the loan and calculate a hypothetical total of payments of $ 540,627.21. The difference between the total of payments disclosed under § 226.38(e)(5)(i) and the hypothetical total of payments is $ 47,686.68. The creditor would divide $ 47,686.68 by the number of periods (360) and disclose an average per-month savings of $ 132.

ii. *Adjustable-rate mortgage*. Assume the loan is an ARM with a three-year introductory rate of 5.625 percent; the fully-indexed rate is 7.75 percent. At the end of the three year period, the interest rate will adjust, subject to a 2 percent rate cap. Thus, the interest rate in effect for year 4 is 7.625 percent. In year 5 the rate adjusts to the fully-indexed rate of 7.75 percent. The creditor should assume that the rate does not increase after it reaches the fully-indexed rate. The total of payments disclosed under § 226.38(e)(5)(i) is $ 585,778.09. To calculate the average per-month savings, the creditor would assume interest rates of 4.625 percent for the first 3 years; 6.625 percent for year 4; and 6.75 percent for the remainder of the loan. Thus, the rates are reduced by 1 percentage point, but the margin, periodic caps and other loan terms remain the same. The hypothetical total of payments is $ 537,087.61. The difference between the total of payments disclosed under § 226.38(e)(5)(i) and the hypothetical total of payments is $ 48,690.48. The creditor would divide $ 48,690.48 by the number of periods (360) and disclose an average per-month savings of $ 135.

38(c) Interest rate and payment summary.

1. *In general*. Section 226.38(c) prescribes format and content for disclosure of interest rates and monthly payments. The information in paragraph (c)(2)-(4) is required to be in the form of a table, except as provided otherwise. The required format and content of the table vary depending primarily on whether the loan has negative amortization. In all cases, however, the table should have no more than five vertical columns, ***showing*** applicable interest rates; payments would be ***shown*** in horizontal rows. Certain loan types and terms are defined for purposes of § 226.38(c) in § 226.38(c)(7).

2. *Amortizing loans*. Loans described as amortizing in § 226.38(c)(2)(i) and 226.38(c)(3) include loans with interest-only features that do not also have negative amortization features. (For rules relating to loans with balloon payments, *see* § 226.38(c)(5)). If an amortizing loan is an adjustable-rate mortgage with an introductory rate (less than the fully-indexed rate), creditors must provide a special explanation of introductory rates. See § 226.38(c)(2)(iii).

3. *Negative amortization*. For loans with negative amortization, creditors should follow the rules in §§ 226.38(c)(2)(ii) and 226.38(c)(4) in disclosing interest rates and monthly payments. Loans with negative amortization also require special explanatory disclosures about rates and payments. See § 226.38(c)(6). Loans with negative amortization include "payment option" loans, in which the consumer is permitted to make minimum payments that will cover only some of the interest accruing each month. See also comment 17(c)(1)(iii)--6, regarding graduated-payment adjustable-rate mortgages.

38(c)(2) Interest rates.

38(c)(2)(i) Amortizing loans.

Paragraph 38(c)(2)(i)(A).

1. *Fixed rate loans--payment increases*. Although the interest rate will not change after consummation for a fixed-rate loan, some fixed-rate loans may have periodic payments that increase after consummation. For example, the terms of the legal obligation may permit the consumer to make interest-only payments for a specified period such as the first five years after consummation. In such cases, the creditor must include the increased payment under § 226.38(c)(4)(ii)(B) in the payment row, and must ***show*** the interest rate in the column for that payment, even though the rate has not changed since consummation. *See also* comment 17(c)(1)(iii)--7, regarding growth equity mortgages.

Paragraph 38(c)(2)(i)(B).

1. *ARMs and step-rate mortgages*. Creditors must disclose more than one interest rate for ARMs and step-rate mortgages, in accordance with paragraph (c)(2)(i)(B). Creditors must assume that interest rates rise after consummation, taking into account the terms of the legal obligation.

2. *Maximum interest rate at first adjustment--adjustable-rate mortgages and step-rate mortgages*. The creditor must disclose the maximum possible rate that could apply at the first scheduled adjustment in the interest rate. If there are no interest rate caps other than the maximum possible rate required under § 226.30, then the creditor should disclose only the rate at consummation and the maximum possible rate. Such a table would only have two columns.

i. For an adjustable rate mortgage, the creditor must take into account any interest rate caps when disclosing the maximum interest rate at the first adjustment. The creditor must also disclose the date on which the first scheduled adjustment occurs.

ii. If the transaction is a step-rate mortgage, the creditor should disclose the rate that will apply after consummation. For example, the legal obligation may provide that the rate is 6 percent for the first two years following consummation, and then increases to 7 percent. The creditor should disclose the rate at first adjustment as 7 percent and the date on which the rate is scheduled to increase to 7 percent.

3. *Maximum interest rate at any time*. The creditor must disclose the maximum rate that could apply at any time during the term of the loan and the earliest date on which the maximum interest rate could apply.

i. For an adjustable-rate mortgage, the creditor must take into account any interest rate caps in disclosing the maximum possible interest rate. For example, if the legal obligation provides that at each annual adjustment the rate may increase by no more than 2 percentage points, the creditor must take this limit into account in determining the earliest date on which the maximum possible rate may be reached.

ii. For a step-rate loan, the creditor should disclose the highest rate that could apply under the terms of the legal obligation.

Paragraph 38(c)(2)(i)(C).

1. *Payment increases*. For some loans, the payment may increase following consummation for reasons unrelated to an interest rate adjustment. For example, an adjustable-rate mortgage may have an introductory fixed-rate for the first five years following consummation, and permit the borrower to make interest-only payments for the first three years. Under § 26.38(c)(3)(ii)(B), the creditor must disclose the first payment of principal and interest. In such a case, the creditor must also disclose the interest rate that corresponds to the first payment of principal and interest, even though the interest rate will not adjust after consummation. The table would ***show***, from left to right: the interest rate and payment at consummation with the payment itemized to ***show*** that the payment is being applied to interest only; the interest rate and payment when the interest-only option ends; the maximum interest rate and payment at first adjustment; and the maximum possible interest rate and payment.

38(c)(2)(ii) Loans with negative amortization.

1. *Rate at consummation*. In all cases the interest rate in effect at consummation must be disclosed, even if it will apply only for a short period such as one month.

2. *Rates for adjustable rate mortgages*. The creditor must assume that interest rates rise as quickly as possible after consummation, in accordance with any interest rate caps under the legal obligation. For ARMs with no interest rate caps except a maximum possible rate cap, creditors must assume that the interest rate reaches the maximum possible interest rate at first adjustment. For example, assume that the legal obligation provides for an interest rate at consummation of 1.5 percent. One month after consummation, the interest rate adjusts and will adjust monthly thereafter, according to changes in the index. The consumer may make payments that cover only part of the interest accruing each month, until the date the principal balance reaches 115 percent of its original balance, or until the 5th year after consummation, whichever comes first. The maximum possible rate is 10.5 percent. No other limits on interest rate changes apply. The minimum required payment adjusts each year, and may increase by no more than 7.5 percent over the previous year's payment. The creditor should disclose the transaction as follows. The creditor should disclose the following rates and the dates when they are scheduled to occur: a rate of 1.5 percent for the first month following consummation and the minimum payment; a rate of 10.5 percent, and the corresponding minimum payment taking into account the 7.5 percent limit, at the beginning of the second year; the rate of 10.5 percent and the corresponding minimum payment taking into account the 7.5 percent limit, at the beginning of the third year. The creditor must also disclose the rate of 10.5 percent, the fully amortizing payment, and the date on which the consumer must first make such a payment under the terms of the legal obligation.

Paragraph 38(c)(2)(iii).

1. *Introductory rate*. In some adjustable-rate mortgages, creditors may set an initial interest rate that is lower than the fully-indexed rate at consummation. For amortizing loans with an introductory rate, creditors must disclose the information required in 226.38(c)(2)(iii) directly below the table.

38(c)(3) Payments for amortizing loans.

1. *Payments corresponding to interest rates*. Creditors must disclose a payment that corresponds to each interest rate disclosed under § 226.38(c)(2)(i)(A)--(C). Balloon payments, however, must be disclosed as provided in § 226.38(c)(5).

2. *Principal and interest payment amounts; examples*.

i. For fixed-rate interest-only transactions, § 226.38(c)(3)(ii)(B) requires scheduled increases in the regular periodic payment amounts to be disclosed along with the date of the increase. For example, in a fixed rate interest-only loan, a scheduled increase in the payment amount from an interest-only payment to a fully amortizing payment must be disclosed. Similarly, in a fixed-rate balloon loan, the balloon payment must be disclosed in accordance with § 226.38(c)(5).

ii. For adjustable-rate mortgage transactions, § 226.38(c)(3)(i)(A) requires that for each interest rate required to be disclosed under § 226.38(c)(2)(i) (the interest rate at consummation, the maximum rate at the first adjustment, and the maximum possible rate) a corresponding payment amount must be disclosed.

iii. The format of the payment disclosure varies depending on whether all regular periodic payment amounts will include principal and interest, and whether there will be an escrow account for taxes and insurance.

38(c)(3)(i)(C) Estimated amounts for taxes and insurance.

1. *Taxes and insurance*. An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. The payment amount must include estimated amounts for property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.

2. *Mortgage insurance*. Payment amounts under § 226.38(c)(3)(i) should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment amount must reflect the terms of the legal obligation, as determined by applicable State or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, payment amounts disclosed up to the 130th payment should reflect premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, payments disclosed up to the 128th payment should reflect premium payments.

Paragraph 38(c)(3)(i)(D).

1. *Total monthly payment*. For amortizing loans, each column should add up to a total estimated payment. The total estimated payment amount should be labeled. If periodic payments are not due monthly, the creditor should use the appropriate term such as "quarterly" or "annually."

38(c)(4) Payments for negative amortization loans.

1. Table. Section 226.38(c)(1) provides that tables shall include only the information required in paragraph (c)(2)-(4). Thus, a table for a negative amortization loan must contain no more than two horizontal rows of payments and no more than five vertical columns of interest rates.

Paragraph 38(c)(4)(i).

1. *Minimum required payments*. In one row of the table, the creditor must ***show*** the minimum required payment in each column, for each interest rate or adjustment required in § 226.38(c)(2)(ii), except that under the last column the fully amortizing payment must be ***shown*** and must be identified as the "full payment." The payments in this row must be calculated based on an assumption that the consumer makes the minimum required payment for as long as possible under the terms of the legal obligation. This row should be identified as the minimum payment option, and the statement required by § 226.38(c)(4)(i)(C) should be included in the heading for the row.

Paragraph 38(c)(4)(iii).

1. *Fully amortizing payments*. In one row of the table, the creditor must ***show*** the fully amortizing payment for every interest rate required in § 226.38(c)(2)(ii). The creditor must assume, for purposes of calculating the amounts in this row that the consumer makes only fully amortizing payments.

38(c)(5) Balloon payment.

1. *General*. A balloon payment is one that is more than two times the regular periodic payment. A balloon payment must be disclosed in a row under the table, unless the balloon payment coincides with an interest rate adjustment or a scheduled payment increase. In those cases, the balloon payment must be disclosed in the table.

38(d) Key Questions About Risk.

38(d)(1) Required disclosures.

1. *Disclosure of first rate or payment increase*. Under § 226.38(d)(1)(i) and (ii), the creditor must disclose the calendar month and year in which the first interest rate or payment increase may occur.

38(d)(1)(iii) Prepayment penalty.

1. *Coverage*. See comment 38(a)(5)-1 to determine whether there is a prepayment penalty.

2. *Penalty*. See comment 38(a)(5)-2 for examples of charges that are prepayment penalties.

3. *Not penalty*. See comment 38(a)(5)-3 for examples of charges that are not prepayment penalties.

4. *Basis of disclosure*. Creditors may rely on comment 38(a)(5)-6 in determining the maximum prepayment penalty.

5. *Timely payment assumed*. In accordance with comment 38(a)(5)-7, creditors may disregard any possible differences resulting from the consumer's payment patterns and may base disclosures on the required payment and not an amortizing payment, if the loan has a negative amortization feature.

38(d)(2) Additional disclosures.

1. *As applicable*. The disclosures required by § 226.38(d)(2) need only be made as applicable. Any disclosure not relevant to the loan may be omitted.

38(d)(2)(iii) Balloon payment.

1. The creditor must make the balloon payment disclosure if the loan program includes a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

38(d)(2)(iv) Demand feature.

1. *Disclosure requirements*. The disclosure requirements of § 226.38(d)(2)(iv) apply not only to transactions payable on demand from the outset, but also to transactions that convert to a demand status after a stated period.

2. *Covered demand features*. See comment 18(i)--2 for examples of covered demand features.

38(e) Information about payments.

38(e)(1) Rate calculation.

1. *Calculation*. If the interest rate will be calculated based on an index, an identification of the index to which the rate is tied, the amount of any margin that will be added to the index, and any conditions or events on which the increase is contingent must be disclosed. When no specific index is used, the factors used to determine any rate increase must be disclosed. When the increase in the rate is discretionary, the fact that any increase is within the creditor's discretion must be disclosed. When the index is internally defined (for example, by that creditor's prime rate), the creditor may comply with this requirement by providing either a brief description of that index or a statement that any increase is in the discretion of the creditor.

38(e)(2) Rate and payment change limits.

1. Limitations on interest rate increases. Limitations include any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the loan's term to maturity.

2. *Limitations on payment increases; negatively amortizing loans*. Limitations include any limit imposed on the change of a minimum payment amount whether or not the change is accompanied by an adjustment to the interest rate. Any conditions on the limitation on payment increases must also be disclosed. For example, some loan programs provide that the minimum payment will not increase by more than a certain percentage, regardless of the corresponding increase in the interest rate. However, there may be exceptions to the limitation on the payment increase, such as if the consumer's principal balance reaches a certain threshold, or if the legal obligation sets out a scheduled time when payment increases will not be limited.

38(e)(5)(i) Total payments.

1. *Calculation of total payments scheduled*. Creditors should use the rules under § 226.18(g) and associated commentary, and comments 17(c)(1)(iii)--1 and --3 for adjustable-rate transactions, to calculate the total payments amount, except that the calculation of the total payments amount must include any amount required to be disclosed under § 226.38(c)(3)(i)(C).

2. *Number of payments*. See comment 18(g)--3.

3. *Demand obligations*. In demand obligations with no alternate maturity date, the creditor must make disclosure of total payments scheduled described in § 226.17(c)(5).

38(e)(5)(ii) Interest and settlement charges.

1. *Calculation of interest and settlement charges*. The interest and settlement charges disclosure is identical to the finance charge, as calculated under § 226.4.

2. *Disclosure required*. The creditor must disclose the interest and settlement charges as a dollar amount, using the term *interest and settlement charges*, together with a brief statement as required by § 226.38(e)(5)(ii). The interest and settlement charges must be disclosed only as a total amount; the components of the interest and settlement charges amount may not be itemized in the segregated disclosures, except as permitted under § 226.38(a)(4), although the regulation does not prohibit itemization elsewhere.

38(e)(5)(iii) Amount financed.

1. *Principal loan amount*. In a mortgage transaction subject to § 226.38, the principal loan amount is the same as the loan amount disclosed under § 226.38(a)(1). As provided in that section, the loan amount is the principal amount the consumer will borrow reflected in the loan contract. Thus the principal loan amount includes all amounts financed as part of the transaction, whether they are finance charges or not.

2. *Loan premiums and buydowns*. In a mortgage transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, a third party, such as a real estate developer or other seller, may offer to pay some portion of the consumer's costs of the credit transaction or to pay the creditor to "buy down" the consumer's interest rate. Such premiums and buydowns must be reflected in accordance with the terms of the legal obligation between the creditor and consumer. *See* § 226.17(c)(1) and comments 17(c)(1)--1, --2 and 17(c)(1)(i)--1 through --4. Thus, if the creditor is legally obligated by the terms of the credit obligation to charge a reduced interest rate or reduced costs as a consequence of the premium or buydown, regardless of its source, the disclosures, including the amount financed, should reflect those credit terms. Otherwise, the disclosures should be calculated without regard to any such premium or buydown.

3. *Disclosure required*. The net amount of credit extended must be disclosed using the term "amount financed" together with a descriptive statement as required by § 226.38(e)(5)(iii).

38(f)(4) Tax deductibility.

1. *Example*. The creditor can use the following language to satisfy the requirements of this section: "If you borrow more than ***your*** home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible."

2. *Applicability*. If the creditor is not certain at the time of application whether the credit extended may exceed the fair market value of the dwelling, the creditor may, at its discretion, provide the disclosure required by this section in connection with all applications for closed-end credit secured by a dwelling or real property.

38(g) Identification of loan originator and creditor.

38(g)(1) Creditor.

1. *Identification of creditor*. The creditor making the disclosures must be identified. Use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

38(g)(2) Loan originator.

1. *Multiple loan originators*. In transactions with multiple loan originators, each loan originator's unique identifier must be disclosed. For example, in a transaction where a mortgage broker meets the definition of a loan originator under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Section 1503(3), 12 U.S.C. 5102(3), the identifiers for the broker and for its employee originator meeting that definition must be disclosed.

38(h) Credit insurance and debt cancellation and debt suspension coverage.

1. *Location*. This disclosure may, at the creditor's option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by State law, or other information. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

Paragraph 38(h)(5).

1. *Compliance*. If, based on the creditor's review of the consumer's age and/or employment status at the time of enrollment in the product, the consumer would not be eligible to receive the benefits of the product, then providing the disclosure required under § 226.38(h)(5) would not comply with this provision. That is, if the consumer does not meet the age and/or employment eligibility criteria, then the creditor cannot state that the consumer may be eligible to receive benefits and cannot comply with this requirement. If the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer is not eligible for all of the bundled products, then providing the disclosure required under § 226.38(h)(5) would not comply with this provision. However, the disclosure still satisfies the requirements of this section if an event subsequent to enrollment, such as the consumer passing the age limit of the product, makes the consumer ineligible for the product based on the product's age or employment eligibility restrictions.

2. *Reasonably reliable evidence*. A disclosure under § 226.38(h)(5) shall be deemed to comply with this section if the creditor used reasonably reliable evidence to determine whether the consumer met the age or employment eligibility criteria of the product. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include a consumer's statement on a credit application form, an Internal Revenue Service Form W--2, tax returns, payroll receipts, or other written evidence such as a letter or e-mail from the consumer or the consumer's employer.

38(i) Required deposit.

1. *Disclosure required*. The creditor must inform the consumer of the existence of a required deposit. (Appendix H provides a model clause that may be used in making that disclosure.) Section 226.38(i)(1) and (2) describe two

types of deposits that need not be considered required deposits. Use of the phrase "need not" permits creditors to include the disclosure even in cases where there is doubt as to whether the deposit constitutes a required deposit.

2. *Pledged-account mortgages*. In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from that account to supplement the consumer's periodic payments. Creditors may treat these pledged accounts as required deposits or they may treat them as consumer buydowns in accordance with the commentary to § 226.17(c)(1).

3. *Escrow accounts*. The escrow exception in § 226.38(i) applies, for example, to accounts for such items as maintenance fees, repairs, or improvements. (See the commentary to § 226.17(c)(1) regarding the use of escrow accounts in consumer buydown transactions.)

4. *Interest-bearing accounts*. When a deposit earns at least 5 percent interest per year, no disclosure is required. This exception applies whether the deposit is held by the creditor or by a third party.

5. *Examples of amounts excluded*. The following are among the types of deposits that need not be treated as required deposits:

i. Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.

ii. Required property insurance escrow on a mobile home transaction.

iii. Refund of interest when the obligation is paid in full.

iv. Deposits that are immediately available to the consumer.

v. Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.

vi. Escrow of condominium fees.

vii. Escrow of loan proceeds to be released when the repairs are completed.

38(j) Separate disclosures.

38(j)(1) Itemization of amount financed.

1. *Compliance alternatives*. The creditor has three alternatives in complying with § 226.38(j)(1). Under all three alternatives, the itemization (or its substitute) must be provided at the same time as the other disclosures required by § 226.38, although separate from those disclosures. The three alternatives are as follows:

i. The creditor may provide an itemization as a matter of course, without notifying the consumer of the right to receive the itemization.

ii. The creditor may inform the consumer, as part of the segregated disclosures, that a written itemization of the amount financed will be provided on request, furnishing the itemization only if the consumer in fact requests it.

iii. The creditor may substitute the GFE or HUD--1 settlement statement for the itemization. See comment 38(j)(1)(iii)--1 for additional guidance on this alternative.

Paragraph 38(j)(1)(i).

1. *Additional information*. Section 226.38(j)(1)(i) establishes a minimum standard for the information to be included in the itemization of the amount financed. Creditors have considerable flexibility in revising or supplementing the information listed in § 226.38(j)(1)(i). The creditor may, for example, do one or more of the following:

i. Include amounts that reflect payments not part of the amount financed. For example, costs of the transaction that the consumer pays directly, rather than out of loan proceeds, may be included.

ii. Organize the categories in any order. For example, the creditor may rearrange the terms in a mathematical progression that depicts the arithmetic relationship of the terms.

iii. Further itemize each category. For example, the amount paid directly to the consumer may be subdivided into the amount given by check and the amount credited to the consumer's savings account.

iv. Label categories with different language from that ***shown*** in § 226.38(j)(1)(i). For example, an amount paid on the consumer's account may be revised to identify the account specifically as "***your*** existing mortgage loan with us."

v. Delete, leave blank, mark "N/A," or otherwise note inapplicable categories in the itemization. For example, in a mortgage transaction to finance the purchase of a dwelling with no proceeds distributed directly to the consumer or amount credited to the consumer's account with the creditor, the amount financed may consist of only the amounts paid to others and the prepaid finance charge. In this case, the itemization may be composed of only those categories, and the other categories may be eliminated.

2. *Amounts appropriate to more than one category*. When an amount may appropriately be placed in any of several categories and the creditor does not wish to revise the categories ***shown*** in § 226.38(j)(1)(i), the creditor has considerable flexibility in determining where to reflect the amount. For example, in a mortgage transaction to refinance an existing mortgage held by the same creditor with additional proceeds paid to the consumer, the portion of the proceeds used to pay off the existing mortgage debt may be treated as either an amount paid to the consumer or an amount paid on the consumer's account. If the existing mortgage is held by another creditor, the portion of the proceeds used to pay it off may be treated as either an amount paid to the consumer or an amount paid to others on the consumer's behalf.

Paragraph 38(j)(1)(i)(A).

1. *Amounts paid to consumer*. This category encompasses funds given to the consumer in the form of cash or a check, including joint proceeds checks, as well as funds placed in an asset account. It may include money in an interest-bearing account even if that amount is considered a required deposit under § 226.38(i). For example, in a transaction with total loan proceeds of $ 50,000, assume the consumer receives a check for $ 30,000 and $ 20,000 is required by the creditor to be put into an interest-bearing account. Whether or not the $ 20,000 is a required deposit, it is part of the amount financed. At the creditor's option, it may be broken out and labeled in the itemization of the amount financed.

Paragraph 38(j)(1)(i)(B).

1. *Amounts credited to consumer's account*. The term *consumer's account* refers to an account in the nature of a debt with that creditor. It may include, for example, an unpaid balance on a prior loan or other amounts owing to that creditor. It does not include asset accounts of the consumer such as savings or checking accounts.

Paragraph 38(j)(1)(i)(C).

1. *Amounts paid to others*. This category includes, for example, title fees; amounts paid to insurance companies for insurance premiums; security interest fees; and amounts paid to credit bureaus, appraisers, and 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 § 226.38(j)(1)(i)(C), third parties must be identified by name.

Paragraph 38(j)(1)(i)(D).

1. *Prepaid finance charge*. Prepaid finance charges that are subtracted from the loan amount to calculate the amount financed, under § 226.38(e)(5)(iii), must be disclosed under § 226.38(j)(1)(i)(D). The prepaid finance charges must be ***shown*** as a total amount but, at the creditor's option, also may be further itemized and described. All amounts must be reflected in this total, even if portions of the prepaid finance charge are also reflected elsewhere. For example, if at consummation the creditor collects interim interest of $ 30 and an underwriting fee of $ 100, a total prepaid finance charge of $ 130 must be ***shown***. At the creditor's option, the underwriting fee paid to a third party also may be ***shown*** elsewhere as an amount included in § 226.38(j)(1)(i)(C). The creditor also may further describe the two components of the prepaid finance charge, although no itemization of this element is required by § 226.38(j)(1)(i)(D).

2. *Prepaid finance charges placed in escrow*. RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are payments into an escrow account for items that are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amounts listed on the respective lines of the settlement statement for each of those items, without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for such items disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.

Paragraph 38(j)(1)(iii).

1. *RESPA disclosures*. RESPA requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. For transactions subject to § 226.38, whether or not they are subject to RESPA, the creditor can satisfy § 226.38(j)(1) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content of the good faith estimate and HUD--1 settlement statement under RESPA differs from the requirements of § 226.38(j)(1)(i). If a creditor chooses to substitute RESPA's settlement statement for the itemization when redisclosure is required under § 226.19(a)(2), however, the statement must be provided to the consumer at the time required by that section.

38(j)(2) Rebate.

1. *Disclosure required*. The creditor must give a definitive statement of whether or not a rebate will be given. If a refund is possible for one type of prepayment, even though not for all, a positive disclosure is required. This applies to any type of prepayment, whether voluntary or involuntary as in the case of prepayments resulting from acceleration.

2. *Rebate-penalty disclosure*. Creditors may rely on comment 38(a)(5)--8 in determining ***how*** to disclose both a prepayment penalty and a rebate in a single transaction. Sample form H--15 in Appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

3. *Prepaid finance charge*. The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure under § 226.38(j)(2). A prepaid finance charge is not considered a rebate under § 226.38(j)(2). At its option, however, a creditor may consider a prepaid finance charge to be a rebate under § 226.38(j)(2). If a disclosure is made under § 226.38(j)(2) with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower "will not be entitled to a refund of the prepaid finance charge" or some other term that describes the finance charge.

4. *Rebate of finance charge*. This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation.

i. This category includes, for example:

A. Precomputed finance charges such as add-on charges.

B. Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.

ii. No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under this section.

38(j)(3) Late payment.

1. *Definition*. This paragraph requires a disclosure only if charges are added to individual delinquent installments by a creditor who otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

i. The right of acceleration.

ii. Fees imposed for actual collection costs, such as repossession charges or attorney's fees.

iii. Deferral and extension charges.

iv. The continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate is a late payment charge to the extent of the increase.

2. *Content of disclosure*. Many State laws authorize the calculation of late charges on the basis of either a percentage or a specified dollar amount, and permit imposition of the lesser or greater of the 2 charges. The disclosure made under § 226.38(j)(3) may reflect this alternative. For example, stating that the charge in the event of a late payment is 5% of the late amount, not to exceed $ 5.00, is sufficient.

38(j)(5) Contract reference.

1. *Content*. Creditors may substitute, for the phrase "loan contract," a reference to specific transaction documents in which the additional information is found, such as "promissory note." A creditor may, at its option, delete inapplicable items in the contract reference.

38(j)(6) Assumption policy.

1. *Policy* statement. In many mortgages, the creditor cannot determine, at the time disclosure must be made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors such as the creditworthiness of the subsequent borrower, the potential for impairment of the lender's security, and execution of an assumption agreement by the subsequent borrower. In cases where uncertainty exists as to the future assumability of a mortgage, the disclosure under § 226.38(j)(6) should reflect that fact. In making disclosures in such cases, the creditor may use phrases such as "subject to conditions," "under certain circumstances," or "depending on future conditions." The creditor may provide a brief reference to more specific criteria such as a due-on-sale clause, although a complete explanation of all conditions is not appropriate. For example, the disclosure may state, "If you sell ***your*** home after you take out this loan, we may permit the new buyer to take over the payments on ***your*** mortgage, subject to certain conditions, such as payment of an assumption fee." See comment 17(a)(1)-5 for an example of a reference to a due-on-sale clause.

2. *Original terms*. The phrase "original terms" for purposes of section 226.38(j)(6) does not preclude the imposition of an assumption fee, but a modification of the basic credit agreement, such as a change in the contract interest rate, represents different terms.

* * * *

Appendices G and H--Open-End and Closed-End Model Forms and Clauses

1. *Permissible Changes*. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. [,except] However, formatting changes may not be made to the following model forms, model clauses, and samples in Appendices G and H: G--2[(A)], G--3[(A)], G--4[(A)], G--10(A)--(E), G--14(A)--(E), G--15(A)--(D), G--17(A)--(D), G--18(A) (except as permitted pursuant to § 226.7(b)(2)), G--18(B)--(C), G--19, G--20, [and]G--21, G--22(A)--(B), G--23(A)--(B), G--24(A) (except as permitted pursuant to § 226.7(a)(2)), G--25, and G--26; and H--4(B) through H--4(L), H--17(A) through (D), H--19(A)--(I), and H--20 through H--22. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state "plain English" requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms for transactions not secured by real property or a dwelling.)

[vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.]

2. *Debt cancellation coverage*. This regulation does not authorize creditors to characterize debt cancellation or debt suspension fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation or debt suspension coverage constitutes insurance under State law.

* * * *

Appendix H--Closed-End Model Forms and Clauses

1. *Models H--1 and H--2*. Creditors may make several types of changes to closed-end model forms H--1 (credit sale) and H--2 (loan) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. Permissible changes include the addition of the information permitted by [footnote 37 to] section 226.17 and "directly related" information as set forth in the commentary to section 226.17(a).

The creditor may also delete, or on multi-purpose forms, indicate inapplicable disclosures, such as:

. The itemization of the amount financed option (See sample[s] H--12 [through H--15].)

. The credit [life and disability] insurance or debt cancellation or debt suspension coverage disclosures (See model clauses and samples H-[11] 17(A) and H--17(C) and H-[12] 17(B) and H--17(D).)

. The property insurance disclosures (See model clause H--18, and samples H--10 through H--12[, and H--14].)

. The "filing fees" and "nonfiling insurance" disclosures (See samples H--11 and H--12.)

. The prepayment penalty or rebate disclosures (See sample[s] H--12 [and H--14].)

. The total sale price (See samples H--11 through H-[15] 12.)

Other permissible changes include:

. Adding the creditor's address or telephone number. (See the commentary to § 226.18(a).)

. Combining required terms where several numerical disclosures are the same, for instance, if the "total of payments" equals the "total sale price." (See the commentary to § 226.18.)

. Rearranging the sequence or location of the disclosures--for instance, by placing the descriptive phrases outside the boxes containing the corresponding disclosures, or by grouping the descriptors together as a glossary of terms in a separate section of the segregated disclosures; by placing the payment schedule at the top of the form; or by changing the order of the disclosures in the boxes, including the annual percentage rate and finance charge boxes.

. Using brackets, instead of checkboxes, to indicate inapplicable disclosures.

. Using a line for the consumer to initial, rather than a checkbox, to indicate an election to receive an itemization of the amount financed.

. Deleting captions for disclosures.

. Using a symbol, such as an asterisk, for estimated disclosures, instead of an "e."

. Adding a signature line to the insurance disclosures to reflect joint policies.

. Separately itemizing the filing fees.

. Revising the late charge disclosure in accordance with the commentary to § 226.18(l).

2. *Model H--3*. Except as otherwise specifically provided, [C] creditors have considerable flexibility in filling out model H--3 (itemization of the amount financed). Appropriate revisions, such as those set out in the commentary to section 226.18(c), or section 226.38(j)(1) for transactions secured by real property or a dwelling, may be made to this form without loss of protection from civil liability for proper use of the model forms.

3. *Models H--4(A) [through], H--4(C), H--4(H), H--5, H--7, H--16, H--17(A), H--17(C), H--18, and H--20 through H--23*. The model clauses are not included in the model forms although they are mandatory for certain transactions. Creditors using the model clauses when applicable to a transaction are deemed to be in compliance with the regulation with regard to that disclosure.

4. *Model H--4(A)*. This model contains the variable-rate model clauses applicable to transactions subject to section 226.18(f)[(1)] and is intended to give creditors considerable flexibility in structuring variable-rate disclosures to fit individual plans. The information about circumstances, limitations, and effects of an increase may be given in terms of the contract interest rate or the annual percentage rate. Clauses are ***shown*** for hypothetical examples based on the specific amount of the transaction and based on a representative amount. Creditors may preprint the variable-rate disclosures based on a representative amount for similar types of transactions, instead of constructing an individualized example for each transaction. In both representative examples and transaction-specific examples, creditors may refer either to the incremental change in rate, payment amount, or number of payments, or to the resulting rate, payment amount, or number of payments. For example, creditors may state that the rate will increase by 2 percent, with a corresponding $ 150 increase in the payment, or creditors may state that the rate will increase to 16 percent, with a corresponding payment of $ 850.

5. *Model H--4(B) and Samples H--4(D) through (F)*. [This model clause illustrates the variable-rate disclosure required under section 226.18(f)(2), which would alert consumers to the fact that the transaction contains a variable-rate feature and that disclosures were provided earlier] Model H--4(B) illustrates, in the tabular format, the disclosures required under section 226.19(b) for adjustable-rate transactions secured by real property or a dwelling. The model form alerts consumers to risky features of the specific adjustable-rate mortgage program, and includes information on ***how*** the interest rate is determined and ***how*** it can change over time. The model form also directs the consumer to a Web site to obtain additional information on adjustable-rate programs or to find a list of licensed housing counselors. Samples H--4(D) through (F) illustrate ***how*** to adapt the model form and clauses contained in appendix H--4(B) and H--4(C) to the creditor's own particular adjustable-rate program. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Model H--4(B). *See* comment app. H--18 regarding formatting details for samples H--4(D) through H--4(F).

6. *Model H--4(C)*. Th[is] e model clauses illustrate[s] certain [the] early disclosures required generally under 226.19(b). [It] They include[s] information on ***how*** the consumer's interest rate is determined and ***how*** it can change over the term of the loan when there is carryover interest, a conversion feature, or a preferred rate [, and explains changes that may occur in the borrower's monthly payment. It contains an example of ***how*** to disclose historical changes in the index or formula values used to compute interest rates for the preceding 15 years. The model clause also illustrates the disclosure of the initial and maximum interest rates and payments based on an initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure and illustrates ***how*** to provide consumers with a method for calculating the monthly payment for the loan amount to be borrowed].

7. *Models H--4[D](G), (H), and (K), and Samples H--4(I) and (J)*. [This model] Model H--4(G), and model clauses contained in H--4(H), illustrate[s], in the tabular format, the disclosures [the adjustment notice] required under section 226.20(c) [and provides] regarding interest rate adjustment notices for adjustable rate transactions secured by real property or a dwelling. Model H--4(K) illustrates an annual notice of interest rate change without any corresponding change to payment. Samples H--4(I) and (J) provide examples of payment-change notices [and annual notices of interest-rate changes] for an interest-only, adjustable rate transaction and a hybrid adjustable rate transaction, respectively. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Models H--4(G) or H--4(K).

8. *Model H--5*. This contains the demand feature clause.

9. *Model H--6*. [This contains the assumption clause.] Reserved

10. *Model H--7*. This contains the required deposit clause.

11. *Models H--8 and H--9*. These models contain the rescission notices for a typical closed-end transaction and a refinancing, respectively. The last paragraph of each model form contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, where the notice or material disclosures are delivered late or where the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional. See the commentary to section 226.2(a)(25) regarding the specificity of the security interest disclosure for model form H--9. The prior version of model form H--9 is substantially similar to the current version and creditors may continue to use it, as appropriate. Creditors are encouraged, however, to use the current version when reordering or reprinting forms.

12. *Sample forms*. [The sample forms] Samples [(]H--4(D) through H-(F), H4(I) and H--4(J), H--10 through H-[15] 12, H--17(B) and H--17(D), and H--19(D) through (I)[)] serve a different purpose than the model forms and model clauses. The samples illustrate various ways of adapting the model forms to the individual transactions described in the commentary to appendix H. The deletions and rearrangements ***shown*** relate only to the specific transactions

described. As a result, the samples do not provide the general protection from civil liability provided by the model forms and clauses.

13. *Sample H--10*. This sample illustrates an automobile credit sale. The cash price is $ 7,500 with a downpayment of $ 1,500. There is an 8% add-on interest rate and a term of 3 years, with 36 equal monthly payments. The credit life insurance premium and the filing fees are financed by the creditor. There is a $ 25 credit report fee paid by the consumer before consummation, which is a prepaid finance charge.

14. *Sample H--11*. This sample illustrates an installment loan. The amount of the loan is $ 5,000. There is a 12% simple interest rate and a term of 2 years. The date of the transaction is expected to be April 15, 1981, with the first payment due on June 1, 1981. The first payment amount is labelled as an estimate since the transaction date is uncertain. The odd days' interest ($ 26.67) is collected with the first payment. The remaining 23 monthly payments are equal.

15. *Sample H--12*. This sample illustrates a refinancing and consolidation loan. The amount of the loan is $ 5,000. There is a 15% simple interest rate and a term of 3 years. The date of the transaction is April 1, 1981, with the first payment due on May 1, 1981. The first 35 monthly payments are equal, with an odd final payment. The credit disability insurance premium is financed. In calculating the annual percentage rate, the U.S. Rule has been used. Since an itemization of the amount financed is included with the disclosures, the statement regarding the consumer's option to receive an itemization is deleted.

16. *Samples H--[13] 19(D) through H--[15] 19(I)*. These samples illustrate various mortgage transactions. They assume that the mortgages are subject to the Real Estate Settlement Procedures Act (RESPA). As a result, no option regarding the itemization of the amount financed has been included in the samples, because providing the good faith estimates of settlement costs required by RESPA satisfies Truth in Lending's amount financed itemization requirement. (See [footnote 39 to § 226.18(c)] § 226.38(j)(1)(iii).)

17. *Sample H--[13]16*. This sample illustrates the disclosures required under § 226.32(c)(1) through (5). The sample illustrates notices, the amount borrowed, and the disclosures about optional insurance that are required for mortgage refinancings under § 226.32(c)(5). The sample also includes disclosures required under § 226.32(c)(3) when the legal obligation includes a balloon payment. [This sample illustrates a mortgage with a demand feature. The loan amount is $ 44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. The 15 days of interim interest ($ 294.34) is collected as a prepaid finance charge at the time of consummation of the loan (April 15, 1981). In calculating the disclosure amounts, the minor irregularities provision in § 226.17(c)(4) has been used. The property insurance premiums are not included in the payment schedule. This disclosure statement could be used for notes with the 7-year call option required by the Federal National Mortgage Association (FNMA) in states where due-on-sale clauses are prohibited.]

18. *[Sample H--14] Models H--19(A) through H--19(C)*.i. These model forms illustrate, in the tabular format, the disclosures required generally under § 226.38(a) through 226.38(j) for transactions secured by real property or a dwelling. Creditors can use model H--19(A) for fixed-rate mortgage loans subject to § 226.38; model H--19(B) for adjustable-rate mortgages subject to § 226.38; and model H--19(C) for mortgages that are negatively amortizing and subject to § 226.38.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms H--19(A) through (C), as applicable.

iii. Although creditors are not required to use a certain ***paper*** size in disclosing the §§ 226.19(b), 226.20(c), 226.20(d) or 226.38 disclosures, samples H--4(D) through H--(F), and H--19(D) through H--19(I) are designed to be printed on an 8 x 11 1/2 sheet of ***paper***. In addition, the following formatting techniques were used in presenting the information in the sample forms to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style, except for the annual percentage rate which is ***shown*** in 16-point type);

B. Sufficient spacing between lines of the text;

C. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type, except the headings in the tabular format used to provide the interest rate and payment disclosures required under § 226.38(c), which are ***shown*** in 9-point type;

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text;

E. Sufficient contrast between the text and the background. Generally, black text was used on white ***paper***.

iv. The Board is not requiring creditors to use the above formatting techniques in presenting information in the tabular format or scaled graph (except for the 10-point and 16-point minimum font requirements); however, the Board encourages creditors to consider these techniques when disclosing information in the table or scaled graph to ensure that the information is presented in a readable format. [This sample disclosure form illustrates the disclosures under § 226.19(b) for a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year. The sample form ***shows*** a creditor ***how*** to adapt the model clauses in appendix H--4(C) to the creditor's own particular variable-rate program. The sample disclosure form describes the features of a specific variable-rate mortgage program and alerts the consumer to the fact that information on the creditor's other closed-end variable-rate programs is available upon request. It includes information on ***how*** the interest rate is determined and ***how*** it can change over time. Section 226.19(b)(2)(viii) permits creditors the option to provide either a historical example or an initial and maximum interest rates and payments disclosure; both are illustrated in the sample disclosure. The historical example explains ***how*** the monthly payment can change based on a $ 10,000 loan amount, payable in 360 monthly installments, based on historical changes in the values for the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. Index values are measured for 15 years, as of the first week ending in July. This reflects the requirement that the index history be based on values for the same date or period each year in the example. The sample disclosure also illustrates the alternative disclosure under § 226.19(b)(2)(viii)(B) that the initial and the maximum interest rates and payments be ***shown*** for a $ 10,000 loan originated at an initial interest rate of 12.41 percent (which was in effect July 1996) and to have 2 percentage point annual (and 5 percentage point overall) interest rate limitations or caps. Thus, the maximum amount that the interest rate could rise under this program is 5 percentage points higher than the 12.41 percent initial rate to 17.41 percent, and the monthly payment could rise from $ 106.03 to a maximum of $ 145.34. The loan would not reach the maximum interest rate until its fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed reflects the amortization of the loan during that period. The sample form also illustrates ***how*** to provide consumers with a method for calculating their actual monthly payment for a loan amount other than $ 10,000.]

19. *Sample H--[15] 19(D)*. This sample illustrates the disclosures under § 226.38 for a fixed rate mortgage with a shared-equity feature. The loan amount is $ 210,000, payable in 36 monthly installments at a simple interest rate of 5.50%. The date of the transaction is March 26, 2009, and the sample assumes the average prime offer rate for the week of March 23, 2009 is 5.66%. There is a balloon payment of $ 202,217.84 due in March 2012. The taxes and property insurance premiums are not escrowed, and therefore, are ***shown*** as not included in the interest rate and payment summary table required under § 226.38(c). [This sample illustrates a graduated payment mortgage with a 5-year graduation period and a 7 1/2 percent yearly increase in payments. The loan amount is $ 44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. Two points ($ 898), as well as an initial mortgage guarantee insurance premium of $ 225.00, are included in the prepaid finance charge. The mortgage guarantee insurance premiums are calculated on the basis of 1/4 of 1% of the outstanding principal balance under an annual reduction plan. The abbreviated disclosure permitted under § 226.18(g)(2) is used for the payment schedule for years 6 through 30. The prepayment disclosure refers to both penalties and rebates because information about penalties is required for the simple interest portion of the obligation and information about rebates is required for the mortgage insurance portion of the obligation.]

20. *Sample H--[16] 19(E)*. This sample illustrates the disclosures under § 226.38 for a fixed rate mortgage with interest-only payments for the first 10 years. The loan amount is $ 200,000, payable in 360 monthly installments, at a simple interest rate of 6.50%. The date of the transaction is February 26, 2009, and the sample assumes the average prime offer rate for the week of February 23, 2009 is 6.19%. The taxes and property insurance premiums are escrowed, and therefore, are ***shown*** as included in the total estimated monthly payment in the interest rate and payment summary table required under § 226.38(c). [This sample illustrates the disclosures required under § 226.32(c). The sample illustrates the amount borrowed and the disclosures about optional insurance that are required for mortgage refinancings under § 226.32(c)(5). Creditors may, at their option, include these disclosures for all loans subject to § 226.32. The sample also includes disclosures required under § 226.32(c)(3) when the legal obligation includes a balloon payment].

21. *Sample H--19(F)*. This sample illustrates the disclosures under § 226.38 for a step-payment mortgage with a seven-year step period and a 4 percent annual payment cap. This sample does not offer payment options. The consumer is required to make minimum payments for the first seven years; the minimum payments cover no principal and only some interest for the first two years and therefore, the mortgage has a negative amortization feature. Fully amortizing payments begin in year eight. The loan amount is $ 200,000, payable in 360 monthly installments at a simple interest rate of 6.50%. The date of the transaction is February 4, 2009, and the sample assumes the average prime offer rate for the week of February 2, 2009 is 5.75%. The taxes and property insurance are escrowed, and therefore, a statement of the amount of estimated taxes and insurance is included in the interest rate and payment summary disclosure required under § 226.38(c)(6)(i).

22. *Sample H--19(G)*. This sample illustrates the disclosures under § 226.38 for a hybrid adjustable rate mortgage with a prepayment penalty that is in effect for the first 2 years. The loan amount is $ 200,000, payable in 360 monthly installments, with an initial discounted rate of 5.625% that is fixed for the first 3 years. The date of the transaction is February 26, 2009, and the sample assumes the average prime offer rate for the week of February 23, 2009 is 6.50%. The taxes and property insurance premiums are escrowed, and therefore, are ***shown*** as included in the total estimated monthly payment in interest rate and payment summary table required under § 226.38(c).

23. *Sample H--19(H)*. This sample illustrates the disclosures under § 226.38 for a hybrid adjustable rate mortgage. The loan has an interest only payment option for the first 5 years, and a prepayment penalty that is in effect for the first 2 years. The loan amount is $ 200,000, payable in 360 monthly installments, with an initial discounted rate of 6.875% that is fixed for the first 5 years. The date of the transaction is February 26, 2009, and the sample assumes the average prime offer rate for the week of February 23, 2009 is 4.00%. The taxes, property insurance and private mortgage insurance premiums are escrowed, and therefore, are included in the interest rate and payment summary table required under § 226.38(c).

24. *Sample H--19(I)*. This sample illustrates the disclosures under § 226.38 for an adjustable-rate mortgage with payment options. The loan amount is $ 200,000 and payable in 360 monthly installments. The loan has an initial 1-month introductory rate of 1.5% that adjusts to the maximum of 10.5% in the second month of the loan. The date of the transaction is February 4, 2009, and the sample assumes the average prime offer rate for the week of February 2, 2009 is 4.75%. The minimum payment option has an annual payment cap of 7.5% and can be made until the loan recasts at 115% of the original loan amount. This sample assumes only minimum payments are made until the loan recasts in June 2011, when fully amortizing payments of $ 2,402.54 would be required. The taxes and property insurance are escrowed, and therefore, a statement of the amount of estimated taxes and insurance is included in the interest rate and payment summary disclosure required under § 226.38(c)(6)(i).

25. *Model H--20*. This contains the balloon payment clause.

26. *Model H--21*. This contains the introductory rate clause.

27. *Model H--22*. These model clauses illustrate, in the tabular format, the disclosures required generally under § 226.38(d)(2) regarding key questions about risk for transactions secured by real property or a dwelling. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms H--19(A)--(C).

28. *Model H--23*. These model clauses illustrate the following disclosures required generally under § 226.38(j)(2)--(6) for transactions secured by real property or a dwelling: rebate; late payment; property insurance; contract reference; and assumption.

[21] 29. *HRSA--500-1 9-82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA--500-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all Health Education Assistance Loans (HEAL) with a variable interest rate that are interim student credit extensions as defined in Regulation Z.

[22] 30. *HRSA--500-2 9-82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA--500-2 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate that are interim student credit extensions as defined in Regulation Z.

[23] 31. *HRSA--502-1 9-82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA--502-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

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By order of the Board of Governors of the Federal Reserve System, July 24, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

Note: The following attachments A and B will not appear in the Code of Federal Regulations.

Attachment A

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Key Questions to *Ask* About *Your* Mortgage

When you are shopping for a loan, ***ask*** each lender the questions below. Some loans have risky features that could make it difficult for you to make payments in the future. Make sure you understand the terms of ***your*** loan. If you are not comfortable with the risks, ***ask*** ***your*** lender about other loan products. **The only way to make sure you get the best possible loan terms is to talk to several lenders**.

Shop. Compare. Negotiate.

For more information about risky loan features, read *Shop Wisely: Understanding* ***Your*** *Mortgage Choices*, available at: www.federalreserve.gov.

1 Can my interest rate increase?

If you have an adjustable rate mortgage (ARM), ***your*** interest rate can go up or down after a short period. This means that ***your*** monthly payments could increase.

2 Can my monthly payment increase?

With some loans, ***your*** monthly payment could increase after a period of time, often by hundreds of dollars. This increase could be because you have a lower introductory interest rate, ***your*** property taxes or insurance premiums increase, or because in the beginning ***your*** monthly payment only covers the interest on the loan, and not the principal owed.

3 Will my monthly payments reduce my loan balance?

Some loans let you pay only the interest on ***your*** loan each month. These payments do not pay down the amount you borrowed. As a result, if you have this type of loan, you may not build any equity in ***your*** home.

4 Even if I make my monthly payments, can my loan balance increase?

Some loans let you choose to pay even less than the interest owed each month. The unpaid interest is added to ***your*** loan balance and increases the total amount that you owe. This could cause you to lose equity in ***your*** home over time.

5 Could I owe a prepayment penalty?

Some loans charge you a large fee if you pay off ***your*** loan, refinance it, or sell ***your*** home within the first few years of the loan. This penalty fee could be thousands of dollars.

6 Will I owe a balloon payment?

Some loans require a very large payment at the end of the loan--sometimes tens of thousands of dollars. If interest rates go up or if the value of ***your*** property drops, you may not be able to refinance ***your*** loan before you have to make this large payment.

7 Will I have to document my employment, income, and assets to get this loan?

Sometimes a lender will make a loan without requiring you to ***show*** that you are employed and have the income or assets to repay the loan. These no-documentation ("no-doc") or low-documentation ("low-doc") loans usually have higher interest rates or higher fees than other loans.

Attachment B

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Fixed vs. Adjustable Rate Mortgages

What Type of Mortgage is Right for You?

A traditional fixed rate mortgage is a safe choice for many borrowers, but in some circumstances an adjustable rate mortgage (ARM) might make sense for you. If you are considering an ARM, be sure you understand the tradeoffs.

Fixed Rate Mortgages	**ARMs**
With a fixed rate mortgage, the interest rate and monthly payment stay the same for the entire loan term.	With an ARM, the interest rate and monthly payment often start out lower than with a fixed rate mortgage. However, both the rate and payment can increase very quickly.
Consider a Fixed Rate Mortgage if:	Consider an ARM if:
. You would prefer predictable payments or have difficulty managing monthly payments that increase; or	. You are confident that you could afford increases in ***your*** monthly payment, even at the maximum amount (sometimes as much as double ***your*** initial payment amount); or
. You plan to stay in ***your*** home for a long period of time.	. You plan to sell ***your*** home within a short period of time.

If you are considering an ARM, don't count on being able to refinance before *your* interest rate and monthly payments increase. You might not qualify for refinancing if the market value of ***your*** home goes down, or ***your*** financial situation changes due to job loss, illness, or other large debts.

Where to Find Help

For more information about ***how*** to choose the right loan for you, or for a list of licensed housing counselors in ***your*** area that could help you make this decision, visit www.federalreserve.gov.

Attachment A

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

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Attachment B

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Fixed vs. Adjustable Rate Mortgages

What Type of Mortgage is Right for You?

A traditional fixed rate mortgage is a safe choice for many borrowers, but in some circumstances an adjustable rate mortgage (ARM) might make sense for you. If you are considering an ARM, be sure you understand the tradeoffs.

Fixed Rate Mortgages	**ARMs**
With a fixed rate mortgage, the interest rate and monthly payment stay the same for the entire loan term.	With an ARM, the interest rate and monthly payment often start out lower than with a fixed rate mortgage. However, both the rate and payment can increase very quickly.
Consider a Fixed Rate Mortgage if:	Consider an ARM if:
. You would prefer predictable payments or have difficulty managing monthly payments that increase; or	. You are confident that you could afford increases in ***your*** monthly payment, even at the maximum amount (sometimes as much as double ***your*** initial payment amount); or
. You plan to stay in ***your*** home for a long period of time.	

Fixed Rate Mortgages	ARMs
	. You plan to sell ***your*** home within a short period of time.

If you are considering an ARM, don't count on being able to refinance before *your* interest rate and monthly payments increase. You might not qualify for refinancing if the market value of ***your*** home goes down, or ***your*** financial situation changes due to job loss, illness, or other large debts.

Where to Find Help

For more information about ***how*** to choose the right loan for you, or for a list of licensed housing counselors in ***your*** area that could help you make this decision, visit www.federalreserve.gov.

EXECUTIVE SUMMARY

BACKGROUND AND DESCRIPTION OF PROJECT

In 1968, Congress enacted the Truth in Lending Act (TILA) to protect consumers by requiring lenders to provide key pieces of information to consumers at various points in time. Congress assigned the Federal Reserve Board (the "Board") the responsibility of implementing TILA, and the Board currently does so through its Regulation Z.

In 2004, the Board began the process of reviewing Regulation Z to determine whether revisions were necessary. In January 2009, the Board finalized amendments to Regulation Z's rules applicable to open-end (not home secured) credit (e.g., general purpose credit cards, merchant-specific credit plans, and overdraft lines of credit). [1] The Board is currently in the process of reviewing disclosures under Regulation Z related to home-secured open-end credit--namely, home equity lines of credit, and closed-end mortgage disclosures. This report is related to the Board's review of disclosures for closed-end mortgage loans. (ICF Macro has prepared a separate report relating to home-equity lines of credit). [2] One of the goals of this review is to ensure that the amended regulations lead to improved disclosures that consumers would most likely pay attention to, understand, and be able to use in their decision-making.

Currently, Regulation Z requires that potential borrowers be given three types of disclosures before consummation of a closed-end mortgage loan. The first is a Board publication titled "Consumer Handbook on Adjustable Rate Mortgages." This publication (referred to in this report as the "CHARM booklet") must be provided to potential borrowers who inquire about applying for an adjustable rate mortgage (ARM) at the time they are provided with an application form or are charged a nonrefundable fee, whichever is earlier. The CHARM booklet provides general information about ***how*** ARMs work, but does not provide any transaction-or program-specific information.

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[1] As of the writing of this report, the Board is in the process of reviewing these rules in light of legislation passed by Congress in May 2009.

[2] Disclosures for reverse mortgages and rescission were not included in this stage of the review of Regulation Z mortgage disclosures.

Regulation Z also requires every creditor to provide an ARM loan program disclosure under the same circumstances and at the same time as the CHARM booklet for each ARM program in which the consumer expresses an interest. The program disclosure gives details about a specific loan program, including the index used to determine adjustable rates, ***how*** often the index is adjusted, and any caps that apply to increases in the rate. It also includes a table ***showing*** a historical example of ***how*** rates and payments would have varied over the past 15 years for a hypothetical loan of $ 10,000. Regulation Z currently prescribes no mandatory format for the ARM program disclosure except that it must be "clear and conspicuous," in writing, and in a form that the consumer may keep.

Finally, Regulation Z requires that consumers applying for a closed-end mortgage loan receive a TILA statement that provides detailed transaction-specific information on the terms of their loan offer. This disclosure is provided to prospective borrowers within 3 days of application and typically again before loan closing. [3] Among other things, this disclosure includes the annual percentage rate (APR), finance charge, amount financed, total of payments, and a payment schedule that ***shows*** the number, timing and amounts of payments.In addition to these pre-consummation disclosures, Regulation Z also requires creditors to give borrowers notice after consummation when the interest rate on an ARM changes. Currently, the content of this notice is prescribed, but no mandatory formatting is required.

In December 2007, the Board contracted with ICF Macro, an ICF International company, to assist it with its review and revision of closed-end mortgage disclosures. ICF Macro is a research and evaluation company with expertise in the design and cognitive testing of effective consumer communication materials. ICF Macro worked with the Board on its review of credit card disclosures and is also currently contributing to its review of TILA regulations related to home equity lines of credit.

ICF Macro's work thus far has consisted of two phases. In the background research phase, ICF Macro conducted four focus groups and six rounds of cognitive interviews, which were primarily focused on gaining knowledge about ***how*** consumers use the mortgage disclosures that they now receive, as well as revised disclosures that have been previously proposed. Through the focus groups, which took place in Greenbelt, MD, and Los Angeles, CA, ICF Macro gathered information about mortgage shopping, the types of information that consumers currently use for financial decision-making, and their perceptions of disclosures that are currently in use. Through the in-depth cognitive interviews, ICF Macro gathered more detailed information about ***how*** participants read disclosures and their level of comprehension of the content.

The second phase of the project was devoted to the development and testing of revised forms. This phase consisted of six additional rounds of cognitive interviews in different locations: Atlanta, GA; Bethesda, MD; Dallas, TX; Providence, RI; Denver, CO; and Bethesda, MD. For each round, ICF Macro developed a set of model disclosure forms to be tested. Interview participants were ***asked*** to review these forms and provide their reactions, and were then ***asked*** a series of questions designed to test their understanding of the content. Data were collected on which aspects of each form were most successful in providing information clearly and effectively. The findings from each round of interviews led to revisions to the models for the next round.

The findings from the consumer testing informed the Board's proposed revisions to Regulation Z rules for closed-end mortgages, which the Board will publish for public comment in July 2009. The revised disclosure forms that were developed and refined through the testing will be included as model forms and clauses with the proposal.

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[3] Currently, only applicants for home purchase loans would receive the disclosure within three days of application. Applicants for home equity loans or refinancing would receive the disclosure at closing. Under the Mortgage Disclosure Improvement Act amendments to TILA,all applicants must receive the disclosure within three business days of application, effective July 30, 2009.

SUMMARY OF METHODOLOGY

Research participants were recruited by telephone using a structured screening instrument. Almost all participants had obtained a home mortgage in the past 2 years, either for the purposes of a home purchase or for refinancing. In later rounds, several participants were also recruited who were actively shopping for a mortgage but had not yet obtained one. The purpose of this was to evaluate the extent to which the forms were clear and informative for people who had not yet gone through the mortgage process.

The screening instrument included questions to ensure a range of participants in terms of gender, age, and ethnicity. It also included questions about respondents' current interest rates, as well as whether they had experienced a recent financial hardship or been denied credit or discouraged from applying. These criteria were used as proxies to ensure the inclusion of both prime and subprime borrowers as participants in the study. Since consumers' understanding of ARMs was a particular focus for this project, over half of participants had experience with an ARM, either as their current mortgage or a mortgage they had within the previous 5 years.

SUMMARY OF KEY FINDINGS

The following is a summary of key findings from the cognitive testing, as well as the most significant design decisions. Some of the research focused on very specific aspects of the content or format of these forms, but this summary focuses primarily on the broader issues that were addressed during the testing process.

Mortgage Shopping Behavior

. Only about half of research participants consulted more than one lender or broker when looking for a mortgage loan. The two most common reasons that participants did not shop more actively were a) because they trusted a particular lender or broker due to a personal relationship or prior business relationship; and b) because they were referred to a particular lender (e.g., by a real estate agent or home builder) and did not think to consult others.

. When participants were selecting lenders to contact, trust was one of their most important considerations. Most participants either began the mortgage shopping process by visiting their current lending institution to look at offers or going to a lender or broker recommended by friends, family members, or their realtors.

. Even among participants who shopped for mortgages, the shopping process almost always ended at the point of loan application. In some cases this was because of the cost in time and money required to complete another application; other participants who had found the shopping process tiring or frustrating seemed reluctant to revisit the process once they had applied; and a few were concerned that their credit scores would decrease as a result of multiple applications for credit. Whatever the reason, once a loan application was completed and accepted, very few participants ever revisited the shopping process and talked to other lenders--even after they learned that the loan they had been offered had terms they did not like, or that the terms of the offer had changed.

. Participants were most likely to select loans based on interest rate, monthly payment, and loan type (i.e., fixed rate vs. adjustable rate). Interest rate and monthly payment were by far the two most common terms that focus group and interview participants compared between lenders or brokers when shopping. The amount of closing costs and the presence of a prepayment penalty were other terms participants frequently mentioned considering during the shopping process.

. When participants were ***asked*** what was most difficult about their mortgage experience, the most frequent answer was the amount of paperwork involved. Many commented that because they were ***shown*** so many ***papers*** at closing they did not read any of them carefully--including their TILA and HUD-1 statements. [4] Some also

[4] Under HUD's regulations implementing the Real Estate Settlement Procedures Act (RESPA), mortgage borrowers receive a Good Faith Estimate (GFE) of settlement costs after submitting a loan application and a HUD-1 statement of settlement costs at loan closing.

complained about the amount of information lenders or brokers requested during the loan application process.. Some participants felt external pressure to find a loan quickly, which limited their ability to shop. These participants included those who had found a home they wanted to purchase and had a limited amount of time before closing, and those who needed to refinance an ARM before the interest rate adjusted.

. A number of participants indicated that they were informed only at loan closing that the terms of their loan offer had changed. In almost all cases, these participants still completed the loan transaction despite any reservations they had. The most frequent reason mentioned was that they did not feel they had any options at that point in time--particularly in the case of home purchase loans. In other cases, participants accepted loans because they believed, or were advised by lenders, that they could easily refinance to better terms in the near future. Finally, several participants said they felt intimidated and rushed during the closing process and as a result found it difficult to object or raise questions.

. While most participants were satisfied with the loans they had received and said they would not have done anything differently when shopping for a loan, others said they wished they had spent more time shopping among lenders to obtain a better loan. Several had more serious concerns. For example, some had mortgage payments they were struggling to afford. Others had ended up with mortgages that included terms they had originally not wanted, such as adjustable rates, prepayment penalties, private mortgage insurance, and points paid at closing, which increased the costs of their loans.

TILA Statements

. Almost all participants indicated that the interest rate was one of the most important terms they would consider when evaluating a loan offer. Several were confused by the fact that the interest rate was not included on the current TILA statement, or incorrectly assumed that the Annual Percentage Rate (APR) was the interest rate. As a result, the revised TILA statement displays the contract interest rate.

. Participants were generally confused by the fact that their contract loan amount was not displayed on the current TILA statement, and many incorrectly assumed that the "amount financed" was the amount of money they were borrowing. As a result, the loan amount was added into the Loan Summary section of the revised TILA statement.

. Participants consistently indicated they would want an estimate of their settlement charges as early as possible, and that it would be helpful to have these charges displayed in the context of their other loan terms (rather than on a separate document, such as their HUD-1 statement). As a result, settlement charges were added into the Loan Summary section of the revised TILA statement.

. Participants indicated that they would find the maximum interest rate and payment--two terms that are not disclosed on the current TILA statement--to be very helpful in assessing the affordability and riskiness of a loan offer. As a result, these terms were included in the proposed model forms and clauses.

. Three of the terms disclosed most prominently on the current TILA statement--the number of payments, total of payments, and finance charge--were not seen by participants as useful or important to their decision-making. In addition, almost all participants were confused by the "amount financed" and did not understand what the figure signified. As a result, these four terms are disclosed less prominently on the second page of the revised TILA statement.

. The meaning of the APR was generally not understood by participants. Almost all either assumed that this rate was the same as their interest rate, or understood that the two terms were different but could not explain ***how***. Participants believed a change in the APR would not make much of a difference in their payment. Throughout multiple rounds of testing, ICF Macro designers attempted to clarify the meaning of the APR by using alternative labels and explanations, but were largely unsuccessful at improving participants' comprehension of the term or concept. The TILA statement being proposed, therefore, focuses on providing context for consumers as to ***how*** the APR on their loan compares to others being offered to borrowers with similar loans nationwide. This context is based on the "Average Prime Offer Rate" (APOR) for mortgages of a comparable type (fixed or ARM) and maturity. The APOR is calculated weekly and provided on the Federal Financial Institutions Examining Council (FFIEC) website and is described on the form as "the average APR on similar loans offered to borrowers with excellent credit." The proposed statement uses both a graphic scale and a narrative description to describe both the APOR and a "high cost zone," which begins at 1.5 percentage points above the APOR for first lien loans. [5]. Participants were generally confused by the payment schedule ***shown*** on the current TILA statement. For example, in examining a TILA statement for a hybrid ARM, several participants incorrectly assumed that the fact that payments in the table varied over time meant that they already reflected future changes in interest rates. As a result, the payment table was revised to demonstrate more explicitly the relationship between interest rates and payments. The table in the proposed model form and clauses for a hybrid ARM displays these terms at three points in time: the introductory rate and payment, the maximum at first adjustment, and the maximum ever. [6]. The revised TILA statement includes a new section labeled "Key Questions about Risk," which provides information about up to nine potentially risky or costly features of mortgage loans, such as: adjustable interest rates; potential changes to payments; prepayment penalties; interest-only payments; balloon payments; negative amortization; whether the product is a "no-documentation" or "low-documentation" loan; whether the loan has a demand feature; and equity sharing. For each of these features, the form lists a question (e.g., "Can my interest rate increase?") and the answer (either "Yes" or "No"). [7] All affirmative answers are accompanied by further explanation. This section of the form was received very positively by participants, who found the format clear and easy to understand.. In the final two rounds of testing, ICF Macro tested a TILA statement that described a payment option mortgage. Because the details of payment option mortgages are so complex, ICF Macro and Board staff focused on developing a statement that would communicate to consumers that a) if they made the minimum payment their loan balance would increase; and b) their minimum payment can increase dramatically in the future. While interview participants did not necessarily understand exactly ***how*** payment option ARMs worked based on their review of the form, the statement was largely successful at meeting its two primary communication objectives.

. The proposed TILA model forms and clauses incorporate some of the technical information that is currently provided on ARM loan program disclosures--including information about the frequency of interest rate changes, caps on interest rates, and ***how*** the interest rate is calculated. This decision was made in part because the Board staff believes that this information was important for consumers to have when considering a specific loan offer, and

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[5] For subordinate lien loans, the high cost zone would begin at 3.5 percentage points above the APOR. ICF Macro and Board staff did not construct any tests involving subordinate lien loans.

[6] The payment tables that are being proposed for loans other than hybrid ARMs (e.g., fixed rate loans or payment option ARMS) have a slightly different structure, reflecting the differences in the payment schedule for these products.

[7] Three of these features--adjustable interest rates, potential changes to payments, and prepayment penalties--are displayed on all TILA statements. The remaining six questions are included only the form only if they apply to the loan being described.

in part because background research ***showed*** that consumers were unlikely to notice or use the information when it was included on the program disclosure.

Other Mortgage Disclosure

. Participants who were ***shown*** the CHARM booklet generally indicated that they found the document useful and thought the information it contained was important -- particularly for consumers with Tittle experience with mortgages. However, a significant number of participants indicated that they would be unlikely to read the booklet because it was too long. Several participants indicated that they would be more likely to read a shorter and more concise disclosure.

. As a result, ICF Macro developed a new one-page early disclosure titled "Key Questions to ***Ask*** About ***Your*** Mortgage." The goal was to summarize the most important information in the CHARM booklet in a shorter, more consumer-friendly format, and to warn consumers of certain risky loan features. This form lists seven questions related to potentially risky or costly features that prospective borrowers should ***ask*** their lenders about any loans they are offered. These questions pertain to interest rate, monthly payment, loan balance reduction, loan balance increase, prepayment penalty, balloon payment, and 'loan documentation. The questions on this disclosure are repeated on the TILA statement along with loan-specific answers to each question, to ensure that borrowers have information they need to determine whether to get that loan before they are committed. The Key Questions disclosure tested extremely well with participants; all indicated that they would find it useful, and almost all found it very clear and easy-to-read. As a result, the Board is proposing to require that lenders provide the Key Questions document to prospective borrowers before they submit a loan application.

. Participants who were ***shown*** a sample of a current ARM loan program disclosure found the document very difficult to read and understand. They found the narrative format difficult to navigate and the terminology extremely complicated. A large number misinterpreted the historical example table in the disclosure; for example, some thought that the historical rates ***shown*** in the table would apply to their loan in the future. As a result, ICF Macro developed a simpler revised program disclosure that focuses on four important distinguishing characteristics of an ARM program: the length of introductory period, the frequency of rate change, the index used to calculate the interest rate, and limits on rate changes. The revised program disclosure does not include a historical example table, but does include product-specific answers that parallel the Key Questions provided at application on the TILA statement.

. Along with the Key Questions document, ICF Macro developed another new early disclosure titled "Fixed vs. Adjustable Rate Mortgages." This publication, which the Board is proposing be provided to all prospective borrowers, describes the features of ARMs and their relative advantages and disadvantages in relation to fixed-rate loan products. Interview participants found the form easy to understand, and indicated that it would be useful to them.

. In addition to those disclosures described above, ICF Macro developed and tested two additional disclosure forms and clauses to be provided after loan closing that the Board will propose in July 2009. The first is an ARM adjustment notice that would be provided to consumers at least 60 days before terms of their ARM changed and would explicitly describe the change to their interest rate and payment. The second is a disclosure to be included on periodic statements for loans with negative amortization, such as payment option ARMs. This monthly disclosure highlights the consequences that consumers' payment decisions will have on their loan balance. In both cases, these disclosures tested extremely well--participants had little difficulty understanding their content, and indicated that the information would be meaningful and important to them.

CHAPTER I: INTRODUCTION

BACKGROUND

In 1968, Congress enacted the Truth in Lending Act (TILA) to protect consumers by requiring lenders to provide key pieces of information to consumers at various points in time. Congress assigned the Federal Reserve Board (the "Board") the responsibility of implementing TILA, and the Board currently does so through its Regulation Z.

In 2004, the Board began the process of reviewing Regulation Z to determine whether revisions were necessary. In January 2009, the Board finalized amendments to Regulation Z's rules applicable to open-end (not home secured) credit (e.g., general purpose credit cards, merchant-specific credit plans, and overdraft lines of credit). [8] The Board is currently in the process of reviewing disclosures under Regulation Z related to home-secured open-end credit--namely, home equity lines of credit and close-end mortgage disclosures. This report is related to the Board's review of disclosures for closed-end mortgage loans. [9] One of the goals of this review is to ensure that the amended regulations lead to improved disclosures that consumers would most likely pay attention to, understand, and be able to use in their decision-making.

Currently, Regulation Z requires that potential borrowers be given three types of disclosures before consummation of a closed-end mortgage loan. The first is a Board publication titled "Consumer Handbook on Adjustable Rate Mortgages." This publication (referred to in this report as the "CHARM booklet") must be provided to potential borrowers who inquire about applying for an adjustable rate mortgage (ARM) at the time they are provided with an application form or are charged a nonrefundable fee, whichever is earlier. The CHARM booklet provides general information about ***how*** ARMs work, but does not provide any transaction-or program-specific information.

Regulation Z also requires every creditor to provide an ARM loan program disclosure under the same circumstances and at the same time as the CHARM booklet, for each ARM program in which the consumer expresses an interest. The program disclosure gives details about a specific loan program, including the index used to determine adjustable rates, ***how*** often the index is adjusted, and any caps that apply to increases in the rate. It also includes a table ***showing*** a historical example of ***how*** rates and payments would have varied over the past 15 years for a hypothetical loan of $ 10,000. Regulation Z currently prescribes no mandatory format for the ARM program disclosure except that it must be "clear and conspicuous," in writing, and in a form that the consumer may keep.

Finally, Regulation Z requires that consumers applying for a closed-end mortgage loan receive a TILA disclosure that provides detailed transaction-specific information on the terms of their loan offer. This disclosure is provided to prospective borrowers within 3 days of application and typically again before loan closing. [10] Among other things, this disclosure includes the annual percentage rate (APR), finance charge, amount financed, total of payments, and a payment schedule that ***shows*** the number, timing and amounts of payments.In addition to these pre-consummation disclosures, Regulation Z also requires creditors to give borrowers notice after consummation when

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[8] As of the writing of this report, the Board is in the process of reviewing these rules in light of legislation passed by Congress in May 2009.

[9] Disclosures for reverse mortgages and rescission were not included in this stage of the review of Regulation Z mortgage disclosures.

[10] Currently, only applicants for home purchase loans would receive the disclosure within three days of application. Applicants for home equity loans or refinancing would receive the disclosure at closing. Under the Mortgage Disclosure Improvement Act amendments to TILA,all applicants must receive the disclosure within three business days of application, effective July 30, 2009.

the interest rate on an ARM changes. Currently, the content of this notice is prescribed, but no mandatory formatting is required.

In December 2007, the Board contracted with ICF Macro, an ICF International company, to assist it with its review and revision of closed-end mortgage disclosures. ICF Macro is a research and evaluation company with expertise in the design and cognitive testing of effective consumer communication materials. ICF Macro worked with the Board on its review of credit card disclosures and is currently contributing to its review of TILA regulations related to home equity lines of credit. [11]The findings from ICF Macro's work informed the Board's proposed revisions to Regulation Z rules for closed-end mortgages, which the Board will publish for public comment in July 2009. The revised disclosure forms that were developed and refined through the testing will be included as model forms with the proposal.

OVERVIEW OF THE PROJECT

The project thus far has consisted of two phases. In the background research phase, ICF Macro conducted four focus groups and six rounds of cognitive interviews, which were primarily focused on gaining knowledge about ***how*** consumers use the mortgage disclosures that they now receive, as well as revised disclosures that have been previously proposed. Through the focus groups, which took place in Greenbelt, MD, and Los Angeles, CA, ICF Macro gathered information about mortgage shopping, the types of information that consumers currently use for financial decision-making, and their perceptions of disclosures that are currently in use. Through the in-depth cognitive interviews, ICF Macro gathered more detailed information about ***how*** participants read disclosures and their level of comprehension of the content.

The second phase of the project was devoted to the development and testing of revised forms. This phase consisted of six additional rounds of cognitive interviews in different locations: Atlanta, GA; Bethesda, MD; Dallas, TX; Providence, RI; Denver, CO; and Bethesda, MD. For each round, ICF Macro developed a set of model disclosure forms to be tested. The model disclosures described loan transactions intended to be generally realistic for participants. The terms of the transactions were often constructed to facilitate testing of specific form elements and did not necessarily reflect actual market terms and conditions. Interview participants were ***asked*** to review these forms and provide their reactions, and were then ***asked*** a series of questions designed to test their understanding of the content. Data were collected on which aspects of each form were most successful in providing information clearly and effectively. The findings from each round of interviews led to revisions to the models for the next round.

Appendix A provides an overview of the rounds of focus groups and cognitive interviews that have been conducted as part of this project, as well as the topics addressed in each round.

RECRUITMENT OF RESEARCH PARTICIPANTS

Interview and focus group participants were recruited by telephone using a structured screening instrument developed by ICF Macro and Board staff. Participation was limited to people who were the primary mortgage decision-maker in their households, and who did not work for a bank or other financial institution or in the real estate or mortgage industry. Other questions ensured the recruitment of participants with a range of ethnicities, ages, education levels, and mortgage behavior. Nearly all participants had obtained a mortgage (either for a home purchase or through refinancing) in the past 2 years. Since consumers' understanding of ARMs was a particular

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[11] ICF Macro has submitted a separate report to the Board describing its findings related to home equity lines of credit, which will also be published with its proposed rules.

focus for this project, over half of participants had experience with an ARM, either as their current mortgage or a mortgage they had within the previous 5 years.

In each of the last four rounds at least one participant was recruited who was actively shopping for a mortgage but had not yet obtained one. The purpose of this was to evaluate the extent to which the forms were clear and informative for people who had not yet gone through the mortgage process.

The recruiting screener used for interviews conducted in Providence, RI is provided as Appendix B; while the screener for other rounds varied slightly, the intent of the screening questions was essentially the same. Information about the demographic and background characteristics of the interview participants is provided as Appendix C.

One of the recruiting goals was to ensure that interviews were conducted with both prime and subprime borrowers. Because many consumers do not know their credit scores or are reluctant to share them, it was determined that a credit score could not be used as a screening variable for the purposes of recruiting. Therefore, participants were defined as "subprime" if they had: a) suffered a "financial hardship" such as bankruptcy, foreclosure, repossession or a tax lien in the past 7 years; b) been denied credit or discouraged from applying for credit in the past 2 years; or c) received an interest rate higher than 8 percent on their most recent first mortgage (or 10 percent on their most recent second mortgage). These cutoff points on the interest rate screening questions for borrowers with subprime loans were set to be roughly consistent with the Home Mortgage Disclosure Act (HMDA) APR-based thresholds for reporting higher-priced loans over the 2006-2007 period. [12] Fifty-nine of the 134 research participants qualified as "subprime" using the three criteria related to creditworthiness.**STRUCTURE OF THIS REPORT**

This report provides a summary of the work that has been carried out to date, the methodologies used, and the findings that influenced the development of the proposed model forms and clauses that will be released for public comment.

Chapters II and III describe the background research ICF Macro conducted with consumers prior to developing any new forms. Chapter II details ICF Macro's findings about ***how*** consumers currently shop for mortgages, while Chapter III presents research into the usability of several types of mortgage disclosures that are either currently provided to consumers or have been previously proposed.

Chapters IV through VII describe the second phase of the project, during which new disclosure forms were developed and tested. Chapter IV highlights the general design principles that ICF Macro form designers used during the course of the form development. Chapter V details the development and testing of revised TILA statements through six rounds of cognitive interviews, while Chapter VI describes the development and testing of several other types of disclosures related to mortgages that are provided at application or after closing. Finally, Chapter VII provides a brief summary of the project outcomes.

CHAPTER II: FINDINGS ABOUT MORTGAGE SHOPPING

One of the goals of ICF Macro's consumer research has been to obtain a better understanding of the extent to which consumers shop for mortgages (i.e., compare quotes from more than one lender or broker) and what kind of information they consider when doing so. Since one of the purposes of the Board's disclosures is to make

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In January 2009, the cutoff points for this screening question were adjusted to 7.5 percent for first mortgages and 9.5 percent for second mortgages, to reflect the lower HMDA APR-based reporting thresholds over the 2007-08 period.

consumers more effective shoppers for mortgages, it is important that the development of these documents is informed both by ***how*** consumers shop currently and by the obstacles that they encounter in trying to do so.

All rounds of focus groups and interviews conducted by ICF Macro included an introductory segment during which participants discussed their recent experiences shopping for mortgages. Participants were ***asked*** to describe ***how*** they had previously shopped for mortgages, including ***how*** many lenders or brokers they spoke to, ***how*** they identified potential lenders or brokers, and the factors they considered when choosing a mortgage. The following is a summary of ICF Macro's key findings about mortgage shopping.

SHOPPING FOR A MORTGAGE

. **Only about half of research participants consulted more than one lender or broker when looking for a mortgage loan**. The two most common reasons that participants did not shop more actively were a) because they trusted a particular lender or broker due to a personal relationship or prior business relationship; and b) because they were referred to a particular lender (e.g., by a real estate agent or home builder) and did not think to consult others. Other reasons participants cited for not shopping included time constraints, a reluctance to have multiple lenders perform a credit check because of the impact it would have on their credit scores, concern about the amount of effort it would take to complete paperwork for multiple lenders, and in a few cases, a mistaken belief that all lenders would offer the same rates and terms.

. **When participants were selecting lenders to contact, trust was one of their most important considerations**. Most participants either began the mortgage shopping process by visiting their current lending institution to look at offers or going to a lender or broker recommended by friends, family members, or their realtors. Others selected a lender based on its general reputation as a financial institution. Several participants used the internet to compare loan products, using web resources that gave them multiple quotes from different lenders. A few contacted lenders to inquire about offers they saw in newspaper, radio, or television advertisements.

. **Participants who actively shopped for mortgages used a variety of methods to compare loans**. Some reported using internet tools to compare offers from different lenders. Others relied on offers that they received from different lenders over the phone. A few met in person with representatives from different banks. In general, these participants were more certain about what type of loan they wanted and what terms were most important to them.

. **Participants with poor credit were more likely to indicate they had difficulty finding financing**. Some participants indicated that because of poor credit or recent financial hardships, it was difficult for them to find a lender who would offer them a mortgage. These participants often indicated that in order to get a loan, they had to accept terms they felt were less than ideal, such as an adjustable rate mortgage (ARM) or a mortgage with a pre-payment penalty.

. **Even among participants who shopped for mortgages, the shopping process almost always ended at the point of loan application**. Even participants who actively shopped for their mortgage and solicited information from several lenders usually only applied for one loan. In some cases this was because of the cost in time and money required to complete another application; other participants who had found the shopping process tiring or frustrating seemed reluctant to revisit the process once they had applied. Whatever the reason, once a loan application was completed and accepted, very few participants ever revisited the shopping process and talked to other lenders--even after they learned that the loan they had applied for had terms they did not like, or when the terms of the offer changed.

IMPORTANT FACTORS TO CONSUMERS WHEN SHOPPING

. **Participants were most likely to shop based on interest rate, monthly payment, and loan type**. Interest rate and monthly payment were by far the two most common terms that focus group and interview participants compared between lenders or brokers when shopping. Most participants said they were primarily interested in fixed rate mortgages. While some indicated that they would consider an ARM if they were sure they could refinance or sell before the rate adjusted, others said they would never apply for an ARM. [13] Other terms some participants considered when shopping were closing costs, prepayment penalties, discount points, whether private mortgage insurance was required, and balloon payments.

EDUCATION ABOUT MORTGAGE PROCESS

. **Participants who educated themselves about the mortgage process primarily did so through an informal networking process with family, friends, and colleagues**. New homebuyers were more likely to have gathered information about the mortgage process before starting their search; in most cases participants who were getting their second or third mortgage felt that they were already knowledgeable and did not seek out additional information.

. **Some participants indicated that prior to getting their first mortgage they sought out information about the process on the Internet**. Fewer participants said they obtained information about the mortgage shopping process by reading magazines or newspapers or by attending workshops. A few also indicated they educated themselves by reviewing materials provided by their lending institution. Subprime participants were less likely to use the Internet and more likely to rely on information from family or friends.

FRUSTRATIONS AND SURPRISES

. **Most participants felt overwhelmed by the amount of paperwork involved in obtaining a loan**. When participants were ***asked*** what was most difficult about their mortgage experience, the most frequent answer was the amount of paperwork involved. Many commented that because they were ***asked*** to sign so many ***papers*** at closing they did not read any of them carefully--including their TILA and HUD-1 statements. Some also complained about the amount of information lenders or brokers requested during the loan application process. A few participants said they felt uncomfortable providing detailed financial information to a large number of lenders or brokers because of concerns about privacy. While none explicitly said so, this may have been an additional reason that some participants did not shop for mortgages more widely.

. **Time pressure was a particular concern among borrowers who were purchasing a home and those who felt a need to refinance before their mortgage rates adjusted**. Once participants found a home they wanted to purchase, many felt pressured to find a loan quickly, which limited their ability to shop. As one participant explained, "I found a house that I really loved in this neighborhood that I've been living in...Then a week later it was my

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It is important to note that much of the consumer research described in this report took place during the "mortgage crisis" of 2008-09. As a result, participants may have been more risk-averse and suspicious of ARMs and other alternative mortgage products than they would have been in previous years.

home...I didn't even know ***how*** to get a mortgage or anything so it all just happened really quickly." Some participants said they felt pressure because they had an ARM and needed to re-finance before the interest rate adjusted. As a result, they did not talk to as many potential lenders as they might have otherwise.

. **Participants had difficulty acting on information they were provided for the first time at loan closing**. Several participants indicated they were surprised by important changes in their loan terms at the loan closing. In a few cases, for example, participants said that they had originally been offered a fixed-rate loan, but were told at closing their rate would be adjustable. In almost all of these cases, participants still completed the loan transaction despite their reservations. The most frequent reason mentioned was that they did not feel they had any options at that point in time--particularly in the case of home purchase loans. In other cases, participants accepted loans because they believed or were advised by lenders, that they could easily refinance to better terms in the near future. Finally, several participants said they felt intimidated and rushed during the closing process and as a result found it difficult to object or raise questions.

. **Some participants did not believe they were given enough information during the mortgage process**. For example, one participant complained their broker did not ***show*** him all of the loan offers for which he was qualified. Other participants felt their lender or broker should have explained the terms of their loan more clearly--for example, ***how*** and when rates and payments were going to vary. These complaints were more common among participants who were purchasing their first home; participants who had previous mortgage experience were much less likely to complain about a lack of information.

. **Although most participants were satisfied with their loans, some had serious concerns about their mortgages**. Most participants were satisfied with the loans they had received and said they would not have done anything differently when shopping for a loan. However, some said that, in retrospect, they wished they had spent more time shopping among lenders to obtain a better loan. Several had more serious concerns. For example, some had mortgages they were struggling to pay. Others had ended up with mortgages that included terms they had originally not wanted, such as adjustable rates, prepayment penalties, private mortgage insurance, and points paid at closing.

CHAPTER III: TESTING OF CURRENT AND PREVIOUSLY PROPOSED DISCLOSURE FORMS

As noted earlier in this report, the first phase of ICF Macro's consumer testing primarily focused on gaining knowledge about ***how*** consumers used the mortgage disclosures they now receive as well as testing selected disclosures that were previously proposed by other organizations. In this early phase of testing, ICF Macro tested three types of disclosures:

. **Transaction-Specific Disclosures**: These disclosures provide information about a specific loan offer from a lender. The transaction-specific disclosure that is currently required is known as the "TILA statement." It is currently provided to consumers at two points in the mortgage process--an initial version is provided within 3 days of application and a final document is generally provided before loan closing.

. **ARM Loan Program Disclosures**: This disclosure is required when a consumer who has expressed interest in an ARM received an application form. The form provides information about ARM loan programs offered by the lender but not about specific loan terms based on the consumer's creditworthiness.

. **The Consumer Handbook on Adjustable Rate Mortgages (the "CHARM booklet")**: Like the program disclosure, the CHARM booklet is required to be provided to consumers who have expressed interest in an ARM when they receive an application form. This booklet provides general information about ARMs and ***how*** they work as well as potential risks of getting an ARM.

The following chapter of the report describes ICF Macro's consumer research findings related to these disclosures. It also includes the implications these findings had for subsequent disclosure design efforts.

TRANSACTION-SPECIFIC DISCLOSURES

In addition to the TILA statement format that is currently in use, two other formats were tested during the background research phase of the project (Phase I). These included:

. A form proposed in 1998 by staff from the Department of Housing and Urban Development (HUD) and the Board (referred to in this report as the "joint form"); [14] and

. A three-page form proposed by Alex Pollock of the American Enterprise Institute in 2007. This form, titled "The Basic Facts About ***Your*** Mortgage Loan," is referred to in this report as the "Pollock form." It contains one page of transaction-specific information and a two-page glossary.

ICF Macro and Board staff opted to study these two specific forms for several reasons. The joint form shared a number of common elements with the current TILA and thus supplemented benchmark testing of the TILA statement. In addition, this form reflected joint efforts by HUD and Board staff to combine informational elements from the Real Estate Settlement Procedures Act (RESPA) and TILA into a single disclosure. The Pollock form, on the other hand, utilized a significantly different format than the existing TILA and joint forms. This form also specifically addressed features of ARMs, which was a primary area of focus for this study. [15]Usability information on the current TILA statement was collected through focus groups in Greenbelt, MD and Los Angeles, CA (Rounds 1 and 4), as well as through cognitive interviews in Baltimore, MD (Round 7). The Pollock and joint forms were tested through interviews in Washington, DC and Los Angeles, CA (Rounds 2 and 3). The forms that were ***shown*** to consumers during this background research phase are provided in Appendix D.

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Under a 1996 Congressional directive, the Board and HUD studied ways to simplify and improve the disclosures required by TILA and the Real Estate Settlement Procedures Act (RESPA). In July 1998, the Board and HUD submitted a Joint Report to the Congress that provided a broad outline intended to be a starting point for consideration of legislative reform of the mortgage disclosure requirements. The report included a proposed two-page disclosure that would largely include the information required by both laws. Information elements related to TILA were included on the first page; the second page included a breakout of settlement costs to fulfill the requirements of RESPA. The first page of this combined form was used in the background research phase of this project. The 1998 report the agencies submitted to Congress is available at http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf.

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This project focused primarily on disclosures related to ARMs and other more complex mortgage products. In 2007, the Federal Trade Commission (FTC) conducted research on consumer understanding of TILA and other disclosures in the context of fixed-rate mortgages.

Summary of Findings

Initial Reactions to the TILA Statement

. Only a few participants from the background research testing recognized the current TILA statement, or knew that they had received this document previously. Those that did recognize the form usually commented on the four boxes at the top of the page containing the Annual Percentage Rate, Finance Charge, Amount Financed, and Total of Payments.

. Participants who did recognize the TILA statement were ***asked*** whether they had found the document useful when they received it previously. Most indicated that they had not, either because they had not understood it or because they had not paid attention to it at loan closing.

Loan Summary Information

Amount Financed/Loan Amount

. Most participants who reviewed the current TILA statement incorrectly assumed the "amount financed" was the same as the loan amount or, as one participant said, "the cost of the house."

. The Pollock and joint forms listed the loan amount, rather than the amount financed. All but one participant who reviewed these forms were able to correctly identify the loan amount.

Total of Payments

. When reviewing the current TILA, most participants assumed the "total of payments" was equal to the sum of the finance charge and the amount financed.

Loan Term

. The current TILA and joint forms did not display the loan term. Most participants who were ***asked*** to identify the loan term added up the number of payments ***shown*** in the payment schedule to calculate their answer. However, a few found it difficult to do so and as a result could not answer this question.

. All but one of the participants who were ***shown*** the Pollock statement were able to correctly identify the loan term (30 years).

Settlement Costs

. When ***asked*** whether there was any information that did not appear on the current TILA statement that they thought should be displayed, several participants commented it would be helpful to see more detailed information about closing costs and/or settlement charges.

. All participants correctly identified the amount of the closing costs on both the Pollock and the joint forms. About half of the participants indicated they would want the closing costs to be itemized on the statement.

APR and Finance Charge

. Most participants who reviewed the current TILA and joint forms indicated the "finance charge" was the cost one would pay for getting the loan. It was unclear whether these participants understood that this figure was made up of both interest and fees.

. Almost all participants who were ***shown*** the current TILA statement or joint form did not understand what was meant by the APR. [16] Many assumed it was synonymous with the interest rate while others understood that the two terms were different they were unable to articulate ***how*** they differed.. Some participants who saw the joint form (which provided an explanation of the APR) understood that this rate included both interest and fees. However, most of these participants only realized this after looking at the form for several minutes and even then did not understand ***how*** the term might be useful to them.

. Participants had various misinterpretations of the APR, such as that it reflected ***how*** the rate would adjust in the future, or that it was the maximum possible rate. These misinterpretations occurred even when participants were looking at the joint form, which included an explanation of the term.

Rate and Payment Information

Understanding of Adjustable Rate

. Over half of the participants who reviewed the current TILA statement understood the interest rate on the loan would change. However, several arrived at this conclusion because the payment schedule ***showed*** different monthly payments (which would not necessarily indicate that the loan had an adjustable rate) and not because the form was marked as having a "variable rate feature." A few participants indicated they did not know whether the rate would change or not.

. Some participants who saw the current TILA commented that although the form used the term "variable rate," they were more familiar with the term "adjustable rate." In fact, a few did not realize that the fact that the "variable rate" box on the form was checked meant the rate could change.

. All participants who reviewed the joint form understood the loan had an adjustable rate. However, less than half understood the interest rate was fixed for the first 3 years. The remainder thought that the rate could vary within the first 3 years; several, in fact, thought that it could begin varying after only 1 month. Several others indicated the form did not provide any information about when the interest rate could adjust. Moreover, most participants did not know ***how*** often the interest rate could adjust; only a small number correctly indicated the interest rate could adjust annually after the first 3 years.

. Almost all participants who saw the joint and Pollock forms were able to identify the initial interest rate and most were able to also identify the maximum interest rate.

. All but one participant who reviewed the Pollock form realized the loan had an adjustable rate. Most understood the rate was fixed for 3 years and would begin to vary after that. However, only about half of participants were able to indicate the rate would change annually after the first 3 years. Moreover, a few participants incorrectly indicated that after 3 years, the rate would change to the maximum possible rate.

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The APR did not appear on the Pollock form.

. When participants in several rounds of testing were queried as to what would cause their interest rate to go up or down, they gave a variety of responses, including "the market"; "the economy"; the "prime rate"; the "Fed rate"; and the Consumer Price Index. All of these responses seemed to reflect a common belief that rates would change based on external market forces over which they had no control. However, most participants did not understand the details of ***how*** this rate would be determined (i.e., that it would remain at a fixed margin above a given index rate).

Monthly Payments

. Several participants commented they liked the payment schedule ***shown*** on the current TILA and joint forms because it provided specific and detailed information about their future payments. However, most incorrectly assumed the monthly payments ***shown*** in the payment schedule were their future monthly payments, rather than estimates that could change based on the market. One participant explained, "I like the [the joint] form because it ***shows***...the payment could change, but it shouldn't be dramatically different." This misconception led to some confusion among participants who questioned ***how*** the form could display their future monthly payments when the interest rate was adjustable.

. The joint and Pollock forms each disclosed the maximum rate and payment that could ever be charged on the loan, while the current TILA statement did not. Participants strongly supported the inclusion of this information on the form, because they felt it would help them make more informed decisions regarding the affordability and riskiness of adjustable rate mortgages.

. Almost all participants who saw the joint form were able to correctly identify the initial monthly payment and knew this payment could vary over time. However, as with interest rates, participants were confused as to when the payment could begin adjusting. While some participants correctly stated the payments could change after 3 years, others thought the payments could adjust as early as within 1 month.

. Almost all participants who reviewed the Pollock form correctly identified the initial monthly payment on the Pollock form. When looking at the Pollock form, most participants understood the monthly payments would be fixed for the first 3 years of the loan and then could vary.

. When ***asked*** if the Pollock form indicated what the payment would become after 3 years, about half of the participants identified the payment associated with the fully-indexed rate. However, it appeared that some participants correctly identified the fully-indexed rate because it was the only other payment displayed on the form, rather than because they understood the term. When ***asked*** to explain the meaning of "fully-indexed rate," most participants were unable to do so (see the section "Terms Unique to Pollock Form" below).

Taxes and Insurance (Escrow)

. Most participants who saw the joint form incorrectly assumed that the payments ***shown*** in the payment schedule included escrow, even though there was a footnote stating otherwise. Some participants later saw the footnote and realized their mistake while others did not.

. The word "escrow" has different meanings in different parts of the country which led to confusion on the part of participants who reviewed the joint form. Most participants in Washington, DC. understood the term referred to additional funds for taxes and insurance that are added to the monthly payment. In California, however, the word "escrow" is used to refer to the process of closing on a loan.

. Some participants suggested the joint form provide an explanation of the word "escrow," since they thought not everyone would be familiar with the term. Others suggested either adding another column in the payment schedule to include escrow or moving the information about escrow closer to the payment schedule.

. When ***asked*** which of the monthly payments ***shown*** on the Pollock form would be their initial monthly payment, most selected the payment that included taxes and insurance, while a few participants chose the payment with just principal and interest. [17] Participants who assumed that payments would not include escrow tended to be those who were younger and had less experience with mortgages.***Other Required Disclosure Text***

Prepayment Penalty

. While most participants reviewing the current TILA understood the general meaning of the phrase "prepayment penalty," about half thought the penalty would not apply if they sold the house or refinanced their loan. A few were confused by the language that indicated they would "not be entitled to a refund of part of their finance charge"; these participants thought if they paid off the loan they would still be responsible for paying the full finance charge ***shown*** on the top of the page.

. When looking at the joint form, almost all participants realized there was a prepayment penalty associated with the loan. However, some incorrectly assumed this penalty would only apply if the loan was paid off or if the house was sold, not if the loan was refinanced. A number of participants also commented that they would like the form to provide the amount of the penalty as well as the specific circumstances in which it would apply.

. When reviewing the Pollock form, almost all participants understood that a prepayment penalty would be charged and they were able to correctly identify the amount of that penalty.

. The version of the Pollock form used for testing in Washington, DC stated the prepayment penalty would be charged "if you refinance within the first three years." Several participants who saw this version of the form did not realize that the penalty would also apply if they sold the house or otherwise paid off the loan. A version of the Pollock form used in Los Angeles was revised to read that the fee must be paid "if you pay off or refinance ***your*** loan." This led to fewer misconceptions among participants, although one participant still questioned whether he would have to pay a penalty if he sold the house.

Other Loan Terms

. Very few of the participants who saw the current TILA understood the terms "security interest" and "demand feature." About half of the participants who read the description of loan assumption understood what it meant; others were confused by this text. Several participants were surprised to learn that mortgages could be transferred in this way.

. Participants generally indicated that the information on the bottom half of the current TILA statement and joint form (e.g., information about security interest, late charges, loan assumption, demand feature, and hazard insurance) was much less important than that on the top half of the form (e.g., information about interest rates and payment). At least half did not understand what was meant by "security interest," "assumption," or "demand feature."

. The two pieces of information on the bottom half of the current TILA statement that participants did indicate were important to them were whether or not the interest rate could change, and whether the loan included a pre-payment penalty.

Terms Unique to Pollock Form

The Pollock form had several terms and features not found on the current TILA or joint forms. The findings specific to Pollock terminology and features are described below.

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[17] The Pollock form did not indicate whether or not escrow was required, so none of these responses were correct or incorrect.

Type of Loan

. The Pollock form used in testing listed the "type of loan" as a "3/1 LIBOR ARM." Almost all participants were confused by this term and did not understand what was meant by either "3/1" or "LIBOR." [18] Only one participant understood that "LIBOR" referred to the index being used to determine the interest rate; another understood this after seeing a reference to LIBOR in the glossary.*Fully-Indexed Rate*

. Most participants did not understand that the fully-indexed rate was the level to which the interest rate would eventually adjust assuming there was no market fluctuation (i.e., no variation in the LIBOR index). Several simply thought this was what the interest rate would change to in 3 years, rather than an estimate. Other participants had even more serious misconceptions; for example, one thought the fully-indexed rate represented the fee that the mortgage broker would receive for his or her services.

Payment-to-Income (PTI) Ratio

. All participants correctly interpreted the payment-to-income ratio ***shown*** on the Pollock form as the percentage of their income that would be required to make their loan payments.

. Participants' reactions to the inclusion of the PTI ratio on the form were mixed. Some thought this information would be useful to help them budget for their mortgage payments. Others, however, felt this ratio was not helpful because it did not account for other debts and bills. One participant commented that the PTI ratio was not a valuable measure because it might change dramatically in the event of a career change.

. Participants interpreted the income figure provided on the Pollock form differently; about half assumed the figures listed would be pre-tax, while the other half thought they would be post-tax. Because of this confusion, several participants suggested this be clarified on the form. [19]. When ***asked*** whether they would rather be ***shown*** pre- or post-tax income on this form, participants were again split. Some preferred to see post-tax income, since they felt this would make the ratio more useful. Others preferred to see pre-tax income, because that is the figure with which they are more familiar. The majority of participants also indicated it would be more useful to have monthly income listed on the form, as opposed to annual income.

. Participants had very different opinions of ***how*** high the PTI ratio would have to be before they would feel uncomfortable taking the loan. When ***asked*** what level would make them uncomfortable, participants gave responses ranging from 20 to 50 percent. Only one participant looked in the glossary and found the reference to the "industry standard" of 28 percent.

Glossary

. Very few participants noticed the glossary when first reading the form and even fewer referred to the glossary when they came across terms they did not understand.

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[18] "LIBOR" stands for the London Interbank Offered Rate, which is used as an index for determining the rate on some ARM loans.

[19] The Pollock form does not indicate whether the income ***shown*** is pre- or post-tax.

. When ***asked*** by the interviewer to review the glossary, participants were very positive toward it; they found it to be user-friendly and easy to understand.

. Participants suggested that more consumers would use the glossary if it appeared before the form, rather than after it.

Design cations

. There were several items that do not appear on the current TILA that participants consistently indicated they would want to see on a revised form. In some cases, these were terms that participants already use when shopping for a mortgage, and therefore including this information on the TILA statement would allow them to confirm that they received what they had been offered verbally. In other cases participants felt the information would be helpful for them to make informed decisions between loans. Therefore, all revised TILA forms developed for this project included following new terms: the loan amount, loan term, interest rate, settlement charges, and maximum rate and payment.

. Testing of the current TILA and joint forms ***showed*** that few participants understood the APR; many assumed it was the same as the loan interest rate, while those who knew that it differed from the interest rate were unsure why. In its subsequent revisions of the TILA statement, ICF Macro attempted to clarify the meaning of the APR by varying the labels and explanations used, changing the prominence and placement of the term, and in later rounds, including a graphic ***showing*** ***how*** the APR compares to that of similar loan offers to provide context.

. Testing clearly ***showed*** that the current TILA payment schedule is ineffective at communicating to consumers what could happen to their payments. One goal of the revised TILA was to portray more clearly what could happen to payments over time--while making it clear to consumers that in the case of an ARM, their actual payment could not be accurately predicted.

. Because participants indicated they were more familiar with the phrase "adjustable rate" rather than "variable rate" as it related to mortgages, and because a few did not realize that the fact that a loan had a "variable rate" meant that the interest rate could change, the phrase "adjustable rate" was used on all revised TILA forms.

. Because participants who saw the joint and Pollock forms were unsure whether escrow would be included in their monthly payments, the portion of the payment that went toward escrow was disclosed prominently in the payment table on the revised TILA forms.

. Because participants generally indicated that the bottom half of the TILA statement was significantly less useful to them, ICF Macro reformatted this section of the form significantly. The presence of an adjustable rate or prepayment penalty, both of which participants indicated were important, were disclosed prominently on all revised TILA forms. However, other information that was considered less important (such as the need for hazard insurance or the amount of a late payment fee), or that was confusing to consumers (such as information about loan assumption, a demand feature, or security interest) was reworded and removed from the TILA statement.

ARM LOAN PROGRAM DISCLOSURE

ICF Macro tested an ARM loan program disclosure form through the two rounds of focus groups held in Greenbelt, MD and Los Angeles, CA (Rounds 1 and 4). This form, which is provided in Appendix D, was designed to be representative of forms that are currently in use. The following is a summary of findings related to this initial program disclosure.

Summary of Findings

. None of the participants, including those who had recently shopped for an ARM, remembered ever receiving anything similar to the ARM loan program disclosure they were ***shown***.

. Participants overwhelmingly indicated they would not find the program disclosure useful and that if given the form, they probably would not read it.

. Upon looking at the form, the first reaction of many participants was one of confusion. Several complained it was very difficult to read due to the terminology that was used. One commented, "You've got to be a financial expert to understand that That's ridiculous. That's like the fine print on the credit card." Another said that in order to understand the disclosure "you'd have to take a semester [course] in this."

. Several focus group participants were concerned they could not find any information about what their actual interest rate would be They indicated that in the absence of this rate, most of the other information provided was not important to them.

. The second page of the disclosure included a chart ***showing*** a historical example of ***how*** payments would have varied for a $ 10,000 loan over the previous 15 years. Several participants did not realize this was only an historical example and assumed that the numbers related to a loan they were actually being offered. Some participants who did understand the purpose of the chart commented that because the size of the loan was so low the information was not helpful. Others assumed that because the chart ***showed*** 15 years, it was ***showing*** a loan with a 15-year amortization period (in fact, the chart was for a 30-year loan).

. Several participants commented that the ARM loan program disclosure should ***show*** the best and worst case scenarios with regard to the interest rate and payment adjustments over the life of the loan. Other changes suggested by at least one participant included simplifying the terminology used on the form; enlarging the font size used in the disclosure; replacing the historical table with a line graph; and bolding or highlighting key terms from the first page for emphasis.

Design Implications

. Because participant reactions to the current program disclosure were so negative, this disclosure was redesigned and tested again with consumers in Providence, RI (Round 11). The goal of this redesign was to use plainer language to simplify the form and to focus the disclosure more specifically on potentially risky features of ARMs. Research findings related to the revised program disclosure are provided in Chapter VI of this report.

. Based on the results of the focus groups, ICF Macro and Board staff felt that borrowers would be much more likely to pay attention to and use information that is provided in the context of an actual offer. Therefore, some specific information about ***how*** interest rates would adjust, such as the index and margin used to determine the rate and caps on rate change, were included in the revised TILA.

CHARM BOOKLET

ICF Macro collected usability information about the CHARM booklet [20] through the two rounds of focus groups held in Greenbelt, MD and Los Angeles, CA (Rounds 1 and 4). This booklet was also ***shown*** to interview participants in Washington, DC and Kansas City, KS (Rounds 2 and 6). The following is a summary of findings related to this disclosure.**Summary of Findings**

Consumer Familiarity with CHARM Booklet

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[20] A PDF version of the CHARM booklet may be found at www.federalreserve.gov/pubs/arms/armsbrochure.pdf. A web summary is also available at www.federalreserve.gov/pubs/arms/arms_english.htm

. Almost none of the participants had seen the CHARM booklet before testing. Even among participants who had recently obtained an ARM, very few indicated they had been given the booklet. A few thought they might have seen the booklet when they were shopping for loans, but did not have a clear memory of its contents or whether they had found the resource useful. Therefore, the majority of the reactions described in this report are based on participants' brief review of the booklet during testing.

Initial Reactions to the CHARM Booklet

. The majority of participants liked the information contained in the CHARM booklet because it was informative and educational. Several participants commented the booklet answered questions that some consumers might be reluctant to ***ask***; as one said, "People don't like to ***ask*** questions, so this is good."

. Several participants noted that despite their risks, ARMs can be a useful tool for some consumers who need a low introductory rate or who plan to sell or refinance their loan before the interest rate adjusts. These participants felt the booklet would be particularly beneficial to this type of consumer because it would help them successfully implement their plan.

. There were specific aspects of the booklet that participants particularly liked:

. One of the most frequently mentioned sections of interest to participants was the description of payment shock on page 20. A few participants thought the section was so important that it should have been moved to the front of the booklet. One participant was concerned that people would not read the section in its current location because it is "buried in the middle--you get bored after the 5th page, [and] you don't get that far." A few participants also liked the graph that gave an example of payment shock because it visually ***showed*** ***how*** much ***your*** payment could increase.

. The cautionary bullets on the first page were cited as being particularly useful by several participants. They thought it was a good idea to mention the most important topics early in the booklet. Some participants also commented it was helpful that the bulleted items included page numbers so readers could easily find more information on the subject.

. A large number of participants also identified the sections about prepayment penalties and negative amortization, the Mortgage Shopping Worksheet, and the glossary as being particularly important.

. Fewer participants found other parts of the booklet important. Those parts cited included the definitions of "lenders" and "brokers" on page 5, the description of payment caps on page 13, and the explanation of different types of ARMs beginning on page 15.***Length of the CHARM Booklet***

. Although all participants thought the booklet contained useful information and would be beneficial to consumers who are considering ARMs, most thought the booklet was too long. Many participants said they would be more likely to read the booklet if it was shorter. A smaller number of participants disagreed and indicated that if the booklet were shortened it would actually be less useful because it would not include as much important information. There were even a few participants who thought the booklet was too short and should include more detail--for example, information about other loan products other than ARMs.

. Several participants suggested that multiple versions of the booklet could be developed--a shorter version, for people who were unlikely to read a longer document, and a longer version for those who wanted more detailed information. They felt this might be the best way to make sure everyone saw at least some information about ARMs.

Reactions to the Mortgage Shopping Worksheet (CHARM Booklet pages 2 and 3)

. Nearly all participants thought this worksheet would be a useful tool for someone who was shopping for a mortgage. Several commented that the worksheet would remind them of what loan terms and conditions might be important and that it could act as a guide to help them ***ask*** the necessary questions. Others focused on the fact that the worksheet would help them compare terms between loans.

. There was some disagreement among participants about whether the Mortgage Shopping Worksheet should be in electronic or ***paper*** format. Some participants preferred a ***paper*** format because they would be able to carry the worksheet to different banks and either complete it themselves or have the lender or broker complete it. However, other participants liked the electronic format because it would allow them to enter the data and complete calculations. Several participants felt it would be best to have both formats available.

. Participants provided only two concrete suggestions for improving the worksheet. The first was to define the acronym "ARM," since consumers might use the worksheet independently of the rest of the booklet. A few participants also thought the worksheet should include a numerical example to illustrate ***how*** to complete the form.

Reactions to the Glossary (CHARM Booklet pages 30 through 34)

. Participants were specifically ***asked*** to comment on the usefulness of the glossary. All participants thought the glossary was a valuable part of the booklet because it included definitions and explanations of important terms that are sometimes difficult for consumers to find.

. Several participants gave suggestions for ***how*** the glossary could be made more effective, including bolding the words in the text that appear in the glossary, adding references to the glossary earlier in the booklet, including the definitions in the text as footnotes, or embedding definitions in the text itself.

Participants' Suggested Revisions to the CHARM Booklet

. Several participants said that including more explicit warnings about the risks of ARMs might make consumers read the information more carefully. Some of the suggested phrases included, "It's really important for you to read this because ***your*** life depends on it," or "Foreclosure is inevitable if you don't understand what's in this book."

. A few participants suggested that including information on ***how*** mortgage rates are determined might help consumers forecast their future rates.

. Other content participants suggested adding to the booklet included:

. Differences between fixed-rate versus ARM products;

. Additional detail about late charges and prepayment penalties;

. More emphasis on the need to refinance before the interest rate adjusts; and

. A description of ***how*** taxes change as the interest rate changes.. Some participants suggested improving the format of the booklet to make it clearer and easier to read. Specific ideas included adding a table of contents and bolding or highlighting specific sections to emphasize their importance.

Dissemination of CHARM Information

. To improve the likelihood of consumers seeing and understanding the information in the booklet, participants suggested providing it in alternative formats such as audiotapes or DVDs. One participant pointed out an added advantage of doing this would be that illiterate or semi-illiterate consumers would also be able to obtain the information. A large number of participants commented that the booklet should also be available online (as it currently is).

. One participant suggested that the Board should require lenders and brokers to review this information with their customers and then have them sign a document saying they received and understood the information. Another felt the Board should increase the amount of time consumers have before closing a loan so they will be able to read the booklet and other information. [21]. A large number of participants said that in addition to creating resources like the CHARM booklet, the government should also take other steps to educate consumers. Suggestions included creating a "Real Estate 101" class for new home buyers, teaching high school students about loan products and home ownership, offering free seminars, and providing loan counselors who would be required to act in consumers' best interest.

Design Implications

. Because most participants indicated that the CHARM booklet was too long and many said that as a result they were unlikely to read it, the Board will propose in July 2009 that lenders no longer be required to provide this document to potential borrowers. However, the Board intends to continue to make this publication available for the purposes of consumer education, and plans to review it in the future to determine ***how*** it could be made more useful for consumers.

. Despite the fact that they felt it was too long, participants found a number of aspects of the CHARM booklet to be valuable and informative, such as explanations of negative amortization, payment shock and other potentially risky aspects of ARMs, and prepayment penalties. ICF Macro and Board staff incorporated this information into two new one-page mandatory disclosures that were developed through this project and will be included in the Board's proposed rules, titled "Key Questions to ***Ask*** About ***Your*** Mortgage" and "Fixed vs. Adjustable Rate Mortgages." For more information about the development of these new disclosures, see Chapter VI.

CHAPTER IV: GUIDING PRINCIPLES FOR DISCLOSURE DESIGN

Much of ICF Macro's design of revised disclosures was based directly on findings from cognitive testing. This reliance on direct consumer research is an important strategy for ensuring that disclosure forms are useful and understandable to their intended audiences. At the same time, there are a number of general principles to which ICF Macro's designers try to adhere whenever engaged in this or similar projects. These principals include:

. **Use plain language**. Jargon and technical language should be ***avoided*** whenever possible, and replaced with words that are more easily understood by consumers. The use of simple language is particularly important in the context of disclosures, because consumers that are at the greatest risk of being taken advantage of are often those with lower literacy levels. While readability metrics (such as the "grade level" of the writing) can be useful in this respect, the best way to determine whether language is truly understandable is through direct consumer testing.

. **Prioritize information, and structure disclosures so that the most important information for consumers is easiest for them to find**. Consumers frequently do not read disclosures carefully; those who look at them often only skim them quickly to look for a few key pieces of information. If consumers cannot quickly find the information they are looking for, they are likely to become frustrated and give up. Therefore, before, any design work can begin

[21] This participant may not have understood that the CHARM booklet should be given to consumers when they first inquire about an adjustable rate loan, before they even apply.

there must be some discussion to identify the most important pieces of information on the form. Those should be located most prominently on the disclosure, to increase the likelihood that even consumers who skim the form quickly can find and understand that information.

. **Provide information in a format that makes it easy to compare terms between disclosures**. One purpose of mortgage disclosures is to serve as a tool to help consumers compare products from different lenders. Narrative text is often difficult to compare in this way, because consumers cannot always identify the equivalent information between forms. Providing information in more structured formats, such as tables with consistent labels and headings, facilitates this kind of shopping comparison.

. **Keep language and design elements consistent between forms so that information can be tracked over time**. In a disclosure regime like that currently in place for mortgages, consumers get information about the product for which they are applying at multiple points in time. One goal of these disclosures is to help consumers track the terms of their loan at each stage in the process to make sure nothing changes without their knowledge. To facilitate this, the structure and formatting of disclosure elements, as well as the language that is used to describe various aspects of the product, should be made consistent between disclosures whenever possible. For example, several aspects of the revised TILA statements were integrated into the initial program disclosures as well, to make it easy for consumers to confirm that the loan they were considering accepting matched what they had originally discussed with their lender.

. **Use headings and titles to make documents more navigable, and to help consumers find the information they are looking for**. When large amounts of text are included, plain language headings should be used to distinguish sections on different topics. In tables, rows and columns should have short, easy-to-read titles that accurately describe the information that is provided. This allows consumers to find information that they are looking for quickly and efficiently, and decreases the likelihood that they will become distracted by unrelated text.

. **Group related concepts and figures**. Mortgage disclosures, particularly TILA statements, contain a great deal of disparate information about a loan. Consumers are likely to find it easier to absorb and make sense of the information if it is grouped in a logical way so they do not have to constantly shift their mindset as they read. For example, the revised TILA statement groups all information about potentially risky features of the loan into a single section of the form.

. **When possible, provide information in multiple formats to accommodate different learning styles**. Current disclosures provide information in a mostly narrative format, accompanied by tables of figures. While this structure may be very appropriate for some consumers, others might benefit from an alternative presentation using graphics or other heuristics. While this strategy must be balanced with the desire to make efficient use of space, it can often have significant benefits for consumer comprehension. This approach was implemented in the APR section of the revised TILA statement, which uses a graphic scale to provide context for the loan's APR.

. **Build off of prior research whenever possible**. While each type of disclosure is different, findings from cognitive testing can often translate between different documents. The applicability of a disclosure format in a new context should always be confirmed through cognitive testing, but it often provides a useful starting point. For example, some of the revisions to the way the APR is described on the TILA statement were inspired by findings from ICF

Macro's earlier testing of credit card disclosures for the Board. ICF Macro's design work was also informed by findings from its testing of disclosures related to broker compensation. [22]

CHAPTER V: DEVELOPMENT AND TESTING OF REVISED TILA STATEMENTS

INTRODUCTION

After completing the background testing phase of the project, ICF Macro project staff met with Board staff to discuss key findings from consumer testing. Following this meeting, ICF Macro's design team developed several revised disclosures which were intended to address the weaknesses of the current forms. These forms were then tested through six rounds of cognitive interviews from November 2008 through May 2009. The specific forms that were tested changed in each round, but in each case the findings from one round informed revisions that were made to the forms for the next round. A more detailed description of each round of testing, as well as the topics that were covered, can be found in Appendix A.

The remainder of this report is focused on describing these iterative rounds of testing and form design. This chapter (Chapter V) focuses exclusively on the development and testing of revised TILA statements, which was the primary focus of these interviews. Chapter VI describes work that ICF Macro conducted on other types of mortgage disclosures provided at application or after closing.

For each round of testing that is presented in this chapter, the report begins by describing the objectives and methodology used in that set of interviews, including the different forms tested and the structure of the interview protocol. This is followed by an overview of key interview findings and a description of significant design decisions made following that round.

ROUND 8: ATLANTA, GEORGIA (NOVEMBER 2008)

Objectives and Methodology

In November 2008, ICF Macro conducted nine cognitive interviews in Atlanta, GA. These interviews focused primarily on testing two proposed formats for a revised TILA statement and gathering data on ***how*** consumers might shop between loans using these forms. The interview protocol included the following sections:

. Participants in the interviews were first ***asked*** to review a TILA statement in one of two formats (version A or B) that described a 3/1 ARM product. They were then ***asked*** a series of questions designed to test their comprehension of the content on the form.

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[22] Research on disclosures related to broker compensation was conducted during Rounds 2, 3, 5, and 6 of the background research phase of this project. ICF Macro submitted findings on this topic to the Board under separate cover; this report is available at http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf. ICF Macro's final reports related to its design and testing of credit card reports are available at http://www.federalreserve.gov/newsevents/press/bcreg/20081218a.htm.

. Next, participants were given a second form in the same format describing a different 3/1 ARM. They were ***asked*** to compare the two loans and decide which loan they would choose. The purpose of this exercise was to gather information on which terms participants considered when comparing two loans.

. After this shopping simulation, participants were ***shown*** the alternative version of the TILA statement and ***asked*** to compare several aspects of the two forms in terms of their clarity and usefulness.

. Finally, participants were ***shown*** a table and graph that explained in more detail what could happen to their monthly payments, and were then ***asked*** questions to test their comprehension of the information. This table and graph ***showed*** what would happen to monthly payments under two scenarios: if market rates stayed the same (Scenario A) and if rates increased to the maximum allowed each year (Scenario B).

This first round of developmental testing focused on key terms that would likely be most prominent on a revised TILA. Additional content was added to the TILA in subsequent rounds. Six forms were used during the interviews; all are provided in Appendix D:

. TILA statements A1 and A2 (both have the same format, but different loan terms);

. TILA statements B1 and B2 (same loan terms as their respective A forms, but with an alternative format); and

. A payment scenario graph and table ***showing*** ***how*** payments could change over the life of the loan.

Key Interview Findings

Initial Reactions to the Form

. Each interview participant was ***asked*** to "think aloud" when reading through the TILA statement. In general, participants immediately noticed the interest rate, maximum interest rate, and the prepayment penalty. Most also noticed the finance charges, although they did not express as much interest in this information. Two participants commented they liked to know in advance what their payments would be.

Loan Obligation

. Most participants did not notice the text in the "***Your*** Rights as a Borrower" section that indicated they were not obligated to accept the loan ***shown***. However, even those who did not notice this text still understood they were under no obligation to accept the loan.

General Loan Information

. All participants correctly identified the term of the loan (30 years) and understood that it was an adjustable rate mortgage.

. Participants were confused about the difference between the "loan amount" and the "amount financed." When ***asked*** to identify the amount of money they were borrowing, five participants indicated it was $ 200,000 (the "loan amount") while four stated it was $ 195,250 (the "amount financed"). Two participants indicated the difference between the two was due to the amount of "prepaid finance charges" listed on the form, but it was unclear whether either understood what this meant.

Settlement Charges

. Participants were ***asked*** about their understanding of settlement charges as illustrated on the sample form. Four participants indicated they did not know what "total estimated settlement charges" were. Others indicated that settlement charges included a variety of costs associated with the loan, such as the appraisal fee, legal fees, prepaid items, loan fees, taxes, documents, escrow, loan origination fee, processing fee, and title charges.

. Three participants were ***asked*** to describe the difference between settlement charges and "closing costs"; all said that the two terms were interchangeable.

. Participants all understood that "cash to closing" was related to the amount of money they would be expected to bring to the closing. However, two participants thought they would also have to pay the settlement costs ***shown*** at closing--that is, they believed the two figures were distinct and did not overlap.

. Interview participants were ***asked*** why the "cash to closing" amount might be less than the total estimated settlement charges (as it was in the model form used in this round of testing). Three participants indicated that some settlement charges could have been rolled into the cost of the loan, while one said that the seller might be paying some of the settlement charges. The remaining participants did not understand why the "cash to closing" figure might be lower.

. Version B displayed the settlement charges and cash to closing at the top of the form, while version A ***showed*** these terms in a separate section at the bottom. All but one participant indicated that they preferred to have this information near the top of the page.

APR and Finance Charge

. When ***asked*** to explain what "finance charges" are, participants were generally unsure. Most thought the finance charges were equal to the amount of interest that the borrower would pay over time; only a few understood the finance charges ***shown*** on the form included fees as well as interest. At least one participant was unsure whether principal was also included in the figure for finance charges ***shown***.

. When ***asked*** to explain what the "APR" was, most participants indicated they did not know. Several indicated that the APR was the same as their interest rate. Others knew the APR was different from the interest rate but were unable to articulate ***how***. A few participants commented that they primarily thought of this term as relating to credit cards.

. Most participants did not read the definitions of finance charge and APR during their first review of the form. After being directed to read these definitions, some participants realized that the finance charge included fees. Even after reading the definition of the APR, however, participants were unable to explain in their own words what it was.

. Because the APR and finance charge are more useful shopping tools when they are calculated over the specific length of time the borrower expects to hold the loan, the forms used in this round ***showed*** these terms over three different time horizons: 3 years, 5 years, and 30 years. Most of the participants, however, expressed confusion as to why the APR would vary over time. A few said the APR would increase over time because the interest rate would increase at the end of the introductory period, but most had no explanation. Participants' confusion in this respect was generally due to the fact that they did not understand what the APR signified.

. When ***asked*** ***how*** they would use the finance charges or APR in their decision-making, most participants indicated that they would not. Almost all participants indicated they would be much more likely to compare loans based on the interest rate than on the APR. One commented that he thought the APR would be useful if they expected to be in a home for 15 to 30 years, but not in the shorter term. Two specifically stated that the APR was too confusing for it to be useful to them.

Rate and Payment Information

. All interview participants were able to correctly identify the initial interest rate (5.625%) and the period for which the rate would apply (3 years, or until 2011). However, participants were unsure what would happen after that point. A few participants said that the interest rate would definitely go up after 3 years, but this was usually based on a general assumption that interest rates for ARMs tend to increase. The remaining participants thought the rate could go up or down depending on the market. None of the participants understood that the loan described in the form offered a discounted introductory rate.

. When the interview participants were ***asked*** what would cause their interest rate to go up or down, they gave a variety of responses, including "the market"; "the economy"; the prime rate; the "Fed rate," and the Consumer Price Index. All of these responses seemed to reflect a common belief that rates would change based on external market forces over which they had no control.

. All interview participants were able to correctly identify the maximum highest payment ($ 2,165.97), the maximum interest rate (11.625%), and the year in which it could reach this amount (2013). Participants generally understood that the highest possible payment and rate were only maximums, and would not definitely be reached.

. Most participants understood the interest rates and respective payments ***shown*** on the form as initial and "maximum ever" terms. They were much less clear as to the meaning of the middle interest rate and payment, which represented the maximum at the first adjustment.

. Most participants indicated that the amount ***shown*** on the forms for "estimated taxes and insurance" included property taxes, county taxes, and local taxes. Most participants thought the term "insurance" related to homeowner's insurance, while a few thought it might also include private mortgage insurance (PMI). All participants recognized that while this was ***shown*** as a fixed amount on the form, both taxes and insurance could also vary over time--although some commented that they would not expect this amount to vary much.

. Versions A and B of the TILA statement both included a table of interest rates and monthly payments, but these tables were formatted very differently. This difference did not have a noticeable effect on participants' comprehension of the information. However, most interview participants indicated that they preferred the payment table ***shown*** in version B because a) it allowed them add the different pieces of their monthly payment from top to bottom, rather than left to right; and b) it presented changes over time from left to right, rather than from top to bottom. Two participants also noted that version B used the term "introductory rate," which they found more descriptive than "initial rate," the term used in version A.

Risk Factors/Key Questions

Versions A and B both included a section labeled Risk Factors, but the sections were formatted very differently. Version A listed two potentially risky features of the loan--the fact that the interest rate was adjustable and the fact that the loan included a prepayment penalty. Version B, on the other hand, listed six "key questions" related to potential risks, such as "Can my interest rate increase?" "Could I owe a balloon payment?" and "Will I owe a balloon payment?" Each question was answered "Yes" or "No," with additional explanation provided with "Yes" answers.

. Regardless of which version they were ***shown***, all but one interview participant understood that the loan they were ***shown*** included a prepayment penalty.

. The four interview participants who reviewed version B were ***asked*** about their understanding of the six key questions listed on the form.

> . All of the participants understood the questions related to changing interest rates, changing monthly payments, and prepayment penalties.
>
> . While most participants understood what was meant by a "balloon payment" when they read the questions and answers, one thought it pertained to paying down principal on the loan.
>
> . Most participants were confused by the questions "Will my monthly payments cover only interest and no principal?" and "Can my loan balance increase?" While these questions refer to interest-only payments and negative amortization, respectively, very few participants understood what they meant. For example, one participant thought that his/her loan balance would increase if the interest rate increased, while another thought the question referred to whether or not the borrower would be able to refinance in the future for more money.

. Participants were ***asked*** to directly compare versions A and B and indicate which format they preferred. All participants indicated that they preferred the "key questions" format of version B because they found it easier to read and more informative. Several also liked the fact that version B ***showed*** which risk factors did not apply to the loan, as well as those that did.

Mortgage Shopping Simulation

In one portion of the interview, participants were ***asked*** to review two TILA statements that ***showed*** loans with different terms and indicate which they would choose and why. Loan 1 had lower settlement costs and slightly higher interest rates and monthly payments, while Loan 2 had higher settlement costs and lower interest rates and payments.

. Participants focused almost exclusively on the interest rate, monthly payment, and settlement charges, and cash due at closing when making their decisions. Very few compared the finance charges or APRs of the two loans.

. Participants were split as to which of the loans they would choose. Three participants stated they would choose Loan 1, while four said they would choose Loan 2. The remainder did not express a clear opinion or indicated they would choose the loan based on the period they planned to retain the loan. Most indicated they would have difficulty deciding between the two loans, because the differences between them were so small.

. Some participants indicated their choice between the two loans would depend on their situation--for example, whether they could afford to pay higher settlement charges, or whether they specifically needed lower monthly payments.

. When ***asked*** whether it would make a difference if they knew that they were going to hold the loan for either 3 years or 30 years, most participants said that it would not. A few participants, however, revised their selection based on the concept that trading higher settlement charges for lower payments makes more sense in the long term, while accepting higher payments in return for lower settlement charges would make more sense in the short term.

. Participants were generally confused to find that the APR and finance charges for one of the loans were lower than the other for a 3-year term but higher for a 30-year term. Most participants did not understand why this would be the case.

Payment Change Scenario Table and Graph

After they completed their first review of the TILA, participants were ***shown*** a graph and corresponding table ***showing*** more detail about ***how*** their monthly mortgage payment would change over time under two different scenarios. The terms ***shown*** in the graph and table matched those in the first TILA statement that participants were ***shown***.

. All participants understood the distinction between the two scenarios ***shown*** in the table and graph ("market rates stay the same" vs. "maximum possible rate and payment").

. All participants understood the "Year of Loan," "Period Beginning," and "# of Payments" columns in the table, although one commented that the number of payments was redundant and unnecessary.

. Almost all participants understood from both the table and graph that even if market rates stayed the same, their payment would increase after three years. Several indicated that this surprised them, because this was not apparent from the first page of the TILA. However, the table did not improve understanding of why rates would increase if market rates stayed the same; even after seeing both the table and graph none of the participants understood that the loan in question had a discounted introductory rate.

. When looking at the graph and table, all participants understood that their rate and payment would never be higher than the maximum ***shown***. Some, however, incorrectly thought that the rate and payment could never go below than the amounts ***shown*** for Scenario A (the scenario under which market rates stayed constant). This misconception was particularly prevalent when participants were looking at the graph; several incorrectly assumed that their payment would always fall between the two lines ***shown***.

. Most participants indicated that they found the table easier to understand than the graph; one said that he [23] would not look at information presented in graphical format because he would assume it was difficult to understand.

Subsequent Design Decisions

Loan Summary Section

. Because all but one participant in this round preferred to have information about settlement charges provided near the top of the form, all forms developed for subsequent rounds of testing included these charges in the Loan Summary section at the top of the page.

. Several participants did not understand the relationship between "cash to close" and settlement charges. To address this confusion, forms developed for the next round ***showed*** the arithmetic relationship between total settlement charges, cash to close, pre-paid fees, and fees that were rolled into the loan amount.

APR and Finance Charge

. Participants in Atlanta had a great deal of difficulty interpreting the table ***showing*** APRs and finance charges for multiple time horizons; most, in fact, had no understanding of why APRs over different time periods would vary. Therefore, the decision was made to highlight only a single APR and finance charge.

. Some participants connected the term "APR" with its meaning in a credit card context, and as a result assumed that the APR was the same as their interest rate. To address this potential confusion, forms used in the next round used two different labels for the Annual Percentage Rate: "This Loan's Price Tag" and "Total Cost."

. Most participants in Atlanta found the lengthy description of the APR that was provided to be confusing. The forms tested in the next round used a simpler, shorter phrase to describe this term ("the interest rate when some closing costs are factored in"). Variations of this shorter description were used in forms for all subsequent rounds.

Despite the explanation provided on the forms, some participants in Atlanta did not understand that the APR represented a combination of both interest and fees. Therefore, one of the forms tested in the following round tried to display this relationship more explicitly as an "equation" (interest rate + fees = APR).

Rate and Payment Information

. Participants found the rate and payment table used in version B (which ***showed*** payment components vertically and time periods and payment changes horizontally) significantly easier to understand. Therefore, all forms for subsequent rounds included a table with this format.

. Because several participants indicated they preferred the label "introductory rate" to "initial rate," all subsequent forms used this phrasing.

. Several participants in this round had difficulty understanding ***how*** their rate could change over time, therefore, explanatory text was added under the heading "Rate Change." This text disclosed the length of the introductory period, the index and margin that would be used to determine the rate after the introductory period ended, and the

[23] To protect participants' confidentiality, this report will refer to individual participants as "he" regardless of the actual gender of the participant.

periodic and lifetime rate change caps. The new text also stated that the loan had a discounted introductory rate, since none of the participants in this round realized that this was the case. This "Rate Change" information was added below the Payment Summary table.

. Because several participants indicated they would not use the payment change scenario graph, and because it would take up a great deal of space on the form, this graph was not included in any subsequent forms.

. While several participants had difficulty understanding the payment change scenario table that was tested this round, there was some evidence that others did benefit from more specific information about ***how*** their rates and payments would change over time. Therefore, this table was included in one of the versions tested in the following round (version D).

Risk Factors/Key Questions

. Participants in this round responded positively to the question and answer format used in the Risk Factors section of version B. Therefore, this format was used in all subsequent forms.

. Participants also liked the fact that version B indicated which risk factors were not associated with the loan being described, as well as those that were. Therefore, the forms developed for the next round included all Key Questions, even those to which the answer was "No." This issue was revisited in the Dallas round of testing (Round 10).

. Most participants who were ***shown*** version B had difficulty understanding the Key Questions related to interest-only payments and negative amortization. As a result, the wording of these questions was revised for the forms tested in the following round.

ROUND 9: BETHESDA, MARYLAND (JANUARY 2009)

Objectives and Methodology

In January 2009, ICF Macro conducted nine cognitive interviews in Bethesda, MD. As with the previous round of interviews, the Bethesda round focused primarily on testing two proposed formats for a revised TILA statement and gathering data on ***how*** consumers might shop between loans using these forms. The interview protocol included the following sections:

. Participants in the interviews were first ***asked*** to review a TILA statement in one of these two formats (versions C or D) that described a 3/1 or 5/1 ARM product. They were then ***asked*** a series of questions designed to test their comprehension of the content on the form.

. Next, participants were given a set of two TILA forms in the same format that described two fixed-rate loans. They were ***asked*** to compare the two loans and decide which they would choose. As in the previous round, the purpose of this exercise was to gather information about which terms participants consider when selecting between loans. The decision was made in this round to use fixed-rate loans rather than ARMs to simplify the comparison for participants.

. After this shopping simulation, participants were ***shown*** the alternative TILA statement and ***asked*** to compare several aspects of the two forms in terms of clarity and usefulness.

. After reviewing the TILA statements, participants were ***asked*** to review some text for additional required disclosures about possible lender actions, loan assumption, property insurance, demand features, and refund of finance charges. The goal of this section of the interview was to assess the extent to which participants understood this language.

Version D included some information that was not on version C, including a table providing more detail about future changes in rates and payments (the payment change scenario table tested in the previous round) and a table

showing APRs and finance charges for three different time horizons. As a result, version D was printed on two letter-sized pages. Version C was printed on one legal-sized page, as were the forms used in the previous round.

All TILA statements for this round (Round 9) included a section labeled "Optional Features," which contained information on credit life insurance, reduced documentation loans, and owner's title insurance.

Seven forms were used in these sections of the interview; all are provided in Appendix D:

. TILA statements C1, C2, and C3 (all forms had the same format, but C1 was a 3/1 ARM while C2 and C3 were fixed-rate loans);

. TILA statements D1, D2, and D3 (same terms as C1, C1, and C3, but with an alternative format); and

. A separate page of additional required disclosures. [24]**Key Interview Findings**

Initial Reactions to the Form

. When ***asked*** what information was most important to them on the TILA statement, participants most frequently mentioned the interest rate (3 participants), monthly payment (2), Key Questions About ***Your*** Loan (2), the loan type (2), and the loan amount (2). Other items mentioned as most important included the timing of the interest rate adjustments, the fact that taxes and insurance were included in the monthly payments, and the boldface language at the bottom of the form indicating not to sign the form if you do not understand the terms.

. When ***asked*** whether there was any information that was not on the form that they would want to know, some participants commented that they would want a more detailed breakdown of their settlement charges.

Loan Obligation

. Most participants did not notice the text at the top of the form that indicated they were not obligated to accept the loan ***shown***. However, most interview participants who did not notice this text still understood they were under no obligation to accept the loan.

Loan Summary Section

. Eight of nine participants correctly identified the term of the loan (30 years). All participants understood that the loan being described was an adjustable rate mortgage.

. When ***asked*** to identify the amount of money they were borrowing, five of nine participants correctly identified the loan amount ***shown*** on the form. Two participants incorrectly subtracted from the loan amount the down payment ***shown*** on the form, while one thought he was borrowing the "amount financed." The remaining participant thought he was borrowing the amount financed plus the finance charge.

. When ***asked*** if they could identify the price of the home they were purchasing, most participants added the loan amount and down payment together to obtain the price of the home. None answered this question correctly, which would have required subtracting the closing costs that were included in the loan amount.

. Generally, interview participants did not understand the concept of the "amount financed." The two participants who came closest to correctly explaining this term said that it was the loan amount less the closing costs--although

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[24] For the second day of testing, these disclosures were integrated into the TILA statements rather than being ***shown*** on a separate page.

both noticed that based on the numbers ***shown*** on the form, this was not true. Others gave a variety of incorrect explanations for the amount financed, including that it was "***how*** much escrow they would have," the amount they would have to pay back, or the amount that they borrowed.

. Both versions of the TILA tested in this round broke closing costs into three categories: "paid before closing," "included in loan amount," and "due at closing." In general, most participants did not understand the significance of these categories. For example, only four of the nine participants understood that the "due at closing" figure was what they would have to pay at settlement, and only three understood that they were effectively borrowing the costs "included in loan amount."

. At least four participants confused the phrase "closing costs" with the amount that they would have to pay at closing when in fact some would be paid before closing. This misunderstanding persisted despite the fact that the costs "due at closing" were listed on the form.

. When ***asked*** whether they preferred the use of the term "settlement charges" or "closing costs," most participants thought the two phrases had identical meanings. One thought settlement charges were a subset of closing costs, while another suggested "loan fees" as an alternative term.

APR and Finance Charge

. Only one of the nine participants understood that the APR included both interest and fees. About half thought that the terms APR and interest rate were identical in meaning, while others knew the APR was different but could not articulate ***how***.

. When participants were ***asked*** ***how*** they would use the APR, all but two indicated they would not use the term. Of the two that indicated they would use it for shopping and comparing loans, one misinterpreted the APR as the "average interest rate" over time.

. Comprehension of the finance charge was higher than that of the APR; all but one participant was able to correctly describe what the finance charges signified. However, only one of the nine participants indicated that he would find this information useful.

. Versions C and D displayed the APR and finance charge in two very different formats. On version C, the APR and finance charge were provided in a box labeled "This Loan's Price Tag." Version D included a horizontal box across the page labeled "Total Cost" that presented the initial interest rate, settlement charges, APR and finance charge in the form of an equation. [25] Participants were split when ***asked*** which format they preferred; four preferred this aspect of version D while three preferred version C. However, regardless of which form participants were ***shown*** comprehension of the APR was minimal.. As in the previous round, participants were generally confused by the table on the second page of version D that ***showed*** the APR and finance charge over 3, 5, and 30 years. Few could explain why the APR would vary based on the time horizon used. Almost all participants ignored this table, except when specifically ***asked*** questions about it.

Rate and Payment Information

Understanding of Adjustable Rate

[25] The equation was stated as follows: interest rate + estimated closing costs = APR & finance charge.

. All but one participant were able to correctly identify both the initial interest rate and when the first rate adjustment could take place. Six of the nine were able to indicate ***how*** often the interest rate would change.

. All participants understood that the loan described by the versions C 1 and D1 had an adjustable rate. However, only two understood that their initial rate was discounted, so a rate increase after the introductory period was very likely.

. Most participants believed that it was much more likely that their rate would increase than that it would decrease. However, this was based on a general distrust of adjustable rate products, rather than anything they saw on the form.

. When participants were ***asked*** why their interest rate would fluctuate, most correctly stated it was the "market" or "market rate." As in previous rounds of testing, participants had a variety of explanations for what this "market rate" was based on, including the housing market, the "average going rate" for mortgages, and "the economy." One participant correctly stated that the "market rate" was based on the rate the banks paid to borrow their money.

. All interview participants were able to correctly identify the maximum interest rate, and eight of nine were able to identify the year in which it could first reach this amount. However, most participants did not recognize the relationship between the year the maximum could be hit and the periodic caps described on the form.

Payment Summary Table

. The Payment Summary tables used in versions C and D both ***showed*** the introductory and "maximum ever" rate and payment for the loan. Version C also included a third column that ***showed*** the maximum rate and payment at first adjustment. Two participants were confused by the difference between the "maximum at first adjustment" and "maximum ever" columns in the table. However, several other participants commented that the information about what could happen at the first adjustment was very important to them.

. Most participants indicated that when evaluating a loan, the maximum payment would be more important to them than the initial payment because they would want to make sure they could afford the highest possible payment. Two, however, said that the initial payment was more important because they would expect to refinance out of the loan before it hit the maximum.

. When specifically ***asked*** to read the information under the heading "Rate Change," participants generally understood the text about rate caps. Most also seemed to understand the concept of an index and margin, although none understood the term "LIBOR." n26*Taxes and Insurance (Escrow)*

. All participants understood that they would be required to pay taxes and insurance as part of their monthly payment. All but two recognized that the cost of taxes and insurance could change over time and that the amount on the form was only an estimate.

. When ***asked*** what was included in the amount ***shown*** for taxes and insurance, most indicated that it included property taxes and homeowner's insurance. Two participants thought it might include costs ***shown*** elsewhere in the form, such as title insurance or credit life insurance. Another thought it included private mortgage insurance (PMI).

. The term "escrow" was ***shown*** on the form next to the itemization of taxes and insurance. All but two participants understood what this term meant. In almost all cases, however, this understanding was based on prior knowledge rather than the description provided on the form.

Payment Change Scenario Table (Version D1)

. The payment change scenario table on version Dl did not significantly improve participants' understanding of what would happen to their rate and payment. Even after reviewing this table most participants did not understand that their introductory rate was discounted and would likely increase at the end of the introductory period.

. When reviewing the payment change scenario table, most participants understood that over time their rate and payment could be between the figures ***shown*** for Scenarios A and B, and also that they could not be above the amount ***shown*** for Scenario B. As in the previous round, however, some incorrectly thought that the rate and payment could not go below the amount ***shown*** for Scenario A (the scenario under which market rates stayed constant).

. When ***asked*** to assess the importance of the payment change scenario table, most participants indicated that it was not important because it largely repeated information provided elsewhere on the form. A few, however, commented that this table provided useful detail and ***showed*** more clearly that the interest rate could increase even if the market rates stayed the same.

Key Questions Section

. All participants understood they would be charged a pre-payment penalty if they paid off the loan, refinanced, or sold the property within 3 years. All also understood the questions related to rate and payment change and late payment fees.

. Participants' understanding of the term "balloon payment" was inconsistent. Five were able to accurately define a balloon payment, while four gave a variety of incorrect definitions of the term, such as a higher payment due to a rate increase or a final loan payment that is lower than previous payments. One person confused a balloon payment with a jumbo loan.

. All participants understood the meaning of the question related to interest-only mortgages. However, several who were unfamiliar with this type of loan were confused as to why payments would ever be interest-only.

. Only two of the nine participants understood the question "Can my balance increase even after I've made payments?" Others had a variety of misinterpretations; some, for example, thought that the question referred to whether the lender could add a late fee to the loan principal or whether the borrower could borrow more money in the future, such as with a line of credit. Others thought this question was redundant with the question related to interest-only payments.

. When ***asked*** about the relative importance of the questions ***shown***, several participants commented that the information about late payment fees would be less valuable to them because they would already expect to be charged a fee for making a late payment.

Credit Life Insurance and Other Optional Features

. About half of participants did not understand that this section ***showed*** features that were already included in their hypothetical loan. Instead, they thought these features were being offered to them at this point.

. When specifically ***asked*** what they could do to lower the cost of the loan, most participants did not understand that the credit insurance product was optional and could be declined in order to lower the cost of the loan.

. None of the participants understood what was meant by a "No Doc or Low Doc" loan. About half understood the meaning of "credit life insurance" and "owner's title insurance," although several thought that title insurance was a required, not optional, feature.

Mortgage Shopping Simulation

In one portion of the interview, participants were ***asked*** to review two TILA statements that ***showed*** loans with different terms and indicate which they would choose and why. Loan 3 had a higher interest rate (6.5% vs. 6.25%), and a slightly higher monthly payment. Loan 2, however, included a large amount of closing costs that were included in the loan amount. As a result, Loan 2 had a higher APR than Loan 3. Both were fixed-rate loans and did not require the borrower to pay anything at closing.

. Seven of the nine participants selected Loan 3, while two selected Loan 2.

. The two participants selecting Loan 2 stated they chose this loan because of the lower monthly payment and lower interest rate. Neither noticed the $ 15,470 in closing costs that were rolled into the loan amount.

. Most of the participants who selected Loan 3 based their decision at least in part on the fact the APR for that loan was lower. However, as they discussed their decision it was clear that most of these participants did not understand what the APR represented. For example, two pointed to the APR and indicated that the "interest rate" was lower for Loan 3, when in fact this was not the case.

. When it was pointed out to participants that Loan 2 had a higher APR but a lower interest rate, almost none of the participants were able to explain ***how*** this could be.

. When ***asked*** if the length of time they planned to hold the loan would make a difference in their selection of the loan, almost all indicated that it would not. Only one participant who was comparing version D forms looked at the table on the second page that ***showed*** APRs and finance charges for different time horizons.

Other Required Disclosure Text

In addition to testing revised TILA statements, another goal of this round was to assess participants' understanding of text related to other required disclosures. On the first day of interviews, participants were ***shown*** these statements on a separate sheet of ***paper***. On the second day, the statements were integrated into the TILA statements used in the shopping simulation.

. Seven of the nine participants understood language indicating that the lender could demand the borrower pay off the loan at any time All of those who understood the statement indicated it was an important piece of information.

. Seven of the nine participants understood a statement that early payoff of the loan could result in a refund of interest or fees. Participants who understood this text indicated that it was important information to them, although most indicated it would likely not have an impact on whether or not they accepted the loan.

. Seven of the nine participants understood a sentence indicating that the borrower "can obtain insurance from anyone that is also acceptable to the lender." One of the two who misunderstood this sentence thought it meant that he was being charged PMI. Among those who understood the meaning of this text, most indicated it was not important because they already knew this information.

. Only four of nine participants understood language indicating that the loan could be assumed. One thought the text referred to the lender "selling" the mortgage to another lender, while another thought assumption could only take place if the original borrower defaulted. Two thought that the fact that a buyer could assume the loan would be a negative feature for the original borrower.

Subsequent Design Decisions

Loan Summary Section

. Some participants were confused by the fact that the down payment was ***shown*** on the TILA statement, and incorrectly thought that the amount they would be borrowing would be the "loan amount" ***shown*** on the page less their down payment. Therefore, the down payment was removed to simplify the form and improve comprehension.

. The description of "Loan Type" on the forms used in Bethesda included information about rate changes, including the length of the introductory period and the frequency with which the rate would adjust. This information was redundant with other sections of the form; therefore, the TILA statements used in the next round of testing did not include these details. Instead, they simply described the sample loan as a "3/1 Adjustable Rate Mortgage (ARM)."

. The mathematical relationship that was ***shown*** between total settlement charges, cash to close, pre-paid fees, and fees rolled into the loan amount did not improve consumer understanding of ***how*** these terms were related. Therefore, this section of the statement was eliminated from forms tested in the next round (Dallas). Instead, the Loan Amount section of these forms displayed the portion of the loan amount that was applied to settlement charges.

. Participants in the first two rounds (Rounds 8 and 9) generally did not understand the meaning of the amount financed. In addition, several participants in the first two rounds mistakenly thought the amount financed was the amount of money they would be borrowing. Therefore, for the next round the amount financed was removed from the Loan Summary section and the prepaid finance charge (the figure that is subtracted from the loan amount to determine the amount financed on the form) was placed in a footnote on the bottom of the page.

. Some participants expressed a desire to see a more detailed breakdown of their settlement charges. Therefore, all TILA statements used in subsequent rounds included a reference to "See ***your*** Good Faith Estimate for details."

APR and Finance Charge

. As in the previous round, participants were generally confused by a table that ***showed*** APRs and finance charges for three different time periods. In addition, only one of nine participants referred to this table when choosing between two loans. As a result, this table was not included in any forms for subsequent rounds.

. Neither label used for information about the APR and finance charge ("This Loan's Price Tag" or "Total Cost") led to improved comprehension of these terms by participants. As a result, the forms used in the next round of testing (Dallas) used different labels for the APR: "True Cost Factor" and "Overall Rate of Fees and Interest."

. Explicitly displaying the relationship between interest rates, settlement charges, APR and finance charge, as was done on version D, did not have a discernable impact on consumer understanding of the APR. Because of this, as well as concerns that this format gave too much prominence to the initial interest rate, this "equation format" was not used in subsequent TILA versions.

. Participants in this and previous rounds generally disregarded the finance charge when reading their TILA statements, other than commenting that the number was very large. Several commented that this information was not useful, since they had no choice but to pay a large finance charge if they wanted to purchase a home. Therefore, on subsequent versions of the form the finance charge was deemphasized and moved from the top of the first page to the "More Information About ***Your*** Payments" section under the heading "Total Payments."

Rate and Payment Information

. When ***asked*** to compare the Payment Summary tables on versions C and D, several participants commented that the columns providing information about the maximum rate and payment at first adjustment was important to them. Therefore, all versions for subsequent rounds included this column in the Payment Summary table.

. The presence of the more detailed Payment Change Scenario table on the second page of version D did not noticeably improve most participants' understanding of what would happen to their rate and payment over time Most participants indicated that this table was not important to them, because it was largely redundant with other parts of the form. For this reason, this table was not included in any subsequent forms.

Key Questions Section

. As in previous rounds, participants continued to respond positively to the question and answer format used in the Key Questions section of the TILA statement. As a result, this format was retained in the forms for all subsequent rounds of testing.

. Some participants did not realize that the Key Questions ***shown*** on the form were describing potentially risky loan features. Therefore, on forms for all subsequent rounds the title of this section was changed from "Key Questions About ***Your*** Loan" to "Key Questions About Risks."

. For Round 9, an additional question about late payment fees had been added to the forms being tested. However, several participants indicated that this information was less important to them. Based on these results, all subsequent forms did not include this question.

. As in Atlanta, some participants in this round had difficulty understanding the difference between the questions related to interest-only payments and negative amortization. As a result, the wording of these questions was revised again for the following round.

Credit Life Insurance and Other Optional Features

. Because participants generally did not understand the Optional Features section of the forms used in this round, this section of the TILA was significantly restructured for the next round of testing. References to reduced documentation and owner's title insurance were dropped, and the credit life insurance disclosure was revised to clarify that the product is optional and could be declined.

Other Required Disclosure Text

. Participants indicated that information about loan demand features was particularly important to them, so the decision was made to include this information on the TILA statement in the Key Questions section.

ROUND 10: DALLAS, TEXAS (FEBRUARY 2009)

Objectives and Methodology

In February 2009, ICF Macro conducted 10 cognitive interviews in Dallas, TX. As in previous rounds, this round of interviews focused primarily on testing two proposed formats for a revised TILA statement and gathering data on ***how*** consumers might shop between loans using these forms.

As part of the interview, participants were ***shown*** several alternatives for ***how*** the APR could displayed. All of these alternatives provided context for ***how*** the loan's APR compared to that of other similar loans. All disclosed the boundary between prime and higher-priced loans; that boundary is 1.5 percentage points over the "average prime offer rate" (APOR) calculated by the Board for first lien loans and published each week. [27] Some of the APR presentations also disclosed the APOR itself, which was described as the average rate "on comparable loans recently offered to borrowers with excellent credit."The interview protocol included the following sections:

. Participants in the interviews were first ***asked*** to review a TILA statement in one of two formats (versions E or F) that described a 3/1 ARM product. They were then ***asked*** a series of questions designed to test their comprehension of the content on the form.

. Next, participants were given a second form describing a different 3/1 ARM in the same format, but with different terms. They were ***asked*** to compare the two loans and decide which they would choose. As in previous rounds, the purpose of this section of the interview was to gather information about which terms participants consider when selecting between two loans.

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[27] The boundary is 3.5 percentage points for subordinate lien loans.

. After this shopping simulation, participants were ***shown*** the alternative TILA statement and ***asked*** to compare several aspects of the two forms in terms of their clarity and usefulness.

. After completing their review of the TILA statements, participants were then ***shown*** the alternative APR presentations and ***asked*** a series of questions designed to measure their comprehension of the information.

. As in the previous round, after reviewing the TILA statements participants were ***asked*** to review some additional text for required disclosures about possible lender actions, loan assumption, property insurance, refund of finance charges, and late payment fees.

The TILA statements tested in this round included two new items in the Key Questions section. These questions related to loan demand features ("Can my lender demand full repayment at anytime?") and equity sharing features ("Do I have to share any equity I gain?").

Six forms were used in these sections of the interview; all are provided in Appendix D:

. TILA statements E1 and E2 (both have the same format, but different terms);

. TILA statements F1 and F2 (same terms as El and E2, but with an alternative format);

. A variety of alternate approaches to displaying the APR; and

. Additional text for required disclosures.

All TILA statements used in this round of testing were printed on one legal-sized page.

Key Interview Fin

Initial Reactions to the Form

. After participants first reviewed the TILA statement, they were ***asked*** what pieces of information on the form were most important. Participants most often mentioned the monthly payment (5 participants), loan type (4), interest rate (4), key questions (3), loan amount (3), and term of loan (3).

Loan Obligation

. Most participants did not notice the text that indicated they were not obligated to accept the loan ***shown***. However, all but one participant still understood they were under no obligation.

Loan Summary Section

. All participants correctly identified the term of the loan (30 years) and the amount borrowed.

. When ***asked*** ***how*** much of the $ 200,000 loan they could apply to the price of the home they were purchasing, only three participants understood that $ 198,000 would go toward the home purchase and the remaining $ 2,000 would be used to pay for closing costs.

. When ***asked*** if the Total Settlement Charges listed on the form included their down payment, half of the participants incorrectly stated that it did, while three more indicated they did not know.

APR

. Two different labels were used for the APR in this round of testing; on version E the term was labeled "True Cost Factor," while version F used the phrase "Overall Rate of Fees + Interest." When ***asked*** to explain in their own words the definition of this term, only two participants provided an, explanation related to its actual meaning. All other participants were confused by the term; for example, several thought the APR represented an "average" or "overall" interest rate. None of the participants were able to successfully explain ***how*** the "True Cost Factor" or "Overall Rate of Fees plus Interest" differed from the interest rate.

. Version E displayed the APR (called the "True Cost Factor") without a percentage sign. This variation was an attempt to decrease the extent to which participants confused this term with their interest rate. However, this had no noticeable impact on participant understanding; in fact, even participants who saw version E discussed the True Cost Factor as if it was a percentage and confused it with their interest rate.

. When ***asked*** to indicate whether they preferred the treatment of the APR on version E or F, about half of participants selected each form. As in the previous round, however, participant comprehension of the APR was extremely low regardless of which version participants were ***shown***.

Rate and Payment Information

Understanding of Adjustable Rate

. All interview participants were able to correctly identify the initial interest rate. All participants also understood that the loan had an adjustable rate and that the rate and payment would be fixed for the first three years. Participants also were able to correctly identify the size of their payment during that time.

. Most participants understood that the rate could change annually after the third year, but two did not know ***how*** often the rate could change.

. Almost all participants were able to correctly identify the maximum interest rate of the loan. One participant was confused by the text below the table that indicated the rate could increase by 2% each year, and mistakenly thought this meant there was no maximum rate.

Payment Summary Table

. Several participants mistakenly thought the different columns in the payment table represented what would happen to their rate and payment, rather than what could happen. For example, at least two thought that in 2012 and 2014 their rate and payment would increase to the amount ***shown*** in those columns of the table, and did not understand that their rates and payments might actually be lower than those ***shown***.

. When ***asked*** whether the initial or maximum payment would be more important to them when considering an adjustable-rate loan, eight of the ten participants indicated that the maximum payment would be more important.

. Underneath the Payment Summary table, both versions of the TILA statement used in this round included some explanatory text. Version E included an additional sentence that did not appear on version F: "If the market rate does not change, at the end of this period ***your*** interest rate will increase by 2.00%, adding approximately $ 250.00 to ***your*** monthly payment." The inclusion of this statement did not have any noticeable effect on participant understanding.

. Almost all participants understood that the interest rate would change based on the "market rate" (the term used in the statement). When ***asked*** to explain what is meant by the "market rate," participants gave a variety of answers, including the stock market, the price of homes in a community, and "***how*** the economy is doing." One participant understood the term "LIBOR."

. Most participants had difficulty connecting the rates ***shown*** in the payment table with the information about periodic and lifetime caps below the table. In fact, for a few participants the presence of this explanatory text seemed to decrease comprehension of the table; these participants initially understood what was ***shown*** in the table, but then became confused when reading the text.

. Almost all participants understood the information provided under the heading "Total Payments," including the number of payments, total of payments, and finance charge. When ***asked*** ***how*** they would use this information, most participants indicated that they would not.

. No participants commented on the footnote providing the prepaid finance charge during their first reading of the form. When the interviewer pointed out this footnote and ***asked*** participants to explain what the "prepaid finance charges" signified, none were able to do so.

Taxes and Insurance (Escrow)

. All but one participant indicated they had heard the term "escrow" previously. Most seemed to have a thorough understanding of the term before reading the form.

. All participants understood the amount they would pay for taxes and insurance could change over time. However, three participants did not realize that the amount ***shown*** in the table was estimated, and would not necessarily be accurate when they closed on the mortgage.

. All but two participants assumed that the "insurance" referred to in the payment table was homeowner's insurance. One thought this figure might include private mortgage insurance (PMI), while another thought it could include other types of insurance but did not specify which kinds.

Key Questions Section

. Eight of ten participants understood from the Key Questions section that the lender could demand repayment of the loan at any time. However, two of the eight mistakenly thought that the lender could only do so if they became delinquent.

. Half of the participants misunderstood the question related to equity-sharing. Several were confused by the last sentence of this section ("In exchange, we are giving you a lower interest rate") and mistakenly thought the form was indicating they would receive a lower interest rate at the point when they sold their home. Regardless of whether they fully understood the information provided, all participants stated that an equity-sharing feature would be a negative feature for the borrower.

. Version F ***showed*** eight key questions in this section, each with an answer of "Yes" or "No." Version E only ***showed*** those questions whose answers reflected risky features of the loan, and then provided a concise statement listing other features not present in the loan terms. All but two participants indicated they preferred to be ***shown*** all eight key questions, even when the answer ***showed*** that a given feature did not apply to the loan. Two participants preferred to be ***shown*** only those questions whose answers implied risk.

. Version E included "interest-only payments" in a list of features that did not apply to the loan, while version F listed the question "Will my monthly payments reduce my loan balance?" and indicated that the answer was "Yes." In both forms, the intent was to indicate that this loan did not include interest-only payments. However, participants' comprehension of this fact was slightly higher when viewing version F.

. A few participants commented they did not like the fact that the answers to the Key Questions related to rate and payment change were simply "Yes." They indicated that more explanation should be provided to help borrowers understand their loan more completely.

Credit Life insurance

. Almost all participants were somewhat familiar with credit life insurance before seeing the form; only one indicated that he had never heard of this feature before.

. Almost all interview participants understood from their reading of this section of the form that credit life insurance is not required. All understood that this insurance would have a monthly cost associated with it and that this cost was not included in the monthly payments ***shown*** elsewhere on the form.

. After reading this section of the form, several participants commented that credit life insurance sounded like an important loan feature and indicated that they would want to enroll.

Mortgage Shopping Simulation

Participants were ***asked*** to review two TILA statements that described different 3/1 ARMs. Loan 1 had a higher interest rate and monthly payment, while Loan 2 had higher settlement charges and a slightly higher APR. Participants were ***asked*** to select one of the loans and provide reasons for why they chose it.

. Eight of the ten participants selected Loan 2 (i.e., TILA version E2 or F2). These participants generally realized the loan had higher settlement charges, but felt that the lower interest rate and monthly payments outweighed the higher up-front costs.

. Two participants selected Loan 1 (version El or F1). They did so primarily because of its lower settlement charges, although one also considered the APR (see below).

. Only one person considered the APR when choosing between the two loans. This participant chose F1, because it had a lower "Overall Rate of Fees + Interest" (APR) and lower settlement charges. When other participants were ***asked*** why they had not used the APR, most indicated they did not understand what the term meant.

. When ***asked*** if the length of time they planned to hold the loan (3 vs. 30 years) would make a difference in which loan they selected, just over half indicated that it would not. Four participants, however, indicated that the first loan would be the better choice over 3 years while the second loan would be preferable over 30 years. Their reasoning was that over a longer period of time it made sense to pay a larger up-front charge in exchange for a lower interest rate, which was what the second loan offered.

Alternative APR Presentations

. As part of the interview, each individual was ***shown*** two alternative presentations of the APR that provided context for ***how*** the loan compared to others in the market. One version included a graphic that placed the APR on a scale, along with a line distinguishing "prime" and "subprime" loans. The second version did not include a graphic, but included text that listed both the cut-off between "prime" and "subprime" loans and the average APR received by people with "excellent credit."

. When looking at either the graphic or text-based versions, participants generally understood that a lower APR was better for them and that people with better credit would be offered loans with a lower APR. However, it was not clear to what extent this understanding was based on the material presented to them or on prior knowledge.

. Both versions used the word "subprime" in their descriptions. While almost all thought the word had a negative connotation and indicated they would not want a "subprime loan," several did not understanding the meaning of this term.

. In general, participants found the text-based presentation of the APR easier to understand. The primary reason for this was that the text-based presentation listed the average APR received by people with excellent credit, while the graphic presentation did not.

. A few participants suggested the graphic and text be used in combination to explain the information more fully.

Other Required Disclosure Text

. All or almost all participants understood the disclosure text related to possible lender actions, property insurance, refunds of interest and fees, and late payment fees.

. As in previous rounds, several participants had difficulty understanding the text about loan assumption. In some cases this confusion was due to the fact that the phrase "take over ***your*** mortgage" was seen as threatening or a negative feature of the loan.

Subsequent Design Decisions

Loan Summary Section

. Some participants in this round of testing were confused as to whether the amount ***shown*** for "settlement charges" included their down payment, so a statement was added to the TILA statement indicating that the down payment was not included in the settlement charges.

. Most participants did not understand after reading the forms that a portion of the loan amount would go toward settlement charges. Therefore, the forms developed for the next round more explicitly broke the loan amount into two portions: the amount applied toward fees and the amount available for the borrower's own use.

APR

. Neither of the labels used for the APR ("True Cost Factor" and "Overall Rate of Fees and Interest") led to improved comprehension of the term. As a result, forms used in subsequent testing used the original label "Annual Percentage Rate" for this term. Rather than varying the label used, the form designers focused on improving the presentation this term.

. Displaying the APR without a percentage sign had no discernable effect on consumer understanding, so the percentage sign was used in subsequent versions of the TILA statement.

. Participants in Dallas generally reacted positively to the new alternative presentations of the APR they were ***shown***. Therefore, the forms used in the following round of testing included both text-based and graphic context for ***how*** the APR compared to that of other loans.

Rate and Payment Information

. Some participants in this and previous rounds had difficulty relating the rate caps to the maximum rates ***shown*** in the payment table. Therefore, one of the versions designed for the next round (version G1) included text that explicitly connected the lifetime cap to the maximum interest rate.

Key Questions Section

. Most participants in this round preferred to have all Key Questions ***shown***, even those to which the answer was "No." However, ICF Macro and Board staff were concerned that listing all eight Key Questions might not be an efficient use of space, since affirmative answers to some of the questions (such as that related to a demand feature) would be rare. Therefore, the decision was made to require that Key Questions related to rate and payment changes, pre-payment penalties, interest-only payments and balloon payments would be required on the form, whether the answer to the question was affirmative or negative. Key Questions related to negative amortization, equity-sharing, and a demand feature would only be required if the answer was affirmative. This policy was implemented in all forms designed for subsequent rounds of testing.

. Due to continued lack of participant understanding of the Key Question related to interest-only payments, the wording of this question was revised slightly on forms for the following round.

. Because some participants commented they did not like the fact that the responses for the first two Key Questions stated simply "Yes" with no explanation, in subsequent forms a short explanation accompanied all affirmative answers.

Credit Life Insurance

. Based on the findings from this round, the Board staff was concerned that the presence of information about credit life insurance on the first page of the TILA statement increased awareness of the product, but did not make consumers aware that they might not qualify for the product's benefits. Therefore, the decision was made to remove this information from the TILA statement and to add language to alert consumers that they might not be eligible for benefits from the insurance.

Other Required Disclosure Text

. Because participants had difficulty understanding the disclosure text describing loan assumption, this text was revised and tested again in the next round of interviews.

ROUND 11: PROVIDENCE, RHODE ISLAND (MARCH/APRIL 2009)

Objectives and Methodology

On March 30 and April 1, 2009, ICF Macro conducted 10 cognitive interviews in Providence, RI. Unlike previous rounds of interviews, which focused primarily on hybrid ARMs, the TILA statements tested in this round described more complex mortgage products. Loan G was an interest-only 5/1 ARM that included PMI. Loan H was a 3-year fixed-rate mortgage with a balloon payment. Loan H also had an equity-sharing feature, which was disclosed in the Key Questions section. Loan G had a subprime APR, while Loan H had an APR just under the cutoff for subprime. Two different versions of the TILA statement were developed and tested for each of these two loan products.

To ***avoid*** having the statements appear cramped or dense, forms for this round were laid out on two letter-sized pages rather than one legal-sized page. The "Key Questions" section was moved to the second page, as was some descriptive text about rate and payment changes (under the heading "More Information About ***Your*** Payments").

The interview protocol included the following sections:

. Participants in the interviews were first ***asked*** to review one of the TILA statements that described an interest-only ARM product (version G1 or G2). They were then ***asked*** a series of questions designed to test their comprehension of the content on the form.

. Next, participants were given a TILA statement that described the second loan product (version H1 or H2). They were ***asked*** to review this loan and ***asked*** several questions about its content.

. After reviewing the TILA statements, participants were ***asked*** to review some additional text for required disclosures about assumption, negative amortization, and reduced documentation loans.

For the Providence round of testing and all subsequent rounds, the footnote for prepaid finance charges was deleted. Instead, the amount financed was ***shown*** under the heading "Total Payments," in the "More Information about ***Your*** Payments" section on the second page of the statement.

Five forms were used in these sections of the interview; all are provided in Appendix D:

. TILA statements G1 and G2 (both have the same terms, but a different format);

. TILA statements H1 and H2 (both have the same terms, but a different format); and

. A separate page with additional text for required disclosures.

Key Interview Findings

Loan Obligation (Loan G)

. All but one participant understood that when they received this form they would not be obligated to accept it. As in previous rounds, this understanding was based more on prior knowledge than on the fact it was stated on the form.

. Three participants incorrectly believed that by signing the TILA statement they would be committing themselves to the loan. Another participant commented that even thought the form specifically states that a signature only indicates receipt of the form, the cautionary language above the signature line makes it appear binding.

Loan Summary Section (Loan G)

. All participants correctly identified the term of the loan (30 years) and the amount borrowed.

. When ***asked*** if they could identify ***how*** much of the $ 200,000 loan they could apply to the price of the home they were purchasing, about half of participants correctly indicated that $ 198,000 would go toward the home purchase. The remaining participants were not able to answer this question correctly.

. Only three participants understood that the $ 2,000 that had been rolled into the loan amount for Loan G was included in the amount ***shown*** for Total Settlement Charges. Others thought this $ 2,000 would be an additional charge or were not sure.

. Almost all participants understood from the form the down payment was not included in settlement charges.

APR (Loans G and H)

. Several participants initially confused the APR with their interest rate. When ***asked*** to explain the difference between the interest rate and APR, only two participants were able to explain that the APR included settlement charges--even though the APR was described on the page as "***Your*** interest rate with settlement charges included."

. Despite the fact that participants did not generally understand what the APR was, most realized from the graphic that the APR for Loan G fell in the "subprime" category, and that this meant their loan was more costly than a prime loan. These participants indicated this made them feel more negatively about the loan.

. All participants were ***shown*** Loan H and ***asked*** ***how*** they would react to the loan if they had excellent credit. About half indicated that if they had excellent credit they would expect to get a lower APR closer to the average prime offer rate (APOR). The other half did not seem concerned that their APR was different from the APOR, and did not indicate that this fact would affect their decision whether to accept the loan

. Five participants were ***asked*** to explain the graphic on Version G-1 or H-1--in particular, the significance of the two dotted lines on the graph. Four of the five participants understood that one dotted line represented the APOR, while the other represented the lower end of the range labeled "subprime." Two of the five, however, thought the graphic divided the range of possible APRs into three categories--one for people with excellent credit (below the APOR), one for people with "average" credit (between the APOR and "subprime" cutoff), and one for people with poor credit (the area labeled "subprime"). This was not the intent of the graphic, since this interpretation misrepresents the significance of the APOR.

. Although the word "subprime" had a negative connotation for them, only a few participants understood that a subprime loan was a higher-priced loan usually G1ven to borrowers with poor credit. Two participants thought the term "subprime" meant the loan had a rate lower than the prime rate.

. The APR graphic in versions G1 and H1 was slightly different than that on versions G2 and H2. In G1 and H1, the APOR was represented by a dotted line, while the APR for the loan being described was represented by a diamond. In G2 and H2, the APOR was represented by a star, and the loan being described was represented by an inverted triangle and labeled "this loan." About three quarters of participants indicated they preferred the latter format. Some commented that a star was an appropriate symbol for the APOR, since it represented a very good rate.

Rate and Payment Information

Understanding of Adjustable Rate (Loan G)

. When ***asked*** to identify the initial interest rate of the loans, several participants mistakenly pointed to the APR. This seemed to be largely due to the prominence of this figure on the form.

. All participants understood the rate would change, and all but one understood that the first rate adjustment would occur after 5 years (2014). However, most did not realize their initial rate was discounted.

. Only three of the ten participants understood that the rate would change annually after the first 5 years.

. When participants were ***asked*** what determined ***how*** the rate would change over time, three participants understood the rate was based on an index. Most other participants indicated the rate change was based on the "market rate" or the "national rate."

Payment Summary Table (Loan G)

. The maximum interest rate was correctly identified by eight of ten participants. Four of five participants who saw version G1 understood that the interest rate could increase no more than 2 percentage points each year. [28]. All participants were able to identify the amount of the first monthly payment and all knew the payment would be same for the first 5 years.

. When ***asked*** what was more important to them in terms of the payments, six participants indicated the "maximum ever" payment was more important than the initial or first adjustment payments.

. As in previous rounds, several participants were unsure what would happen to their payment after the introductory period ended. Some assumed the payment would definitely increase to the amount ***shown*** in the "maximum at first adjustment" column, while others understood that their payment could be lower than that ***shown***.

Interest-Only Payments (Loan G)

. Only two of the ten participants realized during their first review of Loan G that their payments would be interest-only during the first 5 years. All participants eventually understood this feature of the loan, but in most cases only after being prompted by the interviewer to re-read portions of the form.

Taxes and Insurance (Escrow) (Loans G and H)

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Form G2 did not include information about the periodic cap on rate change.

. On versions G1 and G2, only one participant thought the amount for taxes and insurance ***shown*** in the payment summary table was the actual amount he would pay; all others understood this figure was an estimate. Almost all participants also understood that taxes and insurance could change over time.

. Almost all participants understood Loan H did not include an escrow account and that as a result they would have to pay taxes and insurance on their own. In all cases, this understanding was based on the inclusion of the words "not included" in the escrow row of the Payment Summary table; fewer participants noticed this information in the More Information About ***Your*** Payments section.

Key Questions Section (Loans G and H)

. All participants understood that Loan G included a prepayment penalty if they paid off the loan within the first 2 years.

. When ***asked*** to read the Key Question related to interest-only payments, almost all participants understood they would not be paying any principal for the first 5 years they made payments. All realized that this could be a risky feature, although one participant commented he might still accept an interest-only loan if that were the only type he could afford.

. When looking at Loan H, only three of ten participants noticed the equity-sharing feature in their first review of the form. Four others eventually saw this information in the Key Questions section, while three never did.

"More Information About Your Payments" Section (Loan G)

. All participants had heard of PMI previously. However, only two of the ten participants noticed the text under the heading Escrow that indicated that they would be paying PMI with this loan.

. Version G1 included information about periodic and lifetime rate change caps, while version G2 did not. Participants who saw G1 ***showed*** a greater understanding of ***how*** their rate could change over time. For example, some participants who saw G1 were able to use the periodic rate change cap information to determine what their maximum rate would be in 2015, while no participants who saw G2 were able to correctly answer this question. When ***asked*** whether information about rate caps would be important to them and should be included on the form, most participants responded affirmatively.

. Almost all participants correctly identified the number of payments and total of payments, as well as the amount that would go to interest and fees. As in previous rounds, none were able to explain what was meant by the "amount financed," although this did not affect their comprehension of other parts of the form.

Balloon Payment (Loan H)

. Almost all participants realized in their initial review of Loan H that it included a balloon payment. All understood that the "balloon payment" was a large payment that they would have to make after 3 years.

. Most noticed the information about the balloon payment in the Payment Summary table. Only one noticed it first in the Key Questions section.

. Versions H1 and H2 provided information about the balloon payment in two different ways. H1 ***showed*** the balloon payment in a separate column in the Payment Summary table, while H2 ***showed*** the balloon payment in a separate row below the table. The format that was used did not have a discernable effect on participant understanding; almost all participants noticed the balloon payment regardless of which form they saw. Participants were evenly split in terms of which of the two formats they felt was the clearest presentation of the balloon payment.

Other Required Disclosure Text

. At the end of the interview, participants were ***asked*** to review three different disclosures and describe what they meant in their own words. The first disclosure was revised text related to loan assumption. The results were more positive than in previous rounds; most participants understood what was meant by the fact that the lender could "permit the new buyer to take over the payments" on their mortgage and that this could be a positive feature for a borrower.

. In addition to the language about loan assumptions, participants were also ***asked*** to review two disclosures in the "Q&A" format used in the "Key Questions About Risk" section of the TILA. The first described negative amortization by indicating that the loan balance for the loan could increase over time, even if the borrower made payments. All stated that this was not a feature that they would want on their loan. While few participants had previously heard the phrase "negative amortization," almost all understood that if this disclosure were true they could potentially end up owing more money than they had oriG1nally borrowed.

. The other "Key Question" disclosure participants were ***asked*** to review described no- or low-documentation loans. It indicated that the loan had a higher rate or fees because the borrower did not document his or her employment, income, or other assets. While several were surprised at the disclosure because they assumed that documentation always had to be provided, almost all understood its meaning.

Subsequent Design Decisions

Loan Summary Section

. Although the breakout of the loan amount into two amounts--the amount applied towards fees and the amount available for the borrower's own use--was more successful than previous attempts to communicate information, almost half of the participants were still confused by this portion of the form. As a result, this reference was removed from the Loan Amount section. Instead, underneath the settlement charges a reference was added referring to what portion of the fees were included in the loan amount.

APR

. Two different versions of the APR graphic were tested in Providence. Generally, participants reacted more positively to the graphic used in versions G2/H2, which included more explicit labels for the APOR and the APR of the loan offered. As a result, this basic graphic template was used in forms for subsequent rounds of testing.

. Several participants were confused by the word "subprime" as it was used in the APR section, so this word was not used in forms for the next round. Instead, the "subprime" portion of the APR range in the graphic was labeled "high cost."

. Several participants in Providence and previous rounds of testing expressed a belief that a small difference in APR would not likely make a significant difference in their monthly payment. To combat this misconception, a reference was added to forms for the following round (Denver) that indicated the monthly dollar amount a 1 percent decrease in APR could save a borrower.

Rate and Payment Information

. Because participants continued to struggle to understand what would happen to their payment at the end of the introductory period, for the next round of testing information was added to the first page of the form describing what would happen if market rates did not change. This text appeared as a "Teaser Rate Notice" under the payment summary table.

. Most participants did not notice the disclosure in the "More Information about ***Your*** Payments" section that indicated their loan included private mortgage insurance. Therefore, the forms for the next round of testing included this information in the heading of the escrow row in the Payment Summary Table on the first page.

. Because most participants did not initially realize that payments for Loan G would be interest-only for the first 5 years, in the next round a reference to "interest-only payments" was added under Loan Type to make this feature more prominent.

. In the model forms and clauses it releases in July 2009, the Board will propose that in most cases the balloon payments be displayed in a separate row at the bottom of the payment table (as in version H2). Since participants had no clear preference between the different formats tested, the rationale for this decision was that it may be easier to add a row to the payment table rather than a column since space is more likely to be limited horizontally on a page.

Key Questions Section

. In an attempt to improve comprehension among participants, the wording of the affirmative answer to the Key Question related to interest-only payments was revised slightly on forms for the following round.

. Several participants did not understand that interest rate adjustments for the sample loan could occur on an annual basis, so a reference to the frequency of adjustment was added to the answer to the first Key Question ("Can my interest rate change?").

ROUND 12: DENVER, COLORADO (APRIL 2009)

Objectives and Methodology

In April 2009, ICF Macro conducted 10 cognitive interviews in Denver, CO. The TILA statements tested in this round described two different mortgage products: an interest-only ARM and a payment option ARM. The goal of the interviews was to assess ***how*** clearly the revised statement described the terms of these more complex products.

The interview protocol included the following sections:

. Participants in the interviews were first ***asked*** to review one of two TILA statements that described an interest-only ARM (versions J-IO or K-IO). As in previous rounds, they were then ***asked*** a series of questions designed to test their comprehension of the content on the form.

. Next, participants were G1ven the alternate interest-only TILA statement, which varied only in the way in which APR information was presented on the form. Participants were ***asked*** to compare the APR sections on the two forms and indicate which format they felt was clearer and more informative. In order to minimize learning effects, the order in which participants were ***shown*** the two interest-only TILA statements was rotated between participants.

. Participants were then ***shown*** a TILA statement that described a payment option ARM product (versions J-PO or K-PO). Again, participants were then ***asked*** a series of questions designed to test their comprehension of the content on the form. They were subsequently ***shown*** the alternate payment option TILA statement and ***asked*** which aspects of each form they found clearer. As with the interest-only loans, the order in which the participants were ***shown*** the two payment option TILA statements was rotated.

. After reviewing the TILA statements, participants were ***shown*** some additional text related to credit life insurance and were ***asked*** questions to test their understanding of the content.

Five forms were used in these sections of the interview; all are provided in Appendix D:

. TILA statements J-IO and K-IO, which described interest-only ARM products (identical except for the format of the APR section);

. TILA statements J-PO and K-PO, which described payment option ARM products (identical except for the format of the APR and Payment Summary sections); and

. A page with an additional disclosure about credit life insurance.

Versions J-IO and K-IO displayed an APR of 7.59%, which fell into the "high cost" (i.e., subprime) area ***shown*** on the form. Versions J-PO and K-PO displayed an APR of 6.01%, which was close to, but not in, the high cost range ***shown*** on the form.

Prior to this round, ICF Macro and Board staff determined that the Payment Summary table tested in prior rounds would not be appropriate to use for a payment option ARM. Because payment option ARMs are significantly different products, the table being used for other types of loans would not have disclosed several important pieces of information, such as the fact that multiple payment options were available each month. Therefore, versions J-PO and K-PO include a new Payment Summary section that was customized for this specific type of product. Because of the complexity of payment option ARMs, ICF Macro did not attempt to describe all details of the loan product. For example, the TILA statement that was developed did not display all payment options available for this type of loan; it only provided information about the full and minimum payments. The primary goals of the statement were to communicate to consumers that: a) making the minimum payment each month would cause their loan balance to increase; and b) their minimum required payment could increase dramatically in the future.

Key In Findings

Loan Summary Section [29]. All participants correctly identified the term of the loan (30 years). All but two correctly identified the amount that was being borrowed; the remaining two incorrectly thought they were borrowing the "amount financed" ***shown*** on the second page of the form.

. Almost all participants understood that the settlement charges ***shown*** on the form did not include any down payment they would owe.

. TILA statements used in Denver indicated that $ 2,000 of the settlement charges had been "rolled into" the loan amount. All five participants who were ***shown*** these forms were confused when this language was pointed out to them; most thought this meant the loan amount would be different than the amount ***shown*** ($ 200,000). On the second day of testing, participants were ***shown*** an alternative wording for this portion of the disclosure ("$ 2,000 of these charges is already included in ***your*** loan amount above"). Participants found this phrasing much clearer; all understood that the $ 2,000 was part of the $ 200,000 loan amount ***shown*** on the form.

APR

. As in previous rounds, participants continued to confuse the APR with their interest rate; several, in fact, referred to the APR as the interest rate during their initial review of the form. When participants were ***asked*** to explain why the APR and interest rate listed on the form were different, only two correctly indicated that the APR includes settlement charges. All others were either unable to explain the difference or provided an incorrect explanation; two, for example, thought the APR was the average of the interest rates they would be charged over time.

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Participants answered questions about the loan term and settlement charges while reviewing the interest-only loan.

. The forms used in this round included a graphic that that ***showed*** a range of possible APRs. The APOR was identified on this range, and labeled the "Avg. Best APR." The range of subprime APRs was shaded darker on the scale, and was labeled "high cost." All participants were able to correctly explain what the "Avg. Best APR" and shaded regions meant. Most also understood that participants with poor credit were likely to be offered loans with APRs that were identified as "high cost."

. The APR for the interest-only loan used in this round was 7.59%, which placed it in the range labeled "high cost." Most participants realized that the APR fell into the "high cost" category based on their review of the graphic. However, not all indicated this would be a factor in whether or not they accepted the loan. For example, some who confused the APR with the interest rate said that 7.59% seemed like a good interest rate to them, because it was lower than what they had on their current mortgage. Others commented that they would not accept the loan, because their current interest rate was lower than 7.59%. These participants were clearly relating the APR ***shown*** on the form to their own personal experience, rather than the context provided by the form.

. Six of the ten participants indicated they would be less likely to accept the interest-only loan based on the information in the APR section, while the remaining four indicated this information would be unlikely to affect their decision. However, in some cases it was clear that participants' attitudes toward the loan were being driven by factors other than the APR, such as the fact that it had an adjustable rate or that payments were interest-only.

. The TILA statements describing a payment option loan displayed an APR of 6.01%, which was just below the boundary of "high cost" loans. Again, most participants understood the content of the APR section--for example, they knew that the average APR offered to borrowers with excellent credit was 4.75%. However, when ***asked*** what they would do if they had excellent credit and received this form from their lender, half expressed concern that their APR was too high. These participants indicated that they would go to another lender to get another offer, or would ***ask*** their lender to G1ve them a lower APR. Others, however, did not seem to be bothered by the fact that they had not been offered the lower APR and indicated that the information on the form would not influence their decision whether to accept the loan.

. All forms also included a statement informing readers that a 1% APR reduction would result in a savings of $ 167 a month for the first 5 years. Most participants did not notice this information; when ***asked*** if the form contained any information about ***how*** much money they would save with a lower APR, only two participants referenced this statement on the form.

. When participants were ***asked*** to compare the APR sections of versions J and K, six participants indicated that they preferred version K, while only one preferred version J. The remaining three participants did not express a preference. The aspects that participants liked about version K included the fact that the APR was displayed in a larger font, the fact that the explanatory text was below the graphic rather than beside it, and the fact that the definition of the APR was provided right next to the actual term, rather than in smaller font below.

Rate and Payment Information

Interest-Only ARM

. All interview participants correctly identified the initial and maximum interest rates, as well as the period of time during which the rate would remain fixed.

. All but one participant indicated their rate and payment would likely increase at the end of the first 5 years. However, their responses seemed to be based mostly on a distrust of ARMs and an assumption that rates on these loans usually increase. Only two participants referenced the information in the Teaser Rate Notice; they indicated the rate would likely increase because it was discounted for the introductory period.

. Only three participants understood ***how*** often the interest rate could change after the first 5 years; the remainder did not see that information in the Key Questions or More Information About ***Your*** Payments sections.

. About half of participants were able to identify the maximum their rate could increase in a single year (2%); the remainder did not see this information in the More Information About ***Your*** Payments section.

. All participants correctly identified the initial monthly payment, and all but two understood that this payment would remain constant for 5 years (except for potential changes in escrow).

. Almost all participants could identify the maximum their payment would be when it first adjusted after 5 years. However, some participants mistakenly thought their payment would definitely increase to the maximum at that time. This misconception appeared to be in part because of a misreading of the table and in part because of general distrust of ARM products.

. When the Teaser Rate Notice was pointed out to them, a few participants reacted negatively to the use of the word "teaser." Some commented that lenders would be very unlikely to use this word when communicating with consumers; others felt the use of the word was demeaning or insulting.

. Only six of the participants realized during their initial review of the form that the loan included interest-only payments; the remaining four did not.

. In some cases, participants were not concerned to find out that payments for the first 5 years were interest-only. They seemed to think this was a traditional loan in which the amount of principal paid during the first few years is very small. Because of this misunderstanding, these participants indicated that the fact that initial payments were interest-only would not affect ***how*** they felt about the loan.

Payment Option ARM

. Two participants had previously heard of a payment option mortgage; one of the two had held this type of mortgage previously.

. After their first review of the TILA statement, about half of participants commented they definitely would not accept this type of loan. Two others indicated they found the terms of the loan confusing.

. All participants understood the interest rate could change and all but two understood it could beG1n chanG1ng after the first month.

. Half of the participants were able to identify the initial interest rate of the loan (1.5%). Four of the other five participants incorrectly referenced the APR when ***asked*** this question. Participants who saw version K were more successful in identifying the initial rate because it was displayed in the Payment Summary table rather than in the explanatory text above the table.

. All but two participants were able to identify the maximum interest rate for the loan (10.5%).

. All but one participant understood that their minimum payment would increase over time, and increase dramatically in June 2011.

. Most participants understood based on their first review of the form that if they made only the minimum payment each month, their loan balance would increase because of unpaid interest.

. The Payment Summary tables were significantly different on versions J-PO and K-PO. Participants were ***shown*** both forms and ***asked*** which version of the table they found clearer and more informative. Most participants indicated that they preferred the table on version K to that on version J. The most frequent reasons G1ven by participants were that they liked the fact the column headings identified specific points in time (rather than "Year 1," "Year 2," etc.); they liked the fact that the table in version K listed the interest rate at different points in time as well as the payment; they liked the references to "1st adjustment" and "2nd adjustment" that were provided; and they liked the placement of the description of the full and minimum payment options.

Taxes and Insurance (Escrow)

Interest-Only ARM

. All but two participants were able to explain the term "escrow." Of the other two, one said that they had heard of the word but did not know what it meant, while the other had never heard the term.

. Seven participants understood that the amounts ***shown*** for taxes and insurance on the form were only estimates. Eight understood that these amounts could change over time.

. Half of the participants had previously heard of PMI; the remainder had not.

. Although the Payment Table listed PMI as part of the estimated taxes and insurance, only six of the ten participants realized they would be paying PMI on this loan. One reason that awareness was fairly low may have been that half of the participants had never heard of PMI before.

Payment Option ARM

. When reviewing the payment option ARM, half of the participants saw the reference that taxes and insurance were included in the payments ***shown*** in the Payment Summary section. The remaining participants indicated that taxes and insurance were not included or stated they did not know.

Key Questions Section

Interest-Only ARM

. All participants understood that the interest-only loan they were ***shown*** had a prepayment penalty.

. When directed to read the Key Question about interest-only payments, most participants understood that payments for the first 5 years would not cover any principal, and that they would begin paying down the loan principal in year 6.

Payment Option ARM

. When reviewing the payment option forms, most participants generally understood the content of the Key Questions related to interest-only payments and negative amortization. However, a few confused the information that was provided about interest-only payments and negative amortization, and mistakenly thought that the information in the Key Question about interest-only payments related to the minimum payment option.

"More Information About Your Payments" Section

Interest-Only ARM

. When ***asked*** to read the text under the Rate Calculation heading, about half of the participants were able to explain ***how*** their rate would be determined after the introductory period. Some participants were confused by the term "LIBOR," while others had difficulty understanding the concept of ***how*** an index and margin would be used to calculate their rate.

. When ***asked*** to read the text under the Rate Change Limits and Total Payments headings, all participants generally understood the information provided. However, several participants did not notice this information until they were specifically ***asked*** to read it (e.g., the periodic rate cap).

Payment Option ARM

. Most participants did not understand the information under the heading Rate and Payment Change Limits in the More Information About ***Your*** Payments section of the form. Two participants seemed to generally understand the information about the caps on payments and the loan balance, although the extent to which they understood exactly ***how*** the caps worked was unclear. Other participants were clearly confused by this text.

Loan Obligation

. Despite the fact the forms included a statement consumers were not obligated to accept the loan in addition to a statement "By signing below, I acknowledge receipt of this form," about half of the participants mistakenly thought if they signed the statement they would be indicating acceptance of the loan terms.

Credit Life Insurance

. All participants understood after reading the text that there was an additional cost for credit life insurance.

. When ***asked*** whether they would sign up for credit life insurance based on the notice they were ***shown***, three indicated that they would. Two said that they would consult their own life insurance policies first to see whether additional coverage was necessary. The remaining participants were unsure whether they would sign up.

. Only three participants noticed the language that indicated even if you pay for credit life insurance, you may not receive any benefit from the policy.

. All interview participants noticed the reference to the Board website in the credit life statement. Most indicated that they would be likely to visit this site if they had questions about this product.

. Although most participants also saw the reference to a housing counselor, only four indicated they would be likely to contact a counselor to obtain more information. Others said they would be more likely to go to the website ***shown***.

Subsequent Design Decisions

Loan Summary Section

. As in the previous round, some participants were unsure ***how*** often their rate and payment could change after the introductory period ended. Therefore, the forms developed for the following round of testing included the adjustment frequency in the Loan Type section.

. Because the alternate language used on the second day describing settlement charges that were included in the loan amount was clearer to participants, this language was used on forms for the following round of testing.

. Because some participants continued to confuse the APR with their interest rate, forms for the next round did not describe the APR as "***your*** interest rate with settlement charges included." Instead, the revised forms used the phrase "overall cost of this loan" or "fee-inclusive cost of this loan."

. Although participants understood that the right side of the APR range represented "high cost" loans, some participants in this round did not express concern that their APR fell into this range. Therefore, the graphic used in forms for the subsequent round of testing in Bethesda attempted to demonstrate the importance of this range by coloring it black and labeling it the "high cost zone." Also, an explanatory note about "high cost" loans that had been removed from forms in this round was added back in, along with a reference that loans falling in this range are usually provided to consumers with poor credit.

. Most participants preferred the format of the APR section ***shown*** in version K to that of version J, therefore, this format was used in all subsequent forms.

Rate and Payment Information

. The Teaser Rate Notice was simplified in forms for the next round of testing, because of concerns that the number of different rates and payments displayed on the first page could confuse consumers. Specifically, the amount of the rate increase and the reference to a new monthly payment amount were removed.

. A few participants reacted negatively to the use of the word "teaser," so on subsequent forms the Teaser Rate Notice was renamed the Introductory Rate Notice.

. Some participants continued not to notice that their loan included PMI, so a bullet was used to emphasize this fact in the left-hand column of the Payment Summary table. In addition, information about private mortgage insurance was given its own heading in the More Information About ***Your*** Payments section on the second page.

Interest-Only Payments

. Several participants in this round of testing did not realize they would be paying only interest during the introductory period, while some others did not realize that the fact that payments were interest-only made this product different than traditional loans. To emphasize that payments were interest-only, the number "0" in the first column of the Payment Summary table was replaced with the word "None."

Payment Option ARM

. When reviewing forms for the payment option loan, participants strongly preferred all aspects of the Payment Summary table used in version K to that used in version J. Therefore, this format was used in the forms designed for the next round of testing.

. Because some participants confused the interest-only payments described in the Key Questions section with the minimum payment, the description of the minimum payment option was revised slightly for the next round of testing. The revised text was adapted from the payment option monthly payment disclosure that was also tested this round (see Chapter VI).

. Several participants did not realize escrow payments were included in the sample monthly payments ***shown*** in the Payment Summary table, so this fact was made more prominent in the forms tested in the following round.

. Most participants struggled to understand the information in the "More Information about ***Your*** Payments" section under the heading "Rate and Payment Change Limits." Therefore, on forms for the following round of testing, this text was broken into two different headings: "Rate Change Limits" and "Payment Change Limits."

Key Questions Section

. Although understanding of the Key Questions related to interest-only payments and negative amortization was better than in previous rounds, there were still a few participants who were confused by this text. Therefore, the wording of these questions and answers was revised for the following round.

Credit Life Insurance

. While participants understood most of the content in the credit life insurance disclosure tested this round, most did not realize that purchasing this insurance might not provide them with any additional benefits. Therefore, this information was made more prominent in the version of this disclosure tested in the next round.

ROUND 13: BETHESDA, MARYLAND (MAY 2009)

Objectives and Methodology

In May 2009, ICF Macro conducted nine cognitive interviews in Bethesda, MD. One goal of this round was to continue testing ***how*** effectively the revised TILA could describe the terms of complex loan products, such as interest-only and payment option ARMs. Another goal was to continue testing the extent to which the text and graphic in the APR section provided participants with useful context for comparing their APR to that being offered to other consumers.

The interview protocol included the following sections:

. Participants in the interviews were first ***asked*** to review one of two TILA statements describing fixed-rate loans. The primary focus of this portion of the interview was to assess participants' reaction to and understanding of the APR section. The decision was made to use fixed-rate loans for this portion of the interview because in previous rounds of testing participants' reactions to forms they were ***shown*** were often driven by other loan features, such as an adjustable rate or a prepayment penalty, rather than by the APR. As a result, it was often difficult to isolate participants' reactions to a high APR. By testing the APR in the context of a simpler loan, ICF Macro and Board staff could assess ***how*** a relatively high APR would affect participants' evaluation of a loan they might otherwise accept.

. Next, participants were given a TILA statement that described an interest-only ARM product. They were then ***asked*** a series of questions designed to test their comprehension of information on the form.

. Participants were next given a TILA statement describing a payment option ARM product, and again were ***asked*** a series of questions designed to test their comprehension of the information.

. After reviewing the TILA statements, participants were ***asked*** to review a revised disclosure related to credit life insurance.

Five forms were used in these sections of the interview; all are provided in Appendix D:

. TILA statements L1 and L2 (describing fixed-rate loans; they were identical except for the information in the APR section);

. TILA statement M (describing an interest-only ARM);

. TILA statement N (describing a payment-option ARM); and

. Additional text about credit life insurance.

Key Interview Findings

Loan Summary Section (Versions L1 and L2)

. All participants correctly identified the term of the loan (30 years) and the amount borrowed ($ 306,000).

. Six of nine participants understood the settlement charges ***shown*** on the form did not include any down payment they would owe; one participant did not answer this question.

. Four participants were confused by the statement that $ 3,000 of their settlement charges were included in the loan amount ***shown***. Some thought this statement might mean that they were actually borrowing a different amount than that listed on the form. The remaining participants understood that the $ 3,000 of their settlement charges were already included in the loan.

. Almost all participants in this round understood that the $ 3,000 of settlement charges that were included in the loan amount were already reflected in the "total estimated settlement charges" listed on the form.

APR (Versions L1 and L2)

. As in previous rounds, several participants initially confused the APR with the interest rate; several referred to the APR as the "interest rate" throughout their review of the form. When it was pointed out to participants that the APR and interest rate were different, only one was able to explain that the APR was higher because it included settlement charges. Others either indicated that they did not know why the terms were different or provided incorrect explanations.

. Most participants understood the dot on the scale labeled "Avg. Best APR" represented the average APR offered to applicants with excellent credit. All but one understood that the "high cost zone" labeled on the scale represented the range of more costly APRs that would likely be offered to consumers with poor credit.

. When ***shown*** version L1, which ***showed*** an APR that was in the "high cost zone," four of five participants indicated that this information made them view the loan more negatively and would make them less likely to accept the loan. Among those who were ***shown*** L2, which had an APR just below the "high cost zone," three of five participants indicated concern about the APR.

. Among all participants, about half said that if they had excellent credit, they would want to make sure that they got an APR close to the "average best" APR ***shown*** on the form. The remaining participants indicated that the APR graphic did not seem to consider this an important goal.

. Half of the participants noticed the reference on the form that a 1% APR reduction would result in a savings of $ 194 a month. Other participants said they understood that decreasing their APR would save them money, but did not notice the information on the form about the specific amount they could save.

. All but two participants understood there was no limit to ***how*** high the APR could be on a loan. The remaining two thought that the end of the scale (10.75%) represented the maximum APR that could be offered.

. The L forms described the APR as the "overall cost of the loan, including interest and settlement charges." Participants were ***asked*** whether replacing the word "overall" in this description with the phrase "fee-inclusive" would change their perception of what the APR signified. Almost all participants indicated this change would not affect their understanding of the APR. Most indicated that they found the term "overall cost" to be clearer than "fee-inclusive cost"; a few said that they found the reference to fees confusing. One participant, however, did appear to understand the meaning of the APR better when given the "fee-inclusive" language.

Rate and Payment Information

Fixed-Rate Mortgage (Versions L1 and L2)

. All participants understood their interest rate and payment would not change over time (except if the amount for taxes and insurance changed).

Interest-Only ARM (Version M)

. Most participants were able to identify the initial interest rate of the loan, although two incorrectly identified the APR as the interest rate. All participants understood that the interest rate could change after the 5-year introductory period.

. All but two participants could identify the maximum interest rate; the remaining two incorrectly thought the rate could increase above the maximum ***shown*** in the Payment Summary table.

. All participants correctly identified the maximum their interest rate could be in Year 6. Aside from the maximum, however, participants seemed unclear as to what could happen to their rate. Some seemed to think their rate would definitely increase in Year 6 to the amount ***shown*** in the table while others understood their rate could also be lower than the amount ***shown***.

. Most participants indicated that they thought their interest rate was likely to increase after the introductory period ended in March 2014. However, only a few participants referenced the information in the Introductory Rate Notice, which indicated that the initial rate was discounted and that the interest rate would increase after the introductory period, even if the market rate did not change. Most participants did not notice this information or did not realize ***how*** it related to future rate and payment changes.

. All but two participants understood their rate could adjust annually. The remaining two assumed the rate would adjust every two years after the introductory period ended, because that was the length of time between the second and third columns in the Payment Summary table.

. Half of the participants were able to identify the maximum amount their rate could increase in a single year; others did not notice this information in the More Information About ***Your*** Payments section.

. Half of the participants realized during their initial reading of the form that payments during the introductory period would be interest-only. All others noticed this information after reviewing the form further. Overall, the word "None" in the Payment Summary table seemed to make the fact that these payments were interest-only more prominent.

Payment Option ARM (Version N)

. Two participants had heard of a payment option mortgage prior to their interview.

. After their initial review of the TILA statement, most participants expressed concern with some aspect of the payment option loan. Some features that participants mentioned included: the fact that their loan balance could increase; the fact that minimum payments would not pay off any principal; and the fact that the interest rate was adjustable. When ***asked*** if anything concerned them about this loan, one participant responded "everything." Another commented that the loan would make it "too easy" for a borrower to get into trouble if they made only the minimum payments.

. All participants understood that their interest rate was adjustable and could begin changing as soon as the second month.

. All but one participant correctly identified the initial interest rate; the remaining participant confused the initial interest rate with the APR. All but one was also able to identify the maximum interest rate.

. All but two participants understood their minimum payment would increase over time, and could increase dramatically in June 2011 when the loan would require a fully amortizing payment.

. Most participants understood the minimum payment covered only some interest and no principal, while the full payment covered both. Two participants understood that the minimum payment covered no principal, but mistakenly thought that it covered all interest.

. All but two participants understood that making the minimum payments would cause the loan balance to increase over time. Not all understood why this occurred, however; a few indicated that the loan balance would increase because the principal was not being paid off, rather than because of unpaid interest.

. After being directed to read the statement at the bottom of the page that explained making minimum payments would lead to an increase of $ 29,943.00 to the loan amount, all participants indicated that this information would make them less likely to make minimum payments.

Taxes and Insurance (Escrow)

Interest-Only ARM

. Although all participants indicated they had previously heard the term "escrow"; when ***asked*** to describe it, however, only six were able to do so accurately.

. All but two of the participants realized the payments for the interest-only loan included PMI. Most saw this information in the More Information About ***Your*** Payments section on the second page, rather than in the note about PMI in the Payment Summary table.

Payment Option ARM

. As in the previous round, most participants did not realize taxes and insurance were included in the monthly payments ***shown*** on the form. Only three participants in this round of testing understood that this was the case, while other participants either assumed that taxes and insurance were not included or were not sure.

Key Questions Section

Interest-Only ARM

. All participants realized, based on their initial review of the form, that the interest-only ARM had a prepayment penalty feature. Most of the participants noticed this feature on the first page of the form, rather than from the Key Questions on the second page of the form.

. When ***asked*** to read the Key Question related to interest-only payments, all but one participant understood the information clearly. One incorrectly thought that making interest-only payments would cause the loan balance to increase.

Payment Option ARM

. Participants were ***asked*** to read the Key Questions related to interest-only payments and negative amortization and explain what they said. Most participants understood both features and the impact that they would each have on the loan balance over time. However, as in previous rounds a few participants confused the two For example, two participants indicated that making interest-only payments would cause the loan balance to increase.

"More Information About Your Payments" Section

Interest-Only ARM

. When ***asked*** to read the text under the Rate Calculation heading, almost all participants were able to explain that their rate would be equal to the LIBOR index plus 5%. While some had never heard of the LIBOR index, most generally understood the concept that their rate would vary based on a market rate.

. All but one participant understood the annual and periodic rate change caps described under the heading Rate Change Limits. However, as noted above about half of the participants did not see this information until it was pointed out to them.

. As in previous rounds, almost all participants understood the text under the heading Total Payments, although none understood what the "amount financed" signified.

Payment Option ARM

. Almost all participants were able to explain the information under the heading Rate Change Limits on the payment option ARM statement, including that their rate could increase to a maximum of 10.5% and that it could start adjusting the first month after consummation. This was an improvement from the previous round, when participants did not understand this text.

. As in the previous round of testing, participants were generally confused by the information under the heading Payment Changes. While some understood that their payments could increase no more than 7.5% a year at the beginning of the loan, they generally did not understand the relationship between caps on payments and the loan balance or what would happen after the loan balance cap was reached.

Credit Life insurance

. All participants understood after reading the notice that credit life insurance was not a required feature.

. Participants generally understood the first two bulleted statements. Most participants were surprised by the third statement, which stated that even if they paid for the insurance they may "not qualify to receive benefits in the future." A few indicated they did not understand ***how*** they could pay for the coverage and then receive no benefits. Despite their surprise, participants seemed to understand the statement; all but two correctly indicated that if they purchased the coverage and then died, the insurance would not necessarily pay off their loan. Most assumed that the reason a borrower would not be covered would be because of pre-existing medical conditions or suicide.

. When ***asked*** whether they would purchase credit life insurance, all but one participant indicated they would not--in fact, one participant had recently purchased credit life insurance and was planning to re-read the paperwork after the interview. The remaining participant, however, indicated he would purchase credit life insurance after reading the notice.

. When ***asked*** ***how*** much credit life insurance would cost for a $ 200,000 loan, five of seven participants correctly answered $ 144 per month. The remaining two gave the figure ***shown*** on the form ($ 72 per month), which was the incremental cost for each $ 100,000. Two participants were not ***asked*** this question.

. Most participants indicated they would be likely to visit the website ***shown*** on the notice if they had additional questions about credit life insurance.

Loan Obligation

. Because the forms used in this round specifically stated that a signature on the part of the borrower merely indicates receipt of the form, six participants understood that by signing they would not be committing themselves to the loan terms. However, three participants incorrectly thought that signing the form would indicate a commitment to the lender.

Subsequent Design Decisions

Loan Summary Section

. Because participant understanding of the frequency of rate and payment change was higher than in the previous two rounds, the decision was made to include this information under the Loan Type heading, as was done in this round.

Rate and Payment Information

. For interest-only loans, the use of the word "none" in the Payment Summary table indicating none of the payment would be used to pay principal seemed to make this information clearer and more noticeable to participants. Therefore, this notation was used in the final TILA statement models and clauses.

APR

. Most participants in this round indicated that the term "overall cost" was a clearer descriptor of the APR than "fee-inclusive cost"; there was no clear difference between the two terms in ***how*** well they explained the meaning of the term. Therefore, the decision was made to use the phrase "overall cost" in the final model forms and clauses.

. The revised format of the APR graphic--particularly the use of the term "high cost zone"--appeared to improve its effectiveness at communicating to participants the costs of having a high APR. Compared to the previous round of testing in Denver, more participants in this round indicated that if they had excellent credit they would expect to get an APR near the "average best APR" ***shown*** on the scale. Therefore, this basic format was used in the APR section of the final model forms and clauses.

"More Information About Your Payments" Section

. Because participants were more likely in this round to realize the interest-only loan they reviewed included PMI, the decision was made to retain the separate heading "Private Mortgage Insurance" in this section of the forms and clauses.

. Although participants who reviewed the payment option ARM still did not understand the relationship between the caps on payments and the loan balance, their understanding of the rate change limits was significantly better than in the previous round. Therefore, the decision was made to retain separate headings for "Rate Change Limits" and "Payment Change Limits" on the model forms and clauses for payment option ARMs.

CHAPTER VI: DEVELOPMENT AND TESTING OF OTHER TYPES OF MORTGAGE DISCLOSURES

Although the primary focus of most rounds of interviews for this project was on testing current and revised TILA statements, ICF Macro and Board staff also developed and tested several other types of disclosures. These included several new early disclosures, a revised initial program disclosure, a rate adjustment notice for ARMs, and a payment option monthly payment disclosure explaining the consequences of making less than the full payment each month. In most cases, these disclosures were developed by ICF Macro and tested in only one round of interviews, after which small changes in wording were made to address any comprehension issues that had become apparent through testing.

This chapter of this report describes the development and testing of these other disclosures.

NEW EARLY DISCLOSURES ABOUT MORTGAGE RISKS

"Mortgage Risk Worksheet"

For the round of interviews held in Baltimore, MD (Round 7), ICF Macro developed a new early disclosure called the "Mortgage Risk Worksheet." This document listed six mortgage features that are potentially risky or costly: an adjustable rate, balloon payment, interest-only payments/negative amortization, prepayment penalty, no-documentation or low-documentation loans, and direct payment of taxes and insurance. For each of the six features, the form provided a description of the feature and the potential benefits, risks, and costs. In each case, the participant was ***asked*** to decide whether or not they were comfortable with the risk and to indicate if their comfort level by checking a box. Since the intent of the Mortgage Risk Worksheet was to ensure that individuals were affirmatively "opting in" to risky loan features, the form did not include a box for participants to check if they were not interested in a particular feature.

Participants in the Baltimore interviews were ***shown*** the Mortgage Risk Worksheet and ***asked*** to provide initial reaction and feedback. They were then ***asked*** to explain several portions of the form, to learn the extent to which they understood the content. Finally, they were ***asked*** to describe ***how***, if at all they would use this worksheet in their own mortgage shopping process. The form that was ***shown*** to participants is provided in Appendix D.

Key Findings

. The Mortgage Risk Worksheet was received favorably by most participants. However, some more experienced participants indicated the Worksheet would be of minimal value to them because they already understood the risks associated with these loan features.

. Most participants indicated they learned something from reading the form. Most often, participants said they had learned something about balloon payments, negative amortization, or "no-doc"/"low-doc" loans.

. Participants generally understood most of the content on the form. However, several were confused by the difference between an "interest-only loan" and one with negative amortization. This confusion may have been exacerbated by the fact that these two loan features were combined into a single row in the worksheet.

. Some participants were confused by the last row of the worksheet, which related to "direct payment of property taxes and homeowner's insurance." The source of this confusion seemed to be that while most rows addressed the presence of a risky loan feature, this last row addressed the absence of an escrow account. As a result, several participants mistakenly thought that by checking the box in the right-hand column they were indicating they did want an escrow account--when in fact a checkmark meant that they would consider a loan that required them to save for taxes and insurance themselves.

. A few participants had difficulty understanding the row on "no-doc"/"low-doc" loans. In most cases, participants confused by this row seemed to understand the content but were surprised that these types of loans existed.

. Several participants suggested additional features be added to the worksheet, such as fixed rate loans and PMI. Others suggested the document should provide a full glossary of loan terminology. Based on these suggestions, it was clear the participants did not understand that the Mortgage Risk Worksheet was designed specifically to alert consumers about loan features that might be particularly risky or costly. Instead, they viewed it as a source of general information about mortgage terms.

. Participants generally understood ***how*** the form was intended to be used--that is, that potential borrowers were to read and complete the worksheet and then use it as a basis for discussion with their lender or broker. However, most participants indicated they would be unlikely to complete the worksheet or bring it to meetings with their lenders or brokers. Participants seemed to feel that the usefulness of the form lay in the information it provided and that actually completing it would provide minimum additional value for them.

. Several participants did not like the fact that the worksheet only offered a checkbox to indicate they were comfortable with the risk. They felt a second checkbox should be provided in each row indicating that the potential borrower is not comfortable with the risk associated with that feature.

. Several participants commented that a worksheet like this would only be valuable if lenders and brokers were held accountable for collecting it and keeping consumers' stated preferences in mind when presenting loan offers. A few even recommended that the form include a signature line for the potential borrower and lender, to ***show*** that consumers' preferences had been collected and discussed.

Subsequent Design Decisions

. While participants indicated that much of the content in this disclosure was important and helpful to them, most said they would not use the form as intended. As a result, the decision was made at this time not to require lenders to provide this type of worksheet to all potential borrowers.

. Because ICF Macro and Board staff believed that the content of the Mortgage Risk Worksheet was important in helping consumers understand and assess the risk associated with adjustable-rate and other loan products, a new early disclosure was designed for the following round of testing. This new document, which was titled "Six Key Questions to ***Ask*** About ***Your*** Mortgage," moved away from the "worksheet" structure of the original form but provided much of the same information about potentially risky loan terms.

"Key Questions to *Ask* About *Your* Mortgage" Disclosure

The disclosure titled "Six Key Questions to ***Ask*** About ***Your*** Mortgage," which was developed following the Baltimore round of testing, listed six questions consumers should ***ask*** their lender about a loan offer, as well as an explanation for why each question is important.

The Key Questions early disclosure was designed to be provided to consumers when they first inquire with a lender or broker about getting a mortgage. However, the questions ***shown*** on the form mirrored those ***shown*** on the revised TILA statement. The intent of this parallel construction was that during the shopping stage, consumers would ***ask*** their lender or broker these questions about the loan they were being offered. Once they applied for the loan, the TILA statement would allow them to confirm the answers they had been given.

This early disclosure was tested with participants in the Atlanta round of interviews in November 2008 (Round 8). Based on findings from this round, the disclosure was revised and tested again with participants in Dallas in February 2009 (Round 10). Content was added to the form for this round; the version of the Key Questions disclosure tested in Dallas lists nine questions instead of the original six.

Participants in both rounds (Atlanta and Dallas) were ***shown*** the Key Questions disclosure near the end of the interview and ***asked*** to provide initial reactions and feedback. They were then ***asked*** to explain several items on the form, to gather data on the extent to which they understood the content. Both versions of the Key Questions disclosure are provided in Appendix D.

Key Findings

. When ***asked*** to rate the usefulness of the Key Questions document on a scale of 1 ("not at all useful") to 10 ("extremely useful"), almost all participants in both rounds of testing gave the document a rating of 9 or 10. No participants gave the form a rating lower than 7.

. Participants liked the "question and answer" format and thought the content would be particularly helpful for first-time buyers.

. Participants in both rounds of testing generally understood the intended purpose of the disclosure. While many indicated they would not necessarily ***ask*** their lender the exact questions ***shown*** on the page, some said they would use the information on the form to develop their own list of questions.

. When ***asked*** whether they had learned anything from reading the form, about half of the participants indicated that they had In Atlanta, participants most frequently said they had learned something about negative amortization, interest-only payments, or balloon payments. In Dallas, participants most frequently indicated they had learned something about equity-sharing features, demand features, and "no-doc"/"low-doc" loans--in fact, several said they had never heard of these three features before reading the Key Questions disclosure.

. Participants in both rounds generally understood the questions related to variable interest rates, payment changes, and prepayment penalties; these were all terms and concepts with which participants were already familiar.

. In general, the questions that were least understood by participants were those relating to interest-only payments and negative amortization. Several participants confused these two features and were unclear as to the difference between them. This was particularly true in Atlanta, when the question about negative amortization immediately preceded the question related to interest-only payments. The order of these two questions was flipped in Dallas, which appeared to alleviate the confusion between them--although some participants continued to struggle to distinguish the two.

Subsequent Design Decisions

. Between the Atlanta and Dallas rounds, several small changes were made to the wording of both the questions and the answers. These revisions, along with the reversal of the order of questions relating to negative amortization and interest-only payments, seemed to improve comprehension of the document slightly.

. Because participants in both the Atlanta and Dallas rounds reacted so positively to the Key Questions disclosure, and indicated that they would find the information useful, the Board is proposing that this document be provided to all prospective borrowers. The final model form includes seven of the nine Key Questions listed on the version used in Dallas. [30]

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Two Key Questions relating to loan features that are relatively rare in the market (equity sharing and demand features) were removed from the form, because of concerns that if the disclosure were too long fewer consumers would read it.

REVISED ARM LOAN PROGRAM DISCLOSURE

As described in Chapter III, ICF Macro tested the current version of the ARM loan program disclosure through focus groups in Greenbelt, MD and Los Angeles, CA (Rounds 1 and 4). Participants' reaction to the disclosure was fairly negative; most indicated they found it difficult to understand and that, because the content was so general, the form would not help them shop between products or lenders.

Prior to the round of interviews in Providence, RI (Round 11), ICF Macro developed a revised program disclosure form. This form included four terms that are important distinguishing characteristics of an ARM program: the length of the introductory period, the frequency of rate change, the index used to calculate the rate, and limits on rate changes. It also provided answers to the Key Questions used on the TILA statement. The intended timing of this disclosure was the same as the current ARM program disclosure; consumers would be provided with the document at the point before they have applied for a loan. The revised program disclosure form that was tested in Providence is provided in Appendix D.

Participants in the Providence interviews were ***asked*** to read the revised program disclosure and provide general comments on the extent to which they would find the form useful. They were then ***asked*** a series of questions designed to test their understanding of the content.

Key Findings

. Participants understood that the purpose of the ARM loan program disclosure was to provide general information about a lender's loan program. They understood that this disclosure differed from transaction-specific documents like the TILA, because the lender could not provide specific information about interest rates before application.

. Six participants understood that the information on the form was being provided by the lender. Three were not sure who was responsible for the information provided, while one thought the information on the form was coming from "the government."

. Comprehension of the information on the program-specific page was generally high. All but one participant understood that their rate could begin changing after 3 years, and all knew that their rate would change annually after that point. Three participants mistakenly thought that the maximum interest rate on the loan would be 6%; in fact, this was the maximum increase in the interest rate. When ***asked*** if anything was confusing to them, two participants indicated they found the LIBOR index and margin as well as limits on the rate change and interest caps difficult to understand.

. Eight participants understood without prompting that the loan being described had both demand and equity-sharing features. Once they had read the information about these features, all participants understood them clearly. All participants indicated that these features would make them less likely to accept the loan; several were surprised because they had not known that mortgages could have these features.

Subsequent Design Decisions

. Because participants' understanding and perceived usefulness of the revised program disclosure form were dramatically higher than the current version, the Board will propose to include the revised form in its proposed regulations.

. Because a few participants mistakenly thought that the reference to a "6% lifetime cap" referred to a limit on the interest rate itself rather than the change in the rate, the wording of this reference was revised following the

Providence round of testing to state that the interest rate can increase "no more than 6% total for the life of the loan."

NEW EARLY DISCLOSURE:
"FIXED VS. ADJUSTABLE RATE MORTGAGES"

For the round of interviews held in Providence, RI (Round 7), ICF Macro developed a new early disclosure. This one-page document provided information about the relative advantages and disadvantages of an ARM compared to a fixed-rate loan, most of which currently appears in the CHARM booklet. The intent was that this publication would be provided to consumers at the point when they first expressed interest in a mortgage. The document that was tested is provided in Appendix D.

Participants in the Providence interviewers were given this new early disclosure together with the revised program disclosure described above. They were ***asked*** to comment on the extent to which they would find this information useful, and were then ***asked*** questions designed to test their understanding of the form.

Key Findings

. Participants understood that the purpose of this disclosure was to provide them with information about ARMs, and about the relative advantages and disadvantages of this type of loan product compared to a fixed-rate mortgage.

. Participants generally had a favorable reaction to the page comparing fixed rate to adjustable rate mortgages. Participants commented that the information was clear and easy-to-understand, and they did not identify anything that they found unclear or confusing. Several participants particularly liked the box that directly compared the two products and provided suggestions for when to consider each of them.

. Half of the participants understood the information on this page was coming from the Board, as opposed to a lender or broker. Other participants understood this was the case only after the Board logo and heading ("Federal Reserve Board Consumer Protection Resources") were pointed out to them.

Subsequent Design Decisions

. Because participants generally understood the information on this disclosure and indicated that the information would be useful to them, lenders would be required to provide these forms to potential borrowers.

ARM ADJUSTMENT NOTICE

Currently, Regulation Z requires lenders to notify ARM borrowers of a change to the interest rate; if the borrower's payment will change, the lender must send the notice in advance of the change. Regulation Z does not contain a model form for this disclosure.

Prior to the round of interviews in Providence, RI (Round 11), ICF Macro developed a model notice to inform borrowers that their interest rate had been changed and would change their monthly payment. The specific terms ***shown*** on the notice also indicated that the borrower would begin paying interest, whereas previous payments had been interest-only. The notice ***shown*** to participants is provided in Appendix D.

Participants in the Providence interviews were ***asked*** to review this notice and provide initial reactions and comments. They were then ***asked*** a series of questions designed to test their understanding of the content.

Key Findings

. Participants generally understood the form content and recognized all aspects of the loan that would be changing. All interview participants correctly identified the amount of the new payment, as well as the date that it would be due. Almost all participants recognized without prompting that their rate was increasing, the amount they pay for taxes and insurance was increasing, and their new payments would begin paying off the loan principal.

. All but one participant saw the information on the form indicating that if they tried to refinance into another loan, they would be subject to a prepayment penalty.

. When ***asked*** what they would do if they realized they would be unable to make their new payments, six participants indicated they would call their lender, while four said they would use one or more of the resources listed at the bottom of the form. Two participants said that they most likely would not seek out any type of assistance because they did not believe doing so would be helpful.

Subsequent Design Decisions

. Because comprehension of this notice was generally very high, the model ARM adjustment notice published by the Board with its proposed rules in July 2009 will be almost identical to that which was tested with consumers.[31]**PAYMENT OPTION MONTHLY PAYMENT DISCLOSURE**

Prior to the round of interviews in Denver, CO (Round 12), ICF Macro developed a model disclosure to include with monthly statements for payment option mortgages. This disclosure describes a borrower's payment options for that month, along with the impact that each would have on their loan balance and future payments. The disclosure ***shown*** to participants is provided in Appendix D.

Participants in the Denver interviews were ***asked*** to review this disclosure and provide initial reactions and comments. They were then ***asked*** a series of questions designed to test their understanding of the content.

Key Findings

. All participants understood that the purpose of this disclosure was to inform them of their payment options, along with the consequences of selecting a particular payment.

. Participants felt the information was very clearly presented; they had no questions following their review of the disclosure. One participant, however, expressed doubt that lenders would ever be this honest when describing the consequences of making minimum payments.

. Most interview participants understood if they made the minimum payment they would be borrowing more money and increasing their loan balance. Most also understood that if they made minimum payments they would have to make much larger payments in the future.

. All but two participants understood that if they made an interest-only payment they would be paying only interest and would not be paying off principal. The remaining two participants confused the consequences of an interest-only payment with those of the minimum payment, and indicated that making an interest-only payment would also cause the loan balance to increase.

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The model form published by the Board will also ***show*** loan balance and other loan features where applicable, such as interest rate carryover.

Subsequent Design Decisions

. Because comprehension of the content was generally very high, the model payment option monthly payment disclosure published by the Board with its proposed rules in July 2009 will be almost identical to that which was tested with consumers in this round.

NEW EARLY DISCLOSURE: MORTGAGE SHOPPING CHECKLIST

For the round of interviews held in Baltimore, MD (Round 7), ICF Macro developed another early disclosure. Called the "Mortgage Shopping Checklist," the goal of this one-page document was to provide consumers with six action steps they should take before applying for a mortgage loan. These action steps were intended to make consumers more knowledgeable about mortgages, and to improve their ability to shop effectively between lenders. The disclosure was designed with the intent that it would be provided to consumers when they first contacted a lender or broker about obtaining a mortgage.

Participants in the Baltimore interviews were ***shown*** the Mortgage Shopping Checklist and ***asked*** to provide initial reaction and feedback. They were then ***asked*** to explain several sections of the form, to gather data on the extent to which they understood the content. The Checklist ***shown*** to participants is provided in Appendix D.

Key Findings

. About half of participants indicated they would find this document helpful if they were in the process of looking for a mortgage. Some said if they had been given this information when they bought their first home it would have saved them time and money.

. Participants who indicated that the document would not be useful to them tended to be more experienced borrowers who had been through the mortgage process multiple times. Several believed they were already effective shoppers and did not need additional guidance. Some of these participants, however, thought the Checklist would be a useful resource for first-time borrowers.

. One participant commented the document would be more useful if it actually provided information about mortgages, rather than simply recommending other resources.

. Several participants expressed surprise that the Federal Reserve Board would produce a document like this for consumers, because they did not know this was one of the Board's roles. Others had not known that the Board offered resources such as consumer-oriented websites.

. Approximately half the participants said they would be likely to call the phone number listed at the bottom of the page and request the "Mortgage Shopping Package." Others said they would be unlikely to do so, because they did not believe that this information would be useful to them.

. Some participants indicated that in addition to the six items on the checklist, they would like more information on topics including: the timeline of the mortgage process; ***how*** to identify reputable lenders and/or brokers; an explanation of closing costs; suggestions on ***how*** to improve ***your*** credit score; and ***how*** to read and understand mortgage disclosures.

. Several participants suggested that if the Board produced a resource like this, they should be sure to promote it to increase awareness of its availability.

. A few participants commented that in addition to this form, the Board should also provide in-person workshops and mortgage counseling.

. One participant indicated that he would be unlikely to get quotes from multiple lenders if doing so required that he pay multiple application fees.

Subsequent Design Decisions

. Because half of the participants indicated they did not find the content of this disclosure to be helpful, the decision was made not to require that a Mortgage Shopping Checklist be provided to all potential borrowers. However, because other participants--particularly less experienced borrowers--said that a checklist like this would be useful, the Board plans to explore options for ***how*** to provide this information through consumer education materials.

CHAPTER VII: SUMMARY

This report summarizes work conducted by ICF Macro from December 2007 through June 2009 in support of the Board's efforts to revise Regulation Z rules pertaining to closed-end mortgage disclosures. The outcomes of this work include the development of:

. A significantly revised TILA statement that:

. Emphasizes potential changes in rates and payments;

. Highlights potentially risky or costly loan features;

. Helps consumers verify key terms they might have considered before applying for a particular loan; and

. Provides context for ***how*** the loan APR compares with what other recent borrowers have been offered;

. A new document titled "Key Questions to ***Ask*** About ***Your*** Loan," a concise and easy-to read disclosure for potential borrowers that provides guidance on what questions they should ***ask*** their lenders;

. A new disclosure titled "Fixed vs. Adjustable Rate Mortgages," which will be provided to potential borrowers to explain the relative advantages of fixed and adjustable rate loan products;

. A revised ARM loan program disclosure that is simpler and more useful to consumers than that which is currently in use;

. A revised ARM adjustment notice that describes future interest rate and payment changes; and

. A new payment option monthly payment disclosure for consumers with payment option and other negative amortization mortgages that describes the consequences of making less than the full payment each month.

The results of the research described in this report will inform the Board's proposed revisions to Regulation Z, which are scheduled for release in July 2009. The disclosure forms developed through iterative testing will be released with the proposal as model forms and clauses. By relying heavily on direct consumer testing in the development of these forms, the Board hopes to ensure that its new regulations will lead to financial disclosures that will be easier for consumers to read and understand, and as a result will help them make well-informed financial decisions.

APPENDIX A: Research Timeline

Round #	Location	Date(s)	Type of Testing
			Focus Groups

Round #	Location	Date(s)	Type of Testing
1	Greenbelt, MD	February 20, 2008	(2)
2	Washington, DC	March 4 & 6, 2008	Interviews (7)
3	Los Angeles, CA	March 25-26, 2008	Interviews (7)
4	Los Angeles, CA	March 25-26, 2008	Focus Groups Focus (2)
5	Washington, DC	April 30 & May 1, 2008	Interviews (10)
6	Kansas City, KS	May 13-14, 2008	Interviews (11)
7	Baltimore, MD	August 20-21, 2008	Interviews (10)
8	Atlanta, GA	November 5-6, 2008	Interviews (9)
9	Bethesda, MD	January 27 & 29, 2009	Interviews (9)
10	Dallas, TX	February 24-25, 2009	Interviews (10)
11	Providence, RI	March 31 & April 1, 2009	Interviews (10)
12	Denver, CO	April 21-22, 2009	Interviews (10)
13	Bethesda, MD	May 6-7, 2009	Interviews (9)

Round #	Topics Addressed
1	. Mortgage shopping behavior . Current disclosures (CHARM booklet, ARM loan program disclosure, TILA statement n1)
2	. Mortgage shopping behavior . Mortgage broker compensation disclosures n2 . Pollock and joint (HUD-Fed) forms
3	. Mortgage shopping behavior . Mortgage broker compensation disclosures . Pollock and joint (HUD-Fed) forms
4	. Mortgage shopping behavior . Current disclosures (CHARM booklet, ARM loan program disclosure, TILA statement)
5	. Mortgage shopping behavior . Mortgage broker compensation disclosures . CHARM booklet
6	. Mortgage shopping behavior . Mortgage broker compensation disclosures
7	. CHARM booklet . Mortgage shopping behavior . New early disclosures (Mortgage Checklist, Mortgage Risk Worksheet)
8	. Current TILA statement . Mortgage shopping behavior . New early disclosure ("Key Questions" disclosure)
9	. Revised TILA statements . Payment scenario table and graph . Revised TILA statements
10	. Revised TILA statements . Alteate presentations of APR . "Key Questions" disclosure
11	. Revised TILA statements (interest-only ARMs and fixed rate loans with balloon payments) . Revised ARM loan program disclosure
12	. ARM adjustment notice . Revised TILA statements (interest-only and payment option ARMs)
	. Payment option monthly payment disclosure . Revised TILA statements (fixed-rate loans,

Round #	Topics Addressed
13	interest-only and payment option ARMs)

APPENDIX B: Sample Recruitment Screener

Participant Screener for Federal Reserve Board In-Depth Interviews Providence, RI

March 31-April 1, 2009

Recruiting Script

Hello, I am calling on behalf of the United States Federal Reserve Board. As you may know, recently many Americans have had problems with their mortgages. In response to the recent mortgage issues, the Federal Reserve Board is sponsoring a series of consumer interviews in ***your*** area so that we can learn more about ***how*** people make decisions regarding their mortgages. We will use what we learn from these interviews to help improve the information consumers receive when they get a mortgage loan.

Q1: Have you obtained a new mortgage or refinanced a mortgage in the past two years?

. Yes --> *Participant may qualify for Category A; continue to Q2*

. No --> *Participant may qualify for Category B; skip to Q9*

Great. We will be holding interviews in Providence on Tuesday, March 31st and Wednesday, April 1st. Participants will receive $ 75 in exchange for their time and input on this important topic. I was wondering if you would be interested in attending.

. Yes --> Continue to screening questions

. No --> *Record reason (not interested, not available on that date, etc); thank them politely and end call*.

Questions for Category A Candidates

Q2: Was this mortgage related to a property for ***your*** own use, or a property you purchased solely as an investment?

. Own use --> *Continue*

. Investment --> *Thank respondent politely and end call*.

Q3: Were you the person in ***your*** household who was responsible for making decisions related to this mortgage?

. Yes --> *Continue*

. Yes, in cooperation with my [spouse, partner, etc.] --> *Continue*

. No --> *Thank respondent politely and end call*.

Q4: Do you work or have you ever worked for a bank or other financial institution, or in the real estate or mortgage industry?

. Yes --> *Thank respondent politely and end call*.

. No --> *Continue*

Q5: ARTICULATION QUESTION: In a few sentences, could you describe the process through which you found ***your*** current mortgage lender?

. If respondent indicates that he/she got their mortgage through a family member or close friend who was a broker or worked at a bank --> *Thank respondent politely and end call*.

In all other cases…

. If respondent gives a thoughtful, articulate answer --> *Continue to Q6*

. If respondent does not give a thoughtful, articulate answer --> *Thank respondent politely and end call*.

At this point, I am going to ***ask*** you a few questions that pertain to financial information that you might find personal or private. However, I want to assure you that none of this information will be shared outside the group conducting this research, and all information will be kept anonymous--***your*** name will never be used in any reports.

Q6: ***How*** many mortgages do you currently have on ***your*** primary residence?

. One (*skip to Q8a*)
. Two or more

Q7: Was the mortgage that you obtained in the past two years the larger or smaller of these mortgages?

a) Larger (1st mortgage)

b) Smaller (2nd or 3rd mortgage) [*NOTE. No more than 2 among interviews*]

c) Both [*Direct respondent to answer remaining questions based on larger (1st) mortgage*]

If answer is "a" or "c"

Q8a: What is the current interest rate on this mortgage?

. 7.5% or below

. Above 7.5% 4 --> **Qualifies as SP**
. Don't know

If answer is "b"

Q8b: What is the current interest rate on this mortgage?

. 9.5% or below

. Above 9.5% --> **Qualifies as SP**
Don't know

Questions for Category B Candidates

Q9: Have you ever owned a home?

. Yes --> *Thank respondent politely and end call*.

. No --> *Continue*

Q10: Have you looked into buying a home in the last year?

. Yes --> *Continue*

. No --> *Thank respondent politely and end call*.

Q11: In the past year, have you spoken to a mortgage lender or a broker about buying a house?

. Yes --> *Continue*

. No --> *Thank respondent politely and end call*.

Q12: Do you work or have you ever worked for a bank or other financial institution, or in the real estate or mortgage industry?

. Yes --> *Thank respondent politely and end call*.

. No --> *Continue*

Q13: ARTICULATION QUESTION: If you find a house you are interested in buying, ***<u>how</u>*** do you think you will go about finding a mortgage loan?

. If respondent gives a thoughtful, articulate answer --> *Continue*

. If respondent does <u>not</u> give a thoughtful, articulate answer --> *Thank respondent politely and end call*.

Q14: Are you the person in ***<u>your</u>*** household who would be responsible for making decisions related to a mortgage?

. Yes --> *Participant qualifies in Category B; continue to Q15*

. Yes, in cooperation with my [spouse, partner, etc.] --> *Participant qualifies in Category B; continue to Q15*

No --> *Thank respondent politely and end call*.

Note: No more than 2 participants can qualify in Category B; all other participants must qualify in Category A based on a "Yes" answer to Q1.

Q15: Have you experienced any of the following financial hardships in the past seven years: bankruptcy, foreclosure, repossession, or a tax lien?

. Yes --> Respondent qualifies as SP

. No

Q16: In the past two years, have you been turned down for credit or have you been discouraged from applying for credit?

. Yes --> Respondent qualifies as SP

. No

Screening Criteria	**Interviews**
Does participant qualify as "SP"?	. At least 4 recruits must be SP . At least 4 recruits must NOT be SP
Q17: [Category A only] Was the mortgage that you obtained used to re-finance an existing mortgage? a) Yes (skip to Q19)	. No more than 4 recruits should answer "a"

Screening Criteria	Interviews
b) No	
Q18: [Category A only] Was this the first home you ever purchased?	. At least 4 recruits should respond "a"
a) Yes b) No	
Q19: Some mortgages have an adjustable interest rate. Does ***<u>your</u>*** new mortgage have a rate that is adjustable or will become adjustable in the future?	
a) Yes, adjustable b) No, not adjustable -> Have you had an adjustable rate mortgage in the past five years? If Yes, then count as "a" c) Don't know	. No more than 3 recruits should respond "b" or "c"
Q20: What is ***<u>your</u>*** age?	. At least 3 recruits should respond "a" or "b"
a) 18 to 25 b) 26 to 35 c) 36 to 50 d) 51 or above	. At least 3 recruits should respond "c" or "d"
Q21: Which of the following categories best reflects ***<u>your</u>*** race or ethnicity? You can choose more than one category. [Respondents who wish to choose more than one category should be counted as minorities, even if one race mentioned is White.]	. At least 3 recruits should respond "a" . At least 3 recruits should respond "b", "d", or "e" . At least 2 recruits should

Screening Criteria	Interviews
	respond "c"
a) White b) Black or African-American c) Hispanic or Latino d) Asian e) Native American or Pacific Islander	
Q22: What is the highest level that you reached in school?	
a) Some high school b) High school graduate c) At least some college work d) College graduate e) At least some graduate school	. At least 3 recruits should respond "a" or "b" . At least 3 recruits should b "c"
Q23: Gender	. At least 3 recruits of each gender

APPE C:

Participant Demographi and Background Information

	Round 1 **Greenbelt MD** **(Feb. 2008** **Focus Groups)**	**Roun 2** **Washington, DC** **(Mar. 2008** **Interviews)**	**Round 3** **Los Angeles, CA** **(Mar. 2008** **Interviews)**
Male	5	2	4
Female	11	5	3
18-35	1<1>	3	3
36+	13	4	4
Caucasian	6	1	3
African-American	10	6	1
Hispanic	0	0	3
Other	0	0	0
High school or less	2	1	0
Some college or more	14	6	7
Yes	8	0	0
No	8	7	7
Yes	4	2	1
No	12	5	6
Creditworthiness<2>			
Subprime	9	2	2
Prime	7	5	5

	Round 4 Los Angeles, CA (Mar. 2008 Focus Groups)	**Round 5 Washington, DC (Apr. 2008 Interviews)**	**Round 6 Kansas City, KS (May 2008 Interviews)**
Male	8	3	4
Female	8	7	7
18-35	2	1	4
36+	14	9	7
Caucasian	5	3	9
African-American	3	6	2
Hispanic	8	1	0
Other	0	0	0
High school or less	4	1	2
Some college or more	12	9	9
Yes	4	0	1
No	12	10	10
Yes	5	2	2
No	11	8	9
Creditworthiness<2>			
Subprime	8	3	3
Prime	8	7	8

	Round 7 Baltimore, MD (Aug. 2008 Interviews)
Male	3
Female	7
18-35	6
36+	4
Caucasian	5
African-American	5
Hispanic	0
Other	0
High school or less	3
Some college or more	7
Yes	2
No	8
Yes	3
No	7
Creditworthiness<2>	
Subprime	4
Prime	6

	Round 1	**Round 2**	**Round 3**

	Greenbelt, MD (Feb. 2008 Focus Groups)	Washington, DC (Mar. 2008 Interviews)	Los Angeles, CA (Mar. 2008 Interviews)
Refinance	9	1	3
Home purchase	7	6	4
No previous loan	0	0	0
Yes	6	3	2
No	1	3	2
One	14	7	6
Two or more	2	0	1
Yes	10	6	5
No	6	1	2
Through broker	3	2	3
Directly from lender	8	3	4
Don't know	5	2	0
Yes	3	1	0
No	13	6	7
Don't know	0	0	0
Yes	0	0	1
No	16	7	6

	Round 4 Los Angeles, CA (Mar. 2008 Focus Groups)	Round 5 Washington, DC (Apr. 2008 Interviews)
Refinance	8	9
Home purchase	8	1
No previous loan	0	0
Yes	6	0
No	2	1
One	8	8
Two or more	8	2
Yes	12	4
No	4	6
Through broker	10	1
Directly from lender	5	9
Don't know	1	0
Yes	2	2
No	14	8
Don't know	0	0
Yes	2	1
No	14	9

	Round 6 Kansas City, KS	Round 7 Baltimore, MD

	(May 2008 Interviews)	(Aug. 2008 Interviews)
Refinance	7	6
Home purchase	4	4
No previous loan	0	0
Yes	2	3
No	2	1
One	10	7
Two or more	1	3
Yes	7	7
No	4	3
Through broker	3	4
Directly from lender	8	6
Don't know	0	0
Yes	2	4
No	9	4
Don't know	0	2
Yes	2	1
No	9	9

	Round 8 Atlanta, GA (Nov. 2008 Interviews)	Round 9 Bethesda, MD (Jan. 2009 Interviews)	Round 10 Dallas, TX (Feb. 2009 Interviews)
Male	5	4	4
Female	4	5	6
18-35	2	2	2
36+	7	7	8
Caucasian	5	5	3
African-American	4	3	4
Hispanic	0	1	2
Other	0	0	1
High school or less	27	0	1
Some college or more	6	9	9
Yes	4	2	4
No	5	7	6
Yes	4	3	7
No	5	6	3
Subprime	4	4	7
Prime	5	5	3

	Round 11 Providence, RI (Mar. 2009 Interviews)	Round 12 Denver, CO (Apr. 2009 Interviews)

	Round 11 Providence, RI (Mar. 2009 Interviews)	**Round 12 Denver, CO (Apr. 2009 Interviews)**
Male	6	4
Female	4	6
18-35	5	5
36+	5	5
Caucasian	8	6
African-American	1	0
Hispanic	1	3
Other	0	1
High school or less	1	1
Some college or more	9	9
Yes	1	3
No	9	7
Yes	2	6
No	8	4
Subprime	2	8
Prime	8	2

	Round 13 Bethesda, MD (May 2009 Interviews)	**Grand Total<5,6>**
Male	3	55 (41%)
Female	6	79 (59%)
18-35	3	39 (30%)
36+	6	93 (70%)
Caucasian	5	64 (48%)
African-American	2	47 (35%)
Hispanic	2	21 (16%)
Other	0	2 (1%)
High school or less	2	20 (15%)
Some college or more	7	113 (85%
Yes	1	30 (22%)
No	8	104 (78%
Yes	3	44 (33%)
No	6	90 (67%)
Subprime	3	59 (44%)
Prime	6	75 (56%)

Round 8 Atlanta, GA (Nov. 2008	**Round 9 Bethesda, MD (Jan. 2009**	**Round 10 Dallas, TX (Feb. 2009**

	Interviews)	Interviews)	Interviews)
Refinance	3	3	4
Home purchase	6	6	5
No previous loan<9>	0	0	1
Yes	3	4	2
No	3	2	3
One	4	7	8
Two or more	5	2	1
Yes	3	5	6
No	6	4	3
Through broker	3	5	4
Directly from lender	4	4	5
Don't know	2	0	0
Yes	4	2	0
No	5	7	9
Don't know	0	0	0
Yes	0	1	3
No	9	8	6

	Round 11 Providence, RI (Mar. 2009 Interviews)	Round 12 Denver, CO (Apr. 2009 Interviews)	Round 13 Bethesda, MD (May 2009 Interviews)
Refinance	5<8>	4	3
Home purchase	2	5	5
No previous loan<9>	2	1	1
Yes	2	3	4
No	0	2	1
One	8	6	4
Two or more	0	3	4
Yes	2	7	5<10>
No	6	2	3
Through broker	4<11>	4	2
Directly from lender	3	4	5
Don't know	0	1	1
Yes	2<12>	1	1
No	5	4	6
Don't know	0	4	1
Yes	1	3	1
No	7	6	7

	Grand Total<5,6>
Refinance	65 (49%)
Home purchase	63 (47%)

	Grand Total<5,6>
No previous loan<9>	5 (4%)
Yes	40 (63%)
No	23 (37%)
One	97 (75%)
Two or more	32 (25%)
Yes	79 (61%)
No	50 (39%)
Through broker	48 (38%)
Directly from lender	68 (53%)
Don't know	12 (9%)
Yes	24 (19%)
No	97 (76%)
Don't know	7 (5%)
Yes	16 (12%)
No	113 (88%

<1>In this round of testing, two participants did not provide their age.

<2>Participants' responses to three questions were used to categorize them as likely prime or subprime borrowers. Participants were categorized as "subprime" if they had: a) suffered a "financial hardship" such as bankruptcy, foreclosure, repossession or a tax lien in the past 7 years; b) been denied credit or discouraged from applying for credit in the past 2 years; or c) the current interest rate on their loan was higher than established HMDA thresholds (see Footnote 4 below).

<3>Only respondents whose most recent mortgage was for a home purchase (as opposed to a refinance) answered this question.

<4>The interest rate thresholds that were used to classify respondents as "subprime" were set to be roughly consistent with the Home Mortgage Disclosure Act (HMDA) APR-based thresholds for reporting higher-priced loans. For Rounds 1 through 8, the 2007-08 HMDA thresholds were used: 8 percent for a first mortgage and 10 percent for a second or third mortgage. For Rounds 9 through 13, these rates were adjusted to the 2008-09 HMDA thresholds: 7.5 percent for a first mortgage and 9.5 percent for a second or third mortgage.

<5>Percentages of participants by demographic category may contain a small rounding error, of less than to 1%.

<6>Some interviews were conducted with couples who indicated that they made mortgage decisions together. In these cases, the personal information ***shown*** in this table was collected from the member of the couple who responded to the recruitment screening questions.

<7>In this round of testing, one participant did not provide their education level.

<8>In this round, one participant did not provide the reason for their most recent loan.

<9>Participants that had never obtained a mortgage loan were not ***asked*** any of the subsequent questions about their loan history.

<10>In this round, one participant did not indicate whether he had an ARM in the past 5 years.

<11>In this round, one participant did not indicate the method through which they obtained their most recent mortgage.

<12>In this round, one participant did not indicate whether his most recent loan was obtained through the FHA or VA.

[SEE APPENDIX D DISCLOSURE FORMS USES IN TESTING IN ORIGINAL]

Classification

Subject: US TRUTH IN LENDING ACT (90%); CONSUMERS (90%); INTEREST RATES (89%); CREDIT REGULATION (89%); CENTRAL BANKS (70%); HOUSING AUTHORITIES (70%); CITIES (50%)

Industry: US TRUTH IN LENDING ACT (90%); INTEREST RATES (89%); CREDIT REGULATION (89%); MORTGAGE BANKING & FINANCE (89%); LINES OF CREDIT (75%); CONSUMER LENDING (75%); HOUSING AUTHORITIES (70%); CENTRAL BANKS (70%)

Person: BEN BERNANKE (55%)
