Background and Summary

The Truth in Lending Act (TILA), 15 USC 1601 et seq., was enacted on May 29, 1968, as title I of the Consumer Credit Protection Act (Pub. L. 90-321). The TILA, implemented by Regulation Z (12 CFR 226), became effective July 1, 1969.

The TILA was first amended in 1970 to prohibit unsolicited credit cards. Additional major amendments to the TILA and Regulation Z were made by the Fair Credit Billing Act of 1974, the Consumer Leasing Act of 1976, the Truth in Lending Simplification and Reform Act of 1980, the Fair Credit and Charge Card Disclosure Act of 1988, the Home Equity Loan Consumer Protection Act of 1988.

Regulation Z also was amended to implement section 1204 of the Competitive Equality Banking Act of 1987, and in 1988, to include adjustable rate mortgage loan disclosure requirements. All consumer leasing provisions were deleted from Regulation Z in 1981 and transferred to Regulation M (12 CFR 213).

The Home Ownership and Equity Protection Act of 1994 amended TILA. The law imposed new disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. The law also included new disclosure requirements to assist consumers in comparing the costs and other material considerations involved in a reverse mortgage transaction and authorized the Federal Reserve Board to prohibit specific acts and practices in connection with mortgage transactions.

The TILA amendments of 1995 dealt primarily with tolerances for real estate secured credit. Regulation Z was amended on September 14, 1996 to incorporate changes to the TILA. Specifically, the revisions limit lenders' liability for disclosure errors in real estate secured loans consummated after September 30, 1995. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 further amended TILA. The amendments were made to simplify and improve disclosures related to credit transactions.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.*, was enacted in 2000 and did not require implementing regulations. On November 9, 2007, the amendments to Regulation Z and the official staff commentary were issued to simplify the regulation and provide guidance on the electronic delivery of disclosures consistent with the E-Sign Act.

In July 2008, Regulation Z was amended to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices. Specifically, the change applied protections to a newly defined category of "higher-priced mortgages" that includes virtually all closed-end subprime loans secured by a consumer's principal dwelling. The revisions also applied new protections to mortgage loans secured by a dwelling, regardless of loan price, and required the delivery of early disclosures for more types of transactions. The revisions also banned several advertising practices deemed deceptive or misleading. The Mortgage Disclosure Improvement Act of 2008 (MDIA) broadened and added to the requirements of the Board's July 2008 final rule by requiring early truth-in-lending disclosures for more types of transactions and by adding a waiting period between the time when disclosures are given and consummation of the transaction.

In December 2008, the Board adopted two final rules pertaining to open-end (not home-secured) credit. The first rule involved Regulation Z revisions and made comprehensive changes applicable to several disclosures required for: applications and solicitations, new accounts, periodic statements, change in terms notifications, and advertisements. The second was a rule published under the Federal Trade Commission (FTC) Act and was issued jointly with the Office of Thrift Supervision and the National Credit Union Administration. It sought to protect consumers from unfair acts or practices with respect to consumer credit card accounts. Before these rules became effective, however, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) amended TILA and established a number of new requirements for open-end consumer credit plans. Several provisions of the Credit CARD Act are similar to provisions in the Board's December 2008 TILA revisions and the joint FTC Act rule, but other portions of the Credit CARD Act address practices or mandate disclosures that were not addressed in these rules.

The Credit CARD Act provisions are effective in three stages. The provisions effective first required creditors to increase the amount of notice consumers receive before the rate on a credit card account is increased or a significant change is made to the account's terms. These amendments also allowed consumers to reject such increases and changes by informing the creditor before the increase or change goes into effect. The provisions effective next involved rules regarding interest rate increases, over-the-limit transactions, and student cards. Finally, the provisions effective last address the reasonableness and proportionality of penalty fees and charges and re-evaluation of rate increases.

In 2009, Regulation Z was amended following the passage of the Higher Education Opportunity Act (HEOA) by adding disclosure and timing requirements that apply to lenders making private education loans.

Format of Regulation Z

The disclosure rules creditors must follow differ depending on whether the creditor is offering open-end credit, such as credit cards or home-equity lines, or closed-end credit, such as car loans or mortgages.

Subpart A (§§226.1 through 226.4) of the regulation provides general information that applies to open-end and closed-end credit transactions. It sets forth definitions and stipulates which transactions are covered and which are exempt from the regulation. It also contains the rules for determining which fees are finance charges.

Subpart B (§§226.5 through 226.16) of the regulation contains rules for disclosures for home-equity loans, credit and charge card accounts, and other open-end credit.

Subpart B also covers rules for resolving billing errors, calculating annual percentage rates, credit balances, and advertising open-end credit. Special rules apply to credit card transactions only, such as certain prohibitions on the issuance of credit cards and restrictions on the right to offset a cardholder's indebtedness. Additional special rules apply to home-equity lines of credit, such as certain prohibitions against closing accounts or changing account terms.

Subpart C (§§226.17 through 226.24) includes provisions for closed-end credit. Residential mortgage transactions, demand loans, and installment credit contracts, including direct loans by banks and purchased dealer paper, are included in the closed-end credit category. Subpart C also contains disclosure rules for regular and variable rate loans, refinancings and assumptions, credit balances, calculating annual percentage rates, and advertising closed-end credit.

Subpart D (§§226.25 through 226.30), which applies to both open-end and closed-end credit, sets forth the duty of creditors to retain evidence of compliance with the regulation. It also clarifies the relationship between the regulation and state law, and requires creditors to set a cap for variable rate transactions secured by a consumer's dwelling.

Subpart E (§§226.31 through 226.36) contains special requirements for mortgages that fit the criteria in §226.32(a) ("high-cost mortgages"), §226.33(a) ("reverse mortgages"), and §226.35(a) ("higher-priced mortgage loans"), as well as loans secured by a consumer's principal dwelling.

Subpart F (§§226.46 through 226.48) includes disclosure and timing requirements that apply to creditors making private education loans. It also limits certain practices by creditors including "co-branding" products with educational institutions in the marketing of private student loans. The rule requires that creditors obtain a self-certification form signed by the consumer before consummating the loan. It also requires creditors with preferred

lender arrangements with educational institutions to provide certain information to those institutions.

Subpart G (§§226.51 through 226.58) relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for §226.57(c), which applies to all open-end credit plans). This subpart contains rules on the evaluation of a consumer's ability to pay, limits on fees during the first year after account opening, and rules on allocation of payments in excess of the minimum payment. The subpart also limits increases in the annual percentage rate (APR), fees, and charges, and prohibits the assessment of fees for over-the-limit transactions unless the consumer consents. There are also rules for reporting and marketing of college student open-end credit, and requirements for the internet posting of credit card account agreements under an open-end (not home-secured) consumer credit plan.

The appendices to the regulation set forth model forms and clauses that creditors may use when providing open-end and closed-end disclosures. The appendices contain detailed rules for calculating the APR for open-end credit (appendix F) and closed-end credit (appendixes D and J). Appendices K and L provide total annual loan cost rate computations and assumed loan periods for reverse mortgage transactions. Appendices M1 and M2 provide guidance for calculating the minimum payment repayment estimate.

Official staff interpretations of the regulation are published in a commentary that is normally updated annually in March. Good faith compliance with the commentary protects creditors from civil liability under the act. In addition, the commentary includes mandates, which are not necessarily explicit in Regulation Z, on disclosures or other actions required of creditors. It is virtually impossible to comply with Regulation Z without reference to and reliance on the commentary.

Note: The following narrative does not discuss all the sections of Regulation Z, but rather highlights only certain sections of the regulation and the Truth in Lending Act.

Subpart A - General

Purpose of the TILA and Regulation Z

The Truth in Lending Act is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms more readily and knowledgeably. Before its enactment, consumers were faced with a bewildering array of credit terms and rates. It was difficult to compare loans because they were seldom presented in the same format. Now, all creditors must use the same credit terminology and expressions of rates. In addition to providing a uniform system for disclosures, the act:

- Protects consumers against inaccurate and unfair credit billing and credit card practices;
- Provides consumers with rescission rights;
- Provides for rate caps on certain dwelling-secured loans;
- Imposes limitations on home equity lines of credit and certain closed-end home mortgages; and
- Delineates and prohibits unfair or deceptive mortgage lending practices.

The TILA and Regulation Z do not, however, tell financial institutions how much interest they may charge or whether they must grant a consumer a loan.

Summary of Coverage Considerations §§226.1 & 226.2

Lenders must carefully consider several factors when deciding whether a loan requires Truth in Lending disclosures or is subject to other Regulation Z requirements. The coverage considerations under Regulation Z are addressed in more detail in the commentary to Regulation Z. For example, broad coverage considerations are included under section 226.1(c) of the regulation and relevant definitions appear in section 226.2.

Exempt Transactions §226.3

The following transactions are exempt from Regulation Z:

- Credit extended primarily for a business, commercial, or agricultural purpose; [1]
- Credit extended to other than a natural person (including credit to government agencies or instrumentalities);
- Credit in excess of $25 thousand not secured by real property or personal property used as the principal dwelling of the consumer;
- Public utility credit;

[1] If a credit card is involved, generally exempt credit (e.g., business or agricultural purpose credit) is still subject to requirements that govern the issuance of credit cards and liability for their unauthorized use. Credit cards must not be issued on an unsolicited basis and, if a credit card is lost or stolen, the cardholder must not be held liable for more than $50 for the unauthorized use of the card.

- Credit extended by a broker-dealer registered with the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), involving securities or commodities accounts;

- Home fuel budget plans; and

- Certain student loan programs.

When determining whether credit is for consumer purposes, the creditor must evaluate all of the following:

- Any statement obtained from the consumer describing the purpose of the proceeds.

    - For example, a statement that the proceeds will be used for a vacation trip would indicate a consumer purpose.
    - If the loan has a mixed-purpose (e.g., proceeds will be used to buy a car that will be used for personal and business purposes), the lender must look to the primary purpose of the loan to decide whether disclosures are necessary. A statement of purpose from the consumer will help the lender make that decision.
    - A checked box indicating that the loan is for a business purpose, absent any documentation showing the intended use of the proceeds could be insufficient evidence that the loan did not have a consumer purpose.

- The consumer's primary occupation and how it relates to the use of the proceeds. The higher the correlation between the consumer's occupation and the property purchased from the loan proceeds, the greater the likelihood that the loan has a business purpose. For example, proceeds used to purchase dental supplies for a dentist would indicate a business purpose.

- Personal management of the assets purchased from proceeds. The lower the degree of the borrower's personal involvement in the management of the investment or enterprise purchased by the loan proceeds, the less likely the loan will have a business purpose. For example, money borrowed to purchase stock in an automobile company by an individual who does not work for that company would indicate a personal investment and a consumer purpose.

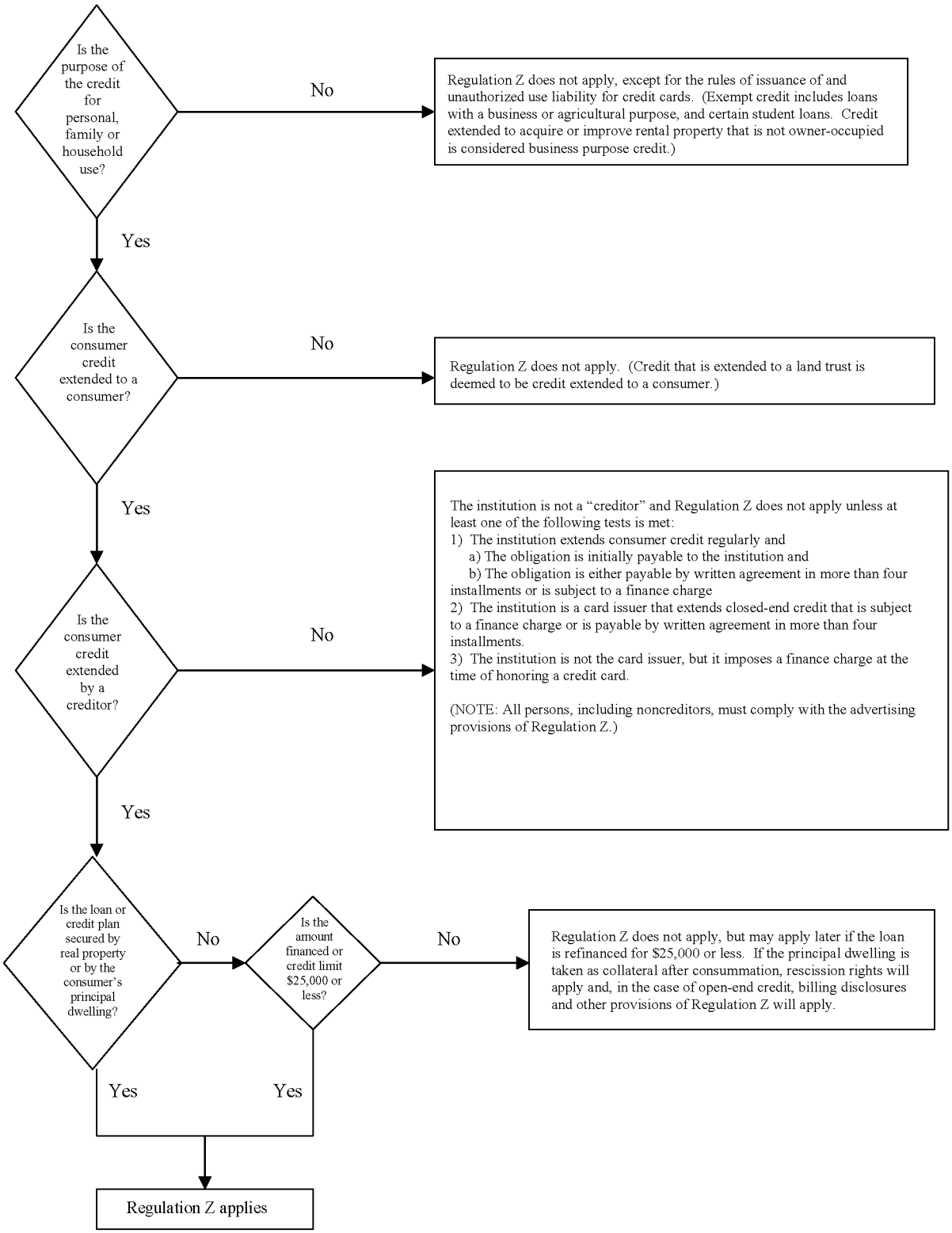
- The size of the transaction. The larger the size of the transaction, the more likely the loan will have a business purpose. For example, if the loan is for a $5,000,000 real estate transaction, that might indicate a business purpose.

- The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income. The lesser the income derived from the acquired property, the more likely the loan will have a consumer purpose. For example, if the

borrower has an annual salary of $100,000 and receives about $500 in annual dividends from the acquired property, that would indicate a consumer purpose.

All five factors must be evaluated before the lender can conclude that disclosures are not necessary. Normally, no one factor, by itself, is sufficient reason to determine the applicability of Regulation Z. In any event, the financial institution may routinely furnish disclosures to the consumer. Disclosure under such circumstances does not control whether the transaction is covered, but can assure protection to the financial institution and compliance with the law.

Coverage Considerations under Regulation Z



Determination of Finance Charge and APR

Finance Charge (Open-End and Closed-End Credit) §226.4

The finance charge is a measure of the cost of consumer credit represented in dollars and cents. Along with APR disclosures, the disclosure of the finance charge is central to the uniform credit cost disclosure envisioned by the TILA.

The finance charge does not include any charge of a type payable in a comparable cash transaction. Examples of charges payable in a comparable cash transaction may include taxes, title, license fees, or registration fees paid in connection with an automobile purchase.

Finance charges include any charges or fees payable directly or indirectly by the consumer and imposed directly or indirectly by the financial institution either as an incident to or as a condition of an extension of consumer credit. The finance charge on a loan always includes any interest charges and often, other charges. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the disclosed finance charge (§226.4(b)).

Accuracy Tolerances (Closed-End Credit) §§226.18(d) & 226.23(h)

Regulation Z provides finance charge tolerances for legal accuracy that should not be confused with those provided in the TILA for reimbursement under regulatory agency orders. As with disclosed APRs, if a disclosed finance charge were legally accurate, it would not be subject to reimbursement.

Under TILA and Regulation Z, finance charge disclosures for open-end credit must be accurate since there is no tolerance for finance charge errors. However, both TILA and Regulation Z permit various finance charge accuracy tolerances for closed-end credit.

Tolerances for the finance charge in a closed-end transaction are generally $5 if the amount financed is less than or equal to $1,000 and $10 if the amount financed exceeds $1,000. Tolerances for certain transactions consummated on or after September 30, 1995 are noted below.

- Credit secured by real property or a dwelling (closed-end credit only):
  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than $100.
  - Overstatements are not violations.
- Rescission rights after the three-business-day rescission period (closed-end credit only):

- The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than one-half of 1 percent of the credit extended.
- The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than 1 percent of the credit extended for the initial and subsequent refinancings of residential mortgage transactions when the new loan is made at a different financial institution. (This excludes high cost mortgage loans subject to §226.32, transactions in which there are new advances, and new consolidations.)

- Rescission rights in foreclosure:

  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than $35.
  - Overstatements are not considered violations.
  - The consumer can rescind if a mortgage broker fee is not included as a finance charge.

  Note: Normally, the finance charge tolerance for a rescindable transaction is either 0.5 percent of the credit transaction or, for certain refinancings, 1 percent of the credit transaction. However, in the event of a foreclosure, the consumer may exercise the right of rescission if the disclosed finance charge is understated by more than $35.

See the "Finance Charge Tolerances" charts within these examination procedures for help in determining appropriate finance charge tolerances.

Calculating the Finance Charge (Closed-End Credit)

One of the more complex tasks under Regulation Z is determining whether a charge associated with an extension of credit must be included in, or excluded from, the disclosed finance charge. The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the financial institution requires use of the third party. Charges imposed by settlement or closing agents are finance charges if the bank requires the specific service that gave rise to the charge and the charge is not otherwise excluded. The "Finance Charge Tolerances" charts within this document briefly summarize the rules that must be considered.

Prepaid Finance Charges §226.18(b)(3)

A prepaid finance charge is any finance charge paid separately to the financial institution or to a third party, in cash or by check before or at closing, settlement, or consummation of a transaction, or withheld from the proceeds of the credit at any time.

Prepaid finance charges effectively reduce the amount of funds available for the consumer's use; usually before or at the time the transaction is consummated.

Examples of finance charges frequently prepaid by consumers are borrower's points, loan origination fees, real estate construction inspection fees, odd days' interest (interest attributable to part of the first payment period when that period is longer than a regular payment period), mortgage guarantee insurance fees paid to the Federal Housing Administration, private mortgage insurance (PMI) paid to such companies as the Mortgage Guaranty Insurance Company (MGIC), and, in non-real-estate transactions, credit report fees.

Precomputed Finance Charges

A precomputed finance charge includes, for example, interest added to the note amount that is computed by the add-on, discount, or simple interest methods. If reflected in the face amount of the debt instrument as part of the consumer's obligation, finance charges that are not viewed as prepaid finance charges are treated as precomputed finance charges that are earned over the life of the loan.

Finance Charge Chart

FINANCE CHARGE = DOLLAR COST OF CONSUMER CREDIT: It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as a condition of or incident to the extension of credit.

CHARGES ALWAYS INCLUDED

- Interest
- Transaction fees
- Loan origination fees
  Consumer points
- Credit guarantee insurance premiums
- Charges imposed on the creditor for purchasing the loan, which are passed on to the consumer
- Discounts for inducing payment by means other than credit
- Mortgage broker fees
- Other examples: Fee for preparing TILA disclosures; real estate construction loan inspection fees; fees for post-consummation tax or flood service policy; required credit life insurance charges

CHARGES INCLUDED UNLESS CONDITIONS ARE MET

CONDITIONS (Any loan)

Premiums for credit life, A&H, or loss of income insurance	Insurance not required, disclosures are made, and consumer authorizes
Debt cancellation fees	Coverage not required, disclosures are made, and consumer authorizes
Premiums for property or liability insurance	Consumer selects insurance company and disclosures are made
Premiums for vendor's single interest (VSI) insurance	Insurer waives right of subrogation, consumer selects insurance company, and disclosures are made
Security interest charges (filing fees), insurance in lieu of filing fees and certain notary fees	The fee is for lien purposes, prescribed by law, payable to a third public official and is itemized and disclosed
Charges imposed by third parties	Use of the third party is not required to obtain loan and creditor does not retain the charge
Charges imposed by third party closing agents	Creditor does not require and does not retain the fee for the particular service
Appraisal and credit report fees	Application fees, if charged to all applicants, are not finance charges. Application fees may include appraisal or credit report fees.

CHARGES NOT INCLUDED (Residential mortgage transactions and loans secured by real estate)

- Fees for title insurance, title examination, property survey, etc.
- Fees for preparing loan documents, mortgages, and other settlement documents
- Amounts required to be paid into escrow, if not otherwise included in the finance charge
- Notary fees
- Pre-consummation flood and pest inspection fees
- Appraisal and credit report fees

CHARGES NEVER INCLUDED

- Charges payable in a comparable cash transaction.
- Fees for unanticipated late payments
- Overdraft fees not agreed to in writing
- Seller's points
- Participation or membership fees
- Discount offered by the seller to induce payment by cash or other means not involving the use of a credit card
- Interest forfeited as a result of interest reduction required by law
- Charges absorbed by the creditor as a cost of doing business

Instructions for the Finance Charge Chart

The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the creditor requires use of the third party. Charges imposed on the consumer by a settlement agent are finance charges only if the creditor requires the particular services for which the settlement agent is charging the borrower and the charge is not otherwise excluded from the finance charge.

Immediately below the finance charge definition, the chart presents five captions applicable to determining whether a loan related charge is a finance charge.

The first caption is charges always included. This category focuses on specific charges given in the regulation or commentary as examples of finance charges.

The second caption, charges included unless conditions are met, focuses on charges that must be included in the finance charge unless the creditor meets specific disclosure or other conditions to exclude the charges from the finance charge.

The third caption, conditions, focuses on the conditions that need to be met if the charges identified to the left of the conditions are permitted to be excluded from the finance charge. Although most charges under the second caption may be included in the finance charge at the creditor's option, third party charges and application fees (listed last under the third caption) must be excluded from the finance charge if the relevant conditions are met. However, inclusion of appraisal and credit report charges as part of the application fee is optional.

The fourth caption, charges not included, identifies fees or charges that are not included in the finance charge under conditions identified by the caption. If the credit transaction is secured by real property or the loan is a residential mortgage transaction, the charges identified in the column, if they are bona fide and reasonable in amount, must be excluded from the finance charge. For example, if a consumer loan is secured by a vacant lot or commercial real estate, any appraisal fees connected with the loan must not be included in the finance charge.

The fifth caption, charges never included, lists specific charges provided by the regulation as examples of those that automatically are not finance charges (e.g., fees for unanticipated late payments).

Annual Percentage Rate Definition §226.22 (Closed-End Credit)

Credit costs may vary depending on the interest rate, the amount of the loan and other charges, the timing and amounts of advances, and the repayment schedule. The APR, which must be disclosed in nearly all consumer credit transactions, is designed to take into account all relevant factors and to provide a uniform measure for comparing the cost of various credit transactions.

The APR is a measure of the cost of credit, expressed as a nominal yearly rate. It relates the amount and timing of value received by the consumer to the amount and timing of payments made. The disclosure of the APR is central to the uniform credit cost disclosure envisioned by the TILA.

The value of a closed-end credit APR must be disclosed as a single rate only, whether the loan has a single interest rate, a variable interest rate, a discounted variable interest rate, or graduated payments based on separate interest rates (step rates), and it must appear with the segregated disclosures. Segregated disclosures are grouped together and do not contain any information not directly related to the disclosures required under §226.18.

Since an APR measures the total cost of credit, including costs such as transaction charges or premiums for credit guarantee insurance, it is not an "interest" rate, as that term is generally used. APR calculations do not rely on definitions of interest in state law and often include charges, such as a commitment fee paid by the consumer, that are not viewed by some state usury statutes as interest. Conversely, an APR might not include a charge, such as a credit report fee in a real property transaction, which some state laws might view as interest for usury purposes. Furthermore, measuring the timing of value received and of payments made, which is essential if APR calculations are to be accurate, must be consistent with parameters under Regulation Z.

The APR is often considered to be the finance charge expressed as a percentage. However, two loans could require the same finance charge and still have different APRs because of differing values of the amount financed or of payment schedules. For example, the APR is 12 percent on a loan with an amount financed of $5,000 and 36 equal monthly payments of $166.07 each. It is 13.26 percent on a loan with an amount financed of $4,500 and 35 equal monthly payments of $152.18 each and final payment of $152.22. In both cases the finance charge is $978.52. The APRs on these example loans are not the same because an APR does not only reflect the finance charge. It relates the amount and timing of value received by the consumer to the amount and timing of payments made.

The APR is a function of:

- The amount financed, which is not necessarily equivalent to the loan amount. For example, if the consumer must pay at closing a separate 1 percent loan origination fee (prepaid finance charge) on a $100,000 residential mortgage loan, the loan amount is $100,000, but the amount financed would be $100,000 less the $1,000 loan fee, or $99,000.

- The finance charge, which is not necessarily equivalent to the total interest amount (interest is not defined by Regulation Z, but rather is defined by state or other federal law). For example:

  - If the consumer must pay a $25 credit report fee for an auto loan, the fee must be included in the finance charge. The finance charge in that case is the sum of the interest on the loan (i.e., interest generated by the application of a percentage rate against the loan amount) plus the $25 credit report fee.
  - If the consumer must pay a $25 credit report fee for a home improvement loan secured by real property, the credit report fee must be excluded from the finance charge. The finance charge in that case would be only the interest on the loan.

- The payment schedule, which does not necessarily include only principal and interest (P + I) payments. For example:

  - If the consumer borrows $2,500 for a vacation trip at 14 percent simple interest per annum and repays that amount with 25 equal monthly payments beginning one month from consummation of the transaction, the monthly P + I payment will be $115.87, if all months are considered equal, and the amount financed would be $2,500. If the consumer's payments are increased by $2.00 a month to pay a non-financed $50 loan fee during the life of the loan, the amount financed would remain at $2,500 but the payment schedule would be increased to $117.87 a month, the finance charge would increase by $50, and there would be a corresponding increase in the APR. This would be the case whether or not state law defines the $50 loan fee as interest.

  - If the loan above has 55 days to the first payment and the consumer prepays interest at consummation ($24.31 to cover the first 25 days), the amount financed would be $2,500 - $24.31, or $2,475.69. Although the amount financed has been reduced to reflect the consumer's reduced use of available funds at consummation, the time interval during which the consumer has use of the $2,475.69, 55 days to the first payment, has not changed. Since the first payment period exceeds the limitations of the regulation's minor irregularities provisions (see §226.17(c)(4)), it may not be treated as regular. In calculating the APR, the first payment period must not be reduced by 25 days (i.e., the first payment period may not be treated as one month).

Financial institutions may, if permitted by state or other law, precompute interest by applying a rate against a loan balance using a simple interest, add-on, discount or some other method, and may earn interest using a simple interest accrual system, the Rule of 78's (if permitted by law) or some other method. Unless the financial institution's internal interest earnings and accrual methods involve a simple interest rate based on a 360-day year that is applied over actual days (even that is important only for determining the accuracy of the payment schedule), it is not relevant in calculating an APR, since an APR is not an interest rate (as that term is commonly used under state or other law). Since the APR normally need not rely on the internal accrual systems of a bank, it always may be

computed after the loan terms have been agreed upon (as long as it is disclosed before actual consummation of the transaction).

Special Requirements for Calculating the Finance Charge and APR

Proper calculation of the finance charge and APR are of primary importance. The regulation requires that the terms "finance charge" and "annual percentage rate" be disclosed more conspicuously than any other required disclosure. The finance charge and APR, more than any other disclosures, enable consumers to understand the cost of the credit and to comparison shop for credit. A creditor's failure to disclose those values accurately can result in significant monetary damages to the creditor, either from a class action lawsuit or from a regulatory agency's order to reimburse consumers for violations of law.

Footnote 45d: If an APR or finance charge is disclosed incorrectly, the error is not, in itself, a violation of the regulation if:

- The error resulted from a corresponding error in a calculation tool used in good faith by the financial institution.
- Upon discovery of the error, the financial institution promptly discontinues use of that calculation tool for disclosure purposes.
- The financial institution notifies the Federal Reserve Board in writing of the error in the calculation tool.

When a financial institution claims a calculation tool was used in good faith, the financial institution assumes a reasonable degree of responsibility for ensuring that the tool in question provides the accuracy required by the regulation. For example, the financial institution might verify the results obtained using the tool by comparing those results to the figures obtained by using another calculation tool. The financial institution might also verify that the tool, if it is designed to operate under the actuarial method, produces figures similar to those provided by the examples in appendix J to the regulation. The calculation tool should be checked for accuracy before it is first used and periodically thereafter.

Subpart B - Open-End Credit

Time of Disclosures (Credit Card Accounts) §226.5(b)

For credit card accounts under an open-end (not home-secured) consumer credit plan, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and that payments are not treated as late for any purpose if they are received within 21 days after mailing or delivery of the statement. In addition, for all open-end consumer credit accounts, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the date on which a

grace period (if any) expires and that finance charges are not imposed as a result of the loss of a grace period if a payment is received within 21 days after mailing or delivery of a statement. For purposes of this requirement, a "grace period" is defined as a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

Subsequent Disclosures (Open-End Credit) §226.9

Creditors are required to provide consumers with 45 days' advance written notice of rate increases and other significant changes to the terms of their credit card account agreements. The list of "significant changes" includes most fees and other terms that a consumer should be aware of before use of the account. Examples of such fees and terms include:

- Penalty fees;
- Transaction fees;
- Fees imposed for the issuance or availability of the open-end plan;
- Grace period; and
- Balance computation method.

Changes that do not require advance notice include:

- Reductions of finance charges;
- Termination of account privileges resulting from an agreement involving a court proceeding;
- The change is an increase in an APR upon expiration of a specified period of time previously disclosed in writing;
- The change applies to increases in variable APRs that change according to an index not under the card issuer's control; and
- Rate increases due to the completion of, or failure of a consumer to comply with, the terms of a workout or temporary hardship arrangement, if those terms are disclosed prior to commencement of the arrangement.

A creditor may lower the credit limit without notice, but may not impose an over limit fee or penalty rate as a result of exceeding the new credit limit without a 45 day advance notice that the credit limit has been reduced. A creditor may suspend account privileges, terminate an account, or lower the credit limit without notice. However, a creditor that lowers the credit limit may not impose an over limit fee or penalty rate as a result of exceeding the new credit limit without a 45 day advance notice that the credit limit has been reduced.

For significant changes in terms (with the exception of rate changes, increases in the minimum payment, certain changes in the balance computation method, and when the change results from the consumer's failure to make a required minimum periodic payment within 60 days after the due date), a creditor must also provide consumers the right to reject the change. If the consumer does reject the change prior to the effective date, the creditor may not apply the change to the account (§226.9(h)(2)(i)).

In addition, when a consumer rejects a change or increase, the creditor must not:

- Impose a fee or charge or treat the account as in default solely as a result of the rejection; or
- Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the following methods: (1) the method of repayment prior to the rejection; (2) an amortization period of not less than five year from the date of rejection; or (3) a minimum periodic payment that includes a percentage of the balance that is not more than twice the percentage included prior to the date of rejection.

Finance Charge (Open-End Credit) §226.6(a)

Each finance charge imposed must be individually itemized. The aggregate total amount of the finance charge need not be disclosed.

Determining the Balance and Computing the Finance Charge

The examiner must know how to compute the balance to which the periodic rate is applied. Common methods used are the previous balance method, the daily balance method, and the average daily balance method, which are described as follows:

- Previous balance method. The balance on which the periodic finance charge is computed is based on the balance outstanding at the start of the billing cycle. The periodic rate is multiplied by this balance to compute the finance charge.

- Daily balance method. A daily periodic rate is applied to either the balance on each day in the cycle or the sum of the balances on each of the days in the cycle. If a daily periodic rate is multiplied by the balance on each day in the billing cycle, the finance charge is the sum of the products. If the daily periodic rate is multiplied by the sum of all the daily balances, the result is the finance charge.

- Average daily balance method. The average daily balance is the sum of the daily balances (either including or excluding current transactions) divided by the number of days in the billing cycle. A periodic rate is then multiplied by the average daily balance to determine the finance charge. If the periodic rate is a daily one, the product of the rate multiplied by the average balance is multiplied by the number of days in the cycle.

In addition to those common methods, financial institutions have other ways of calculating the balance to which the periodic rate is applied. By reading the financial institution's explanation, the examiner should be able to calculate the balance to which the periodic rate was applied. In some cases, the examiner may need to obtain additional information from the financial institution to verify the explanation disclosed. Any inability to understand the disclosed explanation should be discussed with management, who should be reminded of Regulation Z's requirement that disclosures be clear and conspicuous.

When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments must be disclosed.

If the financial institution uses the daily balance method and applies a single daily periodic rate, disclosure of the balance to which the rate was applied may be stated as any of the following:

- A balance for each day in the billing cycle. The daily periodic rate is multiplied by the balance on each day and the sum of the products is the finance charge.

- A balance for each day in the billing cycle on which the balance in the account changes. The finance charge is figured by the same method as discussed previously, but the statement shows the balance only for those days on which the balance changed.

- The sum of the daily balances during the billing cycle. The balance on which the finance charge is computed is the sum of all the daily balances in the billing cycle. The daily periodic rate is multiplied by that balance to determine the finance charge.

- The average daily balance during the billing cycle. If this is stated, the financial institution 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 interest.

If the financial institution uses the daily balance method, but applies two or more daily periodic rates, the sum of the daily balances may not be used. Acceptable ways of disclosing the balances include:

- A balance for each day in the billing cycle;
- A balance for each day in the billing cycle on which the balance in the account changes; or
- Two or more average daily balances. If the average daily balances are stated, the financial institution may, at its option, explain that interest is or may be determined by 1) multiplying each of the average daily balances by the number of days in the billing cycle (or if the daily rate varied during the cycle), 2) by multiplying each of the results by the applicable daily periodic rate, and 3) adding these products together.

In explaining the method used to find the balance on which the finance charge is computed, the financial institution need not reveal how it allocates payments or credits. That information may be disclosed as additional information, but all required information must be clear and conspicuous.

Note that §226.54 prohibits a credit card issuer from calculating finance charges based on balances for days in previous billing cycles as a result of the loss of a grace period (a practice sometimes referred to as “double-cycle billing”).

Finance Charge Resulting from Two or More Periodic Rates

Some financial institutions use more than one periodic rate in computing the finance charge. For example, one rate may apply to balances up to a certain amount and another rate to balances more than that amount. If two or more periodic rates apply, the financial institution must disclose all rates and conditions. The range of balances to which each rate applies also must be disclosed. It is not necessary, however, to break the finance charge into separate components based on the different rates.

Annual Percentage Rate (Open-End Credit)

Determination of APR §226.14

The disclosed APR on an open-end credit account is accurate if it is within one-eighth of one percentage point of the APR calculated under Regulation Z. The regulation states two basic methods for determining the APR in open-end credit transactions. The first involves multiplying each periodic rate by the number of periods in a year. This method is used for disclosing:

- The corresponding APR in the initial disclosures;
- The corresponding APR on periodic statements;
- The APR in early disclosures for credit card accounts;
- The APR in early disclosures for home-equity plans;
- The APR in advertising; and
- The APR in oral disclosures.

The corresponding APR is prospective. In other words, it does not involve any particular finance charge or periodic balance.

The second method is the quotient method, used in computing the APR for periodic statements. The quotient method reflects the annualized equivalent of the rate that was actually applied during a cycle. This rate, also known as the historical rate, will differ from the corresponding APR if the creditor applies minimum, fixed, or transaction charges to the account during the cycle.

If the finance charge is determined by applying one or more periodic rates to a balance, and does not include any of the charges just mentioned, the financial institution may compute the historical rate using the quotient method. In that method, the financial institution divides the total finance charge for the cycle by the sum of the balances to which the periodic rates were applied and multiplies the quotient (expressed as a percentage) by the number of cycles in a year.

Alternatively, the financial institution may use the method for computing the corresponding APR. In that method, the financial institution multiplies each periodic rate by the number of periods in one year. If the finance charge includes a minimum, fixed, or transaction charge, the financial institution must use the appropriate variation of the quotient method. When

transaction charges are imposed, the financial institution should refer to appendix F of this handbook for computational examples.

The regulation also contains a computation rule for small finance charges. If the finance charge includes a minimum, fixed, or transaction charge, and the total finance charge for the cycle does not exceed 50 cents, the financial institution may multiply each applicable periodic rate by the number of periods in a year to compute the APR.

Optional calculation methods also are provided for accounts involving daily periodic rates. (§226.14(d))

Brief Outline for Open-End Credit APR Calculations on Periodic Statements

NOTE: Assume monthly billing cycles for each of the calculations below.

I. APR when finance charge is determined solely by applying one or more periodic rates:

A. Monthly periodic rates:

1. Monthly rate x 12 = APR

or

2. (Total finance charge / applicable balance[2]) x 12 = APR
This calculation may be used when different rates apply to different balances.

B. Daily periodic rates:

1. Daily rate x 365 = APR

or

2. (Total finance charge / average daily balance) x 12 = APR

or

3. (Total finance charge / sum of balances) x 365 = APR

II. APR when finance charge includes a minimum, fixed, or other charge that is not calculated using a periodic rate (and does not include charges related to a specific transaction, like cash advance fees):

A. Monthly periodic rates:

1. (Total finance charge / amount of applicable balance) x 12 = APR[3]

B. Daily periodic rates

1. (Total finance charge / amount of applicable balance) X 365 = APR

[2] For the following formulas, the APR cannot be determined if the applicable balance is zero.
3 Loan fees, points, or similar finance charges that relate to the opening of the account must not be included in the calculation of the APR.

2. The following may be used if at least a portion of the finance charge is determined by the application of a daily periodic rate. If not, use the formula above.

   a. (Total finance charge / average daily balance) x 12 = APR

   or

   b. (Total finance charge / sum of balances) x 365 = APR

C. Monthly and daily periodic rates

1. If the finance charge imposed during the billing cycle does not exceed $.50 for a monthly or longer billing cycles (or pro rata part of $.50 for a billing cycle shorter than monthly), the APR may be calculated by multiplying the monthly rate by 12 or the daily rate by 365.

III. If the total finance charge included a charge related to a specific transaction (such as a cash advance fee), even if the total finance charge also included any other minimum, fixed, or other charge not calculated using a periodic rate, then the monthly and daily APRs are calculated as follows: (total finance charge / the greater of: the transaction amounts that created the transaction fees or the sum of the balances and other amounts on which a finance charge was imposed during the billing cycle[4]) X number of billing cycles in a year (12) = APR.[5]

Timely Settlement of Estates §226.11(c)

Issuers are required to establish procedures to ensure that any administrator of an estate can resolve the outstanding credit card balance of a deceased account holder in a timely manner. If an administrator requests the amount of the balance:

- The issuer is prohibited from imposing additional fees on the account;
- The issuer is required to disclose the amount of the balance to the administrator in a timely manner (safe harbor of 30 days); and
- If the balance is paid in full within 30 days after disclosure of the balance, the issuer must waive or rebate any trailing or residual interest charges that accrued on the balance following the disclosure.

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4 The sum of the balances may include amounts computed by the average daily balance, adjusted balance, or previous balance method. When a portion of the finance charge is determined by application of one or more daily periodic rates, the sum of the balances also means the average of daily balances.

5 If the product is less than the highest periodic rate applied, expressed as an APR, the higher figure must be disclosed as the APR.

Minimum Payments §226.7(b)(12)

For credit card accounts under an open-end credit plan, card issuers generally must disclose on periodic statements an estimate of the amount of time and the total cost (principal and interest) involved in paying the balance in full by making only the minimum payments, and an estimate of the monthly payment amount required to pay off the balance in 36 months and the total cost (principal and interest) of repaying the balance in 36 months. Card issuers also must disclose a minimum payment warning, and an estimate of the total interest that a consumer would save if that consumer repaid the balance in 36 months, instead of making minimum payments.

Evaluation of the Consumer's Ability to Pay §226.51

Regulation Z requires credit card issuers to consider a consumer's ability to pay before opening a new credit card account or increasing the credit limit for an existing credit card account. Additionally, the rule provides specific requirements before opening a new credit card account or increasing the credit limit on an existing account when the consumer is under the age of 21.

When evaluating a consumer's ability to pay, credit card issuers must perform a review of a consumer's income or assets and current obligations. Creditors are permitted, however, to rely on information provided by the consumer. The rule does not require issuers to verify a consumer's statements. A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

The rule also requires that issuers consider at least one of the following:

- The ratio of debt obligations to income;
- The ratio of debt obligations to assets; or
- The income of the consumer will have after paying debt obligations (i.e., residual income).

The rule also provides that it would be unreasonable for an issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets.

Because credit card accounts typically require consumers to make a minimum monthly payment that is a percentage of the total balance (plus, in some cases, accrued interest and fees), creditors are required to consider the consumer's ability to make the required minimum payments. Card issuers must also establish and maintain reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Because the minimum payment is unknown at account opening, the rule requires that creditors use a reasonable method to estimate a consumer's minimum payment. The regulation provides a safe harbor for issuers to estimate the required minimum periodic payment if the card issuer:

1. Assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and
2. Uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:
   (a) If the minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and
   (b) If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

Specific Requirements for Underage Consumers §226.51(b)(1)

Regulation Z prohibits the issuance of a credit card to a consumer who has not attained the age of 21 unless the consumer has submitted a written application and the creditor has:

- Information indicating that the underage consumer has an independent means of repaying any debts incurred in connection with the account; or
- The signature of a cosigner who has attained the age of 21, who has the means to repay debts incurred by the underage consumer in connection with the account, and who assumes joint liability for such debts.

If the account is opened based on a cosigner's ability to pay, the issuer must also obtain written consent from the cosigner before increasing the credit limit.

Limitations of Fees §226.52(a)

During the first year after account opening, issuers are prohibited from requiring consumers to pay fees (other than fees for late payments, returned payments, and exceeding the credit limit) that in the aggregate exceed 25% of the initial credit limit.

Payment Allocation §226.53

When different rates apply to different balances on a credit card account, issuers are required to allocate payments in excess of the minimum payment to first pay the balance with the highest APR, and any remaining portion to the other balances in descending order based on the applicable APR. For deferred interest programs, however, issuers must allocate excess payments first to the deferred interest balance during the last two billing cycles of the deferred interest period. In addition, during a deferred interest period, issuers are permitted (but not required) to allocate excess payments in the manner requested by the consumer.

Double-Cycle Billing and Partial Grace Period §226.54

Issuers are prohibited from imposing finance charges on balances for days in previous billing cycles as a result of the loss of a grace period. In addition, when a consumer pays some, but not all, of a balance prior to the expiration of a grace period, an issuer is prohibited from imposing finance charges on the portion of the balance that has been repaid.

General Prohibition on Applying Increased Rates to Existing Balances §226.55

There are some general exceptions to the prohibition against applying increased rates to existing balances:

- A temporary rate lasting at least six months expires;
- The rate is increased due to the operation of an index available to the general public and not under the card issuer's control (i.e., the rate is a variable rate);
- The minimum payment has not been received within 60 days after the due date;
- The consumer successfully completes or fails to comply with the terms of a workout arrangement; and
- The APR on an existing balance has been reduced pursuant to the Servicemembers Civil Relief Act (SCRA). The creditor is permitted to increase the rate once the SCRA ceases to apply, but only to the rate that applied prior to the reduction.

Regulation Z's limitations on the application of increased rates to existing balances continue to apply when the account is closed, acquired by another institution through a merger or the sale of a credit card portfolio, or when the balance is transferred to another credit account issued by the same creditor (or its affiliate or subsidiary).

For new transactions, creditors are generally prevented from increasing the APR during the first year after an account is opened. After the first year, creditors are permitted to increase the APRs that apply to new transactions so long as the creditor complies with the regulation's 45-day advance notice requirement (§226.9).

Fees for Transactions that Exceed the Credit Limit §226.56

Consumer consent requirement – Regulation Z requires an issuer to obtain a consumer's express consent (or opt-in) before the issuer may impose any fees on a consumer's credit card account for making an extension of credit that exceeds the account's credit limit. Prior to providing such consent, the consumer must be notified by the issuer of any fees that may be assessed for an over-the-limit transaction. If the consumer consents, the issuer is also required to provide a notice of the consumer's right to revoke that consent on any periodic statement that reflects the imposition of an over-the-limit fee.

Prior to obtaining a consumer's consent to the payment of over-the-limit transactions, the issuer must provide the consumer with a notice disclosing, among other things, the dollar amount of any charges that will be assessed for an over-the-limit transaction, as well as any

increased rate that may apply if the consumer exceeds the credit limit. Issuers are prevented from assessing any over-the-limit fee or charge on an account until the consumer consents to the payment of transactions that exceed the credit limit.

Prohibited practices – Even if the consumer has affirmatively consented to the issuer's payment of over-the-limit transactions, Regulation Z prohibits certain issuer practices in connection with the assessment of over-the-limit fees or charges. An issuer can only charge one over-the-limit fee or charge per billing cycle. In addition, an issuer cannot impose an over-the-limit fee on the account for the same transaction in more than three billing cycles. Furthermore, fees may not be imposed for the second or third billing cycle unless the consumer has failed to reduce the account balance below the credit limit by the payment due date in that cycle.

Regulation Z also prevents unfair or deceptive acts or practices in connection with the manipulation of credit limits in order to increase over-the-limit fees or other penalty charges. Specifically, issuers are prohibited from engaging in three practices:

- Assessing an over-the-limit fee because the creditor failed to promptly replenish the consumer's available credit;
- Conditioning the amount of available credit on the consumer's consent to the payment of over-the-limit transactions (e.g., opting in to an over-the-limit service to obtain a higher credit limit); and
- Imposing any fee if the credit limit is exceeded solely because of the issuer's assessment of accrued interest charges or fees on the consumer's account.

Special Rules for Marketing to Students §226.57

Regulation Z establishes several requirements related to the marketing of credit cards and other open-end consumer credit plans to students at an institution of higher education. The regulation limits a creditor's ability to offer a college student any tangible item to induce the student to apply for or participate in an open-end consumer credit plan offered by the creditor. Specifically, Regulation Z prohibits such offers:

- On the campus of an institution of higher education;
- Near the campus of an institution of higher education; or
- At an event sponsored by or related to an institution of higher education

A tangible item means physical items, such as gift cards, t-shirts, or magazine subscriptions, but does not include non-physical items such as discounts, reward points, or promotional credit terms. With respect to offers "near" the campus, the commentary to the regulation states that a location that is within 1,000 feet of the border of the campus is considered near the campus.

Regulation Z also requires card issuers to submit an annual report to the Board containing the terms and conditions of business, marketing, or promotional agreements with an

institution of higher education or an alumni organization or foundation affiliated with an institution of higher education.

Online Disclosure of Credit Card Agreements §226.58

The regulation requires that issuers post credit card agreements on their websites and to submit those agreements to the Board for posting on a website maintained by the Board. There are three exceptions for when issuers are not required to provide statements to the Board:

- The issuer has fewer than 10,000 open credit card accounts; or
- The agreement currently is not offered to the public and the agreement is used only for one or more private label credit card plans with credit cards usable only at a single merchant or group of affiliated merchants and that involves fewer than 10,000 accounts; or
- The agreement currently is not offered to the public and the agreement is for one or more plans offered to test a new product offered only to a limited group of consumers for a limited time that involves fewer than 10,000 accounts.

Subpart C - Closed-End Credit

Finance Charge (Closed-End Credit) §226.17(a)

The aggregate total amount of the finance charge must be disclosed. Each finance charge imposed need not be individually itemized and must not be itemized with the segregated disclosures.

Annual Percentage Rate (Closed-End Credit) §226.22

Accuracy Tolerances

The disclosed APR on a closed-end transaction is accurate for:

- Regular transactions (which include any single advance transaction with equal payments and equal payment periods, or an irregular first payment period and/or a first or last irregular payment), if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z (§226.22(a)(2)).

- Irregular transactions (which include multiple advance transactions and other transactions not considered regular), if it is within one-quarter of 1 percentage point of the APR calculated under Regulation Z (§226.22(a)(3)).

- Mortgage transactions, if it is within one-eighth of 1 percentage point for regular transactions or one-quarter of 1 percentage point for irregular transactions **or**:

i. The rate results from the disclosed finance charge, and the disclosed finance is considered accurate under §§226.18(d)(1) or 226.23(g) or (h) (§226.22(a)(4)); or

ii. The disclosed finance charge is calculated incorrectly but is considered accurate under §§226.18(d)(1) or 226.23(g) or (h) and either:
(A) the finance charge is understated and the disclosed APR is also understated but is closer to the actual APR than the APR that would be considered accurate under §226.22(a)(4); or
(B) the disclosed finance charge is overstated and the disclosed APR is also overstated but is closer to the actual APR than the APR that would be considered accurate under §226.22(a)(4).

For example, in an irregular transaction subject to a tolerance of ¼th of 1 percentage point, if the actual APR is 9.00% and a $75 omission from the finance charge corresponds to a rate of 8.50% that is considered accurate under §226.22(a)(4), a disclosed APR of 8.65% is considered accurate under §226.22(a)(5). However, a disclosed APR below 8.50% or above 9.25% would not be considered accurate.

Construction Loans §226.17(c)(6) and Appendix D

Construction and certain other multiple advance loans pose special problems in computing the finance charge and APR. In many instances, the amount and dates of advances are not predictable with certainty since they depend on the progress of the work. Regulation Z provides that the APR and finance charge for such loans may be estimated for disclosure.

At its option, the financial institution may rely on the representations of other parties to acquire necessary information (for example, it might look to the consumer for the dates of advances). In addition, if either the amounts or dates of advances are unknown (even if some of them are known), the financial institution may, at its option, use appendix D to the regulation to make calculations and disclosures. The finance charge and payment schedule obtained through appendix D may be used with volume one of the Federal Reserve Board's APR tables or with any other appropriate computation tool to determine the APR. If the financial institution elects not to use appendix D, or if appendix D cannot be applied to a loan (e.g., appendix D does not apply to a combined construction-permanent loan if the payments for the permanent loan begin during the construction period), the financial institution must make its estimates under §226.17(c)(2) and calculate the APR using multiple advance formulas.

On loans involving a series of advances under an agreement to extend credit up to a certain amount, a financial institution may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided before consummation.

In a transaction that finances the construction of a dwelling that may or will be permanently financed by the same financial institution, the construction-permanent financing phases may be disclosed in one of three ways listed below.

- As a single transaction, with one disclosure combining both phases.
- As two separate transactions, with one disclosure for each phase.
- As more than two transactions, with one disclosure for each advance and one for the permanent financing phase.

If two or more disclosures are furnished, buyer's points or similar amounts imposed on the consumer may be allocated among the transactions in any manner the financial institution chooses, as long as the charges are not applied more than once. In addition, if the financial institution chooses to give two sets of disclosures and the consumer is obligated for both construction and permanent phases at the outset, both sets of disclosures must be given to the consumer initially, before consummation of each transaction occurs.

If the creditor requires interest reserves for construction loans, special appendix D rules apply that can make the disclosure calculations quite complicated. The amount of interest reserves included in the commitment amount must not be treated as a prepaid finance charge.

If the lender uses appendix D for construction-only loans with required interest reserves, the lender must estimate construction interest using the interest reserve formula in appendix D. The lender's own interest reserve values must be completely disregarded for disclosure purposes.

If the lender uses appendix D for combination construction-permanent loans, the calculations can be much more complex. Appendix D is used to estimate the construction interest, which is then measured against the lender's contractual interest reserves.

If the interest reserve portion of the lender's contractual commitment amount exceeds the amount of construction interest estimated under appendix D, the excess value is considered part of the amount financed if the lender has contracted to disburse those amounts whether they ultimately are needed to pay for accrued construction interest. If the lender will not disburse the excess amount if it is not needed to pay for accrued construction interest, the excess amount must be ignored for disclosure purposes.

Calculating the Annual Percentage Rate §226.22

The APR must be determined under one of the following:

- The actuarial method, which is defined by Regulation Z and explained in appendix J to the regulation.

- The U.S. Rule, which is permitted by Regulation Z and briefly explained in appendix J to the regulation. The U.S. Rule is an accrual method that seems to have first surfaced

officially in an early nineteenth century United States Supreme Court case, Story v. Livingston (38 U.S. 359).

Whichever method is used by the financial institution, the rate calculated will be accurate if it is able to "amortize" the amount financed while it generates the finance charge under the accrual method selected. Financial institutions also may rely on minor irregularities and accuracy tolerances in the regulation, both of which effectively permit somewhat imprecise, but still legal, APRs to be disclosed.

360-Day and 365-Day Years §226.17(c)(3)

Confusion often arises over whether to use the 360-day or 365-day year in computing interest, particularly when the finance charge is computed by applying a daily rate to an unpaid balance. Many single payment loans or loans payable on demand are in this category. There are also loans in this category that call for periodic installment payments. Regulation Z does not require the use of one method of interest computation in preference to another (although state law may). It does, however, permit financial institutions to disregard the fact that months have different numbers of days when calculating and making disclosures. This means financial institutions may base their disclosures on calculation tools that assume all months have an equal number of days, even if their practice is to take account of the variations in months to collect interest.

For example, a financial institution may calculate disclosures using a financial calculator based on a 360-day year with 30-day months, when, in fact, it collects interest by applying a factor of 1/365 of the annual interest rate to actual days.

Disclosure violations may occur, however, when a financial institution applies a daily interest factor based on a 360-day year to the actual number of days between payments. In those situations, the financial institution must disclose the higher values of the finance charge, the APR, and the payment schedule resulting from this practice.

For example, a 12 percent simple interest rate divided by 360 days results in a daily rate of .033333 percent. If no charges are imposed except interest, and the amount financed is the same as the loan amount, applying the daily rate on a daily basis for a 365-day year on a $10,000 one year, single payment, unsecured loan results in an APR of 12.17 percent (.033333% x 365 = 12.17%), and a finance charge of $1,216.67. There would be a violation if the APR were disclosed as 12 percent or if the finance charge were disclosed as $1,200 (12% x $10,000).

However, if there are no other charges except interest, the application of a 360-day year daily rate over 365 days on a regular loan would not result in an APR in excess of the one eighth of one percentage point APR tolerance unless the nominal interest rate is greater than 9 percent. For irregular loans, with one-quarter of 1 percentage point APR tolerance, the nominal interest rate would have to be greater than 18 percent to exceed the tolerance.

Variable Rate Information §226.18(f)

If the terms of the legal obligation allow the financial institution, after consummation of the transaction, to increase the APR, the financial institution must furnish the consumer with certain information on variable rates. Graduated payment mortgages and step-rate transactions without a variable rate feature are not considered variable rate transactions. In addition, variable rate disclosures are not applicable to rate increases resulting from delinquency, default, assumption, acceleration, or transfer of the collateral.

Some of the more important transaction-specific variable rate disclosure requirements under §226.18 follow.

- Disclosures for variable rate loans must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation.

- If the variable rate transaction includes either a seller buy-down that is reflected in a contract or a consumer buy-down, the disclosed APR should be a composite rate based on the lower rate for the buy-down period and the rate that is the basis for the variable rate feature for the remainder of the term.

- If the initial rate is not determined by the index or formula used to make later interest rate adjustments, as in a discounted variable rate transaction, the disclosed APR must reflect a composite rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation (i.e., the fully indexed rate).

    - If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the adjustment, from changing to the fully indexed rate, the effect of that rate or payment cap needs to be reflected in the disclosures.
    - The index at consummation need not be used if the contract provides a delay in the implementation of changes in an index value (e.g., the contract indicates that future rate changes are based on the index value in effect for some specified period, like 45 days before the change date). Instead, the financial institution may use any rate from the date of consummation back to the beginning of the specified period (e.g., during the previous 45-day period).

- If the initial interest rate is set according to the index or formula used for later adjustments, but is set at a value as of a date before consummation, disclosures should be based on the initial interest rate, even though the index may have changed by the consummation date.

For variable-rate loans that are <u>not</u> secured by the consumer's principal dwelling or that are secured by the consumer's principal dwelling but have a term of one year or less, creditors must disclose the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase, and an example of the payment terms that would result from an increase. §226.18(f)(1).

For variable-rate consumer loans secured by the consumer's principal dwelling and having a maturity of more than one year, creditors must state that the loan has a variable-rate feature and that the disclosures were previously given. (§226.18(f)(2)) Extensive disclosures about the loan program are provided when consumers apply for such a loan (§226.19(b), and throughout the loan term when the rate or payment amount is changed (§226.20(c)).

Payment Schedule §226.18(g)

The disclosed payment schedule must reflect all components of the finance charge. It includes all payments scheduled to repay loan principal, interest on the loan, and any other finance charge payable by the consumer after consummation of the transaction.

However, any finance charge paid separately before or at consummation (e.g., odd days' interest) is not part of the payment schedule. It is a prepaid finance charge that must be reflected as a reduction in the value of the amount financed.

At the creditor's option, the payment schedule may include amounts beyond the amount financed and finance charge (e.g., certain insurance premiums or real estate escrow amounts such as taxes added to payments). However, when calculating the APR, the creditor must disregard such amounts.

If the obligation is a renewable balloon payment instrument that unconditionally obligates the financial institution to renew the short-term loan at the consumer's option or to renew the loan subject to conditions within the consumer's control, the payment schedule must be disclosed using the longer term of the renewal period or periods. The long-term loan must be disclosed with a variable rate feature.

If there are no renewal conditions or if the financial institution guarantees to renew the obligation in a refinancing, the payment schedule must be disclosed using the shorter balloon payment term. The short-term loan must be disclosed as a fixed rate loan, unless it contains a variable rate feature during the initial loan term.

Amount Financed §226.18(b)

Definition – The amount financed is the net amount of credit extended for the consumer's use. It should not be assumed that the amount financed under the regulation is equivalent to the note amount, proceeds, or principal amount of the loan. The amount financed normally equals the total of payments less the finance charge.

To calculate the amount financed, all amounts and charges connected with the transaction, either paid separately or included in the note amount, must first be identified. Any prepaid, precomputed, or other finance charge must then be determined.

The amount financed must not include any finance charges. If finance charges have been included in the obligation (either prepaid or precomputed), they must be subtracted from the face amount of the obligation when determining the amount financed. The resulting value must be reduced further by an amount equal to any prepaid finance charge paid separately. The final resulting value is the amount financed.

When calculating the amount financed, finance charges (whether in the note amount or paid separately) should not be subtracted more than once from the total amount of an obligation. Charges not in the note amount and not included in the finance charge (e.g., an appraisal fee paid separately in cash on a real estate loan) are not required to be disclosed under Regulation Z and must not be included in the amount financed.

In a multiple advance construction loan, proceeds placed in a temporary escrow account and awaiting disbursement in draws to the developer are not considered part of the amount financed until actually disbursed. Thus, if the entire commitment amount is disbursed into the lender's escrow account, the lender must not base disclosures on the assumption that all funds were disbursed immediately, even if the lender pays interest on the escrowed funds.

Required Deposit §226.18(r)

A required deposit, with certain exceptions, is one that the financial institution requires the consumer to maintain as a condition of the specific credit transaction. It can include a compensating balance or a deposit balance that secures the loan. The effect of a required deposit is not reflected in the APR. Also, a required deposit is not a finance charge since it is eventually released to the consumer. A deposit that earns at least 5 percent per year need not be considered a required deposit.

Calculating the Amount Financed

A consumer signs a note secured by real property in the amount of $5,435. The note amount includes $5,000 in proceeds disbursed to the consumer, $400 in precomputed interest, $25 paid to a credit reporting agency for a credit report, and a $10 service charge. Additionally, the consumer pays a $50 loan fee separately in cash at consummation. The consumer has no other debt with the financial institution. The amount financed is $4,975.

The amount financed may be calculated by first subtracting all finance charges included in the note amount ($5,435 - $400 - $10 = $5,025). The $25 credit report fee is not a finance charge because the loan is secured by real property. The $5,025 is further reduced by the amount of prepaid finance charges paid separately, for an amount financed of $5,025 - $50 = $4,975. The answer is the same whether finance charges included in the obligation are considered prepaid or precomputed finance charges.

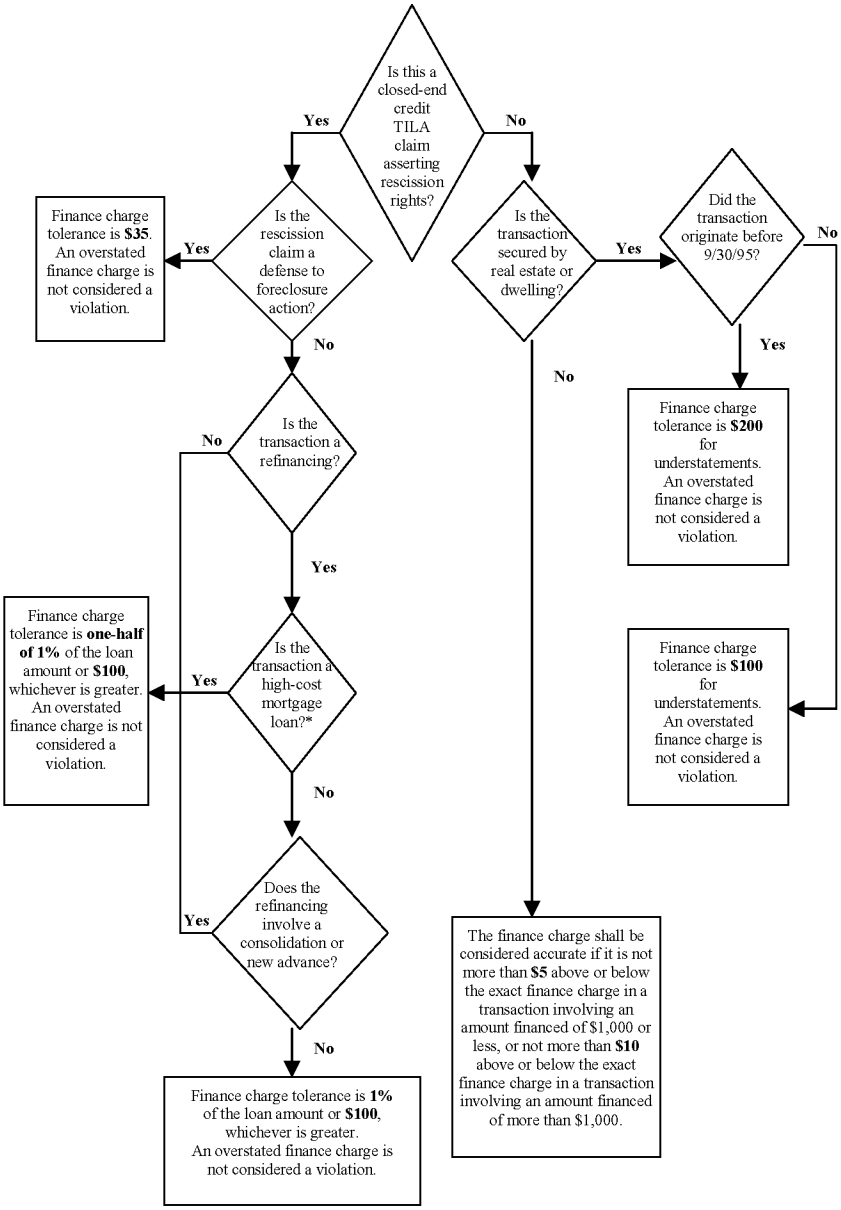
The financial institution may treat the $10 service charge as an addition to the loan amount and not as a prepaid finance charge. If it does, the loan principal would be $5,000. The $5,000 loan principal does not include either the $400 or the $10 precomputed finance charge in the note. The loan principal is increased by other amounts that are financed

which are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee, not the $10 service charge) to arrive at the amount financed of $5,000 + $25 - $50 = $4,975.

Other Calculations

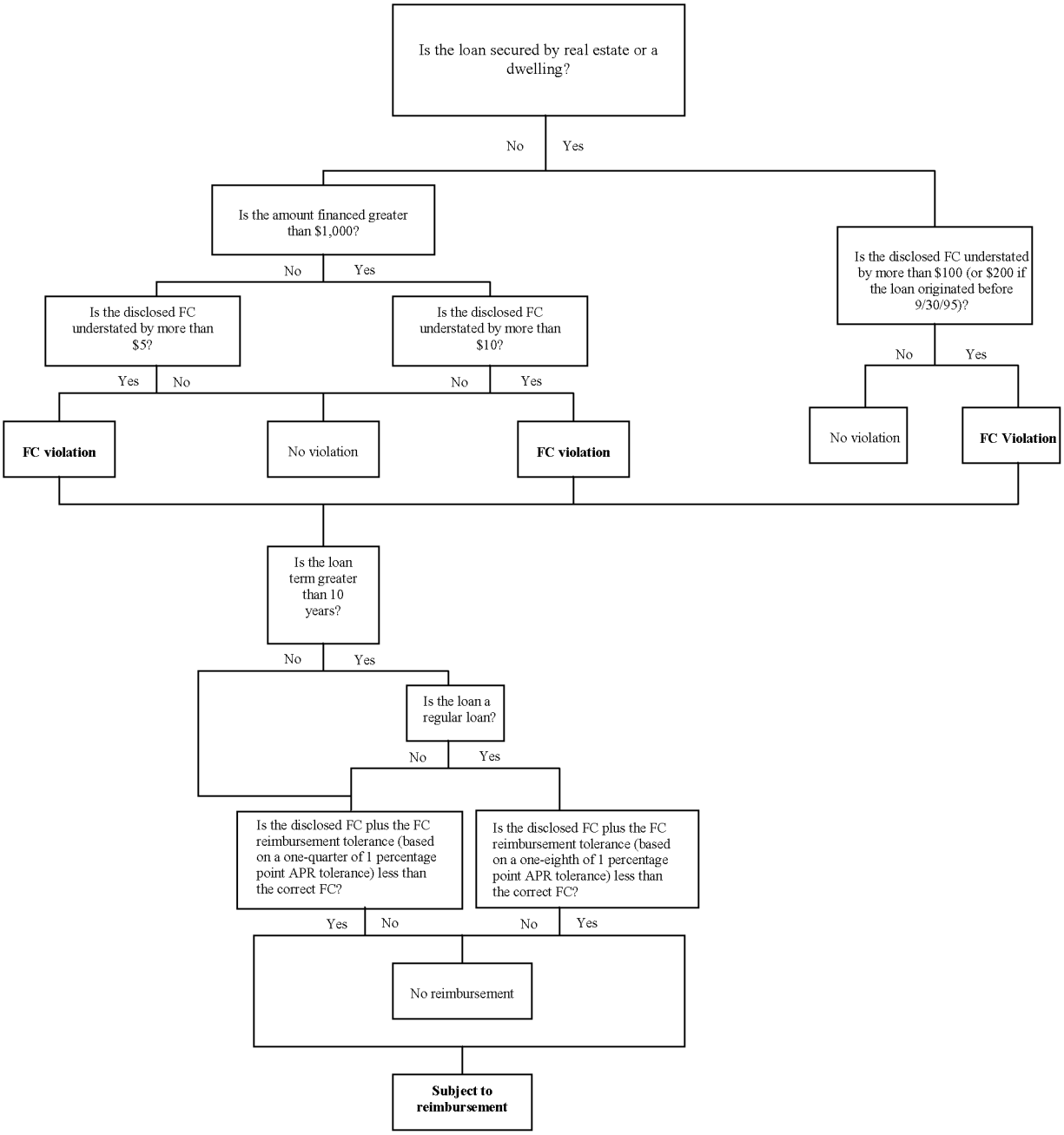
The financial institution may treat the $10 service charge as a prepaid finance charge. If it does, the loan principal would be $5,010. The $5,010 loan principal does not include the $400 precomputed finance charge. The loan principal is increased by other amounts that are financed which are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee and the $10 service charge withheld from loan proceeds) to arrive at the same amount financed of $5,010 + $25 - $50- $10 = $4,975.

Closed-End Credit: Finance Charge Accuracy Tolerances

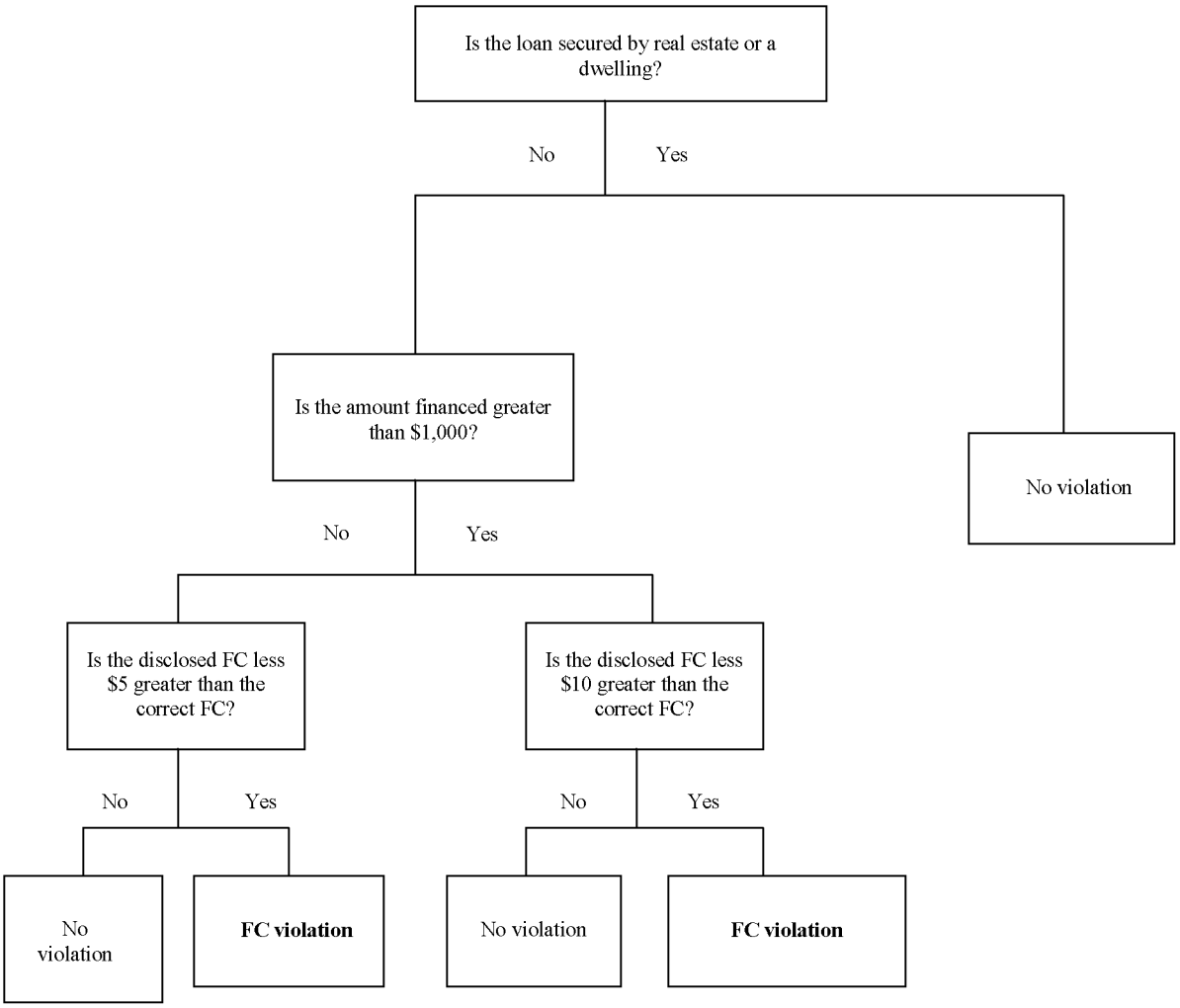


* See 15 USC 160 (aa) and 12 CFR 226.32

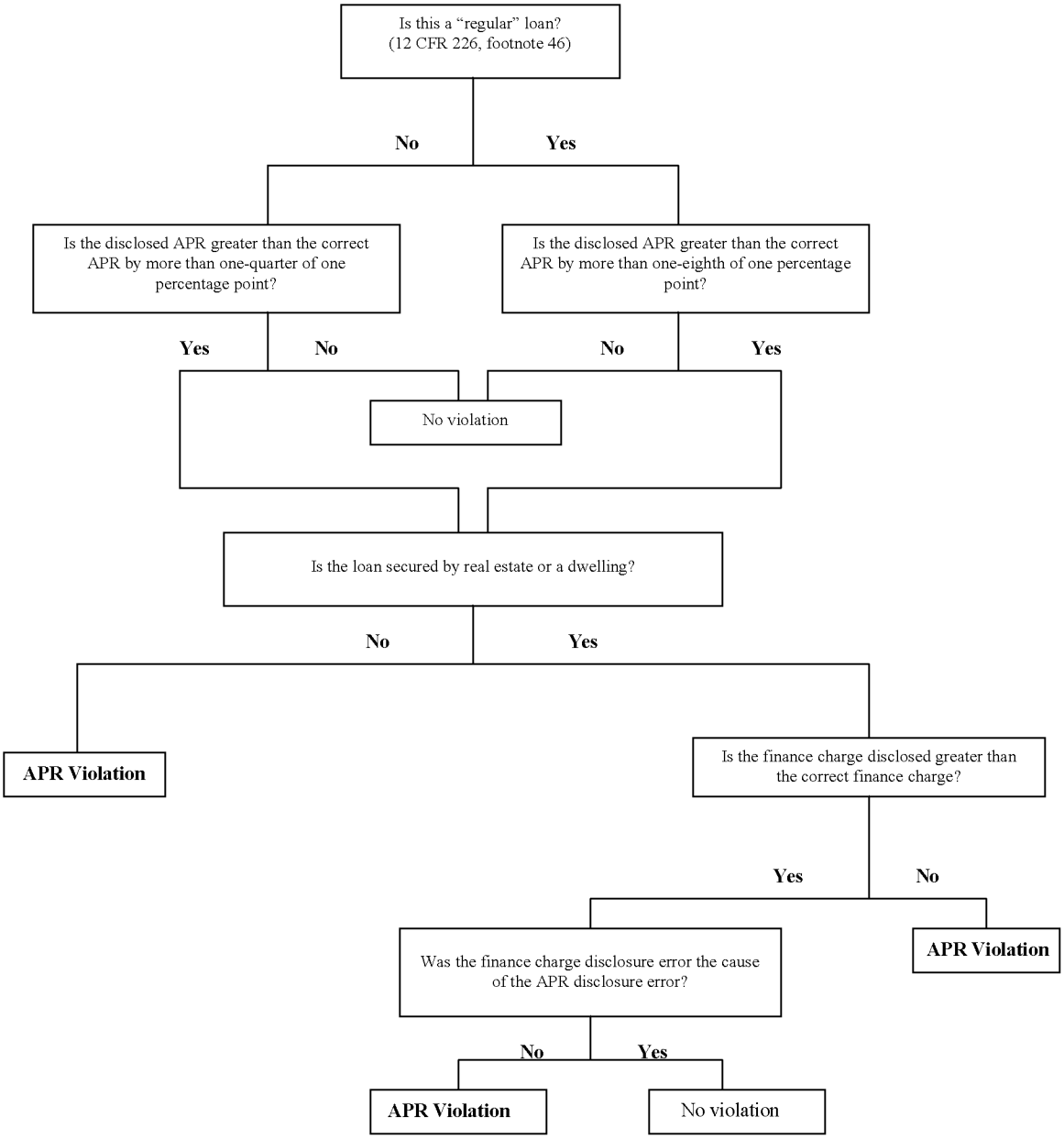
Closed-End Credit: Accuracy and Reimbursement Tolerances for UNDERSTATED FINANCE CHARGES



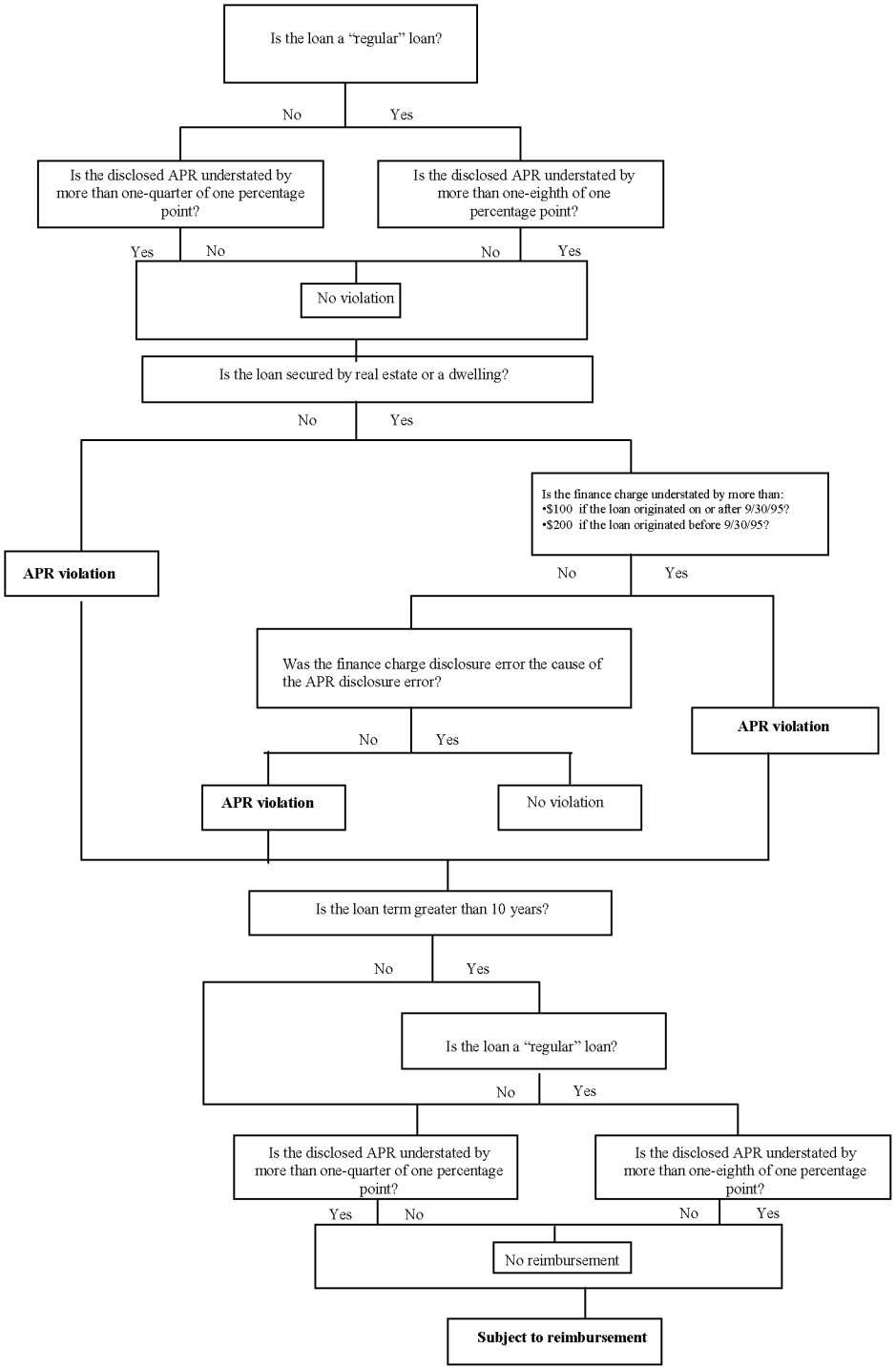
Closed-End Credit: Accuracy Tolerances for OVERSTATED FINANCE CHARGES



Closed-End Credit: Accuracy Tolerances for OVERSTATED APRs



Closed-End Credit: Accuracy and Reimbursement Tolerances For UNDERSTATED APRs



Refinancings §226.20

When an obligation is satisfied and replaced by a new obligation to the original financial institution (or a holder or servicer of the original obligation) and is undertaken by the same consumer, it must be treated as a refinancing for which a complete set of new disclosures must be furnished. A refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the earlier one to be considered a refinancing under the regulation. The finance charge on the new disclosure must include any unearned portion of the old finance charge that is not credited to the existing obligation. (§226.20(a))

The following transactions are not considered refinancings even if the existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer:

- A renewal of an obligation with a single payment of principal and interest or with periodic interest payments and a final payment of principal with no change in the original terms.
- An APR reduction with a corresponding change in the payment schedule.
- An agreement involving a court proceeding.
- Changes in credit terms arising from the consumer's default or delinquency.
- The renewal of optional insurance purchased by the consumer and added to an existing transaction, if required disclosures were provided for the initial purchase of the insurance.

However, 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 financial institution:

- Increases the rate based on a variable rate feature that was not previously disclosed; or
- Adds a variable rate feature to the obligation.

If, at the time a loan is renewed, the rate is increased, the increase is not considered a variable rate feature. It is the cost of renewal, similar to a flat fee, as long as the new rate remains fixed during the remaining life of the loan. If the original debt is not canceled in connection with such a renewal, the regulation does not require new disclosures. Also, changing the index of a variable rate transaction to a comparable index is not considered adding a variable rate feature to the obligation.

Advertising §226.16 and §226.24

The regulation requires that loan product advertisements provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features. The advertising rules ban several deceptive or misleading advertising practices, including representations that a rate or payment is "fixed" when in fact it can change.

Advertising Rules for Open-End Plans (§226.16)

If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor. If any finance charges or other charges are set forth in an advertisement, the advertisement must also clearly and conspicuously state the following:

- Any minimum, fixed, transaction, activity or similar charge that could be imposed;
- Any periodic rate that may be applied expressed as an APR as determined under section §226.14(b). If the plan provides for a variable periodic rate, that fact must be disclosed; and
- Any membership or participation fee that could be imposed.

If any finance charges or other charge or payment terms are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of section 226.5b, the advertisement also must clearly and conspicuously set forth the following:

- Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range;
- Any periodic rate used to compute the finance charge, expressed as an APR as determined under section §226.14(b); and
- The maximum APR that may be imposed in a variable-rate plan.

Regulation Z's open-end home-equity plan advertising rules include a clear and conspicuous standard for home-equity plan advertisements, consistent with the approach taken in the advertising rules for consumer leases under Regulation M. Commentary provisions clarify how the clear and conspicuous standard applies to advertisements of home-equity plans with promotional rates or payments, and to Internet, television, and oral advertisements of home-equity plans. The regulation allows alternative disclosures for television and radio advertisements for home-equity plans. The regulation also requires that advertisements adequately disclose not only promotional plan terms, but also the rates or payments that will apply over the term of the plan.

Regulation Z also contains provisions implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which requires disclosure of the tax implications of certain home-equity plans.

Closed-End Advertising (§226.24)

If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor.

Disclosures required by this section must be made "clearly and conspicuously." To meet this standard in general, credit terms need not be printed in a certain type size nor appear in any particular place in the advertisement. For advertisements for credit secured by a dwelling, a clear and conspicuous disclosure means that the required information is disclosed with equal prominence and in close proximity to the advertised rates or payments triggering the required disclosures.

If an advertisement states a rate of finance charge, it must state the rate as an "annual percentage rate," using that term. If the APR may be increased after consummation, the advertisement must state that fact.

If an advertisement is for credit *not* secured by a dwelling, the advertisement must not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the APR.

If an advertisement is for credit secured by a dwelling, the advertisement must not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the APR. That is, an advertisement for credit secured by a dwelling may not state a periodic rate, other than a simple annual rate, that is applied to an unpaid balance.

"Triggering terms" - The following are triggering terms that require additional disclosures:

- The amount or percentage of any down payment;
- The number of payments or period of repayment;
- The amount of any payment; and
- The amount of any finance charge.

An advertisement stating a triggering term must also state the following terms as applicable:

- The amount or percentage of any down payment;
- The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment; and
- The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

For any advertisement secured by a dwelling that states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement must state in a clear and conspicuous manner:

- Each simple rate of interest that may apply. In variable-rate transactions, a rate determined by adding an index and margin must be disclosed based on a reasonably current index and margin.
- The period of time during which each simple annual rate of interest will apply.
- The APR for the loan.

The regulation prohibits the following seven deceptive or misleading practices in advertisements for closed-end mortgage loans:

- Stating that "fixed" rates or payments for loans whose rates or payments can vary are "fixed" without adequately disclosing that the interest rate or payment amounts are "fixed" only for a limited period of time, rather than for the full term of the loan;
- Making comparisons between credit payments or rates and any payment or rate available under the advertised product that are not available for the full term of the loan, with certain exceptions for advertisements for variable rate products;
- Characterizing the products offered as "government loan programs," "government-supported loans," or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government-supported or -sponsored loans;
- Displaying the name of the consumer's current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer's current lender;
- Making claims of debt elimination if the product advertised would merely replace one debt obligation with another;
- Creating a false impression that the mortgage broker or lender is a "counselor" for the consumer; and
- In foreign-language advertisements, providing certain information, such as a low introductory "teaser" rate, in a foreign language, while providing required disclosures only in English.

Subpart D - Miscellaneous

Civil Liability (TILA §§130 and 131)

If a creditor fails to comply with any requirements of the TILA, other than with the advertising provisions of chapter 3, it may be held liable to the consumer for:

- Actual damage, and
- The cost of any legal action together with reasonable attorney's fees in a successful action.

If it violates certain requirements of the TILA, the creditor also may be held liable for either of the following:

- In an individual action, twice the amount of the finance charge involved, but not less than $100 or more than $1,000. However, in an individual action relating to a closed-end credit transaction secured by real property or a dwelling, twice the amount of the finance charge involved, but not less than $200 or more than $2,000.
- In a class action, such amount as the court may allow. The total amount of recovery, however, cannot be more than $500,000 or 1 percent of the creditor's net worth, whichever is less.

Civil actions that may be brought against a creditor also may be maintained against any assignee of the creditor if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary.

A creditor that fails to comply with TILA's requirements for loans that meet the criteria in §226.32(a) ("high-cost mortgage loans") or §226.35(a) ("higher-priced mortgage loans") may be held liable to the consumer for all finance charges and fees paid to the creditor. For high-cost mortgage loans (under §226.32(a)), any subsequent assignee is subject to all claims and defenses that the consumer could assert against the creditor, unless the assignee demonstrates that it could not reasonably have determined that the loan was subject to §226.32.

Criminal Liability (TILA §112)

Anyone who willingly and knowingly fails to comply with any requirement of the TILA will be fined not more than $5,000 or imprisoned not more than one year, or both.

Administrative Actions (TILA §108)

The TILA authorizes federal regulatory agencies to require financial institutions to make monetary and other adjustments to the consumers' accounts when the true finance charge or APR exceeds the disclosed finance charge or APR by more than a specified accuracy tolerance. That authorization extends to unintentional errors, including isolated violations (e.g., an error that occurred only once or errors, often without a common cause, that occurred infrequently and randomly).

Under certain circumstances, the TILA requires federal regulatory agencies to order financial institutions to reimburse consumers when understatement of the APR or finance charge involves:

- Patterns or practices of violations (e.g., errors that occurred, often with a common cause, consistently or frequently, reflecting a pattern with a specific type or types of consumer credit).
- Gross negligence.
- Willful noncompliance intended to mislead the person to whom the credit was extended.

Any proceeding that may be brought by a regulatory agency against a creditor may be maintained against any assignee of the creditor if the violation is apparent on the face of the

disclosure statement or other documents assigned, except where the assignment was involuntary (§131).

Relationship to State Law (TILA §111)

State laws providing rights, responsibilities, or procedures for consumers or financial institutions for consumer credit contracts may be:

- Preempted by federal law;
- Not preempted by federal law; or
- Substituted in lieu of TILA and Regulation Z requirements.

State law provisions are preempted to the extent that they contradict the requirements in the following chapters of the TILA and the implementing sections of Regulation Z:

- Chapter 1, "General Provisions," which contains definitions and acceptable methods for determining finance charges and annual percentage rates.

- Chapter 2, "Credit Transactions," which contains disclosure requirements, rescission rights, and certain credit card provisions.

- Chapter 3, "Credit Advertising," which contains consumer credit advertising rules and APR oral disclosure requirements.

For example, a state law would be preempted if it required a bank to use the terms "nominal annual interest rate" in lieu of "annual percentage rate.

Conversely, state law provisions are not preempted under federal law if they call for, without contradicting chapters 1, 2, or 3 of the TILA or the implementing sections of Regulation Z, either of the following:

- Disclosure of information not otherwise required. A state law that requires disclosure of the minimum periodic payment for open-end credit, for example, would not be preempted because it does not contradict federal law.

- Disclosures more detailed than those required. A state law that requires itemization of the amount financed, for example, would not be preempted, unless it contradicts federal law by requiring the itemization to appear with the disclosure of the amount financed in the segregated closed-end credit disclosures.

The relationship between state law and chapter 4 of the TILA ("Credit Billing") involves two parts. The first part is concerned with sections 161 (correction of billing errors) and 162 (regulation of credit reports) of the act; the second part addresses the remaining sections of chapter 4.

State law provisions are preempted if they differ from the rights, responsibilities, or procedures contained in sections 161 or 162. An exception is made, however, for state law that allows a consumer to inquire about an account and requires the bank to respond to such inquiry beyond the time limits provided by federal law. Such a state law would not be preempted for the extra time period.

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

A bank, state, or other interested party may ask the Federal Reserve Board to determine whether state law contradicts chapters 1 through 3 of the TILA or Regulation Z. They also may ask if the state law is different from, or would result in violations of, chapter 4 of the TILA and the implementing provisions of Regulation Z. If the board determines that a disclosure required by state law (other than a requirement relating to the finance charge, APR, or the disclosures required under §226.32) is substantially the same in meaning as a disclosure required under the act or Regulation Z, generally creditors in that state may make the state disclosure in lieu of the federal disclosure.

Subpart E - Special Rules for Certain Home Mortgage Transactions

General Rules §226.31

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

Credit Subject to §226.32

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

- The APR at consummation will exceed by more than 8 percentage points for first-lien mortgage loans, or by more than 10 percentage points for subordinate-lien mortgage loans, the yield on Treasury securities having comparable periods of maturity to the loan's maturity (as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor); or

- The total points and fees (see definition below) payable by the consumer at or before loan closing will exceed the greater of eight percent of the total loan amount or $579 for the calendar year 2010. (This dollar amount is adjusted annually based on changes in

the Consumer Price Index. See staff commentary to 32(a)(1)(ii) for a historical list of dollar amount adjustments. (§226.32(a)(1))

Exemptions:

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

Points and fees include the following:

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

Prohibited Acts or Practices in Connection with Credit Subject to §226.32

Among other requirements, a creditor extending mortgage credit subject to §226.32 ("high-cost" mortgage loans) must not make such loans based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including *mortgage-related obligations*.

- Mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor, and similar expenses.
- A creditor must also verify amounts of income or assets that it relies on to determine repayment ability using tax returns, payroll receipts, financial institution records, or other third party documents that provide reasonably reliable evidence of the consumer's income or assets.

A presumption of compliance is available for some transactions, but only if the creditor:

- Verifies the consumer's repayment ability as required;
- Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first seven years following consummation and taking into account current obligations and mortgage-related obligations; and
- Assesses the consumer's repayment ability taking into account either the ratio of total debts to income or the income the consumer will have after paying debt obligations.

For high-cost mortgage loans, the regulation prohibits the imposition of prepayment penalties under certain circumstances, and in no case may a penalty be imposed after two years following consummation.

The regulation prohibits prepayment penalties at any time for high-cost mortgage if:

- Other applicable law (e.g., state law) prohibits such penalty;
- The penalty applies where the source of the prepayment funds is a refinancing by the same mortgage lender or an affiliate;
- The consumer's mortgage payment can change during the first four years of the loan term *(applicable only to loans originated on or after October 1, 2009)*; or,
- The consumer's total monthly debt payments (at consummation), including amounts owed under the mortgage, exceed 50 percent of the consumer's monthly gross income.

The regulation prohibits creditors from structuring a home-secured loan as an open-end plan to evade these requirements.

Reverse Mortgages §226.33

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

Higher-Priced Mortgage Loans §226.35

A mortgage loan subject to §226.35 ("*higher-priced" mortgage loan*) is a consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the *average prime offer rate* for a comparable transaction as of the date the interest rate is set by:

- 1.5 or more percentage points for loans secured by a first lien on a dwelling, or
- 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

Average prime offer rate means an APR that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Federal Reserve Board publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly, as well as the methodology it uses to derive these rates. These rates are available on the website of the Federal Financial Institutions Examination Council.

A higher-priced mortgage loan does not include:

- a transaction to finance the initial construction of a dwelling,
- a temporary "bridge" loan with a term of twelve months or less,
- a reverse mortgage subject to §226.33, or

- a home equity line of credit subject to §226.5(b).

The regulation prohibits prepayment penalties at any time for higher-priced mortgage loans if:

- Other applicable law (e.g., state law) prohibits such penalty;
- The penalty will apply after the two-year period following consummation;
- The source of the prepayment funds is a refinancing by the same mortgage lender or an affiliate; or,
- The consumer's mortgage payment can change during the first four years of the loan term.

The regulation prohibits creditors from structuring a home-secured loan as an open-end plan to evade these requirements.

With few exceptions, a creditor may not extend a higher-priced mortgage loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor. The exceptions involve loans secured by shares in a cooperative or condominium units where the condominium association has an obligation to maintain a master insurance policy. A creditor may allow a consumer to cancel the escrow account one year after consummation if a consumer's written cancellation request is received no earlier than 365 days after consummation.

Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Principal Dwelling §226.36

Coercion of Appraiser

Creditors and mortgage brokers are prohibited from coercing a real estate appraiser to misstate a home's value. Examples of actions that violate that prohibition include telling an appraiser what minimum value is necessary to approve the loan or failing to compensate when values do not meet minimum requirements. Examples of actions that do not violate this section include asking an appraiser to consider additional information for the basis of valuation or requesting the appraiser to correct factual inaccuracies in the appraisal.

Loan Servicing Practices

Companies that service mortgage loans are prohibited from engaging in certain practices, such as pyramiding late fees. In addition, servicers are required to credit consumers' loan payments as of the date of receipt and provide a payoff statement within a reasonable time of request.

Specifically, for a consumer credit transaction secured by a consumer's principal dwelling, a loan servicer cannot:

- Fail, with limited exception, to credit a payment to the consumer's loan account as of the date of receipt;
- Impose on the consumer any late fee or delinquency charge in connection with a timely payment made in full, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment; or
- Fail to provide, within a reasonable time after receiving a request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligations in full as of a specific date.

Notification of Sale or Transfer of Mortgage Loans §226.39

Notice of new owner – No later than 30 days after the date on which a mortgage loan is acquired by or otherwise sold, transferred, or assigned to a third party, the "covered person"[6] shall notify the borrower in writing of such transfer and include:

- An identification of the loan that was acquired or transferred;
- The identity, address, telephone number of the covered person who owns the mortgage loan;
- The acquisition date recognized on the books and records of the covered person;
- How to reach an agent or party having authority to act on behalf of the covered person;
- The location of the place where the transfer of ownership of the debt to the covered person is recorded (note, however, that if the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person complies with this paragraph by stating this fact); and
- At the option of the covered person, any other relevant information regarding the transaction.

This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer. Thus, it applies to both closed-end mortgage loans and open-end home equity lines of credit. This notification is required of the covered person even if the loan servicer remains the same.

[6] A "covered person" means any person, as defined in 12 CFR 226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the services solely for the administrative convenience of the servicer in servicing the obligation. See §226.39(a)(1).

Subpart F – Special Rules for Private Education Loans

Special Disclosure Requirements for Private Education Loans §226.46

The disclosures required under Subpart F apply only to private education loans. Except where specifically provided otherwise, the requirements and limitations of Subpart F are in addition to the requirements of the other subparts of Regulation Z.

A private education loan means an extension of credit that:

- Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965;
- Is extended to a consumer expressly, in whole or part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends; and
- Does not include open-end credit or any loan that is secured by real property or a dwelling.

A private education loan does not include an extension of credit in which the covered educational institution is the creditor if:

- The term of the extension of credit is 90 days or less, or
- An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

Content of Disclosures §226.47

Disclosure Requirements

This section establishes the content that a creditor must include in its disclosures to a consumer at three different stages in the private education loan origination process:

1) Application or Solicitation Disclosures – With any application or solicitation;
2) Approval Disclosures – With any notice of approval of the private education loan; and
3) Final Disclosures – After the consumer accepts the loan. In addition, §226.48(d) requires that the disclosures must be provided at least three business days prior to disbursement of the loan funds.

Rights of the Consumer

The creditor must disclose that, if approved for the loan, the consumer has the right to accept the loan on the terms approved for up to 30 calendar days. The disclosure must inform the consumer that the rate and terms of the loan will not change during this period, except for changes to the rate based on adjustments to the index used for the loan and other

changes permitted by law. A consumer also has the right to cancel the loan, without penalty, until midnight of the third business day following the date on which the consumer receives the final disclosures.

Limitations on Private Educational Loans §226.48

This section contains rules and limitations on private education loans, including:

1) A prohibition on co-branding in the marketing of private education loans;
2) Rules governing the thirty-day acceptance period and three business-day cancellation period and prohibition on disbursement of loan proceeds until the cancellation period has expired;
3) The requirement that the creditor obtain a self-certification form from the consumer before consummation; and
4) The requirement that creditors in preferred lender arrangements provide certain information to covered educational institutions.

Co-Branding Prohibited

Regulation Z prohibits creditors from using the name, emblem, mascot, or logo of a covered institution (or other words, pictures, or symbols readily identified with a covered institution) in the marketing of private education loans in a way that implies endorsement by the educational institution. Marketing that refers to an educational institution does not imply endorsement if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the institution that the educational institution does not endorse the creditor's loans, and that the creditor is not affiliated with the educational institution. There is also an exception in cases where the educational institution actually does endorse the creditor's loans, but the marketing must make a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the institution that the creditor, and not the educational institution, is making the loan.

Specific Defenses (TILA §108)

Defense Against Civil, Criminal, and Administrative Actions

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

- Discovering the error before an action is brought against the financial institution, or before the consumer notifies the financial institution, in writing, of the error.

- Notifying the consumer of the error within 60 days of discovery.

- Making the necessary adjustments to the consumer's account, also within 60 days of discovery. (The consumer will pay no more than the lesser of the finance charge actually disclosed or the dollar equivalent of the APR actually disclosed.)

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

An error is "discovered" if it is:

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

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

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

Additional Defenses Against Civil Actions

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

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

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

Statute of Limitations (TILA §§108 and 130)

Civil actions may be brought within one year after the violation occurred. For private education loans, civil actions may be brought within one year from the date on which the first regular payment of principal and interest is due. After that time, and if allowed by state law, the consumer may still assert the violation as a defense if a financial institution were to bring an action to collect the consumer's debt.

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

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

There is no time limitation on willful violations intended to mislead the consumer. A summary of the various time limitations follows.

- For open-end credit, reimbursement applies to violations not older than two years.
- For closed-end credit, reimbursement is generally directed for loans with violations occurring since the immediately preceding examination.

Rescission Rights (Open-End and Closed-End Credit) §226.15 and §226.23

TILA provides that for certain transactions secured by the consumer's principal dwelling, a consumer has three business days after becoming obligated on the debt to rescind the transaction. The right of rescission allows consumer(s) time to reexamine their credit agreements and cost disclosures and to reconsider whether they want to place their homes at risk by offering it as security for the credit. A higher-priced mortgage loan (whether or not it is a HOEPA loan) having a prepayment penalty that does not conform to the prepayment penalty limitations (§226.32(c) and (d) and §226.35(b)(2)) is also subject to a three-year right of rescission. Transactions exempt from the right of rescission include residential mortgage transactions (§226.2(a)(24)) and refinancings or consolidations with the original creditor where no "new money" is advanced.

If a transaction is rescindable, consumers must be given a notice explaining that the creditor has a security interest in the consumer's home, that the consumer may rescind, how the consumer may rescind, the effects of rescission, and the date the rescission period expires.

To rescind a transaction, a consumer must notify the creditor in writing by midnight of the third business day after the latest of three events:

- Consummation of the transaction,
- Delivery of material TILA disclosures, or
- Receipt[7] of the required notice of the right to rescind.

[7] 12 CFR 226.15(b) and 226.23(b)(1) were amended to include the electronic delivery of the notice of the right to rescind. If a paper notice of the right to rescind is used, a creditor must deliver two copies of the notice to each consumer entitled to rescind. However, under the final rule on electronic delivery of disclosures if the notice is in electronic form, in accordance with the consumer consent and other applicable provisions of the E-Sign Act, only one copy to each customer is required.

For purposes of rescission, business day means every calendar day except Sundays and the legal public holidays (§226.2(a)(6)). The term “material disclosures” is defined in §226.23(a)(3) to mean the required disclosures of the APR, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §226.32(c) and (d).

The creditor may not disburse any monies (except into an escrow account) and may not provide services or materials until the three-day rescission period has elapsed and the creditor is reasonably satisfied that the consumer has not rescinded. If the consumer rescinds the transaction, the creditor must refund all amounts paid by the consumer (even amounts disbursed to third parties) and terminate its security interest in the consumer's home.

A consumer may waive the three-day rescission period and receive immediate access to loan proceeds if the consumer has a "bona fide personal financial emergency." The consumer must give the creditor a signed and dated waiver statement that describes the emergency, specifically waives the right, and bears the signatures of all consumers entitled to rescind the transaction. The consumer provides the explanation for the bona fide personal financial emergency, but the creditor decides the sufficiency of the emergency.

If the required rescission notice or material TILA disclosures are not delivered or if they are inaccurate, the consumer's right to rescind may be extended from three days after becoming obligated on a loan to up to three years.

1. To appraise the quality of the financial institution's compliance management system for the Truth in Lending Act and Regulation Z.

2. To determine the reliance that can be placed on the financial institution's compliance management system, including internal controls and procedures performed by the person(s) responsible for monitoring the financial institution's compliance review function for the Truth In Lending Act and Regulation Z.

3. To determine the financial institution's compliance with the Truth In Lending Act and Regulation Z.

4. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

5. To determine whether the institution will be required to make adjustments to consumer accounts under the restitution provisions of the Act.

General Procedures

1. Obtain information pertinent to the area of examination from the financial institution's compliance management system program (historical examination findings, complaint information, and significant findings from compliance review and audit).

2. Through discussions with management and review of the following documents, determine whether the financial institution's internal controls are adequate to ensure compliance in the area under review. Identify procedures used daily to detect errors/violations promptly. Also, review the procedures used to ensure compliance when changes occur (e.g., changes in interest rates, service charges, computation methods, and software programs).

    - Organizational charts.
    - Process flowcharts.
    - Policies and procedures.
    - Loan documentation and disclosures.
    - Checklists/worksheets and review documents.
    - Computer programs.

3. Review compliance review and audit work papers and determine whether:

    a. The procedures used address all regulatory provisions (see Transactional Testing section).
    b. Steps are taken to follow up on previously identified deficiencies.
    c. The procedures used include samples that cover all product types and decision centers.
    d. The work performed is accurate (through a review of some transactions).
    e. Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.
    f. Corrective actions are timely and appropriate.
    g. The area is reviewed at an appropriate interval.

4. Review the financial institution's record retention practices to determine whether evidence of compliance (for other than the advertising requirements) is retained for at least two years after the disclosures were required to be made or other action was required to be taken. (§226.25)

Disclosure Forms

5. Determine if the financial institution has changed any TILA disclosure forms or if there are forms that have not been previously reviewed for accuracy. If so:

   Verify the accuracy of each disclosure by reviewing the following:

   - Credit card application/solicitation disclosures (§226.5a(b)-(e)).
   - HELOC disclosures (§226.5b(d) and (e)).
   - Initial disclosures (§226.6(a)-(d)) and, if applicable, additional HELOC disclosures (§226.6(e)).
   - Statement of billing rights and change in terms notice (§226.9(a),(b),(c) or (g)).
   - Note and/or contract forms (including those furnished to dealers).
   - Notice of Right to Rescind/Cancel (§§226.15(b), 226.23(b)(1)) and 226.47(c)(4).
   - Standard closed-end credit disclosures (§§226.17(a) and 226.18).
   - ARM disclosures (§226.19(b)).
   - High cost mortgage disclosures (§226.32(c)).
   - Reverse mortgage disclosures (§226.33(b)).
   - Private education loan disclosures (§226.47).

Closed-End Credit Disclosure Forms Review Procedures

a. Determine that the disclosures are clear, conspicuous, and grouped together or segregated as required. The terms "Finance Charge" and "Annual Percentage Rate" and corresponding rates or amounts should be more conspicuous than other terms, except for the creditor's identity. For private student loans the term "Annual Percentage Rate" and corresponding rate must be less conspicuous than the term "finance charge" and the corresponding amount, as well as less conspicuous than the interest rate, the notice of the right to cancel and creditor's identity. (§§226.17(a), 226.47(b), and (c))

b. Determine the disclosures include the following as applicable. (§226.18)

   1. Identity of the creditor
   2. Brief description of the finance charge
   3. Brief description of the APR
   4. Variable rate information (§226.18(f)(1) or (2))
   5. Payment schedule
   6. Brief description of the total of payments
   7. Demand feature
   8. Description of total sales price in a credit sale
   9. Prepayment penalties or rebates
   10. Late payment amount or percentage
   11. Description for security interest
   12. Insurance conditions for finance charge exclusions (§226.4(d))

13. Statement referring to the contract
14. Statement regarding assumption of the note
15. Statement regarding required deposits.

c. Determine all variable rate loans with a maturity greater than one year secured by a principal dwelling are given the following disclosures at the time of application. (§226.19)

    1. Consumer handbook on adjustable rate mortgages or substitute
    2. Statement that interest rate payments and or terms can change
    3. The index/formula and a source of information
    4. Explanation of the interest rate/payment determination and margin
    5. Statement that the consumer should ask for the current interest rate and margin
    6. Statement that the interest rate is discounted, if applicable
    7. Frequency of interest rate and payment changes
    8. Rules relating to all changes
    9. Either a historical example based on 15 years, or the initial rate and payment with a statement that the periodic payment may substantially increase or decrease together with a maximum interest rate and payment
    10. Explanation of how to compute the loan payment, giving an example
    11. Demand feature, if applicable
    12. Statement of content and timing of adjustment notices
    13. Statement that other variable rate loan program disclosures are available, if applicable

d. Determine that the disclosures required for high-cost mortgage transactions (§226.32) clearly and conspicuously include the items below. (§226.32(c), see Form H-16 in Appendix H)

    1. The required statement "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."
    2. The APR.
    3. Amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment should include amounts for voluntary items, such as credit life insurance or debt-cancellation coverage, only if the consumer has previously agreed to the amount (See staff commentary to 32(c)(3)).
    4. Statement that the interest rate may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate allowed under the contract, if applicable.
    5. For a mortgage refinancing, the total amount borrowed, as reflected by the face amount of the note; and 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 amount borrowed).

e. For any closed-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold or otherwise transferred or assigned to the covered person, determine that the covered person) notifies the borrower in writing of such transfer, including (§226.39):

1. An identification of the loan that was acquired or transferred;
2. The identity, address, telephone number of the new covered person who owns the mortgage loan;
3. The acquisition date recognized on the books and records of the covered person;
4. How to reach an agent or party having authority to act on behalf of the covered person;
5. The location of the place where the transfer of ownership of the debt to the covered person is recorded (note, however, that if the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person complies with this paragraph by stating this fact); and,
6. At the option of the covered person, any other relevant information regarding the transaction.

   Note: This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer. This notification is required of the covered person even if the loan servicer remains the same.

f. For private education loans subject to Subpart F, ensure that the required disclosures are accurate (§226.47) and contain the following information:

   1. Application or solicitation disclosures disclose the following:
      a. Interest rate, including:
         i. Rate or range, and if the rate depends in part on a determination of the borrower's creditworthiness or other factors, a statement to that effect;
         ii. Whether rate is fixed or variable;
         iii. If rate may increase after consummation, any limitations, or lack thereof, and if the limitation is imposed by law, that fact. Also, the creditor must state that the consumer's actual rate may be higher or lower that that disclosed, if applicable; and
         iv. Whether the rate will typically be higher if the loan is not co-signed or guaranteed.
      b. Fees and default or late payment costs.
      c. Repayment terms, including:
         i. Term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.
         ii. Deferral options, or if consumer does not have the option to defer, that fact.
         iii. For each available deferral option applicable, information as to:
            1. Whether interest will accrue during deferral period; and
            2. If interest accrues, whether payment of interest may be deferred and added to the principal balance; and

3. A statement that, if the consumer files bankruptcy, the consumer may still be required to repay the loan.

d. Cost estimates, based on an example of the total cost of the loan, calculated using:
   i. The highest interest rate and including all applicable finance charges,
   ii. An amount financed of $10,000, or $5,000, if the creditor offers loans less than $10,000; and
   iii. Calculated for each payment option.

e. Eligibility (e.g., any age or school enrollment eligibility requirements).

f. Alternatives to private education loans, including:
   i. A statement that the consumer may qualify for Federal student loans,
   ii. The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed;
   iii. A statement that the consumer may obtain additional information regarding student federal financial assistance from his school or U.S. Department of Education, including an appropriate website; and
   iv. A statement that a covered educational institution may have school specific educational loan benefits and terms not detailed in the loan disclosure forms.

g. A statement that if the loan is approved, that the loan will be available for 30 days and the terms will not change, except for changes to the interest rate in the case of a variable rate and other changes permitted by law.

h. A statement that before consummation, the borrower must complete a self-certification form obtained from the student's institution of higher education.

2. For approval disclosures, the following information is required under §226.18:

a. Interest rate, information, including:
   i. Interest rate applicable to the loan
   ii. Whether the interest rate is variable or fixed; and
   iii. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.

b. Fees and default or late payment costs, including:
   i. An itemization of the fees or range of fees required to obtain the loan; and
   ii. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

c. Repayment terms, including:
   i. Principal amount;
   ii. Term of the loan;
   iii. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;
   iv. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;
   v. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;
   vi. A statement that if the consumer files for bankruptcy, that the consumer may still be required to pay back the loan;

vii. An estimate of the total amount of payments calculated based upon:
    1. The interest rate applicable to the loan (compliance with §226.18(h) constitutes compliance with this requirement);
    2. The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25%.
    3. If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.

viii. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rated of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

d. Alternatives to private education loans, including:
    i. A statement that the consumer may qualify for Federal student loans,
    ii. The interest rates available for each program available under title IV of the Higher Education Act of 1965, and whether the rate is variable or fixed; and
    iii. A statement that the consumer may obtain additional information regarding student federal financial assistance from his school or U.S. Department of Education, including an appropriate website.

e. A statement that the consumer may accept the terms of the loan until the acceptance period under section §226.48(c)(1) has expired. The statement must include:
    i. The specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan;
    ii. The method or methods by which the consumer may communicate the acceptance (written, oral, or by electronic means; and
    iii. A statement that except for changes to the interest rate and other changes permitted by law, the rates and the terms of the loan may not be changed by the creditor during the 30 day acceptance period.

3. After the consumer has accepted the loan in accordance with §226.48(a), final disclosures must disclose the information required under §226.18 and the following:
    a. Interest rate, including:
        i. Interest rate applicable to the loan
        ii. Whether the interest rate is variable or fixed; and
        iii. If the interest rate may increase after consummation, any limitations on the rate adjustments, or lack thereof.
    b. Fees and default or late payment costs, including:
        i. An itemization of the fees or range of fees required to obtain the loan; and
        ii. Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.
    c. Repayment terms, including:
        i. Principal amount;
        ii. Term of the loan;

iii. A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time;
iv. Any payments required while the student is enrolled at the educational institution, based on the deferral option chosen by the consumer;
v. Amount of any unpaid interest that will accrue while the student is enrolled in school, based upon the deferral option chosen by the consumer;
vi. A statement that if the consumer files for bankruptcy, that the consumer may still be required to pay back the loan;
vii. An estimate of the total amount of payments calculated based upon:
    1. The interest rate applicable to the loan (compliance with §226.18(h) constitutes compliance with this requirement);
    2. The maximum possible rate of interest for the loan, or, if a maximum rate cannot be determined, a rate of 25%;
    3. If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed is an estimate.
viii. The maximum monthly payment based on the maximum rate of interest for the loan, or, if a maximum rate of interest cannot be determined, a rated of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

d. In a text more conspicuous than any other required disclosure, except for the finance charge, the interest rate, and the creditor's identify the following disclosures:
    i. A statement that the consumer has the right to cancel the loan, without penalty, at any time before the midnight of the third business day following the date on which the consumer receives the final loan disclosures. The statement must include the specific date on which the cancellation period expires and that the consumer may cancel by that date.
    ii. A statement that the loan proceeds will not be disbursed until the cancellation period expires.
    iii. The method or methods by which the consumer may cancel; and
    iv. If the creditor permits cancellation by mail, the statement specifying that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosures.

Open-End Credit Forms Review Procedures

a. Determine that the creditor made the disclosures clearly and conspicuously. §226.5(a)

b. Determine that the creditor made the applicable disclosures in writing, in a form that the consumer may keep, except (§226.5(a)(1)(ii)):

1. The following disclosures need not be written: 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 of charges under §226.9(c)(2)(iii)(B); disclosures under §226.9(c)(2)(vi); disclosures under §226.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under §226.56(b)(1)(i).

2. The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section; disclosures for credit and charge card applications and solicitations under §226.5a; home-equity disclosures under §226.5b(d); the alternative summary billing-rights statement under §226.9(a)(2); the credit and charge card renewal disclosures required under §226.9(e); and the payment requirements under §226.10(b), except as provided in §226.7(b)(13).

3. 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, 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.

c. Determine that the terminology used in providing the disclosures required by §226.5 is consistent. (§226.5(a)(2)(i))

d. Determine that, 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. The terms need not be more conspicuous when used for periodic statement disclosures under §226.7(a)(4) and for advertisements under §226.16. (§226.5(a)(2)(ii))

e. Determine that, if disclosures are required to be presented in a tabular format pursuant to §226.5(a)(3), that the term *penalty APR* shall be used, as applicable. §226.5(a)(2)(iii)

   Note: 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) 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.

Credit and Charge Card Application and Solicitation Disclosures §226.5a

a. Determine that the credit card solicitation or application disclosures were made clearly and conspicuously on or with a solicitation or an application. (§226.5a)

b. For the disclosures in §§226.5a(b)(1) through (5) (except for (b)(1)(iv)(B)) and (b)(7) through (15), determine that the creditor made the disclosures required for §§226.5a(c), (d)(2), (e)(1) and (f) in the form of a table with headings, content, and format substantially similar to the applicable tables found in G-10 in appendix G. (§226.5a(a)(2)(i))

c. Determine that the table required by §226.5a(a)(2)(i) contains only the information required or permitted by that section. If the creditor provides other information, determine that such information appears outside the table. (§226.5a(a)(2)(ii))

d. Determine that the disclosures required by §226.5a(b)(1)(iv)(B) and (b)(6) are placed directly beneath the table required by §226.5a(a)(2)(i). (§225.5a(a)(2)(iii))

e. When a tabular format is required, determine that the following disclosures are disclosed in bold text (§226.5a(a)(2)(iv)):

   i. Annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section,
   ii. Introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section,
   iii. Rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and
   iv. Fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13).

   Note: Bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

f. Determine that the card issuer discloses, on or with an solicitation or application: (§226.5a(b))

   1. *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate. When more than one rate

applies for a category of transactions, determine that the range of balances to which each rate is applicable is also disclosed. (§226.5a(b)(1))

Note: The APR for purchases disclosed pursuant to §226.5a(b)(1) shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

i. *Variable rate information.* If a rate is a variable rate, determine that the card issuer discloses the fact that the rate may vary and how the rate is determined. Determine that the card issuer identifies the type of index or formula that is used in setting the rate. Determine that the value of the index and the amount of the margin that are used to calculate the variable rate are not disclosed in the table. Determine further that a disclosure of any applicable limitations on rate increases or decreases is not included in the table. (§226.5a(b)(1)(i))

ii. *Discounted initial rate.* If the initial rate is an introductory rate, determine that the card issuer discloses in the table the introductory rate, the time period during which the introductory rate will remain in effect, and the term "introductory" or "intro" in immediate proximity to the introductory rate. Determine further that the card issuer discloses, as applicable, either the variable or fixed rate that would otherwise apply to the account. (§226.5a(b)(1)(ii))

iii. *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the card issuer discloses the premium initial rate and the time period during which the premium initial rate will remain in effect. Determine that the premium initial rate for purchases is in at least 16-point type. Determine that the issuer discloses in the table the rate that will apply after the premium initial rate expires, in at least 16-point type. (§226.5a(b)(1)(iii))

iv. *Penalty rates.* If a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, determine that the card issuer discloses the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (§226.5a(b)(1)(iv))

v. *Introductory rate.* If the issuer discloses an introductory rate in the table or in any written or electronic promotional materials accompanying applications or solicitations (and subject to paragraph (c) or (e) of §226.5a), determine that the issuer briefly discloses, directly beneath the table, the circumstances, if any, under which the introductory rate may be revoked, and

the type of rate that will apply after the introductory rate is revoked. (§226.5a(b)(1)(iv))

vi. *Rates that depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, determine that the card issuer discloses the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. (§226.5a(b)(1)(v))

Note: if the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in (b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply. (§226.5a(b)(1)(v))

vii. *APRs that vary by state.* Determine that the card issuer does not list annual percentage rates for multiple states in the table. Note, however, that issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table: the specific annual percentage rate applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. (§226.5a(b)(1)(vi))

2. *Fees for issuance or availability.* Determine that the card issuer discloses any annual or other periodic fee, expressed as an annualized amount, or any other fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity. (§226.5a(b)(2))

3. *Fixed finance charge; minimum interest charge*. Determine that the creditor discloses any fixed finance charge that could be imposed during a billing cycle, as well as a brief description of that charge. Determine that the creditor discloses any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. (§226.5a(b)(3))

4. Transaction charge. Determine that the creditor discloses any transaction charge imposed for the use of the card for purchases. (§226.5a(b)(4))

5. *Grace period.* Determine that the issuer discloses the date by which or the period within which any credit extended for purchases 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, determine that this fact is disclosed. In disclosing in the tabular format a grace period that applies to all types

of purchases, determine that the issuer uses the phrase "How to Avoid Paying Interest on Purchases" as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, determine that the issuer uses the phrase "Paying Interest" as the heading for the row describing this fact. Note: If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. (§226.5a(b)(5))

6. *Balance computation method.* Determine that the creditor disclosed the name of the balance computation method that is used to determine the balance on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period. (§226.5a(b)(6))

   Note: Disclosures required by §226.5a(b)(6) must be placed directly beneath the table.

7. Statement on charge card payments. Determine that the creditor discloses a statement that charges incurred by use of the charge card are due when the periodic statement is received. (§226.5a(b)(7))

8. *Cash advance fee.* Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (§226.5a(b)(8))

9. *Late payment fee.* Determine that the creditor disclosed any fee imposed for a late payment. (§226.5a(b)(9))

10. *Over-the-limit fee.* Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (§226.5a(b)(10))

11. *Balance transfer fee.* Determine that the creditor disclosed any fee imposed to transfer a balance. (§226.5a(b)(11))

12. *Returned payment fee.* Determine that the creditor disclosed any fee imposed for a returned payment. (§226.5a(b)(12))

13. *Required insurance, debt cancellation, or debt suspension coverage.* Determine that the fee imposed required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. (§226.5a(b)(13))

14. *Available credit.* Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of minimum credit limit for the account. If so,

determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (§226.5a(b)(14))

15. *Website reference.* For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the Board and a statement that the consumers may obtain on the website information about shopping for and using credit cards. (§226.5a(b)(15))

Requirements for Home Equity Plans §226.5b

a. Determine that the following home equity disclosures were made clearly and conspicuously, at the time of application. (§226.5b)

    1. Home equity brochure
    2. Statement that the consumer should retain a copy of the disclosure
    3. Statement of the time the specific terms are available
    4. Statement that terms are subject to change before the plan opens
    5. Statement that the consumer may receive a full refund of all fees
    6. Statement that the consumer's dwelling secures the credit
    7. Statement that the consumer could lose the dwelling
    8. Creditors right to change, freeze, or terminate the account
    9. Statement that information about conditions for adverse action are available upon request
    10. Payment terms including the length of the draw and repayment periods, how the minimum payment is determined, the timing of payments, and an example based on $10,000 and a recent APR
    11. A recent APR imposed under the plan and a statement that the rate does not include costs other than interest (fixed rate plans only)
    12. Itemization of all fees paid to creditor
    13. Estimate of any fees payable to third parties to open the account and a statement that the consumer may receive a good faith itemization of third party fees
    14. Statement regarding negative amortization, as applicable
    15. Transaction requirements
    16. Statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan
    17. For variable rate home equity plans, disclose the following:

        a. That the APR, payment, or term may change
        b. The APR excludes costs other than interest
        c. Identify the index and its source
        d. How the rate will be determined
        e. Statement that the consumer should request information on the current index value, margin, discount, premium, or APR
        f. Statement that the initial rate is discounted and the duration of the discount, if applicable
        g. Frequency of APR changes

h. Rules relating to changes in the index, APR, and payment amount
i. Lifetime rate cap and any annual caps, or a statement that there is no annual limitation
j. The minimum payment requirement, using the maximum APR, and when the maximum APR may be imposed
k. A table, based on a $10,000 balance, reflecting all significant plan terms
l. Statement that rate information will be provided on or with each periodic statement.

b. For home-equity plans subject to §226.5b, determine that the terms *finance charge* and *annual percentage rate,* when required to be disclosed with a corresponding amount or percentage rate, are more conspicuous than any other required disclosure.

Note: the terms need not be more conspicuous when used for periodic statement disclosures under §226.7(a)(4) and for advertisements under §226.16. (§226.5(a)(2)(ii))

Account Opening Initial Disclosures §226.6

a. The following requirements apply only to home-equity plans subject to the requirements of §226.5b. Determine that the creditor discloses, as applicable (§226.6(a)):

1. *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, including: a statement of when finance charges begin to accrue, and an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge; 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; an explanation of the method used to determine the balance on which the finance charge may be computed; and, 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. (§226.6(a)(1))

   If a creditor offers a variable-rate plan, determine that the creditor discloses: 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, determine that the types of transactions to which the periodic rates shall apply shall also be disclosed. (§226.6(a)(1))

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. (§226.6(a)(2))

3. *Home-equity plan information.* The following disclosures , as applicable: (§226.6(a)(3))

a. 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.
b. The payment information described in §226.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.
c. A statement that negative amortization may occur as described in §226.5b(d)(9).
d. A statement of any transaction requirements as described in §226.5b(d)(10).
e. A statement regarding the tax implications as described in §226.5b(d)(11).
f. 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).
g. 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.

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. (§226.6(a)(4))

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. (§226.6(a)(5))

b. The following requirements apply to open-end (not home-secured). Determine that the creditor discloses in the appropriate format, as applicable §226.6(b):

1. *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an APR. When more than one rate applies for a category of transactions, determine that the creditor discloses the range of balances to which each rate is applicable. Ensure that the APR for purchases disclosed pursuant to this paragraph is in at least 16-point type, except for a penalty rate that may apply upon the occurrence of one or more specific events. (§226.6(b)(2)(i))

2. *Variable rate information.* If the rate is a variable rate, determine that the creditor also disclosed the fact that the rate may vary and how the rate is determined (i.e., identify the type of index or formula used in setting the rate). (§226.6(b)(2)(i)(A))

3. *Discounted initial rate.* If the rate is an introductory rate, determine that the creditor disclosed that the rate would otherwise apply to the account. Where the rate is not tied to an index or formula, determine that creditor disclosed the rate that applies after the introductory rate expires. For a variable rate account, determine that the creditor disclosed a rate based on the applicable index or formula in accordance with the accuracy requirements. (§226.6(b)(2)(i)(B))

4. *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, determine that the creditor disclosed the premium initial rate. Determine that the premium rate for purchases is in at least 16-point type. (§226.6(b)(2)(i)(C))

5. *Penalty rates.* If the rate is a penalty rate, determine that the creditor disclosed as part of the APR disclosure the rate that may apply and a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. (§226.6(b)(2)(i)(D)(1))

6. *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in §226.16(g)(2)(ii), determine that the creditor briefly disclosed directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked. (§226.6(b)(2)(i)(D)(2))

7. *Point of sale where APRs vary by state or based on creditworthiness.* If the creditor imposes an APR that varies by state or based on the consumer's creditworthiness and provides required disclosures in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services, determine that the creditor discloses either (§226.6(b)(2)(i)(E)):

   i. The specific APR applicable to the consumer's account, or
   ii. The range of the APRs, if the disclosure includes a statement that the APR varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the AP applicable to the consumer's account is disclosed. Determine that the creditor does not list APRs for multiple states in the account opening table.

8. *Credit card accounts under an open-end (not home-secured) consumer credit plan.* Determine that the issuer discloses in the table (§226.6(b)(2)(i)(F)):
   i. Any introductory rate, and
   ii. Any rate that would apply upon expiration of a premium initial rate.

9. *Fees for issuance or availability.* Determine that the credit disclosed any annual or periodic fee that may be imposed for the issuance or availability of an open-end plan (including any fee based on account activity or inactivity); how frequently the fee will be imposed; and the annualized amount of the fee. (§226.6(b)(2)(ii))

10. *Fixed finance charge (minimum interest charge).* Determine that the creditor disclosed any fixed finance charge, any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. (§226.6(b)(2)(iii))

11. *Transaction charges.* Determine that the creditor discloses any transaction charge imposed by the creditor for use of the open-end plan for purchases. (§226.6(b)(2)(iv))

12. *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 in the tabular format 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 row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact. (§226.6(b)(2)(v))

13. *Balance computation method.* Determine that the creditor disclosed in the account opening disclosures the name of the balance computation method 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 methods required by §226.6(b)(4)(i)(D). In determining which balance computation method to disclose, the creditor should have assumed that the credit extended will not be repaid within any grace period. (§226.6(b)(2)(vi))

14. *Cash advance fee.* Determine that the creditor disclosed any fee imposed for an extension of credit in the form of cash or its equivalent. (§226.6(b)(2)(vii))

15. *Late payment fee.* Determine that the creditor disclosed any fee imposed for a late payment. (§226.6(b)(2)(viii))

16. *Over-the-limit fee.* Determine that the creditor disclosed any fee imposed for exceeding the credit limit. (§226.6(b)(2)(ix))

17. *Balance transfer fee.* Determine that the creditor disclosed any fee imposed to transfer a balance. (§226.6(b)(2)(x))

18. *Returned payment fee.* Determine that the creditor disclosed any fee imposed for a returned payment. (§226.6(b)(2)(xi))

19. *Required insurance, debt cancellation, or debt suspension coverage.* Determine that the fee imposed required insurance, debt cancellation or suspension coverage is disclosed if the insurance, debt cancellation or coverage is required as part of the plan. (§226.6(b)(2)(xii))

20. *Available credit.* Determine whether total of required fees for the issuance or availability of credit and/or security deposit debited to the account at account opening equal or exceed 15 percent of the credit limit for the account. If so, determine that the creditor disclosed, as applicable, the available credit remaining after the fees and/or security deposit are debited to the account. (§226.6(b)(2)(xiii))

21. *Website reference.* For issuers of credit cards that are not charge cards, determine that the creditor disclosed a reference to the website established by the Board and a statement that the consumers may obtain on the website information about shopping for and using credit cards. (§226.6(b)(2)(xiv))

22. *Billing error rights reference.* Determine that the creditor disclosed a statement that information about consumers' right to dispute transactions is included in the account-opening disclosures. (§226.6(b)(2)(xv))

22. *Charges and finance charges.* For charges imposed as part of open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or explanation of how the charge is determined. For finance charges, 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. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration. (§226.6(b)(3)(i))

23. *Disclosure of rates for open*-end (not home-secured) plans. Determine that the creditor disclosed, as applicable, for each periodic rate that may be used to calculate interest (§226.6(b)(4)(i)):

    i. The rate (expressed as a periodic rate and a corresponding APR),
    ii. The range of balances to which the rate is applicable,
    iii. The type of transaction to which the periodic rate applies,
    iv. An explanation of the method used to determine the balance to which the rate is applied.

24. *Variable-rate Accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) determine that the following are specifically set forth in the account agreement (§226.6(b)(4)(ii)):

    i. The fact that the annual percentage rate may increase.
    ii. How the rate is determined, including the margin.
    iii. The circumstances under which the rate may increase.
    iv. The frequency with which the rate may increase.
    v. Any limitation on the amount the rate may change.
    vi. The effect(s) of an increase.

vii. Except as specified in paragraph (b)(4)(ii)(H) of this section, 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.

25. 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, determine that the creditor discloses (§226.6(b)(4)(iii)):

    i. The initial rate (expressed as a periodic rate and a corresponding APR)
    ii. How long the initial rate will remain in effect and the specific events that cause the initial rate to change.
    iii. The rate (expressed as a periodic rate and a corresponding APR) 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.
    iv. The balances to which the new rate will apply.
    v. The balances to which the current rate at the time of the change will apply.

26. *Voluntary credit insurance, debt cancellation, or debt suspension.* Determine that the creditor disclosed the applicable disclosures if the creditor offers optional credit insurance, or debt cancellation or dept suspension coverage. (§226.6(b)(5)(i))

27. *Security interests.* Determine that the creditor disclosed 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. (§226.6(b)(5)(ii))

28. *Statement of billing rights.* Determine that the creditor disclosed a statement that outlines the consumer's rights and the creditor's responsibilities. (§226.6(b)(5)(iii))

Periodic Statement Disclosures §226.7

a. *Rules affecting home-equity plans.* For home-equity plans subject to the requirements of §226.5b, determine that the creditor disclosed on the periodic statement items 1 through 10 below (§226.7(a)):

   Note: The requirements of §226.7(a) apply only to home-equity plans subject to the requirements of §226.5b. Additionally, a creditor may, at its option, comply with any of the requirements of paragraph §226.7(b); however, any creditor that chooses to replace the disclosures required under paragraph (a)(7) with paragraph (b)(7) must also disclose the information required under paragraph (b)(6).

   1. *Previous balance.* The account balance outstanding at the beginning of the billing cycle. (§226.7(a)(1))

   2. *Identification of transactions.* An identification of each credit transaction in accordance with §226.8. (§226.7(a)(2))

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 does not result in any finance or other charge. (§226.7(a)(3))

4. *Periodic rates.* 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 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) may vary. (§226.7(a)(4))

    i. Note that: If no finance 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 charge will be imposed

    ii. Note further that: 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. 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. (§226.7(a)(5))

6. *Amount of finance charge and other charges.* (§226.7(a)(6))

    a. *Finance charges.* The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* Determine that the components of the finance charge are individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. Note: 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. (§226.7(a)(6)(i))

    b. *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle. (§226.7(a)(6)(ii))

    Note: Creditors may comply with paragraphs (a)(6) of §226.7, or with paragraph (b)(6) of §226.7, at their option.

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.* (§226.7(a)(7))

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. (§226.7(a)(8))

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). (§226.7(a)(9))

10. *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date. (§226.7(a)(10))

b. *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section (1 through 14 below) apply only to plans other than home-equity plans subject to the requirements of §226.5b. For applicable plans, determine that the creditor discloses on the periodic statement (§226.7(b)):

1. *Previous balance.* The account balance outstanding at the beginning of the billing cycle. (§226.7(b)(1))

2. *Identification of transactions.* An identification of each credit transaction in accordance with §226.8. (§226.7(b)(2))

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 crediting does not result in any finance or other charge. (§226.7(b)(3))

4. *Periodic rates.* Each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term *Annual Percentage Rate,* along with the range of balances to which it is applicable. (§226.7(b)(4))

   i. Note: If no 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 interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the APR may vary; and
   ii. A promotional rate, as that term is defined in §226.16(g)(2)(i), is required to be disclosed only 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.* (§226.7(b)(5))

6. *Charges imposed.* The amounts of any charges imposed as part of a plan as stated in §226.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G–18(A) in appendix G to this part. (§226.7(b)(6))

i. *Interest.* 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, and 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, using a format substantially similar to Sample G–18(A).

ii. *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–18(A).

7. *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.* Creditors that provide a change-in-terms notice required by §226.9(c), or a rate increase notice required by §226.9(g), on or with the periodic statement, must disclose the information in §226.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or §226.9(g)(3)(i) on the periodic statement in accordance with the format requirements in §226.9(c)(2)(iv)(D), and §226.9(g)(3)(ii). See Forms G–18(F) and G–18(G). (§226.7(b)(7))

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. (§226.7(b)(8))

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). (§226.7(b)(9))

10. *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date disclosed in accordance with §226.7(b)(13). (§226.7(b)(10))

11. *Due date; late payment costs*. With the exception of periodic statements provided solely for charge cards and periodic statements provided for a charged-off account where payment of the entire account balance is due immediately, determine that the creditor disclosed (in accordance with §226.7(b)(13)) for a credit card account under an open-end (not home-secured) consumer credit plan:

    a. The due date for a payment (the due date must be the same day of the month for each billing cycle). (§226.7(b)(11)(i)(A))

b. The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, verify that the card issuer either states a range of fees or the highest fee. (§226.7(b)(11)(i)(B))

Note: With the exception of the negative or no amortization disclosures required by §226.7(b)(12)(ii), the repayment disclosures in §226.7(b)(12) (as listed in step 12 below) are not required for:

i. Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;
ii. A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and
iii. A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

12. Given those exceptions above, determine that the card issuer disclosed on the periodic statement §226.7(b)(12):

a. The following statement with a bold heading: "**Minimum Payment Warning**: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance;" (§226.7(b)(12)(i)(A))

b. The minimum payment repayment estimate, as described in Appendix M1 to this part. Note: If the minimum payment repayment estimate is less than 2 years, determine that the card issuer disclosed the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year; (§226.7(b)(12)(i)(B))

c. The minimum payment total cost estimate, as described in Appendix M1 to this part, rounded to the nearest whole dollar (§226.7(b)(12)(i)(C);

d. The minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance (§226.7(b)(12)(i)(D);

e. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services (§226.7(b)(12)(i)(E)); and

f. The disclosures required for §226.7(b)(12)(i)(F)(1):

   i. The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar (§226.7(b)(12)(i)(F)(1)(i));
   ii. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment for 3 years;
   iii. The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar; and
   iv. The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded to the nearest whole dollar.

   Note: The disclosures (i through iv above) required for §226.7(b)(12)(i)(F)(1) do not apply to a periodic statement in any of the following circumstances:

1. The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;
2. The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, rounded to the nearest whole dollar that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and
3. A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

g. For non-amortizing or negatively amortizing credit card accounts under an open-end (not home-secured) consumer credit plan, determine that the card issuer provides the following disclosures on each periodic statement (§226.7(b)(12)(ii)):

   i. "**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month" (§226.7(b)(12)(ii)(A));

   ii. "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner" (§226.7(b)(12)(ii)(B));

iii. The estimated monthly payment for repayment in 36 months rounded to the nearest whole dollar (§226.7(b)(12)(ii)(C);

iv. A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years (§226.7(b)(12)(ii)(D)); and

v. A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services (§226.7(b)(12)(ii)(E)).

h. Verify that the items required to be disclosed, as addressed in the procedures in step 12 above (required by §226.7(b)(12)) are disclosed in accordance with the format requirements of §226.7(b)(13) and are similar to the samples provided in Appendix G of Regulation Z.

i. Determine that a card issuer provides (to the extent available from the United States Trustee or a bankruptcy administrator) through the disclosed toll-free telephone number the name, street address, telephone number, and website address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator to provide credit counseling services in either the state in which the billing address for the account is located or the state specified by the consumer. (§226.7(b)(12)(iv)(A))

j. Determine that the card issuer at least annually updates the credit counseling information it discloses for consistency with the information available from the United States Trustee or a bankruptcy administrator. (§226.7(b)(12)(iv)(B))

13. Determine that the card issuer provided periodic statement disclosures according to the following format requirements (§226.7(b)(13)):

    a. The due date is disclosed on the front of the first page of the periodic statement and that the amount of the late payment fee and the APR(s) are stated in close proximity thereto.

    b. The ending balance and the repayment disclosures (required by paragraph (b)(12) of §226.7) are disclosed closely proximate to the minimum payment due.

    c. The due date, late payment fee and APR, ending balance, minimum payment due, and repayment disclosures are grouped together.

    Note that sample G-18(D) in Appendix G of Regulation Z sets forth an example of how these terms may be grouped.

14. For accounts with an outstanding balance subject to a deferred interest or similar program, the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance must be disclosed on the front of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G–18(H) in Appendix G to this part. (§226.7(b)(14))

Subsequent Disclosure Requirements §226.9

a. Determine whether the creditor mailed or delivered the billing rights statement at least once per calendar year, at intervals of not less than 6 months or more than 18 months, customers and whether the institution used the short form notice with each periodic statement. (§226.9(a))

b. If, 30 days after mailing or delivering the account-opening disclosures under §226.6(a)(1) or (b)(3)(ii)(A), the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card, or except with regard to checks that access a credit card account) on the same finance charge terms, determine that the creditor discloses, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed. (§226.9(b)(1))

c. Determine that, except with regard to checks that access a credit card account, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by §226.6(a)(1) or (b)(3)(ii)(A) that are applicable to the added feature or device are given before the consumer uses the feature or device for the first time. (§226.9(b)(2))

d. *Checks that access a credit card account.* For open-end plans not subject to the requirements of §226.5b, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under §226.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, determine that the creditor discloses on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in appendix G to this part (§226.9(b)(3):

    1. If a promotional rate applies to the checks, determine that the creditor discloses:

        a. The promotional rate and the time period during which the promotional rate will remain in effect (§226.9(b)(3)(i)(A)(1);

b. The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section (§226.9(b)(3)(i)(A)(2); and
c. The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date (§226.9(b)(3)(i)(A)(3).

2. If no promotional rate applies to the checks, determine that the creditor discloses:

   a. The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in §226.9(b)(3)(ii). (§226.9(b)(3)(i)(B)(1))

3. Any transaction fees applicable to the checks disclosed under §226.6(b)(2)(iv). (§226.9(b)(3)(i)(C))

4. Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase "How to Avoid Paying Interest on Check Transactions" shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase "Paying Interest" shall be used as the row heading. (§226.9(b)(3)(i)(D))

   Note: The disclosures in §226.9 (b)(3)(i) must be accurate as of the time the disclosures are mailed or delivered. A variable APR is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered.

f. Determine, for home-equity plans subject to the requirements of §226.5b:

1. Whenever any term required to be disclosed under section §226.6(a) is changed or the required minimum periodic payment is increased, the creditor mailed or delivered written notice of the change at least 15 days prior to the effective date of the change. If the consumer agreed to the change, determine that notice was provided before the change went into effect. (§226.9(c)(1)(i))

2. If the creditor prohibits additional extensions of credit or reduces the credit limit that the creditor mailed or delivered notice of the action not later than three business

days after such action is taken. The notice must contain the specific reasons for the action. (§226.9(c)(1)(iii))

Note: Notice is not required when the change involves a reduction of any component of a finance charge or other charge or when the change results from an agreement involving a court proceeding. (§226.9(c)(1)(ii))

g. Determine, for open-end (not home-secured) plans other than home-equity plans subject to the requirements of §226.5b, that the written notice of any significant changes in account terms (listed below), an increase in the required minimum payment, or acquisition of a security interest, was provided 45 days prior to the effective date of the change. (§226.9(c)(2)(i)(A))

   This notice applies to changes to the following terms (§226.9(c)(2)(ii)):

   1. APR increase, including each periodic rate that may be used to compute the finance charge on outstanding balances for purchases, a cash advance, or a balance transfer (such rates may include any discounted initial rate, premium initial rate, or penalty rate that may be applied to the account);
      a. Variable-rate information;
      b. Discounted or premium initial rates;
      c. Penalty rates;
   2. Fees for issuance or availability, including any fee based upon account activity or inactivity;
   3. Fixed finance charge or minimum interest charge, if it exceeds $1.00;
   4. Transaction charge for purchases;
   5. Grace period;
   6. Balance computation method;
   7. Cash advance fee;
   8. Late payment fee;
   9. Over-the-limit fee;
   10. Balance transfer fee;
   11. Returned payment fee; and
   12. Required insurance, debt cancellation, or debt suspension coverage.

h. Ensure that the written change-in-terms notice contains the following disclosures (§226.9(c)(2)(iv)):

   1. A summary of the changes made to terms required by §§226.6(b)(1) and (b)(2), a description of any increase in the required minimum payment, and a description of any security interests being acquired by the creditor.
   2. A statement that changes are being made to the account.
   3. For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to §226.9(c)(2)(iv)(B), a statement indicating that the consumer has the right to opt-out of the changes, if applicable, and a reference to the opt-out right provided in the notice, if applicable.

4. The date the changes will become effective.
5. If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes, in the notice.
6. In the case of a rate change, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's 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.
7. If the change in terms being disclosed is an increase in the APR, the balances to which the increased rate will apply. If applicable, creditors should disclose a statement indentifying the balances to which the current rate will apply as of the effective date of the change.

Additional disclosures for credit card accounts under an open-end (not home-secured) consumer credit plan:

8. If the significant change required to be disclosed is an increase in an annual percentage rate or fee or charge required to be disclosed under §226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based upon the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the 45-day notice must include the following information:
   a. A statement of the reason for the increase; and
   b. That the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase. (§226.9(c)(2)(iv)(C))

9. Right to reject. Except in the case of
   a. An increase in the required minimum periodic payment,
   b. An change in the APR,
   c. A change in the balance computation method necessary to comply with section §226.54, or
   d. When the change results from the creditor not receiving the required minimum periodic payment within 60 days after the due date for that payment, the creditor must provide the following information:

      i. A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for payment;
      ii. Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and
      iii. If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended. (§226.9(c)(2)(iv)(B))

i. Determine that the summary of changes described in §226.9(c)(2)(iv)(A)(1) is in a tabular format (except for a summary of any increase in the required minimum periodic payment), with headings and format substantially similar to any of the account-opening tables found in G–17 in Appendix G. Determine that the table discloses the changed term and information relevant to the change, if that relevant information is required by §226.6(b)(1) and (b)(2). Determine that the new terms are described in the same level of detail as required when disclosing the terms under §226.6(b)(2) (Account opening). (§226.9(c)(2)(iv)(D)(1))

j. If a notice required by §226.9 (c)(2)(i) (change in terms) is included on or with a periodic statement, determine that the information described in §226.9(c)(2)(iv)(A)(1) is disclosed on the front of any page of the statement, and that this immediately follows the information described in paragraph (c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraphs (c)(2)(iv)(B) and (c)(2)(iv)(C), and is substantially similar to the format shown in Sample G–20 or G–21 in Appendix G. (§226.9(c)(2)(iv)(D)(2))

k. If a notice required by §226.9(c)(2)(i) (change in terms) is not included on or with a periodic statement, determine that the information described in §226.9(c)(2)(iv)(A)(1) is, at the creditor's option, 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 may be on more than one page, and may use both the front and reverse sides, but if so, determine that 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.

l. Determine that the summary of changes immediately follows the information described in §226.9(c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraphs (c)(2)(iv)(B) and (c)(2)(iv)(C), substantially similar to the format shown in Sample G–20 or G–21 in appendix G to this part. (§226.9(c)(2)(iv)(D)(3))

m. If a notice required by paragraph (g)(1) (*Increase in rates due to delinquency or default or as a penalty)* is included on or with a periodic statement, determine that the disclosure described in paragraph (g)(3)(i) is in the form of a table and provided on the front of any page of the periodic statement.

n. Section (g)(3)(i) information includes: (1) a statement that the delinquency or default rate or penalty rate, as applicable, has been triggered; the date on which the delinquency or default rate or penalty rate will apply; and, the circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period.

o. If the notice described in paragraph (c)(2)(iv) (significant changes in account terms) is provided on the same statement, determine that the (increase in rates) disclosure is above that notice. (§226.9(g)(3)(ii)(A))

p. If a notice required by paragraph (g)(1) (increase in rates) is not included on or with a periodic statement, determine that the information described in paragraph (g)(3)(i) is disclosed on the front of the first page of the notice. Ensure that only information related to the increase in the rate to a penalty rate is included with the notice. Note: This notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(4) (A statement indicating to which balances the delinquency or default rate or penalty rate will be applied) of this section. (§226.9(g)(3) (ii)(B))

q. Note that the 45 day advance written notice is not required when the change involves:

1. Documentary evidence;
2. A reduction of any component of a finance or other charge;
3. Suspension of future credit privileges (see exception),
4. Termination of the account or plan;
5. Change resulting from an agreement involving a court proceeding;
6. Extension of the grace period;
7. A change applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks or in accordance with paragraph (b)(3)
8. An increase in APR upon the expiration of a specified period of time, provided that:
   a. Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period; and
   b. The APR that applies after that period does not exceed the previously disclosed rate.
9. When the change is an increase in a variable APR in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or

10. When the changes is an increase in the APR or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) or the required minimum periodic payment due to the consumer's completion or failure to comply with the terms of a workout or temporary hardship arrangement, provided that:

    a. The APR or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such increase does not exceed the rate that applied to the category of transactions prior to commencement of the arrangement, or, if the rate that applied 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, and

    b. The creditor has provided the consumer, prior to the beginning of the workout, a clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion). This disclosure must generally be in writing, except that a creditor may provide the disclosure orally be telephone, provided

that the creditor also mails or delivers a written disclosure as soon as reasonably practicable after the oral disclosure is provided.

n. If a creditor increases any component of a charge on a credit card account or introduces a new charge that is not listed above, determine that the creditor either:

   1. Complied with the 45 day notice requirement, or
   2. Provided notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time or in a manner that a consumer would be likely to notice the disclosure of the charge, either in writing or orally. (§226.9(c))

o. Reduction in the credit limit; imposition of over-the-limit fee; or penalty rate – Determine that a notice of these actions was provided in writing or orally 45 days before an over-the-limit fee or penalty rate is imposed as a result of a consumer exceeding the newly decreased credit limit. (§226.9(c)(2)(vi))

p. For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed is an increase pursuant to §226.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, determine that the notice also contains the following:

   1. A statement of the reason for the increase; and
   2. That the increase will cease to apply to transaction that occurred prior to or within 14 days of provision of the delinquency or penalty notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase (§226.9(g)(3)(i)(B).

q. Exception for Decreases in the Credit Limit – Note that a creditor does not need to provide the 45 day notice under § 226.9(g)(1) prior to increasing the rate as a result of exceeding the credit limit, provided that the creditor furnishes written notice at least 45 days in advance of imposing the penalty rate that includes (§226.9(g)(4)):

   1. A statement that the credit limit on the account has or will be decreased.
   2. The date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;
   3. A statement that the penalty rate will not be imposed on that date, if the outstanding balance does not exceed the credit limit as of that date;
   4. The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite period of time;
   5. A statement indicating to which balances the penalty rate may be applied; and
   6. If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment.

In addition to this notice, the creditor may not increase the applicable rate to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice.

r. When the consumer is given the right to reject a significant change to an account term prior to the effective date of the change in the notices provided under (g) or (j) above, determine whether the consumer was given the option to reject the change by notifying the creditor of the rejection before the effective date of the change. (§226.9(h)(1))

s. If the creditor was notified of the rejection of a significant change to an account term, determine that the creditor did not:

   1. Apply the charge to the account;
   2. Impose a fee or charge or treat the account as in default solely as a result of the rejection; or
   3. Require repayment of the balance on the account using a method that is LESS beneficial to the consumer than one of the following methods:

      a. The method of repayment for the account on the date on which the creditor was notified of the rejection;
      b. An amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or
      c. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection. (§226.9(h)(2))

Note that these requirements do not apply if the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment and the creditor has provided timely change in terms disclosures. (§226.9(h)(3))

t. Determine that the disclosures contained in §226.5a(b)(1) through (b)(7) are provided if the account is renewed and (1) the card issuer imposes an annual or other periodic fee for the renewal or (2) the card issuer has changed or amended any term of the account required to be disclosed under §226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. Additionally, the disclosure provided upon renewal must disclose how and when the cardholder may terminate the credit to avoid paying the renewal fee, if any. (§226.9(e))

u. Determine that a statement of the maximum interest rate that may be imposed during the term of the obligation is made for any loan in which the APR may increase during the plan. (§226.30(b))

v. For any open-end mortgage loan (credit transaction that is secured by the principal dwelling of a consumer) that was sold or otherwise transferred or assigned to the

covered person, determine that the covered person notifies the borrower in writing of such transfer, including (§226.39):

1. An identification of the loan that was acquired or transferred;
2. The identity, address, telephone number of the new covered person who owns the mortgage loan;
3. The acquisition date recognized on the books and records of the covered person;
4. How to reach an agent or party having authority to act on behalf of the covered person;
5. The location of the place where the transfer of ownership of the debt to the covered person is recorded (note, however, that if the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person complies with this paragraph by stating this fact); and
6. At the option of the covered person, any other relevant information regarding the transaction.

   Note: This notice of sale or transfer must be provided for any consumer credit transaction that is secured by the principal dwelling of a consumer. This notification is required by the covered person even if the loan servicer remains the same.

Disclosure Requirements for Over-the-Limit Transactions §226.56

a. Determine that the oral, written or electronic "opt-in" notice includes all of the following applicable items (and not any information not specified in or otherwise permitted) §226.56(e)(1):

   1. Fees – The dollar amount of any fees or charges assessed by the card issuer on a consumer's account for an over-the-limit transaction;
   2. APR(s) – Any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of an over-the-limit transaction; and
   3. Disclosure of opt-in right – An explanation of the consumer's right to affirmatively consent to the card issuer's payment of over-the-limit transactions, including the method(s) by which the consumer may consent.

b. Determine that the written notice informing the consumer of the right to revoke consent following the assessment of an over-the-limit fee or charge describes that right, including the method(s) by which the consumer may revoke consent. §226.56(e)(2)

Reverse Mortgage Forms Review Procedures (Both Open and Closed-End)

a. Determine that the disclosures required for reverse mortgage transactions are substantially similar to the model form in Appendix K and include the items below:

    1. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because he or she has received the disclosures or signed an application.
    2. A good faith projection of the total cost of the credit expressed as a table of "total annual loan cost rates" including payments to the consumer, additional creditor compensation, limitations on consumer liability, assumed annual appreciation, and the assumed loan period.
    3. An itemization of loan terms, charges, the age of the youngest borrower, and the appraised property value.
    4. An explanation of the table of total annual loan costs rates.

NOTE: Forms that include or involve current transactions, such as change in terms notices, periodic billing statements, rescission notices, and billing error communications, are verified for accuracy when the file review worksheets are completed.

Timing Requirements

6. Review financial institution policies, procedures, and systems to determine, either separately or when completing the actual file review, whether the applicable disclosures listed below are furnished when required by Regulation Z. Take into account products that have different features, such as closed-end loans or credit card accounts that are fixed or variable rate.

    a. Credit card application and solicitation disclosures – On or with the application (§226.5a(b))

    b. HELOC disclosures – At the time the application is provided or within three business days under certain circumstances. (§226.5b(b))

    c. Open-end credit initial disclosures – Before the first transaction is made under the plan. (§226.5(b)(1))

    d. Card Holder Agreement – Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request (§226.58(e)(1)(ii)(B)). Determine that the issuer has adequate procedures for ensuring that this requirement is met.

    e. Periodic statement disclosures for open-end credit under §226.7 – Required if at the end of a billing cycle the account has a debit or credit balance of $1 or more or if a finance

charge has been imposed (§226.5(b)(2)(i)). Also, the creditor must adopt reasonable procedures designed to ensure that periodic statements for credit card accounts are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires. (§226.5(b)(2)(ii))

f. Statement of billing rights – At least once per year. (§226.9(a))

g. Supplemental credit devices – Before the first transaction under the plan. (§226.9(b))

h. Open-end credit change in significant terms as a result of a change in contractual terms -- 45 days prior to the effective change date. (§226.9(c)(2))

i. Open-end change in terms or rates due to delinquency or default or as a penalty – 45 days prior to the effective change date. (§226.9(g))

j. Finance charge imposed at time of transaction – Prior to imposing any fee. (§226.9(d))

k. Disclosures upon renewal of credit or charge card – 30 days or one billing cycle, whichever is less before the delivery of the periodic statement on which the renewal fee is charged, or at least 30 days prior to the scheduled renewal date if the creditor has changed or amended any term required to be disclosed under §226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer. (§226.9(e))

l. Change in credit account insurance provider – Certain information 30 days before the change in provider occurs and certain information 30 days after the change in provider occurs. The institution may provide a combined disclosure 30 days before the change in provider occurs. (§226.9(f))

m. Closed-end credit disclosures – Before consummation. (§226.17(b))

n. For disclosures for dwelling-secured transactions subject to RESPA (other than open-end), multiple timing requirements apply. Determine whether the creditor provides early disclosures within three business days after receiving the consumer's written application. The creditor is required to deliver or mail the early disclosures no later than three business days after receiving the consumer's application and at least seven business days before consummation (§§226.19(a)(1)(i) and 226.19(a)(2)(i)). If the APR stated in the early disclosures is not considered accurate under § 226.22 when compared to the APR at consummation, determine whether the creditor provided corrected disclosures of all changed terms, including the APR, that the consumer received no later than the third business day before consummation. (§226.19(a)(2)(ii))

o. Disclosures for transactions subject to §226.32 – Three business days prior to consummation. If such disclosures became inaccurate due to a change by the creditor, ensure that the creditor provided new, accurate disclosures no later than three business days prior to consummation. (§226.31(c)(1))

p. Disclosures for reverse mortgages – Three days prior to consummation of a closed-end credit transaction or prior to the first transaction under an open-end credit plan. (§226.31(c)(2))

q. Disclosures for adjustable-rate mortgages – 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 new payment amount is due, or in accordance with other variable-rate subsequent-disclosure regulations issued by a supervisory agency. (§226.20(c))

r. Notice of new creditor (§226.39) – On or before the 30th calendar day following the acquisition.

s. For private education loans subject to Subpart F, determine that:

   1. Application or solicitation disclosures were provided on or with any application or solicitation (§226.46(d)(1)(i));
   2. Approval disclosures were provided before consummation on or with any notice of approval provided to the consumer (§226.46(d)(2)); and
   3. Final disclosures were provided after the consumer accepts the loan and at least three business days prior to disbursing the private education loan funds. (§226.46(d)(3))

t. Determine that the issuer provides a written over-the-limit notice prior to the assessment of any over-the-limit fee or charge on a consumer's account. (§226.56(d)(1)(i))

u. Determine that, if a consumer consents to the card issuer's payment of any over-the-limit transaction by oral or electronic means, the card issuer provides the required written notice immediately prior to obtaining that consent. (§226.56(d)(1)(ii))

v. Determine that the notice confirming the consumer's consent is provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions. In no case may the creditor assess an over-the-limit fee on the consumer's account without first providing written confirmation. (§226.56(d)(2))

w. Determine that the notice providing the consumer notice in writing of the right to revoke consent following the assessment of an over-the-limit fee or charge is provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account. (§226.56(d)(3))

x. For home-equity plans subject to the requirements of §226.5b, whenever any term required to be disclosed under §226.6(a) is changed or the required minimum periodic payment is increased, determine that the creditor mails or delivers written notice of the change to each consumer who may be affected. Determine that the notice is mailed or delivered at least 15 days prior to the effective date of the change. If the change has

been agreed to by the consumer, determine that the notice is given before the effective date of the change. (§226.9(c)(1)(i))

y. *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), determine that the creditor mails or delivers written notice of the action to each consumer who will be affected not later than three business days after the action is taken and contains specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, determine that the notice states that fact. (§226.9(c)(1)(iii))

Electronic Disclosures

7. Assess compliance for an institution's electronic disclosure requirements.

E-Sign Act

a. Disclosures 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 E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It permits institutions to satisfy any statutory or regulatory requirements by providing the information electronically after obtaining the consumer's affirmative consent. Before consent can be given, consumers must be provided with the following information:

    1. Any right or option to have the information provided in paper or non-electronic form;
    2. The right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so;
    3. The scope of the consent (for example, whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship);
    4. The procedures to withdraw consent and to update information needed to contact the consumer electronically; and
    5. The methods by which a consumer may obtain, upon request, a paper copy of an electronic record after consent has been given to receive the information electronically and whether any fee will charged.

b. The consumer must consent electronically or confirm consent electronically in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent." After the consent, if an institution changes the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge.

c. If the financial institution makes its disclosures available to consumers in electronic form, determine that the forms comply with the appropriate sections – §226.5(a)(1); §226.5a(a)(2)(v); §226.5b(a)(3); §226.15(b); §226.16(c); §226.17(a)(1); §226.17(g); §226.19(c); §226.23(b)(1); §226.24(d) and §226.31(b).

d. Card issuers may provide credit card agreements in electronic form under §226.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act. (§226.58(f))

Annual Report to the Board §226.57

a. If the card issuer was a party to one or more college credit card agreements in effect at any time during a calendar year, verify that the card issuer submits to the Board an annual report regarding those agreements in the form and manner prescribed by the Board. (§226.57(d)(1))

   Note that a college credit card agreement is any business, marketing, or promotional agreement between a card issuer and an institution of higher education (or an affiliated alumni organization or foundation) in connection with which credit cards are issued to college students at that institution of higher education. (§226.57(a)(5))

b. The annual report to the Board must include the following (§226.57(d)(2)):

   1. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

   2. A copy of any college credit card agreement to which the card issuer was a party that was in effect at any time during the period covered by the report;

   3. A copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities;

   4. The total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization during the period covered by the report, and the method or formula used to determine such amounts;

   5. The total number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and

6. The total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

c. If the card issuer is subject to reporting, determine if the card issuer submits its annual report for each calendar year to the Board by the first business day on or after March 31 of the following calendar year. (However, card issuers must submit the first report following the effective date of this section, providing information for the 2009 calendar year, to the Board by February 22, 2010.) (§226.57(d)(3))

The Submission of Agreements to the Board §226.58(c)

a. For card issuers that issue credit cards under a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer makes quarterly submissions to the Board in the form and manner specified by the Board that contain:

   1. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

   2. The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Board;

   3. Any credit card agreement previously submitted to the Board that was amended during the preceding calendar quarter, as described in §226.58(c)(3); and

   4. Notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing, as described in §226.58(c)(4) and (c)(5).

b. Verify that, except for the first two submissions on February 22, 2010 and August 2, 2010, quarterly submissions are sent to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. (§226.58(c.)(1))

c. Verify that the first submission is sent to the Board no later than February 22, 2010.

d. Verify that the first submission contains the credit card agreements that the card issuer offered to the public as of December 31, 2009. (§226.58(c)(2))

e. Verify that the next submission is sent to the Board no later than August 2, 2010, and contains:

   1. Any credit card agreement that the card issuer offered to the public as of June 30, 2010 that the card issuer has not previously submitted to the Board;

2. Any credit card agreement previously submitted to the Board that was amended after December 31, 2009, and on or before June 30, 2010, as described in §226.58(c)(3); and

3. Notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in §226.58(c)(4) and (c)(5).

f. If a credit card agreement that previously has been submitted to the Board is amended, verify that the card issuer submits the entire amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. (§226.58(c)(3))

   Note that if a credit card agreement has been submitted to the Board, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required.

g. If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the Board, ensure that the card issuer notifies the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. (§226.58(c)(4))

   Note: A card issuer is not required to submit any credit card agreements to the Board if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. (§226.58(c)(5)(i))

h. If an issuer that previously qualified for the *de minimis* exception ceases to qualify, determine that the card issuer begins making quarterly submissions to the Board no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. (§226.58(c)(5)(ii))

i. If a card issuer that did not previously qualify for the *de minimis* exception qualifies for the de minimis exception, determine that the card issuer continues to make quarterly submissions to the Board until the issuer notifies the Board that the card issuer is withdrawing all agreements it previously submitted to the Board. (§226.58(c)(5)(iii))

j. A card issuer is not required to submit to the Board a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan. (§226.58(c)(6)(i))

   Note: A private label credit card is one that is usable only at a single merchant or affiliated group of merchants. A private label credit card plan is all private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. (§226.58(b)(7))

k. If an agreement that previously qualified for the private label credit card exception ceases to qualify, determine that the card issuer submits the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (§226.58(c)(6)(ii))

l. If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn. (§226.58(c)(6)(iii))

> Note: A card issuer is not required to submit to the Board a credit card agreement if, as of the last business day of the calendar quarter, the agreement is offered as part of a product test offered to only a limited group of consumers for a limited period of time, is used for fewer than 10,000 open accounts, and is not offered to the public other than in connection with such a product test. (§226.58(c)(7)(i))

m. If an agreement that previously qualified for the product testing exception ceases to qualify, determine that the card issuer submits the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. (§226.58(c)(7)(ii))

n. If an agreement that did not previously qualify for the product testing exception qualifies for the exception, determine that the card issuer continues to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn. (§226.58(c)(7)(iii))

o. Verify that each agreement contains the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter. (§226.58(c)(8)(i)(A))

p. Verify that agreements do not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number. (§226.58(c)(8)(i)(B))

q. Verify that agreements are presented in a clear and legible font. (§226.58(c)(8)(i)(D))

r. Verify that pricing information is set forth in a single addendum to the agreement that contains only the pricing information. (§226.58(c)(8)(ii)(A))

> Note: With respect to information other than the pricing information that may vary between cardholders depending on creditworthiness, state of residence, or other factors, issuers may, but are not required to, include that information in a single addendum (the optional variable terms addendum) to the agreement separate from the pricing addendum.

s. If pricing information varies from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors, verify that the pricing information is disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent). (§226.58(c)(8)(ii)(B))

t. If a rate included in the pricing information is a variable rate, verify that the issuer identifies the index or formula used in setting the rate and the margin. (§226.58(c)(8)(ii)(C))

u. If rates vary from one cardholder to another, verify that the issuer discloses such rates by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). §226.58(c)(8)(ii)(C). Note: The value of the rate and the value of the index are not required to be disclosed. (§226.58(c)(8)(ii)(C))

v. Determine that issuers do not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). (§226.58(c)(8)(iv))

w. Determine that changes in provisions or pricing information are integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate. (§226.58(c)(8)(iv))

The Posting of Agreements Offered to the Public §226.58(d)

a. Determine that the card issuer posts and maintains on its publicly available website the credit card agreements that the issuer is required to submit to the Board under §226.58(c). (§226.58(d)(1))

b. With respect to an agreement offered solely for accounts under one or more private label credit card plans (and the issuer does not post and maintain the agreements on its publicly available website), determine that the issuer posts and maintains the agreement on the publicly available website of at least one of the merchants where cards issued under each private label credit card plan with 10,000 or more open accounts may be used. (§226.58(d)(1))

c. Verify that agreements posted pursuant to §226.58(d) conform to the form and content requirements for agreements submitted to the Board specified in §226.58(c)(8). (§226.58(d)(2))

d. Determine that agreements are posted in an electronic format that is readily usable by the general public. (§226.58(d)(3))

e. Verify that agreements are placed in a location on its website that is prominent and readily accessible by the public and accessible without submission of personally identifiable information. (§226.58(d)(3))

f. Determine that the card issuer updates the agreements posted on its website at least as frequently as the quarterly schedule required for submission of agreements to the Board under § 226.58(c). (§226.58(d)(4))

   Note that if the issuer chooses to update the agreements on its website more frequently, the agreements posted on the issuer's website may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

The Posting of Agreements for "Open" Accounts §226.58(e)

a. With respect to any open (i.e., the cardholder can obtain extensions or there is an outstanding balance on the account that has not been charged off) credit card account, determine that the card issuer either:
   1. Posts and maintains the cardholder's agreement on its website; or
   2. Promptly provides a copy of the cardholder's agreement to the cardholder upon the cardholder's request.

b. If the card issuer makes an agreement available upon request, ensure that the issuer provides the cardholder with the ability to request a copy of the agreement both by:

   1. Using the issuer's website (such as by clicking on a clearly identified box to make the request) §226.58(e)(1)(ii)(A), and
   2. Calling a readily available telephone line the number for which is displayed on the issuer's Web site and clearly identified as to purpose. (§226.58(e)(1)(ii)(B) and (e)(2))

c. If an issuer does not maintain a website from which cardholders can access specific information about their individual accounts determine that the issuer makes agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line the number for which is (§226.58(e)(2)):

   1. Displayed on the issuer's website and clearly identified as to purpose; or
   2. Included on each periodic statement sent to the cardholder and clearly identified as to purpose.

d. Verify that the card issuer sends to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request. (§226.58(e)(1)(ii)(B))

e. Determine that agreements posted on the card issuer's website or made available upon the cardholder's request conform to the form and content requirements for agreements submitted to the Board specified in §226.58(c)(8). (§226.58(e)(3)(i))

f. If the card issuer posts an agreement on its website or otherwise provides an agreement to a cardholder electronically, verify that the agreement is posted or provided in an electronic format that is readily usable by the general public and is placed in a location that is prominent and readily accessible to the cardholder. (§226.58(e)(3)(ii))

g. If agreements posted or otherwise provided contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, ensure that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. (§226.58(e)(3)(iii))

h. Determine that agreements posted or otherwise provided set forth the specific provisions and pricing information applicable to the particular cardholder. (§226.58(e)(3)(iv))

i. Determine that provisions and pricing information are complete and accurate as of a date no more than 60 days prior to:

   1. The date on which the agreement is posted on the card issuer's website under §226.58(e)(1)(i);
   2. The date the cardholder's request is received under §226.58(e)(1)(ii) or (e)(2). (§226.58(e)(3)(iv))

   Note that card issuers may provide credit card agreements in electronic form under §226.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). (§226.58(f))

Advertising (Open- and Closed-End)

8. For open- and closed-end loans, sample advertising copy, including any electronic advertising, since the previous examination and verify that the terms of credit are accurate, clear, balanced, and conspicuous. If triggering terms are used, determine that the required disclosures are made (§§226.16 and 226.24).

   a. For advertisements for closed-end credit:
      1. If a rate of finance charge was stated, determine that it was stated as an APR.
      2. If an APR will increase after consummation, verify that a statement to that fact is made.
      3. Determine whether there are deceptive or misleading statements or practices.

b. Determine that the creditor does not offer college students any tangible item to induce such students to apply for or open an open-end consumer credit plan offered by such creditor, if such offer is made:

   1. On the campus of an institution of higher education;
   2. Near the campus of an institution of higher education; or
   3. At an event sponsored by or related to an institution of higher education. (§226.57(c))

c. If an open-end credit advertisement refers to an APR as "fixed" (or similar term), determine 1) that the advertisement also specifies a time period that the rate will be fixed and 2) that the rate will not increase during that period. (§226.16(f))

d. If an open-end credit advertisement used the word "fixed" or a similar word and no time period is specified in which the rate will be fixed, determine that the rate will not increase while the plan is open. (§226.16(f))

e. For any advertisement of an open-end (not home-secured) plan, if any annual percentage rate that may be applied to the account is an introductory rate, determine that the term *introductory* or *intro* is in immediate proximity to each listing of the introductory rate. (§226.16(g)(3))

f. For any advertisement of an open-end (not home-secured) plan, if any annual percentage rate that may be applied to the account is a promotional rate, determine that the following information is stated in a clear and conspicuous manner in the advertisement (§226.16(g)(4)):

   1. When the promotional rate will end; and
   2. The annual percentage rate that will apply after the end of the promotional period.

   Note: If such rate is variable, determine that the annual percentage rate complies with the accuracy standards in §§226.5a(c)(2), 226.5a(d)(3), 226.5a(e)(4), or 226.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, determine that the advertisement discloses the specific rates or the range of rates that might apply. Further, if the rate is stated in a written or electronic advertisement, determine that the information in §§226.16 (g)(4)(i) and (g)(4)(ii) are stated in a prominent location closely proximate to the first listing of the promotional rate.

g. If a deferred interest offer is advertised for an open-end account not subject to §226.5b, determine that the deferred interest period is stated in a clear and conspicuous manner in the advertisement. If the phrase "no interest" or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, determine that the term "if paid in full" is also stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred

interest offer is included in a written or electronic advertisement, determine that the deferred interest period and, if applicable, the term "if paid in full" are stated in immediate proximity to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. (§226.16(h)(3))

h. If any deferred interest offer is advertised for an open-end account not subject to §226.5b, determine that the (h)(4)(i) and (h)(4)(ii) language (of §226.16(h)(4)) is stated in the advertisement and is similar to Sample G–24 in Appendix G. If the deferred interest offer is included in a written or electronic advertisement, determine that this information is stated in a prominent location closely proximate to the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. (§226.16(h)(4))

   Note: The requirements in §226.16(h)(4) apply to any advertisement of an open-end credit plan not subject to §226.5b (requirements for home equity plans) §226.16(h)(1). However, the requirements do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically. (§226.16(h)(5))

Transactional Testing

NOTE: When verifying APR accuracies, use the OCC's APR calculation model or other calculation tool acceptable to your regulatory agency.

9. Review the financial institution's closed-end and open-end transactions to ensure accuracy and completeness.

Closed-End Credit Transactional Testing Procedures

a. For each type of closed-end loan being tested, determine the accuracy of the disclosures by comparing the disclosures to the contract and other financial institution documents. (§226.17)

b. Determine whether the required disclosures were made before consummation of the transaction and ensure the presence and accuracy of the items below, as applicable. (§226.18)

   1. Amount financed
   2. Itemization of the amount financed (RESPA GFE may substitute)
   3. Finance charge
   4. APR
   5. Variable rate verbiage as follows for loans not secured by a principal dwelling or with terms of one year or less:
      a. Circumstances which permit rate increase

   b. Limitations on the increase (periodic or lifetime)
   c. Effects of the increase
   d. Hypothetical example of new payment terms
6. Payment schedule including amount, timing and number of payments.
7. Total of payments
8. Total sales price (credit sale)
9. Description of security interest
10. Credit life insurance premium included in the finance charge unless:
    a. Insurance is not required; and
    b. Premium for the initial term is disclosed; and
    c. Consumer signs or initials an affirmative written request for the insurance
11. Property insurance available from the creditor excluded from the finance charge if the premium for the initial term of the insurance is disclosed
12. Required deposit

c. Determine for adjustable rate mortgage loans with maturities of more than one year that the required early and subsequent disclosures are complete, accurate, and timely. Early disclosures required by §226.19(a) are verified during the closed-end credit forms review. Subsequent disclosures should include the items below, as applicable. (§226.20(c))

   1. Current and prior interest rates
   2. Index values used to determine current and prior interest rates
   3. Extent to which the creditor has foregone an increase in the interest rate
   4. Contractual effects of the adjustment (new payment and loan balance)
   5. Payment required to avoid negative amortization.

   Note: The accuracy of the adjusted interest rates and indexes should be verified by comparing them with the contract and early disclosures. Refer to the Additional Variable Rate Testing section of these examination procedures.

d. Determine, for each type of closed-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest. The rescission notice must disclose the items below. (§226.23(b)(1))

   1. Security interest taken in the consumer's principal dwelling
   2. Consumer's right to rescind the transaction
   3. How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business
   4. Effects of rescission
   5. Date the rescission period expires.

e. Ensure funding was delayed until the rescission period expired. (§226.23(c))

f. Determine if the institution has waived the three-day right to rescind since the previous examination. If applicable, test rescission waivers. (§226.23(e))

g. Determine whether the maximum interest rate in the contract is disclosed for any adjustable rate consumer credit contract secured by a dwelling. (§226.30(a))

h. For private student loans with a right to cancel, review cancellation requests to determine if they were properly handled. (§226.47(c))

Certain Home Mortgage Transactions Subject to Subpart E

a. Determine whether the financial institution originates consumer credit transactions subject to Subpart E of Regulation Z; specifically, certain closed-end home mortgages (high-cost mortgages (§226.32), reverse mortgages (§226.33), and "higher-priced mortgage loans" (§226.35). (Examiners may use the attached worksheet as an aid for identifying and reviewing high-cost mortgages.)

b. In addition to reviewing high-cost mortgages and reverse mortgages for compliance with requirements in other subparts of Regulation Z (for example, disclosure timing requirements under §226.19(a)), review such mortgages to ensure the following:

    1. Required disclosures are provided to consumers in addition to, not in lieu of, the disclosures contained in other subparts of Regulation Z. (§226.31(a))
    2. Disclosures are clear and conspicuous, in writing, and in a form that the consumer may keep. (§226.31(b))
    3. Disclosures are furnished at least three business days prior to consummation of a mortgage transaction covered by §226.32 or a closed-end reverse mortgage transaction (or at least three business days prior to the first transaction under an open-end reverse mortgage). (§226.31(c))
    4. Disclosures reflect the terms of the legal obligation between the parties. (§226.31(d))
    5. If the transaction involves more than one creditor, that only one creditor provided the disclosures. Where the obligation involves multiple consumers, ensure that the disclosures were provided to any consumer who is primarily liable on the obligation. Further, for rescindable transactions, verify that the disclosures were provided to each consumer who has the right to rescind. (§226.31(e))
    6. The APR is accurately calculated and disclosed in accordance with the requirements and within the tolerances allowed in §226.22. (§226.31(g))

c. For high-cost mortgages (§226.32), ensure that, in addition to other required disclosures, the creditor discloses the following at least three business days prior to consummation (See model disclosure at App. H-16):

    1. Notice containing the prescribed language. (§226.32(c)(1))
    2. The APR. (§226.32(c)(2))

3. Amount of regular loan payment and the amount of any balloon payment. The disclosed regular payment should be treated as accurate if it is based on an amount borrowed that is deemed accurate under § 226.32(c)(5). (§226.32(c)(3))
4. For variable rate loans, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment allowed under the contract. (§226.32(c)(4))
5. For a mortgage refinancing, the total amount the consumer will borrow (the face amount) and if this amount includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact is stated. This disclosure should be treated as accurate if within $100 of the actual amount borrowed. (§226.32(c)(5))
6. A new disclosure is required if, subsequent to providing the additional disclosure but prior to consummation, there are changes in any terms that make the disclosures inaccurate. For example, if a consumer purchases optional credit insurance and, as a result, the monthly payment differs from the payment previously disclosed, re-disclosure is required and a new three-day waiting period applies. (§226.31(c)(1)(i))
7. If a creditor provides new disclosures by telephone when the consumer initiates a change in terms, then at consummation (§226.31(c)(1)(ii)) : The creditor must provide new written disclosures and both parties must sign a statement that these new disclosures were provided by telephone at least three days prior to consummation.
8. If a consumer waives the right to a three-day waiting period to meet a bona fide personal financial emergency, the consumer's waiver must be a dated written statement (not a pre-printed form) describing the emergency and bearing the signature of all entitled to the waiting period (a consumer can waive *only after* receiving the required disclosures and prior to consummation). (§226.31(c)(1)(iii))

d. High-cost mortgage transactions (§226.32) do not provide for any of the following loan terms:

1. Balloon payment (if term is less than 5 years, with exceptions). (§226.32(d)(1)(i) and (ii))
2. Negative amortization. (§226.32(d)(2))
3. Advance payments from the proceeds of more than 2 periodic payments. (§226.32(d)(3))
4. Increased interest rate after default. (§226.32(d)(4))A rebate of interest, arising from a loan acceleration due to default, calculated by a method less favorable than the actuarial method. (§226.32(d)(5))
5. Prepayment penalty, unless:
   - it will not apply after the two-year period following consummation;
   - it will not apply if the source of prepayment funds is a refinancing by the creditor or an affiliate of the creditor;
   - the consumer's total monthly debt payments (including amounts owed under mortgage), at consummation, is 50 percent or less of the consumer's monthly gross income (as verified in accordance with section §226.34(a)(4)(ii)); and,

- The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation. (§§226.32(d)(6) and §226.32(d)(7))

6. A due-on-demand clause permitting the creditor to terminate the loan in advance of maturity and accelerate the balance, with certain exceptions. (§226.32(d)(8))

e. The creditor is not engaged in the following acts and practices for high-cost mortgages:
   1. Home improvement contracts — paying a contractor under a home improvement contract from the proceeds of a mortgage unless certain conditions are met. (§226.34(a)(1))
   2. Notice to assignee — selling or otherwise assigning a high-cost mortgage without furnishing the required statement to the purchaser or assignee. (§226.34(a)(2))
   3. Refinancing within one year of extending credit — within one year of making a high-cost mortgage (§226.32), a creditor may not refinance any high-cost mortgage to the same borrower into another high-cost mortgage that is not in the borrower's interest. This also applies to assignees that hold or service the high-cost mortgage. Commentary to 34(a)(3) has examples applying the refinancing prohibition and addressing "borrower's interest." (§226.34(a)(3))

f. For higher-priced mortgage loans (§226.35), ensure that the loan terms do not provide for a prepayment penalty, unless:

   1. The penalty is otherwise permitted by law, including §226.32(d)(6);
   2. The penalty will not apply after the two-year period following consummation;
   3. The source of prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and
   4. The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation. (§226.35(b))

g. For higher-priced mortgage loans secured by a first lien on a principal dwelling escrow accounts are established before consummation for property taxes and premiums for mortgage-related insurance required by the creditor.

h. For both high-cost (§226.32) and higher-priced mortgages (§226.35), review for the following:

   1. Ensure the subject loans are not being extended based on the consumer's collateral without regard to repayment ability, including the consumer's current and expected income, current obligations, mortgage related obligations, assets other than collateral, and employment.
   2. Review underwriting standards.
   3. Ensure the creditor bases its determination of repayment ability on current or reasonably expected income from employment or other sources, on assets other than the collateral, or both.

4. Determine that a creditor verifies amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third party documents that provide reasonably reliable evidence of the consumer's income or assets.

5. To establish whether a presumption of compliance applies, determine whether a creditor verifies the consumer's current obligations by:

   i. Verifying repayment ability as described above;
   ii. Determining the consumer's repayment ability by using the largest payment of principal and interest in the first seven years following consummation, taking into account current and mortgage-related obligations; and
   iii. Assessing the consumer's repayment ability taking into account at least one of the following: the ratio of total debt obligations to income, or the income the consumer will have after paying debt obligations.

6. Evasion of requirements: Ensure that the creditor does not structure a high-cost or higher-priced mortgage loan as an open-end plan ("spurious open-end credit") to evade the requirements of Regulation Z. See staff commentary to 34(b) for factors to be considered. (§226.34(b))

   i. The following are prohibited acts or practices in connection with credit secured by a consumer's principal dwelling (§226.36):

   1. Coercion of Appraiser: For consumer credit secured by a consumer's principal dwelling, review files (and specific consumer complaints not reflected in files) to determine if there is misrepresentation of the value of a consumer's principal dwelling.

      i. Ensure that the creditor or (mortgage broker), affiliate of a creditor or mortgage broker has not directly or indirectly coerced, influenced, or otherwise encouraged an appraiser to misstate or misrepresent the value of a consumer's principal dwelling.
      ii. Determine if the creditor knew, at or before loan consummation, of a violation of the appraiser coercion prohibition. If so, verify that the creditor acted with reasonable diligence to determine that the appraisal in question does not materially misstate or misrepresent the value of the consumer's principal dwelling.

   2. Loan Servicing Practices: For a consumer credit transaction secured by a consumer's principal dwelling, determine if loan servicer:
      i. Failed to credit a conforming payment to the consumer's loan account as of the date of receipt, where the delay in crediting resulted in a charge to the consumer or in the reporting of negative information to a credit reporting agency;

ii. Imposed on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency was attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period; or,

iii. Failed to provide, within a reasonable time after receiving a request from the consumer or person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligations in full as of a specific date. A reasonable time under most circumstances would be to provide the statement within 5 business days, unless refinance application volume is unusually high.

Open-End Credit Transactional Testing Procedures

a. For each open-end credit product tested, determine the accuracy of the disclosures by comparing the disclosure with the contract and other financial institution documents. (§226.5(c))

b. Review the financial institution's policies, procedures, and practices to determine whether it provides appropriate disclosures for creditor-initiated direct mail applications and solicitations to open charge card accounts, telephone applications and solicitations to open charge card accounts, and applications and solicitations made available to the general public to open charge card accounts. (§226.5a(b), (c), and (d))

c. Determine for all home equity plans with a variable rate that the APR is based on an independent index. Further, ensure home equity plans are terminated or terms changed only if certain conditions exist. (§226.5b(f))

d. Determine that, if any consumer rejected a home equity plan because a disclosed term changed before the plan was opened, all fees were refunded. Verify that non-refundable fees were not imposed until three business days after the consumer received the required disclosures and brochure. (§226.5b(g) and (h))

e. Review consecutive periodic billing statements for each major type of open-end credit activity offered (overdraft and home-equity lines of credit, credit card programs, etc.). Determine whether disclosures were calculated accurately and are consistent with the initial disclosure statement furnished in connection with the accounts (or any subsequent change in terms notice) and the underlying contractual terms governing the plan(s).

f. Determine whether the consumer was given notice of the right to reject the significant change, with the exception of:

   1. An increase in the required minimum periodic payment,
   2. A change in the APR,

3. A change in the balance computation method necessary to comply with §226.54, which sets forth certain limitations on the imposition of finance charges as a result of a loss of a grace period, or
4. When the change results from the creditor not receiving the required minimum periodic payment within 60 days after the due date for that payment. (§226.9(c)(2)(iv)(B))

g. Determine that the creditor did not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance did not exceed the credit limit on the date set forth in the notice. (§226.9(g)(4))

h. Determine, for each type of open-end rescindable loan being tested, the appropriate number of copies of the rescission notice are provided to each person whose ownership interest is or will be subject to the security interest and perform the procedures 12, 13, and 14 under Closed-End Credit section. (§226.15(b), (c) and (e))

i. Additional variable rate testing: Verify that when accounts were opened or loans were consummated that loan contract terms were recorded correctly in the financial institution's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:

   1. Index value,
   2. Margin and method of calculating rate changes,
   3. Rounding method, and
   4. Adjustment caps (periodic and lifetime).

j. Using a sample of periodic disclosures for open-end variable rate accounts (e.g., home equity accounts) and closed-end rate change notices for adjustable rate mortgage loans:

   1. Compare the rate-change date and rate on the credit obligation to the actual rate-change date and rate imposed.
   2. Determine that the index disclosed and imposed is based on the terms of the contract (example: the weekly average of one-year Treasury constant maturities, taken as of 45 days before the change date). (§§226.7(g) and 226.20(c)(2))
   3. Determine that the new interest rate is correctly disclosed by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment. (§§226.7(g) and 226.20 (c)(1))
   4. Determine that the new payment disclosed (§226.20(c)(4)) was based on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract). (§226.20(c))

Crediting a Consumer's Account §226.10

a. Ensure that the creditor credits payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge. (§226.10(a))

b. If a creditor specifies requirements for payments, determine that they are reasonable and allow most consumers to make conforming payments. (§226.10(b))

c. If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, determine that the payment is credited within five days of receipt. (§226.10(b)(4))

d. If the creditor sets a cut-off time for payments to be received by mail, by electronic means, by telephone, or in person, verify that the cut-off time is 5 p.m. or later on the payment due date at the location specified by the creditor for the receipt of such payments. (§226.10(b)(2)(ii))

e. For in-person payments on a credit card account under an open-end (not home-secured) consumer credit plan at a financial institution branch or office that accepts such payments, a card issuer shall not impose a cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. However, a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m. (§226.10(b)(3)(i))

f. If a creditor fails to credit a payment as required and imposes a finance or other charge, ensure that the creditor credits the charge(s) to the consumer's account during the next billing cycle. (§226.10(c)

g. If (due to a weekend or holiday, for example) a creditor does not receive or accept payments by mail on the due date for payments, determine that the creditor treats as timely a payment received on the next business day. (§226.10(d)(1))

   Note: If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely.

h. For credit card accounts under an open-end (not home-secured) consumer credit plan, determine that the creditor does not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. (§226.10(e))

i. If a card issuer makes a material change in the address for receiving payments or procedures for handling payments, and such change causes a material delay in the crediting of a payment to a consumer's account during the 60-day period following the date on which such change took effect, ensure that the card issuer does not impose any late fee or finance charge for a late payment on the credit card account during the 60-day period following the date on which the change took effect. (§226.10(f))

Treatment of Credit Balances, Account Termination §226.11

a. Determine institution's treatment of credit balances. Specifically, if the account's credit balance is in excess of $1, the institution must take the actions listed below. (§226.11)

    1. Credit the amount to the consumer's account; and
    2. Either:
        a. Refund any part of the remaining credit balance within seven business days from receiving a written request from the consumer; or
        b. If no written request is received and the credit remains for more than six months, make a good faith effort to refund the amount of the credit to the consumer by cash, check, money order, or credit to a deposit account of the consumer. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

b. Determine that institution has not terminated an account prior to its expiration date solely because the consumer did not incur a finance charge. However, a creditor is not prohibited from closing an account that, for three consecutive months, no credit has been extended (such as by purchase, cash advance, or balance transfer) and the account has had no outstanding balance. (§226.11(b))

c. Determine that, for credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer has adopted reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased account holder can determine the amount of and pay any balance on the account in a timely manner. (§226.11(c)(1)(i))

    Note: This does not apply to the account of a deceased consumer if a joint account holder remains on the account.

d. Ensure that, upon request by the administrator of an estate, the card issuer provides the administrator with the amount of the balance on a deceased consumer's account in a timely manner. (§226.11(c)(2)(i))

    Note: Providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

e. Verify that, after receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, the card issuer does not impose any fees on the account (such as a late fee, annual fee, or over the-limit fee) or increase any annual percentage rate, except as provided by §226.55(b)(2) (i.e., due to the operation of an index). (§226.11(c)(3)(i))

f. Determine that, if payment in full of the disclosed balance, pursuant to paragraph 226.11(c)(2), is received within 30 days after disclosure, the card issuer waives or rebates any additional finance charge due to a periodic interest rate. (§226.11(c)(3)(ii))

Special Credit Card Provisions and Billing Error Resolution §§226.12 and 13

a. *Repayment disclosures.* Review a sample of billing error resolution files and a sample of consumers who have asserted a claim or defense against the financial institution for a credit card dispute regarding property or services. Verify the following (§§226.12 and 226.13):

   i. Credit cards are issued only upon request;
   ii. Liability for unauthorized credit card use is limited to $50;
   iii. Disputed amounts are not reported delinquent unless remaining unpaid after the dispute has been settled;
   iv. Offsetting credit card indebtedness is prohibited; and
   v. Errors are resolved within two complete billing cycles.

Ability to Make the Required Minimum Payments §226.51

a. Determine that the card issuer does not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations. (§226.51(a)(1)(i))

b. Verify that the card issuer establishes and maintains reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Reasonable policies and procedures to consider a consumer's ability to make the required payments include a consideration of at least one of the following:

   1. The ratio of debt obligations to income;
   2. The ratio of debt obligations to assets; or
   3. The income the consumer will have after paying debt obligations.

c. Confirm that the card issuer does not issue a credit card to a consumer who does not have any income or assets, and that the credit does not issue a credit card without reviewing any information about a consumer's income, assets, or current obligations. (§226.51(a)(1)(ii))

   (Note: A card issuer may consider the consumer's income or assets based on information provided by the consumer, in connection with the credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, subject to any applicable information-sharing rules, and information obtained through third parties, subject to any applicable information-sharing rules. A card issuer may also

consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets. See Regulation Z Commentary: §226.51(a)(1-4).

d. Determine that the card issuer uses a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account. (§226.51(a)(2)(i))

e. A card issuer's estimate of the minimum periodic payment is compliant (i.e., receives the benefit of a safe harbor) if it uses the following method (§226.51(a)(2)(ii)):

   1. The card issuer assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and

   2. The card issuer uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:

      i. If the applicable minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and

      ii. If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

f. Rules affecting young consumers: If the card issuer opens a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, verify that the issuer requires that such consumers:

   1. Submit a written application; and
   2. Possess an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account under §226.51(b)(1)(i)) or provide a signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old who has the ability to make the required minimum periodic payments on such debts, and be either jointly or secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 pursuant to §226.51(b)(1)(ii)(A) and (B).

g. If a credit card account has been opened for a consumer less than 21 years old with a cosigner, guarantor, or joint applicant pursuant to §226.51(b)(1)(ii), determine that the issuer does not increase the credit limit on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase. (§226.51(b)(2))

Fees Charged During the First Year of a Credit Card Account §226.52

a. During the first year after the opening of a credit card account under an open-end (not home-secured) consumer credit plan, determine whether the card issuer required the consumer to pay covered fees in excess of the 25 percent of the credit limit at the time of the account opening. (§226.52(a))

Covered fees include fees:

1. For the issuance or availability of credit, including any fees based on account activity or inactivity;
2. For insurance, debt cancellation or debt suspension, if the insurance or debt cancellation or suspension is required by the terms of the account;
3. The consumer is required to pay to engage in transactions using the account, such as:
    a. Cash advance fees;
    b. Balance transfer fees;
    c. Foreign transaction fees;
    d. Fees for using the account for purchases; and
    e. Fees the consumer is required to pay for violating the terms of the account, except to the extent they are specifically excluded (see below).

b. Fees not covered by this limitation include:

1. Late payment fees, over-the-limit fees, and returned-payment fees; or
2. Fees that the consumer is not required to pay with respect to the account, such as:
a. An expedited payment fee;
b. Fees for optional services like travel insurance;
c. Fees for reissuing a lost or stolen card; or
d. Statement reproduction fees.

c. Review penetration rates of various optional services to determine if they are truly optional and therefore not covered by the 25 percent limitation.

Allocation of Credit Card Payments in Excess of the Minimum §226.53

a. Determine whether, when a consumer makes a payment in excess of the required minimum periodic payment, the card issuer allocates the excess amount:
    1. First to the balance with the highest APR, and
    2. Any remaining portion to the other balances in descending order based on the applicable APR.

b. For balances on a credit card account subject to a deferred interest or similar program, determine whether the card issuer allocated any amount paid by the consumer in excess of the required minimum periodic payment:

1. Consistent with the general requirement discussed in (a) above, except that, during the two billing cycles immediately preceding expiration of the deferred interest period, the excess amount must have been allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances; or
2. In the manner requested by the consumer.

Loss of a Grace Period §226.54

a. Determine whether the card issuer imposed finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan based on:

   1. Balances for days in billing cycles that precede the most recent billing cycle, a prohibited practice; or
   2. Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period. (§226.54).

b. With respect to the prohibition in a.2 above, issuers are not required to follow any specific methodology, but an issuer is in compliance if it applies the consumer's payment to the balance subject to the grace period and calculates interest charges on the amount of the balance that remains unpaid.

   Exceptions: This rule does not apply to adjustments to the finance charge as a result of:

   1. The resolution of a dispute under §226.12, unauthorized use, or §226.13, billing error; or
   2. The return of a payment.

Limitations on Increasing Annual Percentage Rates, Fees, and Charges §226.55

a. With respect to a credit card account under an open-end (not home-secured) consumer credit plan, determine that the card issuer did not increase an APR or fee or charge required to be disclosed under §226.6(b)(2)(ii) (fee for issuance or availability (e.g., an annual fee)), (b)(2)(iii) (fixed finance charge or minimum interest charge), or (b)(2)(xii) (fee for required insurance, debt cancellation, or debt suspension coverage), unless as permitted by one of the six exceptions:

   1. Temporary rate exception;
   2. Variable rate exception;
   3. Advance notice exception;
   4. Delinquency exception;
   5. Workout and temporary hardship arrangement; and

6. Servicemembers Civil Relief Act exception (§226.55(a)-(b)).

b. To assess whether the temporary rate exception applies (§226.55(b)(1)), determine whether:

   1. The card issuer increased the APR upon the expiration of a specified period of six months or longer; and

   2. Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period.

c. If the temporary rate exception applies, determine that the card issuer:

   1. Did not apply an APR to transactions that occurred prior to the period that exceeds the APR that applied to those transactions prior to the period;
   2. Provided the required notice, but did not apply an APR (to transactions that occurred within 14 days after provision of the notice) that exceeds the APR that applied to that category of transactions prior to provision of the notice; and
   3. Did not apply an annual percentage rate to transactions that occurred during the period that exceeds the increased APR.

d. If the variable rate exception applies (§226.55(b)(2)), determine that the card issuer did not increase an APR unless:

   1. The increase in the APR is due to an increase in the index; and
   2. The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public. Note: For purposes of qualifying under this exception, an index is considered under the card issuer's control if the card issuer applies a minimum rate or floor below which the rate cannot decrease. However, because there is no disadvantage to consumers, issuers are not prevented from setting a maximum rate or ceiling.

e. If the advance notice exception applies (§226.55(b)(3)), determine that the card issuer:

   1. Did not apply that increased APR, fee, or charge to transactions that occurred prior to provision of the notice;
   2. Did not apply the increased APR, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and
   3. Did not increase the APR, fee, or charge during the first year after the account is opened.

f. If the delinquency exception applies (§226.55(b)(4)), determine that the card issuer:

   1. Disclosed in a clear and conspicuous manner in the required notice a statement of the reason for the increase, and

2. Will cease the increase if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

g. If the delinquency exception applies and the card issuer received six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, determine that the card issuer reduces any APR, fee, or charge (increased pursuant to the delinquency exception) to the original APR, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the required notice.

h. If the workout and temporary hardship arrangement exception applies (§226.55(b)(5), determine that:

   1. Prior to commencement of the arrangement (except as provided in §226.9(c)(2)(v)(D)) the card issuer provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and
   2. Upon the completion or failure of the arrangement, the card issuer did not apply to any transactions that occurred prior to commencement of the arrangement an APR, fee, or charge that exceeds the APR, fee, or charge that applied to those transactions prior to commencement of the arrangement.

i. If the Servicemembers Civil Relief Act exception applies (§226.55(b)(6)), determine that the card issuer increased the APR only after 50 U.S.C. app. 527 no longer applied. Further, determine that the issuer did not apply to any transactions that occurred prior to the decrease an APR that exceeded the APR that applied to those transactions prior to the decrease.

j. For protected balances (§226.55(c)), determine that the card issuer did not require repayment using a method that is less beneficial to the consumer than one of the following methods:

   1. The method of repayment for the account before the effective date of the increase;
   2. An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or
   3. A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

Requirements for Over-the-Limit Transactions §226.56

a. Determine that, if two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer treats the affirmative consent of any of the joint consumers as affirmative consent for that

account. Similarly, determine that the card issuer treats a revocation of consent by any of the joint consumers as revocation of consent for that account. (§226.56(f))

b. Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, determine that the card issuer does not (§226.56(j)):

   1. Impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, the card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

   2. Impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment.

   3. Condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service.

   4. Impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer (defined as charges imposed as part of the plan under §226.6(b)(3)) to the consumer's account during that billing cycle.

Administrative Enforcement

10. If there is noncompliance involving understated finance charges or understated APRs subject to reimbursement under the FFIEC Policy Guide on Reimbursement (policy guide):

    a. Document the date on which the administrative enforcement of the TILA policy statement would apply for reimbursement purposes by determining the date of the preceding examination.

    b. If the noncompliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed.

    c. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.

    d. Notify your supervisory office for follow up with the regulator that has primary responsibility for the original creditor.

e. If the noncompliance involves direct credit:

1. Make an initial determination whether the violation is a pattern or practice.

2. Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.

3. Estimate the total impact on the population based on the expanded sample.

4. Inform management that reimbursement may be necessary under the law and the policy guide, and discuss all substantive facts including the sample loans and calculations.

5. Inform management of the financial institution's options under section 130 of the TILA for avoiding civil liability and of its option under the policy guide and section 108 (e)(6) of the TILA for avoiding a regulatory agency's order to reimburse affected borrowers.

HIGH-COST MORTGAGE (§226.32) WORKSHEET

Borrower's Name	Loan Number:

COVERAGE		
	Yes	**No**
Is the loan secured by the consumer's principal dwelling? [§226.2(a)(19), §226.32(a)(1)]		
If the answer is No, STOP HERE		
Is the loan for the following purpose?		
1. Residential Mortgage Transaction – [§226.2(a)(24)]		
2. Reverse Mortgage Transaction – [§226.33]		
3. Open-End Credit Plan – Subpart B [note prohibition against structuring loans as open-end plans to evade §226.32 – [§226.34(b)]		
If the answer is Yes to Box 1, 2, or 3, STOP HERE. If No, continue to Test 1.		

TEST 1 – CALCULATION OF APR		
A. Disclosed APR		
B. Treasury Security Yield of Comparable Maturity Obtain the Treasury Constant Maturities Yield from the FRB's Statistical Release, H-15 – Selected Interest Rates (the "Business" links will display daily yields). Use the yield that has the most comparable maturity to the loan term and is from the 15th day of the month that immediately precedes the month of the application. If the 15th is not a business day, use the yield for the business day immediately preceding the 15th. If the loan term is exactly halfway between two published security maturities, use the lower of the two yields.) Note: Creditors may use the FRB's Selected Interest Rates or the actual auction results. See Staff Commentary to Regulation Z for further details. [§ 226.32(a)(1)(i)] http://www.federalreserve.gov/releases/H15/data.htm		
C. Treasury Security Yield of Comparable Maturity (Box B) Plus: 8 percentage points for first-lien loan; or 10 percentage points for subordinate-lien loan		
	Yes	**No**
D. Is Box A greater than Box C?		
If Yes, the transaction is a High-Cost Mortgage. If No, continue to Test 2, Points and Fees.		

HIGH-COST MORTGAGE (§ 226.32) WORKSHEET

TEST 2 – CALCULATION OF POINTS AND FEES		
STEP 1: Identify all Charges Paid by the Consumer at or before Loan Closing		
A. Finance Charges – §226.4(a) and (b) (Interest, including per-diem interest, and time price differential are excluded from these amounts.)		
	Fee	**Subtotals**
Loan Points		
Mortgage Broker Fee		
Loan Service Fees		
Required Closing Agent/3rd Party Fees		
Required Credit Insurance		
Private Mortgage Insurance		
Life of Loan Charges (flood, taxes, etc.)		
Any Other Fees Considered Finance Charges		
Subtotal		
B. Certain Non-Finance Charges Under §226.4(c)(7) – Include fees paid by consumers only if the amount of the fee is unreasonable or if the creditor receives direct or indirect compensation from the charge or the charge is paid to an affiliate of the bank. (See the example in §226.32(b)(1)(ii) of the commentary for further explanation.)		
Title Examination		
Title Insurance		
Property Survey		
Document Preparation Charge		
Credit Report		
Appraisal		
Fee for "Initial" Flood Hazard Determination		
Pest Inspection		
Any Other Fees Not Considered Finance Charges		
Subtotal		
C. Premiums or Other Charges for Optional Credit Life, Accident, Health, or Loss-of-Income Insurance, or Debt-Cancellation Coverage		
D. Total Points & Fees: Add Subtotals for A, B, C		

HIGH-COST MORTGAGE (§226.32) WORKSHEET

TEST 2 – CALCULATION OF POINTS AND FEES (continued)	
STEP 2: Determine the Total Loan Amount for Cost Calculation [§226.32(a)(1)(ii)]	
A. Determine the Amount Financed [§226.18(b)] Principal Loan Amount	
Plus: Other Amounts Financed by the Lender *(not already included in the principal and not part of the finance charge)*	
Less: Prepaid Finance Charges [§226.2(a)(23)]	
Equals: Amount Financed	
B. Deduct costs included in the points and fees under §226.32(b)(1)(iii) and (iv) (Step 1, Box B and Box C) that are financed by the creditor	
C. Total Loan Amount (Step 2, Box A minus Box B)	

TEST 2 – CALCULATION OF POINTS AND FEES (continued)		
STEP 3: Perform High-Fee Cost Calculation		
A. Eight Percent of the Total Loan Amount (Step 2, Box C)		
B. Annual Adjustment Amount – [§226.32(a)(1)(ii)] *2010: $579* *(use the dollar amount corresponding to the year of the loan's origination)*		
C. Total Points & Fees (Step 1, Box D)		
	Yes	**No**
In Step 3, does Box C exceed the greater of Box A or Box B?		
If Yes, the transaction is a High-Cost Mortgage. If No, the transaction is not a High-Cost Mortgage under Test 2, Points and Fees.		

Laws

15 USC 1601 *et seq*., Truth in Lending Act (TILA)
15 USC 1666 *et seq.*, Fair Credit Billing Act
15 USC 7001 *et seq*., Electronic Signatures in Global and National Commerce Act

Regulations

12 CFR Part 226, Truth-in-Lending Regulation