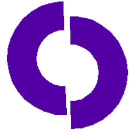

CCE-TIL

Comptroller of the Currency
Administrator of National Banks

Truth in Lending

Comptroller's Handbook

December 2006

CCE

Consumer Compliance Examination

Truth in Lending — Table of Contents

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This booklet provides background information and optional expanded examination procedures for the Truth in Lending Act (TILA) and Regulation Z.

Examiners will select from the procedures those that are necessary, if any, after first completing a compliance core assessment. For guidance in completing a core assessment, refer to the "Community Bank Supervision" and "Internal and External Audits" booklets in the *Comptroller's Handbook* and the "Compliance Management System" booklet in the *Comptroller's Handbook for Consumer Compliance*. Complaint information received by the Office of the Ombudsman, Customer Assistance Group, may also be useful in completing the assessment.

Background and Summary

The TILA, 15 USC 1601 *et seq.,* was enacted on May 29, 1968, as title I of the Consumer Credit Protection Act (Public Law 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, the Home Ownership and Equity Protection Act of 1994, the TILA Amendments of 1995, and the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

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 (ARM) 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 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 of a reverse mortgage transaction and authorized the Board of Governors of the Federal Reserve System (Board) to prohibit specific acts and practices in connection with mortgage transactions. Regulation Z was amended in 2001 to implement these legislative changes to TILA.

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 that limit lenders' liability for disclosure errors in loans secured by real estate consummated after September 30, 1995. The EGRPRA amendments were made to simplify and improve disclosures related to credit transactions.

Format of Regulation Z

The disclosure rules creditors must follow differ depending on whether or not the creditor is offering open-end credit, such as credit cards or home-equity lines of credit, or closed-end credit, such as car loans or mortgages.

Subpart A [sections 226.1 through 226.4] 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 [sections 226.5 through 226.16] contains disclosure rules for home-equity lines of credit, credit and charge card accounts, and other open-end credit. It also covers rules for resolving billing errors, calculating the annual percentage rate (APR), 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 [sections 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. It also contains disclosure rules for regular and variable rate loans, refinancings and assumptions, credit balances, calculating the APR, and advertising closed-end credit.

Subpart D [sections 226.25 through 226.30] applies to both open-end and closed-end credit and sets forth a creditor's duty 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 [sections 226.31 through 226.34] applies to certain home mortgage transactions including high-cost, closed-end mortgages and reverse mortgages. It requires additional disclosures and provides limitations for certain home mortgage transactions having rates or fees above a certain percentage or amount; it prohibits specific acts and practices in connection with those loans; and it includes disclosure requirements for reverse mortgage transactions (open-end and closed-end credit).

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

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. In order to comply with the Regulation Z, it is critical to reference and rely on the commentary.

NOTE: The following narrative does not discuss every section of Regulation Z, but rather highlights areas that have caused the most problems for banks, including finance charge and APR calculations.

Subpart A – General

Purpose of the TILA and Regulation Z

The TILA 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 variable rate loans; and
- Imposes limits on home equity lines of credit and certain closed-end home mortgages.

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

Summary of Coverage [Sections 226.1 & 226.2]

Lenders must carefully consider several factors when deciding if a loan requires Truth in Lending disclosures or is subject to other Regulation Z requirements. A chart in the appendix of this booklet, "Coverage Considerations under Regulation Z," helps lenders make such decisions.

Regulation Z and its commentary address the factors included in the chart in more detail. For example, section 226.1(c) of the regulation specifies what kinds of institutions and borrowers are covered, and relevant definitions appear in section 226.2.

Exempt Transactions [Section 226.3]

The following transactions are exempt from Regulation Z:

- Credit extended primarily for a business, commercial, or agricultural purpose;
- Credit extended to other than a natural person (including credit to government agencies or instrumentalities);
- Credit in excess of $25,000 not secured by real property or personal property used or expected to be used as the consumer's principal dwelling;
- Public utility credit;
- 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.

However, when a credit card is involved, generally exempt credit (e.g., business purpose credit) is subject to the 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 (Regulation Z, footnote 4).

When determining if 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 if 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 less the borrower is personally involved in managing 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 relative amount of income derived from the property acquired by the loan proceeds. The less the income derived from the acquired property relative to the borrower's total income, 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 to determine the applicability of Regulation Z. In any event, the bank may routinely furnish disclosures to the borrower. Disclosure under such circumstances does not determine that the transaction is covered under the Regulation Z but can assure protection to the bank and compliance with the law.

Determination of Finance Charge and APR

Finance Charge (Open-End and Closed-End Credit) [Section 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.

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 [section 226.4(b)].

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.

Accuracy Tolerances (Closed-End Credit) [Sections 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 the 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 the TILA and Regulation Z permit various finance charge accuracy tolerances for closed-end credit.

Tolerances for the finance charge in a closed-end transaction, other than a mortgage loan, are generally $5 if the amount financed is less than or equal to $1,000 and $10 if the amount financed exceeds $1,000. The finance charge in a closed-end mortgage transaction consummated on or after September 30, 1995 is considered accurate:

- If the disclosed finance charge does not vary from the actual finance charge by more than $100, or

- If the disclosed finance charge is greater than the actual finance charge.

Tolerances for the finance charge in rescindable mortgage transactions are different. After the three-business-day rescission period is over, the finance charge in the **closed-end credit transaction** is considered accurate if:

- Except as otherwise provided, the disclosed finance charge does not vary from the actual finance charge by more than one-half of 1 percent of the credit extended or $100, whichever is greater.

- The disclosed finance charge does not vary from the actual finance charge by more than 1 percent of the credit extended or $100, whichever is greater, for the initial and subsequent refinancings of residential mortgage transactions when the new loan is made by a different financial institution. (This does not apply to high cost

mortgage loans subject to section 226.32, transactions in which there are new advances and new consolidations.)

Special rules apply to the finance charge tolerances if the (**closed-end credit**) rescindable mortgage transaction is involved in foreclosure action.

- 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 that should have been included in the finance charge was not included.

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.

Calculating the Finance Charge (Closed-End Credit)

One of the more complex tasks under Regulation Z is determining if 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 bank 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.

See the "Finance Charge" chart in the appendix of this booklet for a brief summary of the rules that must be considered when determining what is a finance charge.

Prepaid Finance Charges [Section 226.2(23)]

A "prepaid" finance charge is any finance charge paid separately to the bank 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.

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.

APR Definition and Disclosure [Sections 226.18(a) & 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, if 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 section 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 is essential if APR calculations are to be accurate, and in accordance with the Regulation Z parameters.

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, two loans could each have a finance charge of $978.52, but the APR on loan one is 12 percent and the APR on loan two is 13.26 percent. The APRs differ because the amount financed in loan one is $5,000 and the borrower makes 36 equal monthly payments of $166.07 each, and the amount financed in loan two is $4,500 and the borrower makes 35 equal monthly payments of $152.18 each and a final payment of $152.22. The APRs on these loans are not the same because an APR reflects not only the finance charge but also the amount and timing of value received by the consumer in relation 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. 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, which is defined by state or other federal law, is not defined by Regulation Z. Charges may or may not be considered a finance charge because of exemptions or conditions. 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 loan secured by real property, the credit report fee must be excluded from the finance charge. Assuming there are no additional fees or charges assessed in the connection with the mortgage loan, the finance charge would be only the interest on the loan. Refer to the section on finance charge for clarification.

- The *payment schedule*, which does not necessarily include only principal and interest (P + I) payments. 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 (for illustrative purpose, there is no interest component) $50 loan fee over 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 minus $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 limits of the regulation's minor irregularities provisions (see section 226.17(c)(4)), it may not be treated as regular. In calculating the APR, the first payment period must include the additional 25 days (i.e., the first payment period may not be treated as one month).

Banks 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. Even if the bank's internal interest earnings and accrual methods involve a simple interest rate based on a 360-day year that is applied over 365 actual days (that fact 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 can be computed after the loan terms have been agreed upon (as long as it is disclosed before consummation of the transaction).

Special Requirements for Calculating the Finance Charge and APR

The finance charge and APR, more than any other disclosures, enable consumers to understand the cost of credit and to comparison shop for credit. Therefore, proper calculation of the finance charge and APR are of primary importance. Additionally, section 226.17(a)(2) requires that the terms "finance charge" and "annual percentage rate" be disclosed more conspicuously than any other required disclosure. 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 to section 226.22 of regulation Z provides that 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 bank;
- Upon discovery of the error, the bank promptly discontinues use of that calculation tool for disclosure purposes; and
- The bank notifies the Federal Reserve Board in writing of the error in the calculation tool.

When a bank claims it used a calculation tool in good faith, it assumes a reasonable degree of responsibility for ensuring that the tool in question provides the accuracy the regulation requires. For example, the bank might verify the results obtained using the tool by comparing those results to the figures obtained by using another calculation tool. The bank 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

The following is not a complete discussion of the TILA's requirements for open-end credit. Instead, the information provided below is offered to clarify otherwise confusing terms and requirements. Refer to sections 226.5 through 226.16 and related commentary for a more thorough understanding of the act.

Finance Charge (Open-End Credit) [Section 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:

- *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, banks have other ways of calculating the balance to which the periodic rate is applied. By reading the bank'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 bank 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.

If 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 bank 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 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, however, the bank must explain somewhere on the periodic statement or in an accompanying document that the finance charge is or may be determined by multiplying the average daily balance by the number of days in the billing cycle, rather than by multiplying the product by the daily periodic rate.

If the bank 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 bank shall indicate on the periodic statement or in an

accompanying document that the finance charge is or may be determined by multiplying each of the average daily balances by the number of days in the billing cycle (or if the daily rate varies, by multiplying the number of days that the applicable rate was in effect), multiplying each of the results by the applicable daily periodic rate, and adding the products together.

In explaining the method used to find the balance on which the finance charge is computed, the bank 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.

Finance Charge Resulting from Two or More Periodic Rates

Some banks 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 bank 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)

Accuracy Tolerance [Section 226.14]

The disclosed APR on an open-end credit account is accurate if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z.

Determination of APR

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 application or solicitation 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 bank may compute the historical rate using the quotient method. Using that method, the bank 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 bank may use the quotient method for computing the corresponding APR by multiplying each periodic rate by the number of periods in one year. If the finance charge includes a minimum, fixed, or transaction charge, then the bank must use the appropriate variation of the quotient method (see section 226.14(c) for more details). When transaction charges are imposed, the bank should refer to appendix F of Regulation Z 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 bank may

multiply each applicable periodic rate by the number of periods in a year to compute the corresponding APR.

Optional calculation methods also are provided for accounts involving daily periodic rates. [section 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 / Sum of the balances [1]) x 12 = APR
      This calculation also can be used when different rates apply to different balances.

   B. Daily periodic rates [section 226.14(d)]:

      1. Daily rate x 365 = APR

      or

      2. (Total finance charge / average daily balance[1]) x 12 = APR

      or

      3. (Total finance charge / sum of balances[1]) x 365 = APR

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[1] If zero, no APR can be determined. The amount of applicable balance is determined by the balance calculation method and may include the average daily balance, adjusted balance, or previous balance method.

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 [section 226.14(c)(2)]:

1. (Total finance charge / amount of applicable balance[1]) x 12 = APR[2]

C. Daily periodic rates [section 226.14(c)]:

1. (Total finance charge / amount of applicable balance[1]) x 365 = APR[2]

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[1]) x 12 = APR[2]

or

b. (Total finance charge / sum of balances[1]) x 365 = APR[2]

C. Monthly and daily periodic rates:

If the finance charge imposed during the billing cycle does not exceed $0.50 for a monthly or longer billing cycle (or pro rata part of $0.50 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 includes a charge related to a specific transaction (such as a cash advance fee), even if the total finance charge also includes any other minimum, fixed, or other charge not calculated

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[2] 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.

using a periodic rate, then the monthly and daily APRs are calculated as follows: total finance charge divided by 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[3] times number of billing cycles in a year (12) equals APR.[4]

Subpart C — Closed-End Credit

What follows is not a complete discussion of the TILA's requirements for closed-end credit. The information provided here merely clarifies confusing terms and requirements. Refer to sections 226.17 through 226.24 and related commentary for a more thorough understanding of the act.

Finance Charge (Closed-End Credit) [Section 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) [Section 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 or a first or last irregular payment), if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z (section 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

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[3] The sum of the balances may include the average daily balance, adjusted balance, or previous balance method. Where a portion of the finance charge is determined by application of one or more daily periodic rates, sum of the balances also means the average of daily balance.
[4] Cannot be less than the highest periodic rate applied, expressed as an APR.

percentage point of the APR calculated under Regulation Z (section 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 **and**

  i. The rate results from the disclosed finance charge; **and**

  ii. The disclosed finance charge would be considered accurate under section 226.18(d)(1) or section 226.23(g) or (h)(section 226.22(a)(4)).

  NOTE: There is an additional tolerance for mortgage loans when the disclosed finance charge is calculated incorrectly but is considered accurate under section 226.18(d)(1) or section 226.23(g) or (h) (section 226.22(a)(5)).

Construction Loans [Section 226.17(c)(6) & 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 bank 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 bank 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 bank 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

bank must make its estimates under section 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 bank 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 bank, the construction and permanent financing phases may be disclosed in any of three ways:

- As a single transaction, with one disclosure combining both phases.

- As two separate transactions, with one disclosure for each phase. If 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.

- 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 bank chooses, as long as the charges are not applied more than once.

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 or not they ultimately are needed to pay for accrued construction interest. If the lender will not disburse the excess amount when it is not needed to pay for accrued construction interest, the excess amount must be ignored for disclosure purposes.

Calculating the Annual Percentage Rate [Section 226.22]

The APR must be determined using either of the following methods:

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

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

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

360-Day and 365-Day Years [Section 226.17(c)(3)]

Confusion often arises over the use of 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. The method to apply should be

explained clearly in the legal obligation. 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 one method of interest computation over another (although state law may). It permits banks to disregard the fact that months have different numbers of days when calculating and making disclosures. This means banks 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 bank 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 bank applies a daily interest factor based on a 360-day year to the actual number of days between payments. In those situations, the bank 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 is no other charge 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 1 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 [Section 226.18(f)]

If the terms of the legal obligation allow the bank, after consummation of the transaction, to increase the APR, the bank 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 section 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 buydown that is reflected in a contract or a consumer buydown, the disclosed APR should be a composite rate based on the lower rate for the buydown 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, he 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 must be reflected in the disclosures.
  - The index at consummation need not be used if the contract allows the lender to delay 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, such as 45 days before the change date). Instead, the bank 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 not 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 limits on the increase, the effect of an increase, and an example of the payment terms that would result from an increase [section 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 disclosures were previously provided [section 226.18(f)(2)]. Extensive disclosures about the loan program are provided when consumers apply for such a loan [section 226.19(b)], and throughout the loan term when the rate or payment amount is changed [section 226.20(c)].

Payment Schedule [Section 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 reduce 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 bank 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 bank 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 [Section 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 (if 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 [Section 226.18(r)]

A "required deposit," with certain exceptions, is one that the bank 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 bank. 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 if finance charges included in the obligation are considered prepaid or precomputed finance charges.

The bank 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: $5,000 + $25 - $50 = $4,975.

Other Calculations

The bank 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: $5,010 + $25 - $50 - $10 = $4,975.

Closed-End Credit APR and Finance Charge Tolerance Charts

The appendix of this booklet contains five charts that show how accuracy tolerances apply to finance charges and APRs for disclosure and reimbursement purposes. These charts are:

- "Closed-End Credit: Finance Charge Accuracy Tolerances"

- “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 [Section 226.20]

When an obligation is satisfied and replaced by a new obligation to the original bank (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 [section 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 the old obligation is not canceled and a new one created, a new transaction subject to new disclosures results if the bank:

- 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.

Subpart D — Miscellaneous

Civil Liability [Section 130]

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. Exception: 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 high-cost mortgage loans may be held liable to the consumer for all finance charges and fees paid by the consumer. 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 section 226.32.

Criminal Liability [Section 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 for not more than one year, or both.

Administrative Actions [Section 108]

The TILA authorizes federal regulatory agencies to require banks 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 banks 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 [section 131].

Relationship to State Law [Section 111]

State laws that impose responsibilities on banks offering consumer credit, or that require such institutions or consumers to follow certain procedures, or that grant rights to consumers or banks in consumer credit contracts:

- May be preempted by the TILA;
- May not be preempted by the TILA; or
- May be substituted for the TILA and Regulation Z requirements. The TILA does not preclude preemption of state law by other federal statues, such as the National Bank Act.

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 APRs. For example, a state law would be preempted if it required a bank to include in the finance charge any fees that the TILA excludes, such as seller's points.

- Chapter 2, ″Credit Transactions,″ which contains disclosure requirements, rescission rights, and certain credit card provisions. For example, a state law would be preempted if it required a bank to use the terms "nominal annual interest rate" in lieu of ″APR.″

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

Conversely, state law provisions may be appropriate and are not preempted under the TILA 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 by the TILA.

- 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 the TILA 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 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 the TILA. 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 the TILA is involved.

A bank, state, or other interested party may ask the Federal Reserve Board to determine if 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 section 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 [Section 226.31]

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

Certain Closed-End Home Mortgages [Section 226.32]

This section's requirements 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 8 percent of the total loan amount or $547 for the calendar year 2007. (This dollar amount is adjusted annually based on changes in the Consumer Price Index. See staff commentary to section 32(a)(1)(ii) for a historical list of dollar amount adjustments.) [section 226.32(a)(1)]

Exemptions

The following transactions are exempted from compliance with section 226.32:

- Residential mortgage transactions (generally purchase money mortgages),

- Reverse mortgage transactions subject to section 226.33, and

- Open-end credit plans subject to Subpart B of Regulation Z.

Points and Fees

Points and fees include the following:

- All items required to be disclosed under section 226.4(a) and (b), except interest or the time-price differential.

- All compensation paid to mortgage brokers.

- All items listed in section 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.

- Premiums or other charges, paid at or before closing if 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 (section 226.32(b)(1)).

Reverse Mortgages [Section 226.33]

A reverse mortgage is a nonrecourse transaction secured by the consumer's principal dwelling; unless the consumer defaults, a reverse mortgage loan repays only after the consumer dies, the dwelling is transferred, or the consumer ceases to occupy the dwelling as a principal dwelling.

Specific Defenses [Sections 108 & 130]

Defense Against Civil, Criminal, and Administrative Actions

A bank in violation of TILA may avoid liability by doing all of the following:

- Discovering the error before an action is brought against the bank, or before the consumer notifies the bank, 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 bank 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 bank's own procedures.
- An inaccurately disclosed APR or finance charge included in a regulatory agency notification to the bank.

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

The circumstances under which a bank 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 bank 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.

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

A violation that occurred unintentionally could be difficult to prove if the bank is unable to produce explicit evidence that it has an internal controls program designed to ensure compliance. A bank can strengthen its defense if it has demonstrated a commitment to compliance and it has adopted policies and procedures to detect errors before disclosures are furnished to consumers.

Statute of Limitations [Sections 108 & 130]

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

Neither criminal actions nor regulatory administrative enforcement actions are subject to the TILA one-year statute of limitations. However, enforcement actions under the interagency policy guide for erroneously disclosed APRs and finance charges are subject to TILA time limitations. Those limitations range from the date of the bank's last regulatory examination, to as far back as 1969, depending on when loans were made, when violations were identified, whether or not the violations were repeat violations, and other factors.

There is no time limit on willful violations intended to mislead the consumer.

A summary of the primary time limitations follows:

- For open-end credit, reimbursement applies to violations not older than two years.

- For closed-end credit, the OCC directs reimbursement for loans with violations occurring since the immediately preceding examination of any type.

Rescission Rights (Open-End and Closed-End Credit) [Sections 226.15 & 226.23]

The 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 consumers time to reexamine their credit agreements and cost disclosures and to reconsider if they want to place their homes at risk as security for the credit. Transactions exempt from the right of rescission include residential mortgage transactions [section 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: (1) consummation of the transaction, (2) delivery of material TILA disclosures, or (3) receipt of the required notice of the right to rescind. For purposes of rescission, business day means every calendar day except Sundays and the legal public holidays (section 226.2(a)(6)). The term "material disclosures" is defined in section 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 section 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 to as much as three years. On certain loans in foreclosure and in conjunction with recent case law, the consumer's right to rescind can be extended for a period of greater than three years when a consumer files bankruptcy, and the consumer used that as a defense to a foreclosure action.

Interagency Administrative Enforcement Policy

On September 8, 1998, the federal financial regulatory agencies issued a revised "Joint Statement of Policy on the Administrative Enforcement of the TILA - Restitution." (See the appendix of this booklet for this document and related guidance in question-and-answer form.) The policy summarizes and explains how the agencies interpret the reimbursement provisions of section 108(e) of the TILA. It also describes corrective actions the financial regulatory agencies believe appropriate.

The regulatory agencies anticipate that most banks will comply voluntarily with the reimbursement provisions of the TILA. However, if a bank does not act voluntarily to correct violations, the agencies generally are required by law to use their cease and desist authority to order correction of a clear and

consistent pattern or practice of violations, gross negligence, or a willful violation that was intended to mislead the person to whom the credit was extended.

Enforcement Policy Applicability to Indirect Paper

Even if a third party rather than the bank makes an improper disclosure on a loan for which the bank is the creditor (i.e., if the bank is the entity to which the obligation is initially payable), the bank is cited for the violation and may be required to reimburse affected consumers under the enforcement policy.

If the third party is the creditor, a bank's acceptance of the third party's disclosures containing reimbursable violations normally reflects only a need for improved internal controls. However, if affected consumers have not been reimbursed, the OCC will report such third-party violations (consistent with the requirements of the Right to Financial Privacy Act of 1978) to the national headquarters of the regulatory agency supervising the creditor.

Adjustable Rate Mortgages

OCC's ARM Regulation

The OCC's ARM regulation (12 CFR 34) is intended to encourage national bank participation in the residential mortgage market. It provides a flexible framework within which banks may design ARMs that best meet their needs and those of their borrowers. National banks may make long-term mortgage loans with interest rates that can be adjusted to reflect changes in their cost of funds. At the same time, the regulation protects consumers by requiring national banks, for certain consumer ARMs, to link interest rates to an independent index.

The OCC's ARM regulation permits national banks to design their own ARM loan programs, subject to certain rules. Banks may offer more than one ARM loan program as long as the various programs are offered to all borrowers in a manner that does not discriminate on any prohibited basis. Banks may impose limitations that are more restrictive than those provided in the regulation. Also, banks may continue to offer fixed rate mortgages.

While providing the flexibility desired by national banks, the OCC's ARM regulation helps protect the interests of borrowers. Subsequent notifications aid ARM borrowers in monitoring the pay down of their loans and determining if changes in installment payment amounts or rates of amortization best serve their needs. Because the regulation protects consumers primarily by ensuring proper disclosure rather than restricting ARM terms, the OCC views failure to provide timely and substantively complete disclosures as a serious violation of the regulation.

History and Requirements

National bank ARM loans may be subject to the OCC's ARM regulation, to special provisions on variable rate loans in the Regulation Z, or to both. The OCC's ARM regulation was issued originally in March 1981, as 12 CFR 29, and amended significantly on March 7, 1983.

To achieve greater uniformity among the ARM regulations of several financial regulatory agencies, the OCC's regulation was rewritten completely, effective March 11, 1988 with optional compliance until October 1, 1988. The revised regulation was incorporated into 12 CFR 34, which is the OCC's regulation governing real estate lending activity of national banks, as Subpart B. The original Part 29 continued to be available until October 1, 1988.

The revised OCC ARM regulation modified the definition of an ARM, reduced the circumstances under which independent indexes are required, and deferred all ARM disclosure requirements to Regulation Z, as amended December 29, 1987. Subpart B was again modified and simplified effective April 19, 1996.

The OCC's ARM regulation covers any extension of credit made by a national bank with an interest rate subject to adjustment and for the purpose of purchasing or refinancing the purchase of a one-to-four family dwelling and secured by that dwelling. OCC ARMs may either be open-end or closed-end credit.

Under the OCC ARM regulation, ARMs that are subject both to 12 CFR 34 and 12 CFR 226.19(b) must be tied to an independent index. Regulation Z

requires ARMs subject to 12 CFR 226.19(b) to have early and comprehensive initial shopping disclosures, as well as notifications of interest rate changes. Disclosure requirements reflect the belief that the marketplace operates efficiently only if both buyers and sellers are well informed about the transaction. Consumers must be equipped to evaluate a variety of complex mortgage instruments, including ARMs. Initial shopping disclosures serve the dual purpose of educating consumers about the nature of ARMs and equipping them to shop for the appropriate one.

Loans subject to the ARM requirements of Regulation Z are closed-end consumer credit transactions secured by the consumer's **principal** dwelling with a maturity greater than one year and an APR that may increase. Regulation Z ARMs include purchase-money mortgage loans, as well as closed-end credit extended for other reasons (e.g., for home improvement). See the "Summary of Coverage Rules for ARMs" in the appendix of this booklet for a comparison of ARM coverage requirements between the OCC's ARM regulation and the closed-end ARM requirements of Regulation Z.

The Board's changes to Regulation Z, effective on December 18, 1987, required creditors to provide comprehensive information about the variable rate features of closed-end ARMs. National bank and other creditor compliance with the Regulation Z ARM amendments became mandatory on October 1, 1988.

With the regulatory changes that became mandatory October 1, 1988, the only national bank federal disclosure requirements that remained for open-end ARMs were the regular open-end credit disclosures required by Regulation Z. However, in November 1988, the Home Equity Loan Consumer Protection Act became law. That statute required the FRB to amend Regulation Z to include special disclosure requirements for any open-end consumer credit plan secured by the consumer's dwelling. Additional comprehensive disclosure requirements were also included for variable rate plans.

Credit subject to the variable rate disclosure provisions of the Home Equity Loan Consumer Protection Act are open-end consumer credit transactions with variable rates of interest that are secured by the consumer's dwelling.

Such disclosure requirements would apply both to open-end credit consumer ARMs, as defined by the OCC, as well as to any other consumer home equity line of credit (HELOC) secured by the consumer's dwelling. Also, the statute applies to both variable and fixed rate HELOCs.

1. To evaluate the quality of the bank's compliance management system for the TILA and Regulation Z.

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

3. To determine the bank's compliance with the TILA 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 if the institution will be required to reimburse consumers under the restitution provisions of the act.

General Instructions and Worksheet Guidance

From the examiner who completed the compliance risk assessment of the bank, obtain information pertinent to the area of examination. Review the conclusions of the assessment, the compliance review, audit work papers, and complaints reported to the Office of the Ombudsman, Customer Assistance Group to determine the examination procedures that will address the regulatory concerns. For guidance, refer to the "Community Bank Supervision" and "Internal and External Audits" booklets of the *Comptroller's Handbook* and the "Compliance Management System" booklet of the *Comptroller's Handbook for Consumer Compliance*.

The worksheets in the appendix contain all the detailed requirements of the TILA and ARM regulations. There are worksheets to help examiners review advertising, the accuracy of preprinted disclosure forms, and the accuracy of account files, including any Internet loan activity. Each worksheet contains general guidance for its use. There may be cases in which multiple worksheets will be completed for a particular review. For example, if you are reviewing a sample of variable rate home improvement loans secured by a second deed lien, three worksheets (#5, 6, and 7) must be completed.

Objective #1: To determine the bank's level of compliance with the TILA and the OCC's ARM regulation.

Disclosure Forms

1. If the bank has changed any preprinted TILA disclosure forms or if there are forms that have not been previously reviewed for accuracy, verify the accuracy of each preprinted disclosure by completing worksheets #3, 4, 8, 9, and 10. Include in the review:

   – Note or contract forms, including those furnished to dealers.
   – Standard closed-end credit disclosures [226.17(a) and 226.18].

- High cost mortgage disclosures [226.32(c)].
- Credit card application and solicitation disclosures [226.5a(b)-(e)].
- Home equity line of credit (HELOC) disclosures [226.5b(d)-(e)].
- Initial disclosures [226.6(a)-(d)] and, if applicable, additional HELOC disclosures [226.6(e)].
- Statement of billing rights [226.9(a)].
- ARM disclosures [226.19(b)].
- Reverse mortgage disclosures [226.33(b)].

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 of Disclosures

2. When completing the file review worksheets, determine if the following disclosures are furnished when required by Regulation Z (includes closed-end or open-end accounts that are fixed or variable rate):

   - Credit card application and solicitation disclosures [226.5a(a)].
   - HELOC disclosures [226.5b(b)].
   - Initial disclosures [226.5(b)(1)].
   - Periodic disclosures [226.5(b)(2)].
   - Statement of billing rights [226.9(a)].
   - Supplemental credit devices [226.9(b)].
   - Change in terms [226.9(c) & 226.31(c)(1)(i)].
   - Finance charge imposed at time of transaction [226.9(d)].
   - Disclosures upon renewal of credit or charge card [226.9(e)].
   - Change in credit account insurance provider [226.9(f)].
   - Closed-end credit disclosures [226.17(b)].
   - Disclosures for certain closed-end home mortgages [226.31(c)(1)].
   - Disclosures for reverse mortgages [226.31(c)(2)].

Electronic Disclosures

3. If the bank makes its disclosures available to consumers electronically, determine that they are in a form the consumer can keep as you complete the appropriate worksheets [226.5(a)(1) & 226.17(a)(1)] and determine that the bank complies with the electronic communication requirements, when applicable [226.36].

Advertising

4. Sample advertising copy for closed-end credit, including any Internet advertising, from the last 12 months and complete worksheet #1.

5. Sample advertising copy for HELOC and other open-end credit, including any Internet advertising, from the last 12 months and complete worksheet #2.

Note: Examiners may decide to coordinate efforts and have one examiner review advertising copy for all related lending sections (e.g., fair housing, TILA, ECOA, leasing, etc.).

Record Retention

6. Test the bank's record retention practices (for other than the advertising requirements) to determine if evidence of compliance 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].

Closed-end Credit

7. For each type of closed-end loan product being tested, complete worksheet #5. When completing the worksheet, determine the accuracy of the disclosures by comparing the disclosures to the contract and other bank documents.

   Note: When verifying APR accuracy, use the OCC's APRWIN program located in the applications section of your computer software.

8. For each type of closed-end rescindable loan product being tested, complete worksheet #7. If applicable, test rescission waivers.

9. For each type of ARM being tested, complete worksheet #6. For applicability, determine that the loans:

   – Are subject to Regulation Z.
   – Are secured by the borrower's one- to four-unit principal dwelling.
   – Have a maturity of more than one year.
   – Have a variable rate feature.

Open-end Credit

10. Determine if the bank 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, as appropriate. [226.5a(c), (d) and (e)]

11. For each type of open-end credit account being tested, including HELOC's, complete worksheets #7 and #11. When completing the worksheets, determine the accuracy of the disclosures by comparing the disclosure with the contract and other bank documents. Also, review a sample of billing error resolution files and a sample of consumers who have asserted a claim or defense against the bank for a credit card dispute regarding property or services [226.12(c)] [226.13].

12. Review two consecutive periodic billing statements for each major type of open-end credit activity offered (e.g., overdraft and home-equity lines of credit, credit card programs, etc.) and complete worksheet #14. Determine if 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).

13. For each type of open-end HELOC subject to section 226.5b, complete worksheet #12.

Additional Variable Rate Testing

14. Verify that, when accounts were opened or loans were consummated, loan contract terms were recorded correctly in the bank's calculation systems (e.g., its computer). Determine the accuracy of the:

    – Index value.
    – Margin and method of calculating rate changes.
    – Rounding method.
    – Adjustment caps (periodic and lifetime).
    – Draw period/payback period.

15. Using a sample of periodic disclosures for open-end variable rate accounts (e.g., home equity lines of credit) and closed-end rate change notices for ARM loans, and using the appropriate worksheets, determine that:

    – The rate-change date and rate on the credit obligation equals the actual rate-change date and rate imposed. The index disclosed and imposed is based on the terms of the contract (e.g., 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)].
    – 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)].
    – The new payment disclosed 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)].

Certain Home Mortgage Transactions

16. Select a sample of high-cost and reverse mortgage loans and complete worksheet #13. Worksheet #15 may be used to determine whether or not particular loans are high cost mortgages.

Objective #2: To determine if there is noncompliance involving understated finance charges or understated APRs subject to reimbursement under the *FFIEC Policy Guide on Reimbursement* (Policy Guide).

1. Document the date on which the administrative enforcement of the TILA Policy Guide would apply to closed-end credit for reimbursement purposes by determining the date of the preceding examination of any type.

2. If the noncompliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed, prepare comments on the need for improved internal controls, for inclusion in the report of examination. Also, notify your supervisory office for follow-up with the regulator that has primary responsibility for the original creditor.

3. If the noncompliance involves direct credit, make an initial determination if the disclosure error resulted from a clear and consistent pattern or practice of violations, gross negligence, or a willful violation that was intended to mislead the consumer. Consider:

   – If the conduct appears to be grounded in a written or unwritten policy or established practice.
   – If there is evidence of similar conduct by the bank in more than one transaction. (Note: more than one does not necessarily constitute a pattern or practice.) If there is a common source or cause within the bank's control.
   – The relationship of the instances of noncompliance to one another (i.e., if they all occurred in the same area of the bank, in the same product line, or by one employee).
   – The relationship of the number of instances of noncompliance to the bank's total activity. (Note: depending on the circumstances, violations that involve only a small percentage of a bank's total activity could constitute a pattern or practice.)

4. For violations determined to be a pattern or practice, gross negligence, or willful, perform the following steps:

- Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.
- Estimate the total impact on the population based on the expanded sample.
- 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.
- Inform management of the bank's options under section 130 of the TILA for avoiding an OCC order to reimburse affected borrowers.

Summary of the TILA Worksheets by Transaction Type

Loan Type	Worksheets
Closed-End Consumer (Not Secured by Real Estate)	Worksheet 3 – Closed-End Forms Review
	Worksheet 5 – Closed-End File Review
Closed-End Consumer (Secured by Real Estate)	Worksheet 3 – Closed-End Forms Review
	Worksheet 5 – Closed-End File Review
	Worksheet 7 – Right of Rescission File Review
	Worksheet 13 – Special Rules for Certain Home Mortgage Transactions File Review
	Worksheet 15 – High-Cost Mortgages
Closed-End Residential Mortgage	Worksheet 3 – Closed-End Forms Review
	Worksheet 5 – Closed-End File Review
	Worksheet 7 – Right of Rescission File Review
	Worksheet 15 – High-Cost Mortgages
Adjustable Rate Mortgage	Worksheet 4 – ARM Forms
	Worksheet 6 – ARM File Review
	Worksheet 7 – Right of Rescission File Review
	Worksheet 13 – Special Rules for Certain Home Mortgage Transactions File Review
	Worksheet 15 – High-Cost Mortgages
Home Equity Loan	Worksheet 3 – Closed-End Forms Review
	Worksheet 5 – Closed-End File Review
	Worksheet 7 – Right of Rescission File Review
	Worksheet 13 – Special Rules for Certain Home Mortgage Transactions File Review
	Worksheet 15 – High-Cost Mortgages
Home Equity Line of Credit	Worksheet 7 – Right of Rescission File Review
	Worksheet 8 – Open-End Forms Review
	Worksheet 9 – HELOC Forms Review
	Worksheet 12 – HELOC File Review
	Worksheet 14 – Periodic Billing Statement
Credit Card	Worksheet 8 – Open-End Forms Review
	Worksheet 10 – Credit Card Forms Review
	Worksheet 11 – Open-End File Review
	Worksheet 14 – Periodic Billing Statements Review
Advertising – Closed-End Credit	Worksheet 1 – Closed-End Credit Advertising
Advertising – Open-End/HELOC	Worksheet 2 – Open-End/Home Equity Line of Credit Advertising

Worksheet #1
Closed-End Credit Advertising

Use this worksheet when reviewing closed-end advertisements. To complete, review advertising files and place a check in each applicable box. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "No" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "No" answer indicates a possible violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Underline the applicable use: Audit Bank Policies Expanded Procedures

Closed-End Credit Advertising Worksheet										
Identify Advertisement:										
Advertisement Type:										
Date or Period Run:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. If credit terms are specific, are terms stated that actually are or will be arranged or offered by the creditor? [226.24(a)]										
2. If the advertisement states a rate of finance charge, is it stated as an "APR"? [226.24(b)]										
3. Is the APR stated more conspicuously than the simple interest rate (if stated)? [226.24(b)]										
4. If the APR is stated and may be increased after consummation, does the advertisement state that fact? [226.24(b)]										
5. If triggering terms were used [226.24(c)(1)], did the ad include, as applicable: a. The down payment (credit sales only)? [226.24(c)(2)(i)] b. The repayment terms? [226.24(c)(2)(ii)] c. The APR? [226.24(c)(2)(iii)]										

Closed-End Credit Advertising Worksheet										
Identify Advertisement:										
Advertisement Type:										
Date or Period Run:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
d. The fact that the APR may be increased after consummation, if applicable? [226.24(c)(2)(iii)]										

Worksheet #2
Open-End/Home Equity Line of Credit Advertising

Use this worksheet when reviewing open-end and HELOC advertisements. To complete, review advertising files and place a check in each applicable box. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a “No” answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a “No” answer indicates a possible violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate “NA.”

Underline the applicable use: Audit Bank Policies Expanded Procedures

Open-End/Home Equity Line of Credit Advertising Worksheet										
Identify Advertisement:										
Advertisement Type:										
Date of Period Run:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. If terms are specific, are terms stated that actually are or will be arranged or offered by the creditor? [226.16(a)]										
2. If triggering terms were used on any open-end plan advertisement [226.6(a) & (b)], did the advertisement also clearly and conspicuously include: a. Any minimum, fixed, transaction, activity or similar fee that could be imposed? [226.16(b)(1)] b. Any periodic rates stated as an APR? [226.16(b)(2)] c. The fact that the plan provides for a variable periodic rate, if applicable? [226.16(b)(2)] d. Any membership or participation fee that could be imposed? [226.16(b)(3)]										

Open-End/Home Equity Line of Credit Advertising Worksheet										
Identify Advertisement:										
Advertisement Type:										
Date of Period Run:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Additional Requirements for Home Equity Lines of Credit [226.5b]										
3. If triggering terms were used [226.6(a) & (b)], or the payment terms were set forth for a HELOC did the advertisement also include: a. Any loan fee that is a percentage of the credit limit? [226.16(d)(1)(i)] b. An estimate of any other fees for opening the plan stated as a single dollar amount or reasonable range? [226.16(d)(1)(i)] c. Any periodic rate stated as an APR? [226.16(d)(1)(ii)] d. The highest APR that may be imposed for a variable-rate plan? [226.16(d)(1)(iii)]										
4. If a discounted or premium rate plan, does the ad state how long the initial APR will be in effect and provide a reasonably current, fully indexed APR with equal prominence? [226.16(d)(2)]										
5. If a minimum periodic payment is disclosed, does the ad disclose, if applicable, that a balloon payment may result? [226.16(d)(3)]										
6. If there is a reference to tax deductibility, does the reference refrain from misleading language? [226.16(d)(4)]										
7. Does the ad refrain from misleading terms, such as referring to the HELOC as “free money”? [226.16(d)(5)]										

Worksheet #3
Closed-End Credit Forms Review

Use this worksheet when reviewing closed-end credit forms **other than** those secured by the customer's principal dwelling for a term of more than one year. To complete, review the forms and place a check in each applicable box. **Determine the accuracy of the disclosures by comparing them to the contract and other bank documents**. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "No" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "No" answer indicates a possible violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Underline the applicable use: Audit Bank Policies Expanded Procedures

Closed-End Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are disclosures clear, conspicuous, grouped, segregated, and in writing in a form the consumer can keep? [226.17(a)(1)]										
2. Are terms "finance charge" and "APR" more conspicuous? [226.17(a)(2)]										
3. Is the creditor identified (may be apart from other disclosures)? [226.18(a)]										
4. Is there a brief description of the Amount Financed? [226.18(b)]										
5. Is there a separate itemization of the Amount Financed or a statement that the consumer may request and receive a written itemization? [226.18(c)]										
6. Is there a brief description of the finance charge? [226.18(d)]										
7. Is there a brief description of the APR? [226.18(e)]										

Closed-End Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8. Do the disclosures for variable rate loans that are not secured by the customer's principal dwelling or, if secured by the consumer's principal dwelling, that have a term of one year or less include: a. Circumstances that permit rate increases? [226.18(f)(1)(i)] b. Limits on the increase: Periodic? [226.18(f)(1)(ii)] Lifetime? [226.18(f)(1)(ii)] c. Effects of increase? [226.18(f)(1)(iii)] d. Hypothetical example of new payment terms? [226.18(f)(1)(iv)]										
9. Is the payment schedule included? [226.18(g)]										
10. Is there a description of the "Total of Payments," unless it's a single payment loan? [226.18(h)]										
11. Is a demand feature disclosed, if applicable? [226.18(i)]										
12. Is the total sales price included and described (if a credit sale)? [226.18(j)]										
13. Does the disclosure include whether or not a penalty/rebate is imposed for prepayment? [226.18(k)]										
14. Is a late payment charge (dollar amount or percent) disclosed, if applicable? [226.18(l)]										
15. Is there a security interest disclosure, if applicable? [226.18(m)]										
16. If credit life insurance and debt cancellation premiums have been excluded from the finance charge, has the bank: a. Disclosed that insurance coverage is not required? b. Disclosed the premium for initial term?										

Closed-End Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
c. Obtained the customer's signature or initials as an affirmative request for the insurance? [226.18(n) and 226.4(d)]										
17. If the property insurance premium has been excluded from finance charge, has the bank: a. Disclosed that the consumer may choose the insurance company? b. Disclosed the cost of the insurance for the initial term if obtained from or through the bank? [226.18(n) and 226.4(d)]										
18. Are the disclosures required under 226.4(e) to exclude certain fees required by law, such as a filing fee or certain insurance premiums from the finance charge provided? [226.18(o)]										
19. Is there a statement referring to the contract document for specified information? [226.18(p)]										
20. Is there an appropriate assumption disclosure for residential mortgage transactions? [226.18(q)]										
21. If a deposit is required as a condition of the transaction, has the bank disclosed that the APR does not reflect its effect? [226.18(r)]										

Worksheet #4
Closed-End Credit – Adjustable Rate Mortgage Forms Review

Use this worksheet when reviewing variable rate loans or ARMs with a maturity greater than one year secured by the principal dwelling of the borrower. To complete, review the forms and place a check in each applicable box. **Determine the accuracy of the disclosures by comparing them to the contract and other bank documents**. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

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Underline the applicable use: Audit Bank Policies Expanded Procedures

Closed-End Credit Adjustable Rate Mortgage Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Is the fact that the note contains a variable rate feature disclosed? [226.18(f)(2)(i)]										
2. Is there a statement that variable rate disclosures were provided earlier? [226.18(f)(2)(ii)]										
Disclosure At Time Of Application (one for each program in which the consumer expresses an interest) [226.19(b)(2)]										
3. Are disclosures provided either at time of application or before consumer pays any nonrefundable fee or, if the application is received from a mortgage broker or over the telephone, mailed within three business days following receipt of the application? [226.19(b) & footnote 45b]										
4. Do variable rate program disclosures provide: a. The booklet entitled "Consumer Handbook on ARMs," or a suitable substitute? [226.19(b)(1)] b. A statement that interest rate, payment or the term can change? [226.19(b)(2)(i)] c. The index/formula with source of										

Closed-End Credit Adjustable Rate Mortgage Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
information disclosed? [226.19(b)(2)(ii)]										
d. An explanation of the interest rate/payment determination and margin? [226.19(b)(2)(iii)]										
e. A statement that consumer should ask for the current margin and interest rate? [226.19(b)(2)(iv)]										
f. The fact that interest rate is discounted, if applicable, and a statement that the consumer should ask about the amount of discount? [226.19(b)(2)(v)]										
g. The frequency of interest rate and payment changes? [226.19(b)(2)(vi)]										
h. The rules relating to changes? [226.19(b)(2)(vii)]										
i. An historical example or the maximum interest rate and payment? [226.19(b)(2)(viii)]										
j. An explanation of how the loan payment can be calculated based on example? [226.19(b)(2)(ix)]										
k. The fact that the loan program contains a demand feature? [226.19(b)(2)(x)]										
l. Information on, and timing of, adjustment notices? [226.19(b)(2)(xi)]										
m. A statement that disclosures for other variable rate loan programs are available? [226.19(b)(2)(xii)]										

Worksheet #5
Closed-End Credit File Review

Use this worksheet when reviewing closed-end credit loans. The worksheet contains all the standard closed-end credit disclosure requirements and should be used with the other closed-end worksheets. **Determine the accuracy of the disclosures by comparing them to the contract and other bank documents**. To complete, review loan files and place a check in each applicable box.

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "No" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "No" answer indicates a possible violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Underline the applicable use: Audit Bank Policies Expanded Procedures

Closed-End Credit File Review Worksheet										
Product Type: Name of Borrower: Account Number:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are disclosures furnished before consummation? [226.17(b)]										
2. Is the amount financed disclosed and accurate? [226.18(b)]										
3. Is there a separate itemization of the amount financed (RESPA-GFE, if applicable, may be substituted)? [226.18(c)]										
4. Is the finance charge disclosed and accurate? [226.4, 226.18(d) & footnote 41]										
5. Is the APR disclosed and accurate? [226.18(e), footnote 42 & 226.22(a)]										
6. Are the following required disclosures on variable rate loans (other than those secured by the consumer's principal dwelling with a term of more than one year) provided? a. Circumstances that permit rate increase? [226.18(f)(1)(i)] b. Limits on the increase:										

Closed-End Credit File Review Worksheet										
Product Type: Name of Borrower: Account Number:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Periodic? [226.18(f)(1)(ii)] Lifetime? [226.18(f)(1)(ii)] c. Effects of increase? [226.18(f)(1)(iii)] d. Hypothetical example of new payment terms? [226.18(f)(1)(iv)]										
7. Are the following required disclosures provided if the annual percentage rate may increase after consummation on variable rate loan transaction secured by the consumer's principal dwelling with a term greater than one year: a. The fact that the transaction contains a variable-rate feature? b. A statement that variable-rate disclosures have been provided earlier? [226.18(f)(2)]										
8. Is the payment schedule (amount, timing, and number of payments) provided and accurate? [226.18(g)]										
9. Is the total of payments provided and accurate? [226.18(h)]										
10. a. If the obligation has a demand feature, is that fact disclosed? b. If the disclosures are based on an assumption of one year as provided in section 226.17(c)(5), is that fact disclosed? [226.18(i)]										
11. If a credit sale, is the total sale price accurate? [226.18(j)]										
12. Is the security interest described accurately, if applicable? [226.18(m)]										
13. Is the credit life insurance premium or debt cancellation fee for the initial term										

Closed-End Credit File Review Worksheet										
Product Type: Name of Borrower: Account Number:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
accurately disclosed, if applicable? [226.18(n) & 226.4(d)]										
14. Is the cost of insurance for the initial term accurately disclosed if from or through the creditor? [226.18(n) and 226.4(d)]										
15. Are deposits required for credit transactions disclosed accurately? [226.18(r)]										
16. Are REM closing fees that are excluded from the disclosed finance charge bona fide and reasonable? [226.4(c)(7)]										
17. Is the maximum interest rate in the contract (variable rate mortgage) disclosed? [226.30(a)]										

Worksheet #6
Closed-End Credit – Adjustable Rate Mortgage File Review

Use this worksheet when reviewing variable rate loans or ARMs with maturity greater than one year secured by the principal dwelling of the borrower. To complete, review applicable loan files and place a check in each applicable box. **Determine the accuracy of the disclosures by comparing them to the contract and other bank documents**. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "No" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "No" answer indicates a possible violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Underline the applicable use: Audit Bank Policies Expanded Procedures

Closed-End Credit – Adjustable Rate Mortgage File Review Worksheet										
Name of Borrower: Account Number:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Did the bank provide timely early disclosures for residential mortgage transactions subject to RESPA? [226.19(a)(1)]										
2. Was the booklet entitled "Consumer Handbook on ARMs" or a substitute provided? [226.19(b)(1)]										
3. Does the contract contain an independent index [12 CFR 34.22] if the transaction is an ARM under 12 CFR 34.20 or an ARM under 226.19(b)?										
Subsequent Disclosures										
4. Were subsequent disclosures mailed in accordance with timing requirements? [226.20(c)] and do they provide the: a. Current and prior interest rates (verify accuracy of rates used)? [226.20(c)(1)] b. Index values on which interest rates are based (verify accuracy of indexes used)? [226.20(c)(2)] c. Extent to which the creditor has foregone an interest rate increase (only if carryover exists)? [226.20(c)(3)] d. Contractual effects of the adjustment, including										

Closed-End Credit – Adjustable Rate Mortgage File Review Worksheet										
Name of Borrower: Account Number:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
the new payment amount and a statement of the loan balance? [226.20(c)(4)] e. Payment required to avoid negative amortization? [226.20(c)(5)]										

Worksheet #7
Right of Rescission File Review

Use this worksheet when reviewing the right to rescission for both closed- and open-end loans subject to Regulation Z that are secured by the consumer's principal dwelling. Requirements for closed- and open-end loans are found in 12 CFR 226.23 and 12 CFR 226.15, respectively. (Note: Loans not subject to rescission include business purpose credit, refinancings in which no new money is advanced, and residential mortgage transactions.). To complete, review applicable loan files and place a check in each applicable box

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "No" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "No" answer indicates a possible violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Underline the applicable use: Audit Bank Policies Expanded Procedures

Right of Rescission File Review Worksheet										
Product Type: Name of Borrower: Loan/Account #: Type of Credit (closed or open):	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Were two copies furnished to each person entitled to rescind? [226.23(b)(1)/226.15(b)]										
2. Does the rescission notice identify the transaction? [226.23(b)(1)/226.15(b)]										
3. Does the rescission notice disclose: a. The retention or acquisition of a security interest in the consumer's principal dwelling? [226.23(b)(1)(i)/226.15(b)(1)] b. The consumer's right to rescind? [226.23(b)(1)(ii)/226.15(b)(2)] c. How to exercise the right to rescind? [226.15(b)(1)(iii)/226.23(b)(3)] d. The effects of rescission? [226.23(b)(1)(iv)/226.15(b)(4)]										

Right of Rescission File Review Worksheet										
Product Type: Name of Borrower: Loan/Account #: Type of Credit (closed or open):	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
e. The date the rescission period expires? [226.23(b)(1)(v)/226.15(b)(5)]										
5. Was funding delayed (except into escrow) until the rescission period expired? [226.23(c)/226.15(c)]										
6. Are waivers of the right to rescind appropriate? [226.23(e)/226.15(e)]										
7. **Internal controls**: Does the consumer sign and date the notice to acknowledge receipt? [A no answer is not a violation of law.]										

Worksheet #8
Open-End Credit Forms Review

Use this worksheet when reviewing all open-end credit forms. To complete, review the forms and place a check in each applicable box. **Determine the accuracy of the disclosures by comparing them to the contract and other bank documents**. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

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Underline the applicable use: Audit Bank Policies Expanded Procedures

Open-End Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Initial Disclosures										
1. Is there a statement of when the finance charge begins to accrue and if a grace period exists? [226.6(a)(1)]										
2. a. Is each periodic rate, the range of balances and corresponding APR disclosed? b. Are finance charge and APR more conspicuous? [226.6(a)(2)]										
3. Is the method to determine the balance provided and explained? [226.6(a)(3)]										
4. Is the method to determine any finance charge(s) provided and explained? [226.6(a)(4)]										
5. Is there a statement of the amount of other charges? [226.6(b)]										
6. Has the fact that the creditor has or will acquire a security interest in the property purchased or other property identified by item or type been disclosed? [226.6(c)]										
7. Is there a statement detailing consumer-billing rights? [226.6(d)]										
8. Are conditions for terminating the HELOC plan, for prohibiting additional credit, for										

Open-End Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
reducing the credit limit, and for implementing changes provided? [226.6(e)(1)]										
9. Are the payment terms for the HELOC plan provided (if terms for draw and repayment period are different, the terms for each must be disclosed, as applicable), including: a. The length of the draw period and any repayment period? b. An explanation of how the minimum periodic payment will be computed? c. The timing of periodic payments? d. If the periodic payment repays less than the balance or does not reduce principal (e.g., interest only payments), a statement of that fact and that a balloon payment may or will result, as applicable? e. An example, based on a $10M outstanding balance and a recent APR. [226.6(e)(2)]										
10. For the HELOC, is there a statement, if applicable, that negative amortization might occur, and that it increases the principal balance and reduces the consumer's equity in the dwelling? [226.6(e)(3)]										
11. Is there a statement of transaction requirements for the HELOC? [226.6(e)(4)]										
12. Is there a statement about tax implication and consulting a tax advisor for the HELOC? [226.6(e)(5)]										
13. Is there a statement that the APR does not include costs other than interest for the HELOC? [226.6(e)(6)]										
14. Are the following disclosures provided for variable rate HELOCs? [226.6(e)(7)]:										

Open-End Credit Forms Review Worksheet										
Product Type:										
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
a. The rules relating to changes to the index, APR, and payment amount, including information on payment limitations and carryover? b. The minimum payment required (for both the draw and repayment periods) when the maximum APR is in effect for a $10,000 balance and the earliest date the maximum APR may be imposed? c. An example based on a $10,000 balance, reflecting all significant plan terms and showing how the APR and the minimum periodic payment amount would have been affected during the most recent 15 years by changes in the index? d. A statement that rate information will be provided on or with each periodic statement? e. An example based on a $10,000 balance and a recent APR showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 balance making only the minimum payment while obtaining no additional credit.										
Note: The redisclosure of the variable rate disclosures in step 14 may not be necessary if they were provided with the application in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer. [226.6(e)(7)]										
15. Is the maximum interest rate disclosed (variable rate)? [226.30(b)]										

Open-End Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Subsequent Disclosure Requirements [226.9]										
16. Does the bank furnish the annual statement of billing rights? [226.9(a)(1)] Or is an alternative summary statement provided with each periodic statement? [226.9(a)(2)]										
17. Are the 226.6(a) disclosures for an added feature or credit device with different finance charge terms provided before the consumer uses the feature or device? [226.9(b)(2)].										
18. Are changes in terms disclosed 15 days prior to effective change date if required? [226.9(c)]										

Worksheet #9
Home Equity Line of Credit Forms Review

Use this worksheet when reviewing HELOC forms for disclosures at time of application and initial disclosures. To complete, review the forms and place a check in each applicable box. **Determine the accuracy of the disclosures by comparing them to the contract and other bank documents**. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

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Underline the applicable use: Audit Bank Policies Expanded Procedures

Home Equity Line of Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are disclosures segregated, clear, and conspicuous, and do the required disclosures of paragraph (d)(1) through (4)(ii) precede the other disclosures? [226.5b(a)(1)]										
2. Is a home equity brochure provided? [226.5b(e)]										
3. Does the disclosure state: a. That the consumer should retain a copy of the disclosures? [226.5b(d)(1)] b. The time by which to apply to obtain the specific terms disclosed? [226.5b(d)(2)(i)] c. That terms are subject to change before the plan opens, if applicable? [226.5b(d)(2)(i)] d. That the consumer may receive a refund of all application fees if terms change prior to opening? [226.5b(d)(2)(ii)] e. That the consumer's dwelling secures the HELOC and that the loss of the										

Home Equity Line of Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
dwelling may occur? [226.5b(d)(3)]										
f. The creditor's right to change, freeze, or terminate the account? [226.5b(d)(4)(i)]										
g. That information about conditions for adverse action is available on request? [226.5b(d)(4)(ii)]										
h. Payment terms? [226.5b(d)(5)]										
i. A recent APR and that the APR does not include costs other than interest for fixed rate plans? [226.5b(d)(6)]										
j. An itemization of fees to open, use, or maintain the plan and when such fees are payable? [226.5b(d)(7)]										
k. An estimate of total fees imposed by third parties to open the account? [226.5b(d)(8)]										
l. That the consumer may receive a good faith itemization of third-party fees? [226.5b(d)(8)]										
m. That negative amortization may occur and could increase the principal balance and reduce the consumer's equity? [226.5b(d)(9)]										
n. Transaction requirements under the plan? [226.5b(d)(10)]										
o. That a tax advisor should be consulted? [226.5b(d)(11)]										
Variable Rate HELOC Disclosure Requirements – [226.5b(d)(12)(i)-(xii)]										
4. Does the disclosure state, as applicable: a. That the APR, payment, or term may change? [226.5b(d)(12)(i)]										

Home Equity Line of Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
b. That the APR excludes costs other than interest? [226.5b(d)(12)(ii)]										
c. The index and its source? [226.5b(d)(12)(iii)]										
d. How the APR will be determined? [226.5b(d)(12)(iv)]										
e. That the consumer should request information on the current index value, margin, discount or premium, and APR? [226.5b(d)(12)(v)]										
f. That the initial APR is discounted and the duration of the discount, if applicable? [226.5b(d)(12)(vi)]										
g. The frequency of APR changes? [226.5b(d)(12)(vii)]										
h. The rules relating to changes in the index, APR, and payment amount? [226.5b(d)(12)(viii)]										
i. The lifetime rate cap and any annual (or more frequent) caps, or a statement that there is no annual limitation and a statement of the maximum APR that may be imposed under each payment option? [226.5b(d)(12)(ix)]										
j. The minimum payment requirement, using the maximum APR, and the earliest date the maximum APR may be imposed? [226.5b(d)(12)(x)]										
k. A historical example, based on a $10,000 balance, reflecting all significant plan terms? [226.5b(d)(12)(xi)]										

Home Equity Line of Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
l. That rate information will be provided on or with each periodic statement? [226.5b(d)(12)(xii)]										
Limitations On Home Equity Plans										
5. Is the APR based on an independent index for variable rate accounts? [226.5b(f)(1)(i)]										
6. Is the index available to the public? [226.5b(f)(1)(ii)]										
7. Are accounts terminated and repayment of the entire balance due only under the following conditions: a. There is fraud or material misrepresentation by the **consumer** in connection with the plan at any time, including during the application process, the draw period, or any repayment period? b. The **consumer** fails to meet the plan's repayment terms? c. The **consumer** takes action or fails to act in a manner that adversely affects the bank's security for the plan or any right in the security? [226.5b(f)(2)(iii)] Note: Regulation O requires, and Regulation Z permits, a demand feature in executive officer plans.										
8. Are the terms of an account only changed under the following circumstances: a. A specified change occurs when a specific event takes place, as provided for in the initial agreement? b. The index or margin is changed because the original index is no longer available? c. The consumer specifically agrees to a										

Home Equity Line of Credit Forms Review Worksheet										
Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
specified change in writing at the time of the change? d. Any change unequivocally will benefit the consumer? e. Changes made to the terms are insignificant? [226.5b(f)(3)(i)-(v)]										
9. Is the credit limit reduced, or are additional extensions of credit prohibited, only under the following circumstances: a. The value of the dwelling securing the plan declines significantly? b. The consumer's financial circumstances change materially? c. The consumer defaults on any material obligation under the agreement? d. Government action restricts an APR increase? e. The bank's security interest is adversely affected because of government action to the extent that the security value is less than 120 percent of the credit line? f. The bank is notified by a regulatory agency that continued advances constitute an unsafe and unsound practice? [226.5b(f)(3)(vi)]										

Worksheet #10
Credit Card Forms Review

Use this worksheet when reviewing credit card forms for general applications as well as creditor initiated direct mail applications and preapproved solicitations. **Determine the accuracy of the disclosures by comparing them to the contract and other bank documents**. To complete, review the forms and place a check in each applicable box. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

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Underline the applicable use: Audit Bank Policies Expanded Procedures

Credit Card Forms Review Worksheet										
Product Identification: Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are the disclosures provided on or with the application or solicitation? [226.5a(b) & (c)]										
2. Are the disclosures in 226.5a(b)(1)-(7) in a prominent location, and in the form of a table with headings, content, and format substantially similar to applicable tables in Appendix G? [226.5a(a)(2)(i)]										
3. Are the disclosures in 226.5a(b)(8)-(11) provided either in the table or clearly and conspicuously elsewhere on the application or solicitation? [226.5a(A)(2)(ii)]										
4. Is the terminology used in the application or solicitation consistent with that used in the initial and periodic disclosures? [226.5a(a)(2)(iv)]										
5. a. Is each APR for purchases, cash advances, or a balance transfer in the table? [226.5a(b)(1)] b. If the rate may vary, is that fact disclosed? [226.5a(b)(1)(i)]										
6. Is any fee for issuance or availability of a card in the table? [226.5a(b)(2)]										
7. Is any minimum or fixed finance charge in the table? [226.5a(b)(3)]										
8. Are transaction fees for purchases in the table, if applicable? [226.5a(b)(4)]										
9. Is the length of the "grace period," using that term, in the table? [226.5a(b)(5)]										

Credit Card Forms Review Worksheet										
Product Identification: Product Type:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
10. Is the name (or explanation) of the balance computation method in the table? [226.5a(b)(6)]										
11. Is there a statement that charges are due when the statement is received (charge cards only)? [226.5a(b)(7)]										
12. Is the amount of any cash advance fees included? [226.5a(b)(8)]										
13. Are any late payment charges included, if applicable? [226.5a(b)(9)]										
14. Are any fees for exceeding the credit limit included? [226.5a(b)(10)]										
15. Are balance transfer fees included? [226.5a(b)(11)]										
16. Are disclosures for creditor-initiated telephone applications and preapproved solicitations to open credit card accounts provided orally or in writing, as permitted? [226.5a(d)]										
17. Does the bank make one of the disclosures required in the case of applications or solicitations made available to the general public? [226.5a(e)]										
18. Are renewal disclosures provided at least 30 days or one billing cycle, whichever is less, before the mailing or delivery of the periodic statement on which the renewal fee is initially charged to the account? [226.9(e)(1)]										
19. Are credit insurance disclosures provided when the insurance provider is changed within 30 days before the change in provider occurs? [226.9(f)]										

Worksheet #11
Open-End Credit File Review

Use this worksheet when reviewing all open-end credit. To complete, review loan files and place a check in each applicable box. **Determine the accuracy of the disclosures by comparing them to the contract and other bank documents**. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

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Underline the applicable use: Audit Bank Policies Expanded Procedures

Open-End Credit File Review Worksheet										
Name of Borrower: Account #:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Is the timing of disclosures provided in accordance with all sections of 226.5(b)?										
2. Does the bank indicate, for an added credit feature or credit device, that the feature or device is for use in obtaining credit under the terms previously disclosed? [226.9(b)(1)]										
3. Are the 226.6(a) disclosures for an added feature or credit device with different finance charge terms provided before the consumer uses the feature or device? [226.9(b)(2)]										
4. Are periodic statements provided for each billing cycle in which the account has a debit or credit balance of more than $1 or a finance charge was imposed? [226.5(b)(2)(i)]										
5. Are periodic statements mailed or delivered at least 14 days prior to any date disclosed under 226.7(j) for the consumer to avoid an additional finance charge or other charge? [226.5(b)(2)(ii)]										
6. Are payments promptly credited? [226.10]										
7. Is the treatment of credit balances appropriate? [226.11]										
8. Are credit cards issued only upon request										

Open-End Credit File Review Worksheet										
Name of Borrower: Account #:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
or as a renewal or substitute for an accepted credit card? [226.12(a)]										
9. Is liability for unauthorized credit card use limited to a maximum of $50? [226.12(b)(1)]										
10. Are disputes handled properly? Also, determine if the bank reports the disputed amount withheld by the consumer as delinquent only if the disputed amount remains unpaid after the dispute has been settled or judgment has been rendered against the consumer. [226.12(c)]										
11. Is offsetting credit card indebtedness prohibited? [226.12(d)(1)]										
12. Are billing errors resolved within two complete billing cycles (in no event more than 90 days)? [226.13(c)(2)]										
13. Does the bank wait until the billing error is resolved to: collect the amount in error; report the account as delinquent; or make, or threaten to make, an adverse credit report? [226.13(d)(1) and (2)]										

Worksheet #12
Home Equity Line of Credit File Review

Use this worksheet when reviewing HELOCs. To complete, review loan files and place a check in each applicable box. **Determine the accuracy of the disclosures by comparing them to the contract and other bank documents**. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "No" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "No" answer indicates a possible violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Underline the applicable use: Audit Bank Policies Expanded Procedures

Home Equity Line of Credit File Review Worksheet										
Name: Loan #:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are the disclosures and brochure given at the time an application is provided to the consumer or within three business days if the application is received through a broker or by telephone? [226.5b(b)]										
2. Does the bank indicate, for an added credit feature or credit device, that the feature or device is for use in obtaining credit under the terms previously disclosed? [226.9(b)(1)]										
3. Are the 226.6(a) disclosures for an added feature or credit device with different finance charge terms provided before the consumer uses the feature or device? [226.9(b)(2)]										
4. Is a written notice of adverse change in specified terms provided within three business days? [226.9(c)(3)]										
5. Are all fees refunded when the consumer rejects the plan because a disclosed term changes before the plan is opened? [226.5b(g)]										
6. Does the bank collect only refundable fees, if any, from the consumer before the end of three business days from delivering the disclosures (six days from the date of mailing, if mailed)? [226.5b(h)]										

Home Equity Line of Credit File Review Worksheet										
Name: Loan #:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
7. Has the bank refunded any fees that it collected from the consumer before it delivered the required disclosures if the consumer rejected the plan within three business days after receiving the disclosures (even if there is no change in the disclosed terms)? [226.5b(h)]										

Worksheet #13
Special Rules for Certain Home Mortgage Transactions (High Cost and Reverse Mortgages) File Review

Use this worksheet when reviewing high cost and reverse mortgage loans. To complete, review loan files and place a check in each applicable box. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a "No" answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a "No" answer indicates a possible violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate "NA."

Underline the applicable use: Audit Bank Policies Expanded Procedures

Special Rules for Certain Home Mortgage Transactions File Review Worksheet										
Product Type: Name of Borrower: Loan # or Account #:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Certain Closed-End Home Mortgages [226.32]										
1. Are disclosures clear, conspicuous, in writing and in a form the consumer may keep? [226.31(b)(1)]										
2. Are disclosures provided at least 3 business days prior to consummation? [226.31(c)(1)]										
3. Are new disclosures provided when terms change prior to consummation? [226.31(1)(i)]										
4. Does the bank disclose: a. Notices? [226.32(c)(1)] b. APR? [226.32(c)(2)] c. Regular payment and any balloon payment? [226.32(c)(3)] d. Variable rate? [226.32(c)(4)] e. Amount borrowed? [226.32(c)(5)]										
5. Are these terms absent from the mortgage transaction:										

Special Rules for Certain Home Mortgage Transactions File Review Worksheet										
Product Type: Name of Borrower: Loan # or Account #:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
a. Balloon payment (if term is less than five years) other than bridge loans of less than one year? [226.32(d)(1)] b. Negative amortization? [226.32(d)(2)] c. Advance payments of more than two periodic payments? [226.32(d)(3)] d. Increased interest rate after default? [226.32(d)(4)] e. Refund calculation by method less favorable than the actuarial method for rebates of interest arising from loan acceleration due to default? [226.32(d)(5)] f. Prepayment penalties (unless conditions are met)? [226.32(d)(6)] g. Due-on-demand clause (unless conditions are met)? [226.32(d)(8)]										
6. Does the bank: a. Pay a contractor under a home improvement contract from mortgage proceeds only as allowed in 226.34(a)(1)? b. Sell or assign a mortgage only when furnishing the required notice to assignee? [226.34(a)(2)] c. Refinance a loan subject to section 32 or an original refinance of a loan subject to section 32 only after one-year? [226.34(a)(3) d. Only make loans to consumers with the ability to repay based on the										

Special Rules for Certain Home Mortgage Transactions File Review Worksheet										
Product Type: Name of Borrower: Loan # or Account #:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
consumer's income, obligations, and employment? [226.34(a)(4)]										
7. Are waivers of the waiting period appropriate, and do they reflect the signature of all the consumers entitled to the waiting period? [226.31(c)(1)(iii)]										
Reverse Mortgages (Open- and Closed-End) [226.33]										
8. Are disclosures clear, conspicuous, in writing and in a form the consumer may keep? [226.31(b)(1)]										
9. Are disclosures provided at least three business days prior to: a. Consummation for closed-end loans? [226.31(c)(2)(i)] b. First transaction under an open-end credit plan? [226.31(c)(2)(ii)]										
10. Are disclosures substantially similar to the Appendix K model form, and include: a. Notice? [226.33(b)(1)] b. Total annual loan cost rates? [226.33(c)(1) - (6)] c. Itemization of pertinent information? [226.33(b)(3)] d. Explanation of table? [226.33(b)(4)]										

Worksheet #14
Periodic Billing Statements

Use for all open-end credit products; forms review by product type and sample review by loan name. To complete, review applicable forms and place a check in each applicable box. This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a “No” answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a “No” answer indicates a possible violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate “NA.”

Underline the applicable use: Audit Bank Policies Expanded Procedures

Product Type/Borrower’s Name: Account Number:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Periodic Billing Statements Worksheet										
1. Does the periodic statement include the address for notice of billing errors? [226.7(k)]										
2. Is the beginning outstanding balance provided? [226.7(a)										
3. Are transactions identified and accurate? [226.7(b) & 226.8]										
4. Are the dates and amounts of credits to account disclosed accurately? [226.7(c)]										
5. Are the periodic rate(s) and APR(s) stated and accurate? If it is a variable rate plan, is the fact that the periodic rate may vary disclosed? [226.7(d)/FN15]										
6. If different rates apply to different types of transactions, are the types of transactions to which the periodic rates apply disclosed? [226.7(d)										
7. Is the amount of balance subject to the periodic rate and an explanation of how the balance is determined disclosed? [226.7(e)]										
8. Is any “finance charge” amount (using that term) disclosed and accurate? [226.7(f)]										
9. Are the components of the finance charge imposed during the billing cycle individually itemized and identified? [226.7(f)]										
10. Is the APR (using that term) disclosed and accurate? [226.7(g)]										
11. Are the amounts of any other charges debited to the account itemized, identified by type, and accurately disclosed? [226.7(h)]										

Product Type/Borrower's Name: Account Number:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
12. Is the account balance and closing date disclosed and accurate? [226.7(i)]										
13. Is the payment date or period within which payment must be made disclosed if there is a "free ride" period? [226.7(j)]										
Billing Rights Statement										
14. Is the billing rights statement provided at least once each calendar year, or with each periodic statement in a form similar to that in appendix G? [226.9(a)]										

Worksheet #15
High-Cost Mortgages [226.32]

Use this worksheet when you want to determine whether certain mortgage loans are subject to section 226.32. To complete, review applicable loan files and place a check in each applicable box. For loans that are subject to section 226.32, use Worksheet #13 to document that disclosures were provided appropriately. You can insert an "N/A" if the line item is not applicable. If used, this worksheet should be completed and made part of the work papers.

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Only complete those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested, and retain those completed sections in the work papers.

Underline the applicable use: Audit Bank Policies Expanded Procedures

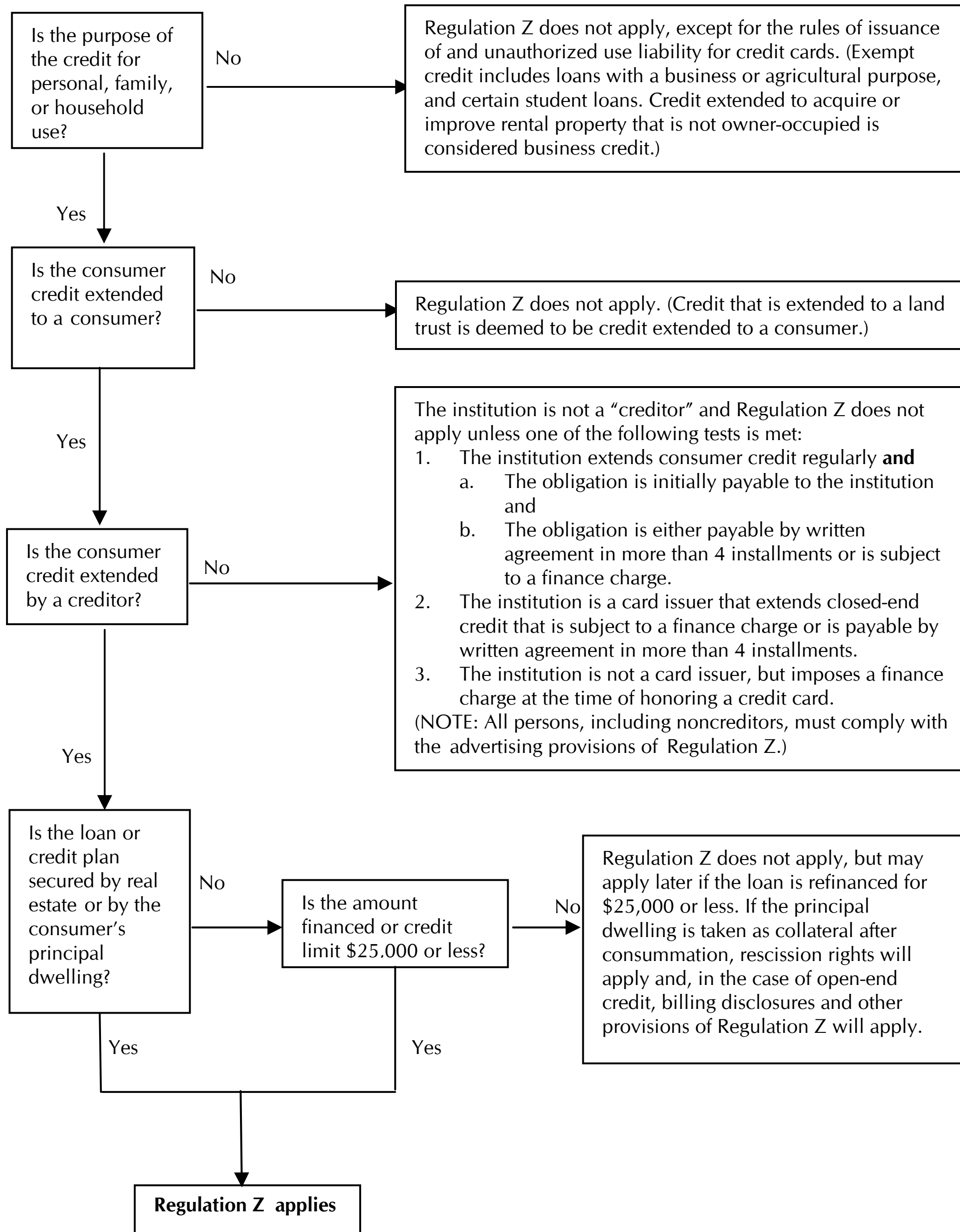
HIGH-COST MORTGAGE WORKSHEET		
Borrower Name: Loan Number:		
Coverage		
	Yes	No
1. Does the consumer's principal dwelling secure the loan? [226.2(a)(19) & 226.32(a)(1)]		
If No, Stop here		
2. Is the loan for the following: a. Residential Mortgage Transaction? [226.2(a)(24)] b. Reverse Mortgage Transaction? [226.33] c. 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 a, b, or c, STOP HERE. If No, continue to Test 1.		
TEST 1 – CALCULATION OF APR		
1. Disclosed APR		
2. 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. [section 226.32(a)(1)(i)] Visit the Web site for the yield: http://www.federalreserve.gov/releases/H15/data.htm		

HIGH-COST MORTGAGE WORKSHEET			
Borrower Name:	Loan Number:		
3. Treasury Security Yield of Comparable Maturity (Box 2) Plus: 8 percentage points for first-lien loan; or 10 percentage points for subordinate-lien loan			
		Yes	No
Is Box 1 greater than Box 3?			
If Yes, the transaction is a high-cost mortgage. If No, continue to Test 2, points and fees.			
Test 2 – CALULATION OF POINTS AND FEES			
Step 1: Identify all Charges Paid by the Consumer at or before Loan Closing			
A. Finance Charges – section 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 Fees			
Loan Service Fees			
Required Closing Agent/Third-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 Section 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 examples under section 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, and C			
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			

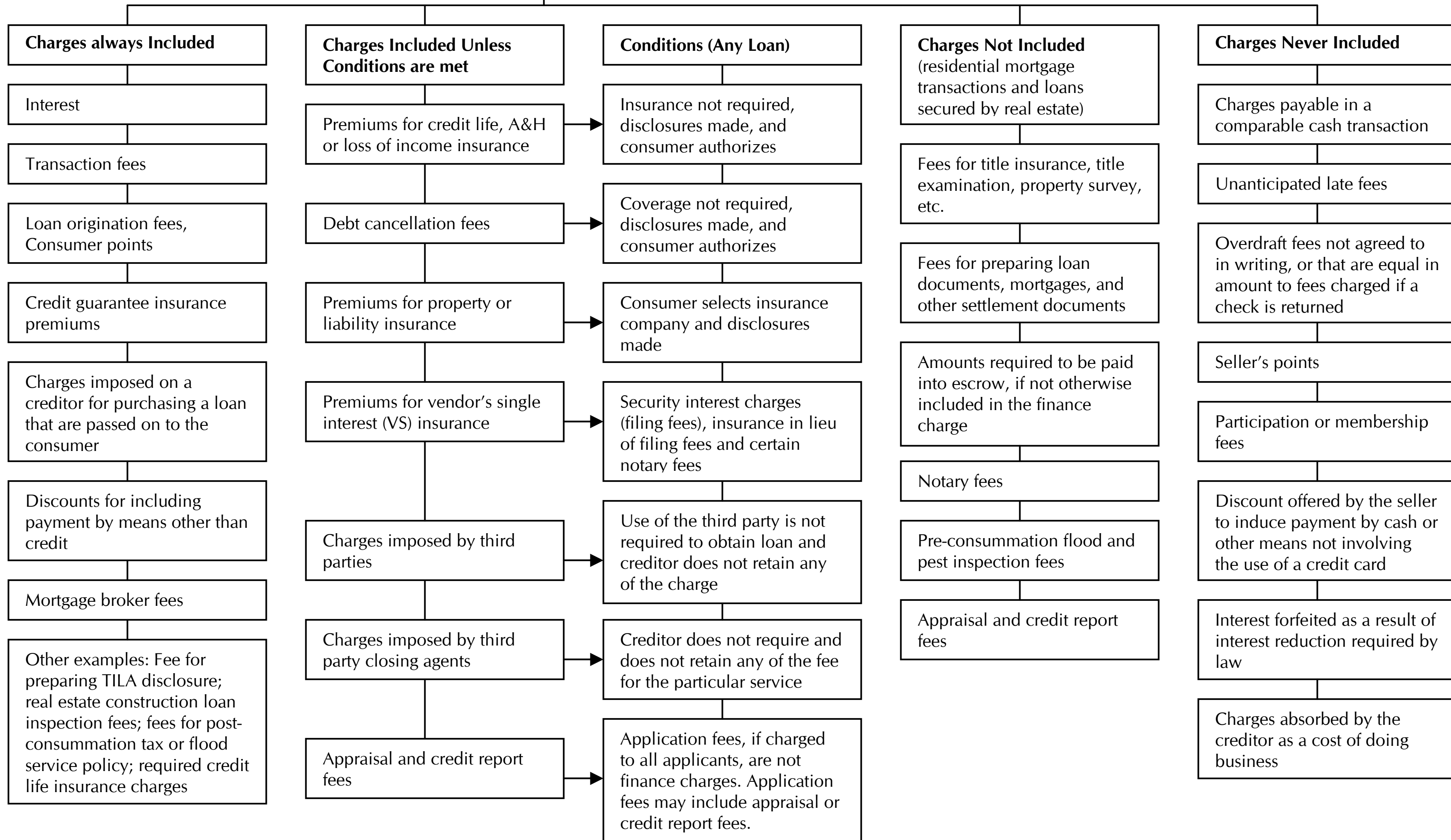
HIGH-COST MORTGAGE WORKSHEET

Borrower Name:	Loan Number:	
Plus: Other Amounts Financed by the Lender (not already included in the principal and not part of the finance charge)		
Less: Prepaid Finance Charges [section 226.2(a)(23)]		
Equals: Amount Financed		
B. Deduct costs included in the points and fees under section 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)		
Step 3: Perform High-Fee Cost Calculation		
A. Eight Percent of the Total Loan Amount (Step 2, Box C)		
B. Annual Adjustment Amount – [section 226.32(a)(1)(ii)] *(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."		

Coverage Considerations Under Regulation Z



Finance Charge Chart



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 or to the extent the creditor retains a portion of the charge. 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 or to the extent the creditor retains a portion of the charge. Immediately below the finance charge definition, the chart presents five captions applicable to determining if 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.

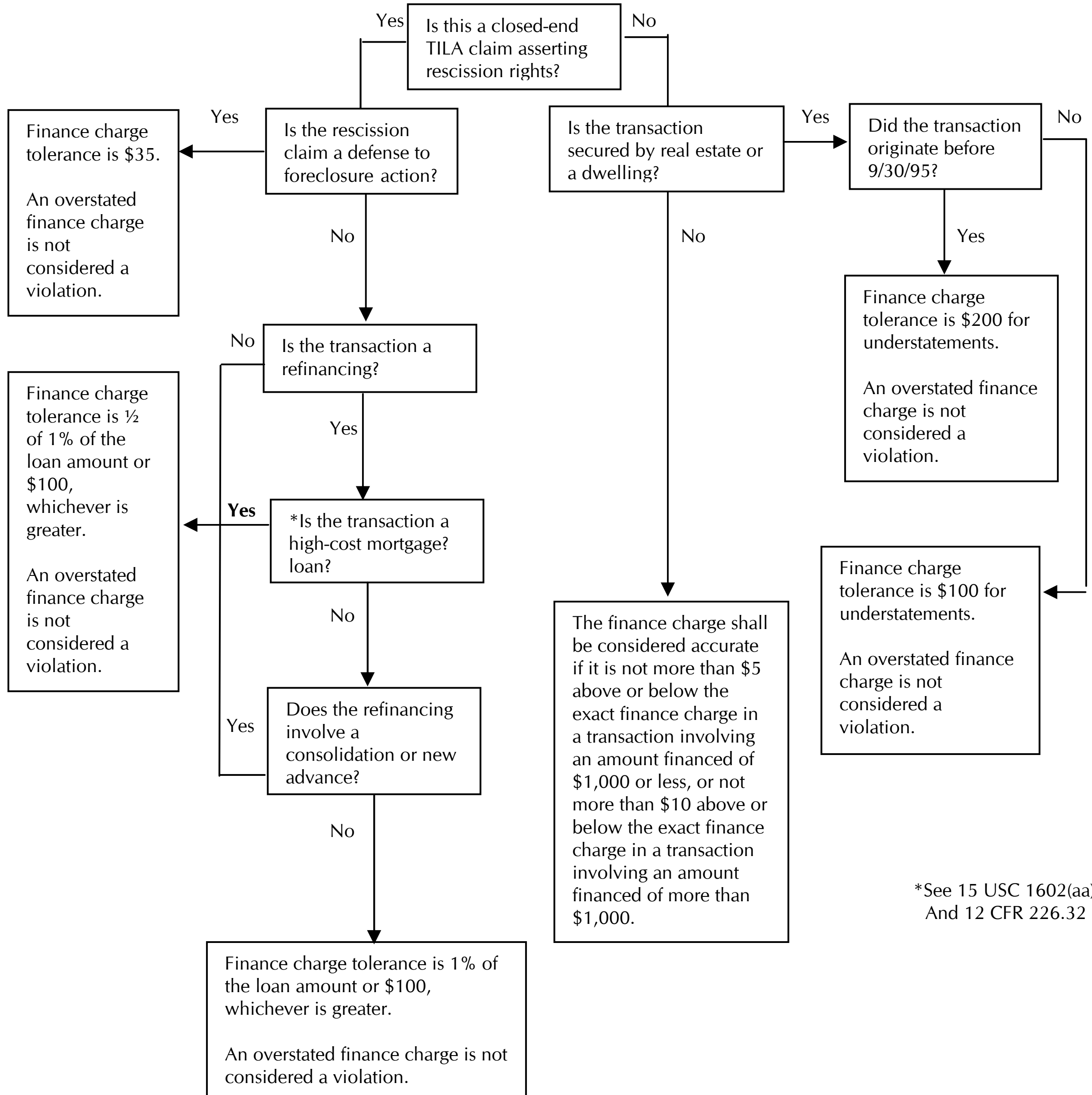
The third caption, “conditions,” focuses on the conditions that need to be met if the charges identified to the left of the conditions are permitted to be excluded from the finance charge. Although most charges under the second caption may be included in the finance charge at the creditor’s option, third 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 an application fee that is charged to all applicants 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 vacant lot or commercial real estate secures a consumer loan, any appraisal fees connected with the loan must not be included in the finance charge.

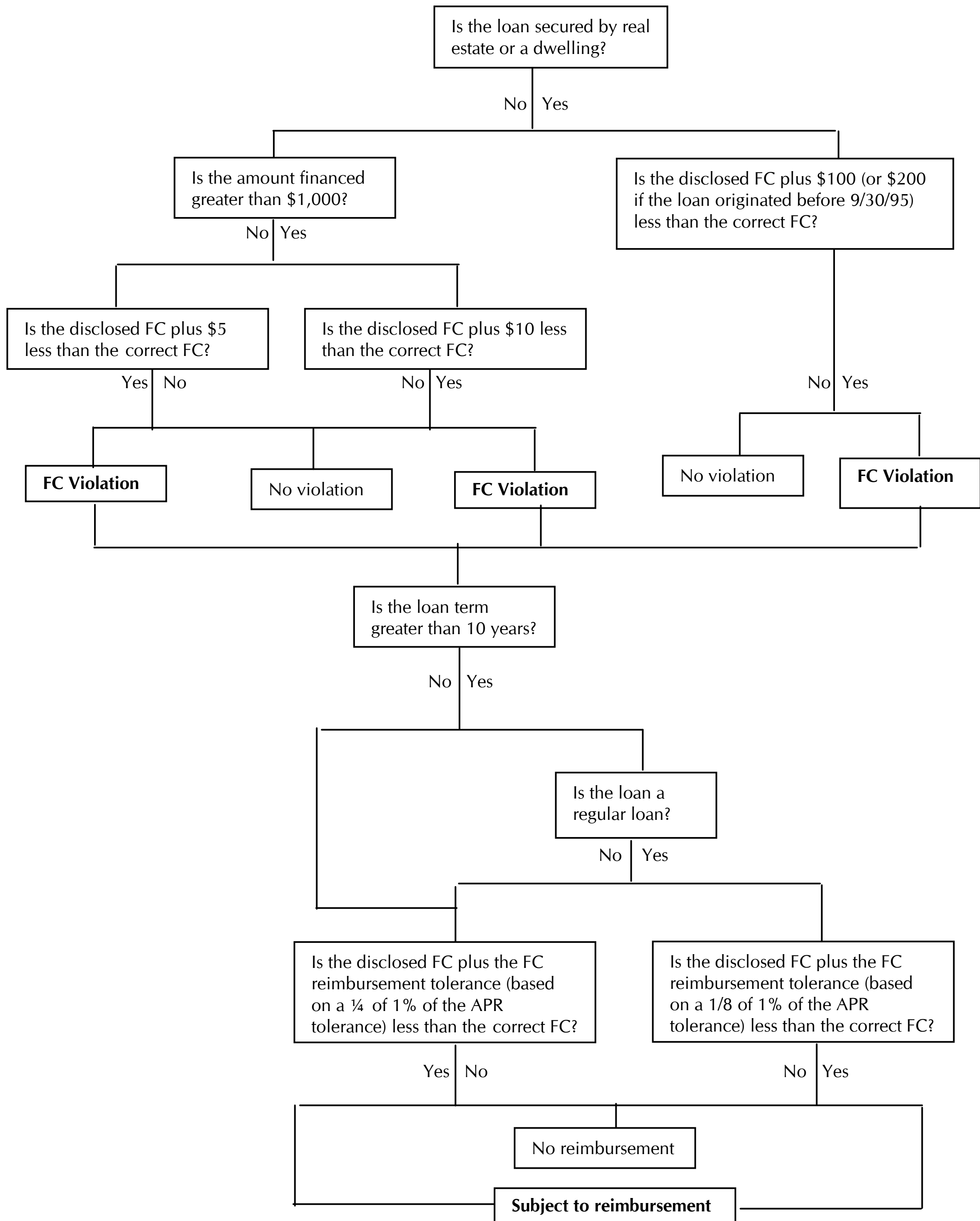
The fifth caption, “charges never included,” lists specific charges provided by the regulation as examples of those that automatically are not finance charges (e.g., fees for unanticipated late payments).

NOTE: In the first column for the charges always included, transaction fees refer to transaction fees imposed in connection with the credit feature. In the third column for conditions, the condition for both the premiums for credit life, A&H, or loss of income and debt cancellation fees must include affirmative consumer authority. Finally, in the last column of charges never included, overlimit fees can be considered as an excludable charge.

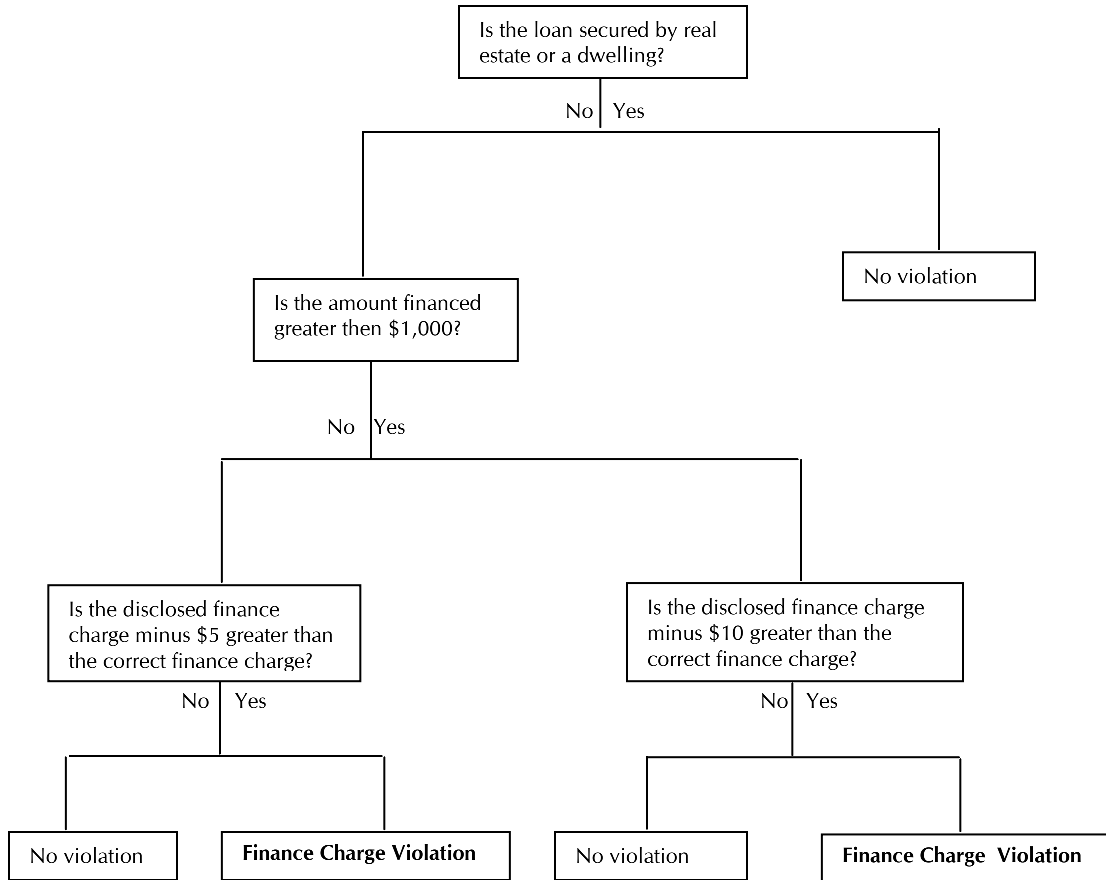
Closed-End Credit: Finance Charge Accuracy Tolerances



Closed-End Credit: Accuracy and Reimbursement Tolerances for Understated Finance Charges

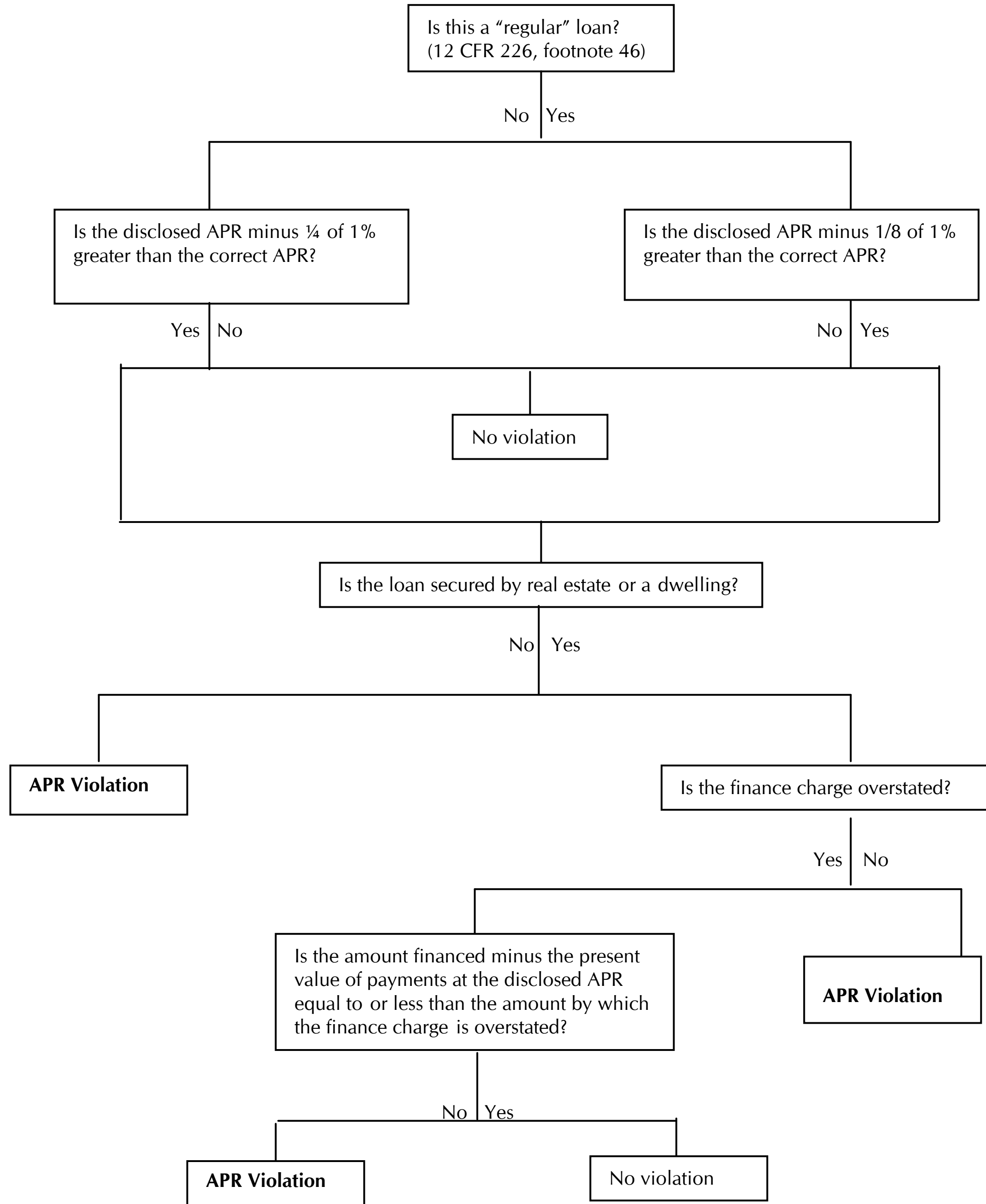


Closed-End Credit: Accuracy Tolerances for Overstated Finance Charges

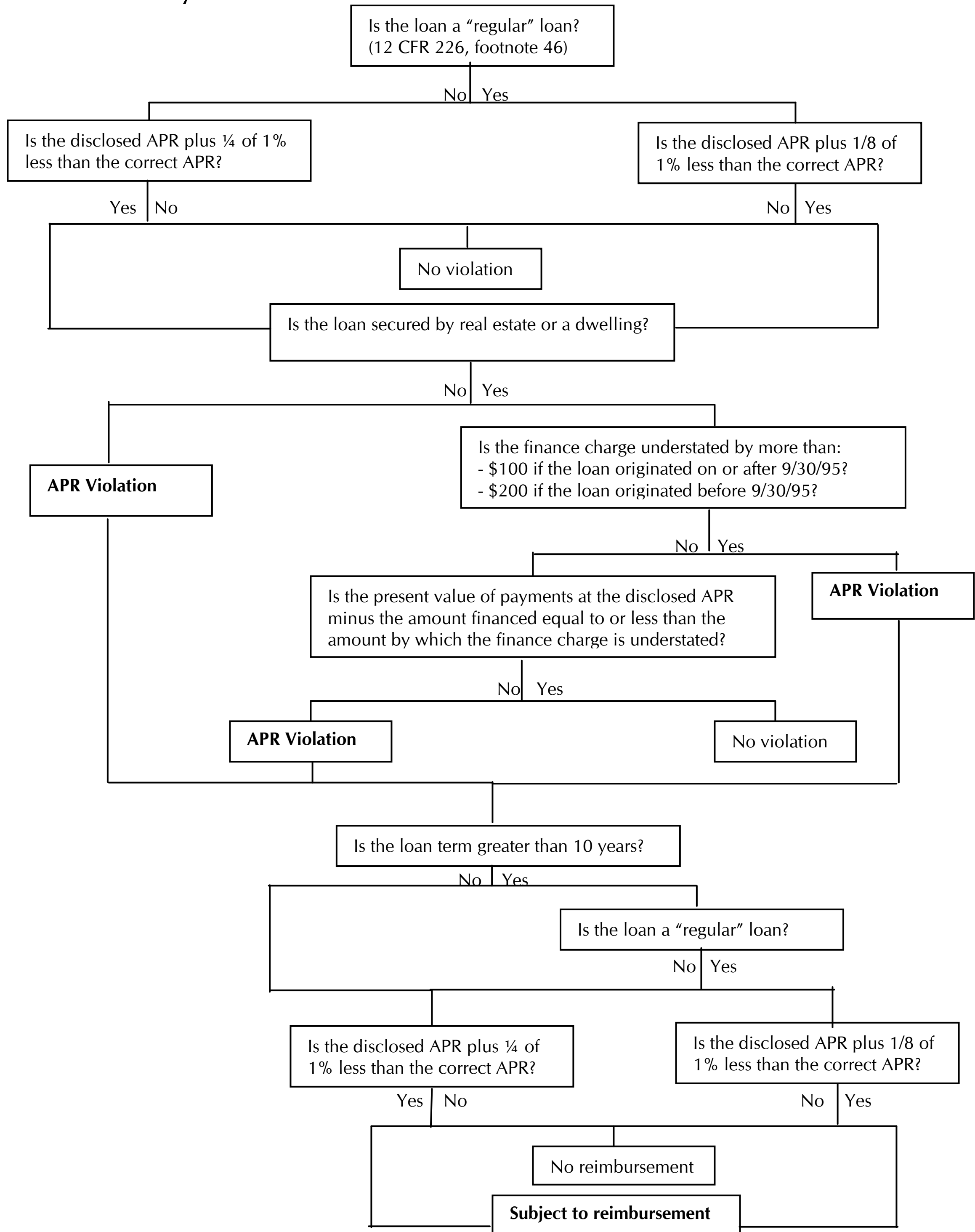


NOTE: While an overstated Finance Charge is a Regulation Z violation, it is not reimbursable.

Closed-End Credit: Accuracy Tolerances for Overstated APRs



Closed-End Credit: Accuracy and Reimbursement Tolerances for Understated APRs



Summary of Coverage Rules for ARMs

OCC ARMs *12 CFR 34.20*	*Regulation Z ARMs* *12 CFR 226.19(b)*
Variable rate loans to purchase or refinance a one- to four-family dwelling and secured by a lien on such a dwelling.	Variable rate loans secured by the consumer's principal dwelling.
Includes: — Open-end credit. — Closed-end credit. — Consumer-purchase loans. — Loans to consumers. — Loans with a business purpose. — Loans to businesses. — Loans for second and vacation homes.	Includes: — Loans subject to closed-end credit provisions of Regulation Z. — Short-term, fixed rate loans, if creditor is committed to renew. — Loans with maturity greater than one year.
Excludes: — Short-term, fixed rate, nonamortizing loans, even if the creditor is committed to renew (unless the renewal is for the full amortization period). — Fixed rate demand loans	Excludes: — Business purpose loans. — Open-end credit (separate open-end HELOC provisions apply). — Any loans not subject to Regulation Z. — Loans with maturity of one year or less (unless creditor is committed to renew and total period surpasses one year). — Second home loans, vacation home loans, short-term bridge loans, short-term construction loans.

Joint Policy Statement on Administrative Enforcement of the Truth in Lending Act – Restitution

The Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221) was enacted on March 31, 1980. Title VI of that Act, the Truth in Lending Simplification and Reform Act, amends the Truth in Lending Act, 15 U.S.C. 1601, et seq. Section 608 of Title VI, effective March 31, 1980, authorizes the federal Truth in Lending enforcement agencies to order creditors to make monetary and other adjustments to the accounts of consumers where an annual percentage rate (APR) or finance charge was inaccurately disclosed. It generally requires the agencies to order restitution when such disclosure errors resulted from a clear and consistent pattern or practice of violations, gross negligence, or a willful violation which was intended to mislead the person to whom the credit was extended. However, the Act does not preclude the agencies from ordering restitution for isolated disclosure errors.

This policy guide summarizes and explains the restitution provisions of the Truth in Lending Act (Act), as amended. The material also explains corrective actions the financial regulatory agencies believe will be appropriate and generally intend to take in those situations in which the Act gives the agencies the authority to take equitable remedial action.

The agencies anticipate that most financial institutions will voluntarily comply with the restitution provisions of the Act as part of the normal regulatory process. If a creditor does not voluntarily act to correct violations, the agencies will use their cease and desist authority to require correction pursuant to: 15 U.S.C. 1607 and 12 U.S.C. 1818(b) in the cases of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision; and 15 U.S.C. 1607 and 12 U.S.C. 1786(e)(1) in the case of the National Credit Union Administration.

Restitution Provisions

Definitions

Except as provided below, all definitions are those found in the Act and Regulation Z, 12 CFR 226.

1. "Current examination" means the most recent examination begun on or after March 31, 1980, in which compliance with Regulation Z was reviewed.

2. "Lump sum method" means a method of reimbursement in which a cash payment equal to the total adjustment will be made to a consumer.

3. "Lump sum/payment reduction method" means a method of reimbursement in which the total adjustment to a consumer will be made in two stages:

   a. A cash payment that fully adjusts the consumer's account up to the time of the cash payment; and

   b. A reduction of the remaining payment amounts on the loan.

4. "Understated APR" means a disclosed APR that is understated by more than the reimbursement tolerance provided in the Act[1] as follows:

   - For loans[2] with an amortization schedule of 10 years or less, a disclosed APR which, when increased by the greater of the APR tolerance specified in the Act[3] and Regulation Z[4] or one-quarter of 1 percent, is less than the actual APR calculated under the Act.[5]

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[1] 15 U.S.C. 1607(e)
[2] For loans consummated after March 31, 1982. For loans consummated prior to that date refer to the Policy Guide dated July 21, 1980 (45 FR 48712) for additional guidance.
[3] 15 U.S.C. 1606(c)
[4] 12 CFR 226.14(a) and 226.22(a)
[5] If, however, the loan is closed-end credit secured by real estate or a dwelling and the APR is understated by more than one-quarter of 1 percent, the APR will be considered accurate and not subject to reimbursement if: (1) The finance charge is understated but considered accurate in accordance with the Act and Regulation (i.e.,

- For loans with an amortization schedule of more than 10 years, a disclosed APR which, when increased by the APR tolerance specified in the Act and Regulation Z (i.e., one-quarter of 1 percent for irregular loans, one-eighth of 1 percent for all other closed-end loans) is less than the actual APR.[6]

5. "Understated finance charge" means a disclosed finance charge which, when increased by the greater of the finance charge dollar tolerance specified in the Act and Regulation Z or a dollar tolerance that is generated by the corresponding APR reimbursement tolerance[7] is less than the finance charge calculated under the Act.

De Minimis Rule

If the amount of adjustment on an account is less than $1.00, no restitution will be ordered. However, the agencies may require a creditor to make any adjustments of less than $1.00 by paying into the United States Treasury, if more than one year has elapsed since the date of the violation.

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the finance charge is not understated by more than $100 on loans made on or after 9/30/95, or $200 for loans made before that date); and (2) the APR is not understated by more than the dollar equivalent of the finance charge error and the understated APR resulted from the understated finance charge that is considered accurate.

[6] If, however, the loan is closed-end credit secured by real estate or a dwelling and the APR is understated by more than one-eighth of one percent if the transaction is not considered to be an irregular transaction as defined by the Regulation (12 CFR 226.22(a)(3)) or one quarter of one percent if the transaction is irregular according to the definition, the APR will be considered accurate and not subject to reimbursement if: (1) The finance charge is understated but considered accurate according to the Actual Regulation (i.e., the finance charge is understated but considered accurate according to the Act and Regulation i.e., the finance charge is not understated by more than $100 on loans made on or after 9/30/95, or $200 for loans made before that date); and (2) the APR is not understated by more than the dollar equivalent of the finance charge error and the understated APR resulted from the understated finance charge that is considered accurate.

[7] The finance charge tolerance for each loan will be generated by the corresponding APR tolerance applicable to that loan. For example, consider a single-payment loan with a one-year maturity that is subject to a one-quarter of 1 percent APR tolerance. If the amount financed is $5,000 and the finance charge is $912.50, the actual APR will be 18.25%. The finance charge generated by an APR of 18% (applying the one-quarter of one percent APR tolerance to 18.25%) for that loan would be $900. The difference between $912.50 and $900 produces a numerical finance charge tolerance of $12.50. If the disclosed finance charge is not understated by more than $12.50, reimbursement would not be ordered.

Corrective Action Period

1. Open-end credit transactions will be subject to an adjustment if the violation occurred within the two-year period preceding the date of the current examination.

2. Closed-end credit transactions will be subject to an adjustment if the violation resulted from a clear and consistent pattern or practice or gross negligence where:

    a. There is an understated APR on a loan which originated between January 1, 1977 and March 31, 1980.

    b. There is an understated APR or understated finance charge, and the practice giving rise to the violation is identified during the current examination. Loans containing the violation which were consummated since the date of the immediately preceding examination are subject to an adjustment.

    c. There is an understated APR or understated finance charge, the practice giving rise to the violation was identified during a prior examination and the practice is not corrected by the date of the current examination. Loans containing the violation which were consummated since the creditor was first notified in writing of the violation are subject to an adjustment. (Prior examinations include any examinations conducted since July 1, 1969).

3. Each closed-end credit transaction, consummated since July 1, 1969, and containing a willful violation intended to mislead the consumer is subject to an adjustment.

4. For terminated loans subject to 2 above, an adjustment will not be ordered if the violation occurred in a transaction consummated more than two years prior to the date of the current examination.

Calculating the Adjustment

Consumers will not be required to pay any amount in excess of the finance charge or dollar equivalent of the APR actually disclosed on transactions involving:

1. Understated APR violations on transactions consummated between January 1, 1977 and March 31, 1980, or

2. Willful violations which were intended to mislead the consumer.

On all other transactions, applicable tolerances provided in the definitions of understated APR and understated finance charge may be applied in calculating the amount of adjustment to the consumer's account.

Methods of Adjustment

The consumer's account will be adjusted using the lump sum method or the lump sum/payment reduction method, at the discretion of the creditor.

Violations Involving the Non-Disclosure of the APR or Finance Charge

1. In cases where an APR was required to be disclosed but was not, the disclosed APR shall be considered to be the contract rate, if disclosed on the note or the Truth in Lending disclosure statement.

2. In cases where an APR was required to be disclosed but was not, and no contract rate was disclosed, consumers will not be required to pay an amount greater than the actual APR reduced by one-quarter of 1 percentage point, in the case of first lien mortgage transactions, and by 1 percentage point in all other transactions.

3. In cases where a finance charge was not disclosed, no adjustment will be ordered.

Violations Involving the Improper Disclosure of Credit Life, Accident, Health, or Loss of Income Insurance

1. If the creditor has not disclosed to the consumer in writing that credit life, accident, health, or loss of income insurance is optional, the insurance shall be treated as having been required and improperly excluded from the finance charge. An adjustment will be ordered if it results in an understated APR or finance charge. The insurance will remain in effect for the remainder of its term.

2. If the creditor has disclosed to the consumer in writing that credit life, accident, health, or loss of income insurance is optional, but there is either no signed insurance option or no disclosure of the cost of the insurance, the insurance shall be treated as having been required and improperly excluded from the finance charge. An adjustment will be ordered if it results in an understated APR or finance charge. The insurance will remain in effect for the remainder of its term.

Special Disclosures

Adjustments will not be required for violations involving the disclosures required by sections 106(c) and (d) of the Act, (15 U.S.C. 1605(c) and (d)).

Obvious Errors

If an APR was disclosed correctly, but the finance charge required to be disclosed was understated, or if the finance charge was disclosed correctly, but the APR required to be disclosed was understated, no adjustment will be required if the error involved a disclosed value which was 10 percent or less of the amount that should have been disclosed.

Agency Discretion

Adjustments will not be required if the agency determines that the disclosure error resulted from any unique circumstances involving a clearly technical and non-substantive disclosure violation which did not adversely affect information provided to the consumer and which did not mislead or otherwise deceive the consumer.

Safety and Soundness

In some cases, an agency may order, in place of an immediate, full adjustment, either a partial adjustment, or a full adjustment in partial payments over an extended time period that the agency considers reasonable. The agency may do so if it determines that (1) the full, immediate adjustment would have a significantly adverse impact upon the safety and soundness of the creditor, and (2) a partial adjustment, or making partial payments over an extended period of time, is necessary to avoid causing the creditor to become undercapitalized.[8]

Exemption from Restitution Orders

A creditor will not be subject to an order to make an adjustment if within 60 days after discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account to ensure that such person will not be required to pay a finance charge in excess of that actually disclosed or the dollar equivalent of the APR disclosed, whichever is lower. This 60-day period for correction of disclosure errors is unrelated to the provisions of the civil liability section of the Act.

[8] The term "undercapitalized" will have the meaning as defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

Questions and Answers Regarding Joint Interagency Statement of Policy for Administrative Enforcement of the Truth in Lending Act – Reimbursement Issued by the FFIEC on July 11, 1980, and Revised October 1998 (Approved July 22, 1999)

General

1. **Q**. Do the enforcement standards and accuracy tolerances in the Policy Guide supersede the requirements of the Truth in Lending Act and Regulation Z?

   A. No. The policy guide applies to agency enforcement procedures only. It does not alter a creditor's responsibility to comply fully with all the requirements of the Act and Regulation Z, including finance charge and annual percentage rate (APR) accuracy requirements.

2. **Q**. When violations are discovered in purchased or assigned loans that are initially payable to an entity other than the financial institution, will the financial institution be ordered to make the necessary adjustments to the accounts of affected consumers?

   A. No, the financial institution is not the creditor, even if the obligation by its terms is payable initially to a third party and simultaneously assigned to the financial institution. The violations will be referred to the creditor's enforcing agency.

3. **Q**. If the creditor must itemize the amount financed, but fails to disclose or understates the prepaid finance charge, will reimbursement be required?

   A. No, this violation of Regulation Z will require prospective corrective action only, assuming the prepaid finance charges are properly included in the computation of the APR and finance charge.

4. **Q**. If APR or finance charge disclosures not required by Regulation Z have been made, will reimbursement be required when such optional disclosures are understated?

A. No, however, errors in disclosures not required by Regulation Z for a particular transaction are violations of either 12 CFR 226.5(a)(1) or 12 CFR

226.17(a)(1), both of which require that credit disclosures be made clearly and conspicuously.

Definitions

"Current examination"

1. **Q**. How should the Policy Guide apply to a situation where an examiner, in an examination in progress discovers that reimbursement had not been undertaken as requested by the enforcement agency following the prior examination? What if the institution states that this examination is the "current examination" thereby requiring it to only make adjustments to those loans found to be in violation and consummated since the prior examination?

   A. TILA does not limit the agencies' authority to require correction of violations detected in earlier examinations and that have not been corrected as of the date of the current examination [see section 108(e)(3)(C)(i) of the Act, found at 15 USC 1607(e)(3)(c)(i)]. In addition, if the practice giving rise to the violations identified in the earlier examination has not been corrected, the institution will be required to make adjustments on any loans containing the violation that were consummated since the date it was first notified in writing of the violation and comply with the corrective action already ordered.

"Understated APR"

1. **Q**. What is meant by "actual APR" and "annual percentage rate calculated in accordance with the Act," as used in the Policy Guide?

   A. Those terms mean the lowest permissible APR that can be computed, applying all applicable provisions of Regulation Z.

De Minimis Rule

1. **Q**. How should the de minimis rule be applied in closed-end credit transactions?

A. The de minimis rule should always be applied to the amount of the adjustment calculated under the "lump sum method" of reimbursement as of the maturity date of the transaction, regardless of which reimbursement method is ultimately used by the creditor.

2. **Q**. How should the de minimis rule be applied in open-end credit transactions?

   A. The de minimis rule should be applied to the total amount of the adjustment calculated for each consumer's account under the "lump sum method" for the period of time from the date of the current examination back to the date of the first occurrence of the violation. However, the total time period may not exceed the two-year period prior to the date of the current examination.

Corrective Action Period

1. **Q**. Have the agencies changed their position on the time period required for taking corrective action for violations involving closed-end credit?

   A. Yes. Prior to 1997, the agencies took the position that the statutory phrase "immediately preceding examination" (which serves as the cutoff date for retroactive application of a reimbursement requirement) referred to the most recent examination (prior to the current examination) in which compliance with Regulation Z and the Act was reviewed. Because of decisions reached by the Eighth and Eleventh Circuits of the United States Courts of Appeals, the agencies have adopted a new policy. The agencies by policy now interpret the phrase "immediately preceding examination" to mean an examination of any type conducted for any purpose by a federal regulatory agency with designated administrative enforcement responsibility under the TILA. However, supervisory visitations, inspections, or other reviews that are not considered examinations by the agencies are not considered examinations for purposes of applying the retroactivity limitation. In addition, an examination of an affiliated entity, such as an operating subsidiary or an institution's holding company, is not considered an examination for purposes of determining the corrective action time period under the Act.

2. **Q**. What is the effective date of the new policy change regarding the time period for corrective action for violations involving closed-end credit?

   A. The policy change regarding the corrective action timer period was effective as of August 7, 1997.

3. **Q**. Can an institution terminate the remainder of its restitution obligation to a borrower in light of this change in policy?

   A. No. The policy change applies to future and pending cases as of the effective date. There will be no change in reimbursement obligations arising in connection with restitution cases that have been previously resolved. Once the institution makes its decision about the restitution method that it will pursue. It is expected to complete its obligations to affected borrowers as agreed.

   For example, under the "Lump Sum/Payment Reduction" method of reimbursement, an institution remits to the borrower a lump sum covering excess money paid to the point that restitution is made, and then reduces future payments to cover the remaining restitution obligation. Under the new policy, the agencies will not permit the institution to terminate its remaining restitution obligation by increasing the borrower's payments to the level that were prior to the restitution action.

4. **Q**. How will the agencies apply the policy change when "concurrent" examinations are being conducted at a financial institution?

   A. Concurrent examinations occur when several different types of examinations begin on the same day or when examinations begin in succession. Concurrent examinations may also begin several weeks or months apart but within the same examination cycle, based on factors such as the availability of working space for the examination teams, or the expressed preferences of the institution's management.

   For purposes of applying the policy change regarding the corrective action time period, the agencies consider a concurrent examination to be one event. Assume, for example, the situation where a safety and soundness examination begins on Monday, a trust examination begins on Tuesday, and the compliance examination starts on Wednesday. Assume further that the compliance team identifies a pattern or practice of violations triggering the restitution provisions of

the Act. The agencies will consider the immediately preceding examination to be the last completed examination, not the trust examination that begins on Tuesday, or the safety and soundness examination that began on Monday.

Similarly, assume an institution's examination is to be conducted in succession, meaning that the compliance examination would begin after the safety and soundness and/or trust examination on site work in the institution is completed, which could be several months after the start date of the concurrent examination. The agencies will consider those concurrent examinations to be part of the same examination cycle for purposes of the policy.

5. **Q**. Does the policy change limit or otherwise affect the corrective action time period where a practice identified at a prior examination is not covered by the date of the current examination?

   A. No. The Policy Guide and statute provide that if a practice is identified during a current examination and the examiner determines that the practice was identified during a prior examination but is not corrected by the date of the current examination, the corrective action time period is retroactive to the date of the prior examination in which the violation was identified. This will be true even if there have been intervening examinations that did not review for compliance with the Act and Regulation Z. [see section 108(e)(3)(c)(I) found at 15 USC 1107(e)(3)(c)(I)]

6. **Q**. Are there any differences in application of the policy change when restitution situations involve open-end credit rather than closed-end credit?

   A. Yes. The Act provides different corrective action time periods for open-end and closed-end credit. The policy change applies to restitution situations involving closed-end credit. The corrective action time period for open-end credit covers the 24-month period preceding the date of the current examination, regardless of whether another examination intervenes during that period.

7. **Q**. What is the corrective action period with respect to terminated closed-end loans if an institution elects to comply voluntarily with the restitution provisions of the Policy Guide, absent a current examination?

A. The Policy Guide states that "for terminated loans ... an adjustment will not be ordered if the violation occurred in a transaction consummated more than two years prior to the date of the current examination." If an institution elects to comply voluntarily with the Policy Guide absent a current examination, the financial institution will have the option of either:

(1) Deferring reimbursement on any terminated loans until its regulatory agency conducts a current examination, or (2) Reimbursing on any terminated loans falling within the period prior to the discovery of the violation up to the date of the immediately preceding examination. If that time frame is in excess of two years, then reimbursement may be limited to the two-year period prior to the date of discovery of the violation.

8. **Q**. How will the Policy Guide apply when loans subject to reimbursement are acquired through a merger, consolidation, or in exchange for the assumption of deposit liabilities?

   A. In the case of a merger or consolidation, the receiving institution or the consolidated institution is liable for all liabilities of the merged or consolidating institutions, and the Policy Guide will apply.

   In the case of loans acquired in exchange for the assumption of deposit liabilities, the Policy Guide will apply to the original creditor.

Calculating the Adjustment

1. **Q**. How will disclosures containing information properly estimated under 12 CFR 226.5(c), 12 CFR 226.17(c), and appendix D be treated for reimbursement determinations and computations?

   A. If an APR or finance charge is in error for any reason other than a properly made estimate, the determination of whether the error constitutes a reimbursable overcharge should be made using the estimated information as disclosed. At the creditor's option, reimbursement should be based on either:

   (1) The actual amount of loan advances, with consideration given to the amount and the dates payments were made by the borrower, or;

(2) The disclosed amounts or time intervals between advances and between payments.

The basis selected shall be applied, using the lump sum or lump sum/payment reduction method (at the creditor's discretion), to all loans of the same type subject to reimbursement.

2. **Q**. If a creditor has failed to reflect private mortgage insurance premiums in the APR or finance charge disclosures, may the institution cancel the insurance after it first reimburses the consumer with a lump sum payment to cover the period up to the date of the reimbursement?

   A. The creditor may elect to cancel the insurance if applicable laws and regulations are not violated. The effect of canceling the insurance will be to reduce the amount of the consumer's future payments, as permitted by the "lump sum payment reduction" method of reimbursement.

3. **Q**. If a creditor has failed to reflect private mortgage insurance premiums in the APR or finance charge disclosures and restitution is required, but the loan has been sold into the secondary market, how should reimbursement be made?

   A. The creditor is responsible for reimbursement, even if the loan has been sold. If its ability to cancel the insurance is limited by terms of the loan sales agreement, the creditor may make payments either to the consumer directly or (if it is agreeable to all parties) to the new owner of the loan. The new owner of the loan would make appropriate adjustments to the account so that the consumer receives the full benefit of the reimbursement.

4. **Q**. If the creditor failed to include any component of the finance charge (e.g., a loan origination fee) in the APR or finance charge disclosures, may the amount of reimbursement be reduced to account for fees excludable from the finance charge under 12 CFR 226.4(c), which are paid for by such finance charge components?

   A. If the borrower has not otherwise paid such excludable fees (e.g., title insurance fees) to the creditor or to a third party, reimbursement may be

computed after first deducting from the finance charge those fees qualifying under 12 CFR 226.4(c).

5. **Q**. A transaction involves a loan with a term of 36 months, a payment schedule where the first 35 payments are calculated using a 30-year amortization and a balloon amount for the final payment. What tolerance should be used when applying the Policy Guide? One-eighth of 1 percent or one-quarter of 1 percent?

   A. The application tolerance is based on the amortization of the loan. Since the loan is completely amortized within a three-year period (i.e., the 36-month payment schedule), a tolerance of one-quarter of 1 percent should be used because the amortization period is less than 10 years (15 USC 1607(e)(1)).

6. **Q**. How will the policy guide apply if a credit transaction has an interest rate or APR subject to increase and the variable rate feature was not provided on the disclosure statement?

   A. If the disclosure statement did not state that the rate would be subject to change, the borrower may be charged only the original APR disclosed. Reimbursement under the policy guide will apply only to the period of time in which the borrower made payments at an increased rate.

7. **Q**. How will the policy guide apply if a creditor disclosed that a rate will be prospectively subject to increase, but the APR or the finance charge disclosed or both were originally understated?

   A. The policy guide will apply as follows:

   (1) If only the APR is understated, reimbursement will be required only for the period of time before the first scheduled change in rate under the variable rate feature in the contract. The term "the first scheduled change in rate" refers to a date on which the rate will change to a level that is unknown or unpredictable at consummation. It does not include changes, such as step rates, that are agreed upon before consummation.

   For example, if the loan terms provide for a 9 percent rate for the first year and a 10 percent rate for the second year, followed by a variable rate feature to be invoked at the beginning of the third year, reimbursement will apply only to the initial 24-month period. The lump sum payment reduction adjustment method

may be used, using two payment streams for the initial two-year period. Payments after the 24th month would not be affected by the adjustment.

(2) If only the finance charge is understated, reimbursement generally will be required for a period covering the entire life of the loan, consistent with the following:

- If a prepaid finance charge was not included in the disclosed finance charge (such as a loan origination fee paid separately by the consumer at loan closing), the entire loan fee (less the applicable dollar tolerance) must be refunded as a "lump sum" payment.

- If, however, the loan fee was financed (included in the loan amount), the finance charge reimbursement may be prorated on a straight-line basis over the life of the loan and refunded under the lump sum/payment reduction method.

However, a finance charge adjustment will be required only for the period of time before the first scheduled change in rate if the error occurred solely because the interest component of the disclosed finance charge was based on either:

(a) The interest to be earned before the first scheduled change in rate, or

(b) The interest to be earned assuming an initial discounted rate over the life of the loan.

For example, the interest component of the disclosed finance charge might incorrectly reflect only loan interest for the first year on a transaction with variable rate changes scheduled annually. Alternatively, it might incorrectly reflect interest calculated only at an initial discounted variable rate for the full term of the loan. In either case, if the loan terms in the example provide that the variable interest rate is subject to change annually, the finance charge reimbursement will apply only to the initial 12-month period.

The adjustment may be prorated on a straight-line basis over the life of the loan. Reimbursement of prorated amounts covering the period of time after the first scheduled change in rate (after month 12 in this example) would not be required. (3) If both the APR and finance charge are understated, normally the lump sum finance charge adjustment is compared with the lump sum APR adjustment as of the loan maturity date and the larger adjustment determines which disclosure error is subject to reimbursement. In the case of variable rate transactions, however, the lump sum APR adjustment used for comparison is calculated for the period of time before the first scheduled change in rate in the manner indicated by (1) above and the finance charge adjustment is calculated in the manner indicated by (2) above.

For example, assume a loan in which both the APR and finance charge are understated on a 30-year, variable rate loan that calls for rate changes annually. If both understatements were caused by the same failure to take into account a prepaid loan origination fee:

- The APR reimbursement amount is the lump sum value for a 12-month period, which is determined by using the lump sum/payment reduction method and appropriate reimbursement tolerances.

- The finance charge reimbursement amount is the lump sum value for a 360-month period, which is determined by subtracting the appropriate reimbursement tolerance from the amount of the loan fee.

The APR adjustment is compared to the finance charge adjustment to determine the larger of the two. In the example, the finance charge adjustment (and not the APR adjustment) would be reimbursable.

8. **Q**. If a creditor uses a simple interest rate, which is disclosed as the APR, to compute a monthly payment schedule, and the time interval from the date the finance charge begins to be earned to the date of the first payment is treated as if it were one month, even though that period is greater than one month and is not a “minor irregularity” under 12 CFR 226.17(c)(4), is enforcement action necessary if the resulting application of the simple interest rate generates a higher finance charge than the one disclosed?

   A. The policy guide will apply if:

(1) The creditor's method of computing the payment schedule, as previously described, is used to compute the disclosed finance charge (i.e., the total of payments less the amount financed).

(2) The final payment collected or scheduled under the contract (as generated by the application of the simple interest rate to the unpaid principal balance over the life of the loan) is greater than the one disclosed.

(3) The finance charge resulting from the first two conditions is understated.

9. **Q**. Will reimbursement be required for demand loans with disclosures based on a one-year maturity when the demand loan contract calls for periodic payments that will amortize the loan over a definite time period?

   A. Yes. A formal amortization schedule recorded in the demand loan contract is, under 12 CFR 226.17(c)(5), equivalent to an alternative maturity date, and disclosures based on the amortization schedule should be made, as opposed to the one-year disclosures.

10. **Q**. Will reimbursement be required on demand loans when:

   (1) An alternate maturity date is disclosed and reflected in the contract, but the finance charge disclosure is based on the year?

   (2) There is no alternate maturity date disclosed or reflected in the contract, but the finance charge disclosure is based on a period of time less than one year?

   A. In the first case, since there is an alternative maturity date in the contract, which is disclosed, the finance charge disclosure should have been based on that alternate maturity date, as required under 12 CFR 226.17(c)(5), not on the disclosure period to be used when the instrument has no alternate maturity date.

   In the second case, the actual finance charge disclosure should have been based on a one-year period as required by 12 CFR 226.17(c)(5), not on some period less than that required when the instrument has no alternate maturity date.

After considering appropriate tolerances, reimbursement will be required in both cases if:

(1) The disclosed finance charge is less than the actual finance charge for the initial required disclosure period.

(2) The demand loan has been on the bank's books past the period for which finance charge disclosures were made.

Reimbursement will be calculated for the required disclosure period only. The amount reimbursed to the consumer is the difference between the finance charge actually paid and the finance charge disclosed (which may be increased by the applicable finance charge reimbursement tolerance).

If the demand loan has not been on the bank's books past the period for which finance charge disclosures were made (e.g., the finance charge was disclosed for a one-year period, but should have been disclosed for a five-year period, and only 10 months have elapsed), no reimbursement is required. However, if the bank takes no prospective corrective action (i.e., if it does not at least disclose in writing a refinancing of the original loan) and the loan remains on the bank's books past the period for which the original finance charge disclosures were made, reimbursement will be required as previously indicated.

Those concepts apply both to straight and variable rate demand loans whenever the disclosed finance charge is less than the actual finance charge after considering appropriate tolerances.

11.**Q**. How will the policy guide apply to violations of the early disclosure rules under Regulation Z?

A. As a general rule, the Policy Guide will not apply to violations involving early truth-in-lending disclosures, but will apply to violations of the pre-consummation disclosures required by section 226.17. However, if the creditor has provided erroneous early disclosures and has not made pre-consummation disclosures, the Policy Guide will apply to the erroneous early disclosures.

Methods of Adjustment

1. **Q**. Must reimbursements resulting from understated finance charges always be made as a single "lump sum" amount?

   A. No. Reimbursements resulting from the creditor's failure to include prepaid finance charges in the total finance charge must always be refunded as a "lump sum" payment, but reimbursements resulting from failure to include finance charge components that accrue over time may be prorated on a straight-line basis (no time value) over the life of the loan and refunded under the lump sum/payment reduction method.

2. **Q**. Must a creditor use one reimbursement method consistently on all affected loans?

   A. No. The creditor's right to choose between the two methods applies to each transaction.

3. **Q**. May a creditor apply a lump sum reimbursement to the consumer's loan balance on a loan requiring reimbursement instead of making a cash payment to the consumer?

   A. If the loan is closed-end, the creditor must make a cash payment or a deposit into an existing unrestricted consumer asset account, such as an unrestricted savings, NOW account, or demand deposit account. However, if the loan is delinquent, in default, or has been charged off, the creditor may apply all or part of the reimbursement to the amount past due, if permissible under law.

   If the reimbursement involves an open-end account, the creditor must make a cash payment or a deposit into an existing unrestricted consumer asset account such as an unrestricted savings, NOW, or demand deposit account. However, on a case-by-case basis, the agencies may permit the creditor to credit the consumer's open account by the amount of the reimbursement if the consumer consents. Creditors should be aware that crediting open-end accounts might create credit balances subject to the requirements of 12 CFR 226.11. In addition,

if the open-end account is delinquent, in default, or has been charged off, the creditor may apply all or part of the reimbursement to the amount past due, if permissible under law.

4. **Q**. If a transaction involves more than one consumer, to whom must reimbursement be made?

   A. The reimbursement is the property of, and is to be made to, the primary obligor in the credit transaction. If there is more than one primary obligor, reimbursement must be made jointly. If the primary obligor(s) is deceased, the payment should be made pursuant to the estate and escheat laws of the state. If the creditor is unable to locate the primary obligor(s), after having at least mailed the reimbursement amount to the consumer's last known address, the amount of the reimbursement is subject to the escheat laws of the state.

5. **Q**. How will the policy guide apply to residential mortgage transactions that have been assumed by a third party?

   A. Reimbursement will be made only to the original borrower and only to the extent of overcharges that occurred before the assumption if:

   (1) A reimbursable violation is found on the original borrower's disclosure statement; and

   (2) The original borrower is not released from liability on the loan. The original transaction will be considered terminated with respect to the original borrower on the date of the assumption and the rules for application of the Policy Guide to terminated loans will apply.

   Reimbursement will be made to the original borrower for the period before the assumption occurred if:

   (1) A reimbursable violation is found on the original borrower's disclosure statement.

   (2) The original borrower is not released from liability on the loan. However, in the event the subsequent borrower defaults and the original borrower must again assume payments on the loan, such payments will be based on the payment

amount that would have been calculated under the lump sum payment reduction method at the time of reimbursement, had no assumption occurred.

If a required disclosure to a subsequent borrower contains reimbursable violations, that borrower shall be reimbursed for the period after the assumption occurred, based on the new disclosure.

Non-Disclosure of the APR or Finance Charge

1. **Q**. How will the policy guide apply to loans for which no disclosure statements are on file?

   A. If there is no evidence that the creditor furnished disclosures or if there is a preponderance of evidence that disclosures containing violations subject to reimbursement were destroyed before the record retention period expired, either violation is treated as a failure to disclose the APR. The creditor will be given the opportunity to substantiate the claim that an accurate disclosure was made before final action is taken. The absence of compliance documentation should be viewed relative to known practices of the creditor for record retention and Regulation Z compliance.

2. **Q**. How will the policy guide apply if a creditor did not provide required disclosures to the consumer before consummation, but did supply them after consummation?

   A. If required disclosures were not provided before consummation of the transaction, the transaction will be viewed as having no APR disclosed, and enforcement action is in order. If the creditor's failure to provide disclosures included the credit life and accident and health insurance disclosures, the insurance premiums must be treated as finance charges.

3. **Q**. Will the policy guide apply when a creditor has disclosed the APR as "2% OP" to mean a fluctuating rate of 2 percent over the prime rate, or has disclosed similar prime rate terminology instead of the APR?

A. If the disclosure statement (not the note) clearly provides the numerical value of the prime rate as it pertains to the credit transaction, as of the time disclosures are given to the consumer, that rate (the prime rate or 2% OP) will be considered to be the disclosed APR under the Policy Guide. If the prime rate is not provided on the disclosure statement, the transaction will be viewed under the policy guide as if no APR had been disclosed.

4. **Q**. Will reimbursement be required on demand loans when the variable rate feature has not been disclosed and the rate is increased?

   A. Yes. If the consumer has not been notified in writing of the rate change on or before the date of the change, reimbursement will be required if the bank has not made the variable rate disclosures.

   Each time the rate is changed and the customer is not given written notification of the new rate, the rate-change period(s) will be treated as if no APR had been disclosed, and the policy guide will apply. The rate on the most recent notification will serve as the contract rate.

Improper Disclosure of Credit Life, Accident, Health, or Loss of Income Insurance

1. **Q**. Are the credit insurance provisions of the Policy Guide applicable to terminated loans?

   A. Yes. The credit insurance provisions apply if such loans originated within the policy guide's corrective action period for terminated loans.

2. **Q**. How will the policy guide apply if the cost of credit insurance premiums is disclosed as a rate (e.g., as a percentage or in dollars and cents per hundred per month) in a closed-end transaction?

   A. Regulation Z permits creditors to disclose credit insurance premiums on a unit-cost basis in closed-end transactions by mail or telephone under 12 CFR 226.17(g), and in certain closed-end transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

   In all other closed-end credit transactions, however, the dollar amount of insurance premiums must be disclosed. If the premium cost in those cases is disclosed as dollars or cents per hundred or as a percentage, it will be treated as

if no disclosure of the cost has been made and the policy guide will apply accordingly.

3. **Q**. How will the policy guide apply if:

   (1) The creditor does the not include premiums for credit life, accident, and health insurance in the APR or finance charge disclosures; and

   (2) The creditor fails to disclose the optional nature of the insurance; but

   (3) The creditor has afforded the borrower the option of taking or refusing the insurance by checking a block or initialing a line opposite statements similar to the following, both of which are disclosed in writing to the borrower: "I desire credit life, accident, and health insurance" and "I do not desire credit life, accident, and health insurance?

   A. In those cases, the policy guide will apply because the creditor has not disclosed to the customer in writing, as required by section 226.4(d)(1)(i) of Regulation Z, that the credit life insurance or accident and health insurance are optional.

4. **Q**. How will the policy guide apply if:

   (1) The consumer is charged for credit life, accident, or health insurance premiums; and

   (2) The creditor did not include the premiums in the APR or finance charge disclosures; and

   (3) The creditor disclosed the optional nature and cost of credit life insurance to the consumer in writing and the customer signed or initialed close to those disclosures; and

   (4) Either no affirmative statement indicating a desire to obtain the insurance was provided or the appropriate box or line was not checked or otherwise marked to indicate whether the customer did or did not desire the insurance?

A. If the disclosure provided a choice to the customer through statements, such as “I desire the insurance” and “I do not desire the insurance,” and neither choice has been marked by the customer, enforcement action is in order because the creditor did not meet the requirements of 12 CFR 226.4(d)(1)(iii).

If no affirmative statement indicating a desire to purchase the insurance has been provided, and the customer has only signed or initialed near the optional nature statements or cost disclosures, the Policy Guide will apply because the creditor did not meet the requirements of 12 CFR 226.4(d)(1)(iii).

5. **Q**. How will the policy guide apply if:

   (1) The creditor does not include premiums for credit life, accident, and health insurance in the APR or finance charge disclosures; and

   (2) The creditor provides disclosures stating that the insurance is not required; and

   (3) The creditor provides the cost of each type of insurance, with a statement that the customer’s signature will indicate a desire to purchase the insurance and the customer signs once, below the cost disclosures, but does not initial each type of insurance desired?

   A. If the disclosures clearly indicate that the customer, by signing where indicated, elects to purchase each type of insurance for which the cost has been provided, the Policy Guide will not apply. However, prospectively the creditor shall clarify such disclosures by obtaining the customer’s initials for each type of insurance selected, or by changing the manner in which the customer signs for credit insurance when more than one type is offered.

6. **Q**. If vendor’s single interest (VSI) insurance is written in connection with a credit transaction, the insurance premiums are not included in the finance charge, and the creditor does not obtain a waiver of the right of subrogation from the insurer, is the resulting finance charge understatement subject to reimbursement under the Policy Guide?

A. Yes. However, if the insurer has not exercised such rights of subrogation and agrees to prospectively waive that right for outstanding loans, the Policy Guide will not apply to those loans.

Obvious Errors

1. **Q**. What are examples of obvious errors described in the Policy Guide?

   A. Consider a situation where the APR is disclosed correctly and the correct finance charge is $600, no adjustment would be required if the amount of the disclosed finance charge is shown as $60 or less. Likewise, if the finance charge is correctly disclosed and the correct APR is 18.568 percent, no adjustment would be required if the disclosed APR is shown as 1.8568 percent or less.

Laws

15 USC 1601 *et seq.*, Truth in Lending Act (TILA)
15 USC 1666, Fair Credit Billing Act

Regulations

12 CFR 226, Truth-in-Lending Regulation
12 CFR 34, Subpart B, Adjustable Rate Mortgage Regulation

OCC Handbook Booklets

Community Bank Supervision
Compliance Management System
Internal and External Audits
Large Bank Supervision

Software

APRWIN Program http://www.occ.treas.gov/aprwin.htm