

Comptroller of the Currency, Treasury

§ 37.6

could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this part.

(c) *Prohibited contract terms.* A national bank may not offer debt cancellation contracts or debt suspension agreements that contain terms:

(1) Giving the bank the right unilaterally to modify the contract unless:

(i) The modification is favorable to the customer and is made without additional charge to the customer; or

(ii) The customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect; or

(2) Requiring a lump sum, single payment for the contract payable at the outset of the contract, where the debt subject to the contract is a residential mortgage loan.

§ 37.4 Refunds of fees in the event of termination or prepayment of the covered loan.

(a) *Refunds.* If a debt cancellation contract or debt suspension agreement is terminated (including, for example, when the customer prepays the covered loan), the bank shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. A bank may offer a customer a contract that does not provide for a refund only if the bank also offers that customer a *bona fide* option to purchase a comparable contract that provides for a refund.

(b) *Method of calculating refund.* The bank shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

§ 37.5 Method of payment of fees.

Except as provided in § 37.3(c)(2), a bank may offer a customer the option of paying the fee for a contract in a single payment, provided the bank also offers the customer a *bona fide* option of paying the fee for that contract in monthly or other periodic payments. If the bank offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the bank must also disclose to the customer, in accordance

with § 37.6, whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

§ 37.6 Disclosures.

(a) *Content of short form of disclosures.* The short form of disclosures required by this part must include the information described in appendix A to this part that is appropriate to the product offered. Short form disclosures made in a form that is substantially similar to the disclosures in appendix A to this part will satisfy the short form disclosure requirements of this section.

(b) *Content of long form of disclosures.* The long form of disclosures required by this part must include the information described in appendix B to this part that is appropriate to the product offered. Long form disclosures made in a form that is substantially similar to the disclosures in appendix B to this part will satisfy the long form disclosure requirements of this section.

(c) *Disclosure requirements; timing and method of disclosures—*(1) *Short form disclosures.* The bank shall make the short form disclosures orally at the time the bank first solicits the purchase of a contract.

(2) *Long form disclosures.* The bank shall make the long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, then the bank shall provide the long form disclosures in writing at that time.

(3) *Special rule for transactions by telephone.* If the contract is solicited by telephone, the bank shall provide the short form disclosures orally and shall mail the long form disclosures, and, if appropriate, a copy of the contract to the customer within 3 business days, beginning on the first business day after the telephone solicitation.

(4) *Special rule for solicitations using written mail inserts or "take one" applications.* If the contract is solicited through written materials such as mail inserts or "take one" applications, the bank may provide only the short form disclosures in the written materials if the bank mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the

§ 37.7

12 CFR Ch. I (1–1–10 Edition)

bank to respond to the solicitation, subject to the requirements of § 37.7(c).

(5) *Special rule for electronic transactions.* The disclosures described in this section may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(d) *Form of disclosures*—(1) *Disclosures must be readily understandable.* The disclosures required by this section must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided.

(2) *Disclosures must be meaningful.* The disclosures required by this section must be in a meaningful form. Examples of methods that could call attention to the nature and significance of the information provided include:

(i) A plain-language heading to call attention to the disclosures;

(ii) A typeface and type size that are easy to read;

(iii) Wide margins and ample line spacing;

(iv) Boldface or italics for key words; and

(v) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(e) *Advertisements and other promotional material for debt cancellation contracts and debt suspension agreements.* The short form disclosures are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

§ 37.7 Affirmative election to purchase and acknowledgment of receipt of disclosures required.

(a) *Affirmative election and acknowledgment of receipt of disclosures.* Before entering into a contract the bank must obtain a customer's written affirmative election to purchase a contract and written acknowledgment of receipt of the disclosures required by § 37.6(d). The election and acknowledgment information must be conspicuous, simple, direct, readily understandable, and de-

signed to call attention to their significance. The election and acknowledgment satisfy these standards if they conform with the requirements in § 37.6(b) of this part.

(b) *Special rule for telephone solicitations.* If the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided the bank:

(1) Maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract;

(2) Mails the affirmative written election and written acknowledgment, together with the long form disclosures required by § 37.6 of this part, to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(3) Permits the customer to cancel the purchase of the contract without penalty within 30 days after the bank has mailed the long form disclosures to the customer.

(c) *Special rule for solicitations using written mail inserts or "take one" applications.* If the contract is solicited through written materials such as mail inserts or "take one" applications and the bank provides only the short form disclosures in the written materials, then the bank shall mail the acknowledgment of receipt of disclosures, together with the long form disclosures required by § 37.6 of this part, to the customer within 3 business days, beginning on the first business day after the customer contacts the bank or otherwise responds to the solicitation. The bank may not obligate the customer to pay for the contract until after the bank has received the customer's written acknowledgment of receipt of disclosures unless the bank:

(1) Maintains sufficient documentation to show that the bank provided the acknowledgment of receipt of disclosures to the customer as required by this section;

(2) Maintains sufficient documentation to show that the bank made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long form disclosures; and