

previous twelve calendar months begin with the calendar month that precedes the month in which the loan originator accepted the consumer's application.

3. *Lowest interest rate.* To qualify under the safe harbor in §226.36(e)(2), for each type of transaction in which the consumer has expressed an interest, the loan originator must present the consumer with loan options that meet the criteria in §226.36(e)(3)(i). The criteria are: The loan with the lowest interest rate; the loan with the lowest total dollar amount for discount points and origination points or fees; and a loan with the lowest interest rate without negative amortization, a prepayment penalty, a balloon payment in the first seven years of the loan term, shared equity, or shared appreciation, or, in the case of a reverse mortgage, a loan without a prepayment penalty, shared equity, or shared appreciation. To identify the loan with the lowest interest rate, for any loan that has an initial rate that is fixed for at least five years, the loan originator shall use the initial rate that would be in effect at consummation. For a loan with an initial rate that is not fixed for at least five years:

i. If the interest rate varies based on changes to an index, the originator shall use the fully-indexed rate that would be in effect at consummation without regard to any initial discount or premium.

ii. For a step-rate loan, the originator shall use the highest rate that would apply during the first five years.

4. *Transactions for which the consumer likely qualifies.* To qualify under the safe harbor in §226.36(e)(2), the loan originator must have a good faith belief that the loan options presented to the consumer pursuant to §226.36(e)(3) are transactions for which the consumer likely qualifies. The loan originator's belief that the consumer likely qualifies should be based on information reasonably available to the loan originator at the time the loan options are presented. In making this determination, the loan originator may rely on information provided by the consumer, even if it subsequently is determined to be inaccurate. For purposes of §226.36(e)(3), a loan originator is not expected to know all aspects of each creditor's underwriting criteria. But pricing or other information that is routinely communicated by creditors to loan originators is considered to be reasonably available to the loan originator, for example, rate sheets showing creditors' current pricing and the required minimum credit score or other eligibility criteria.

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2. At 75 FR 81842, Dec. 29, 2010, supplement I of part 226 was amended under Section 226.18—Content of Disclosures, 18(h) Total of payments, Paragraph 2 is revised; under Sec-

tion 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions, Paragraph 1 is revised; under Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions, 18(s)(2) Interest rates, 18(s)(2)(i) Amortizing loans, Paragraph 18(s)(2)(i)(C), paragraph 1 is revised; under Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions, 18(s)(3) Payments for amortizing loans, Paragraph 18(s)(3)(i)(C), paragraph 1 is revised; under Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions, new 18(s)(7) Definitions and paragraph 1 are added; under appendix D—Multiple Advance Construction Loans, new paragraph 6 is added; under Appendices G and H—Open-End and Closed-End Model Forms and Clauses, paragraph 1 is revised, effective Jan. 30, 2011. For the convenience of the user, the added and revised text is set forth as follows:

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

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SUBPART C—CLOSED-END CREDIT

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Section 226.18—Content of Disclosures 18(h) Total of payments.

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2. *Calculation of total of payments.* The total of payments is the sum of the payments disclosed under §226.18(g). For example, if the creditor disclosed a deferred portion of the downpayment as part of the payment schedule, that payment must be reflected in the total disclosed under this paragraph. To calculate the total of payments amount for transactions subject to §226.18(s), creditors should use the rules in §226.18(g) and associated commentary and, for adjustable-rate transactions, comments 17(c)(1)–8 and –10.

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18(s) Interest rate and payment summary for mortgage transactions.

1. *In general.* Section 226.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for mortgage loans. The information in §226.18(s)(2)–(4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to Model Clause H-4(E), H-4(F), H-4(G), or H-4(H) in appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the

model clause's headings and format is substantially similar to that model clause. Where §226.18(s)(2)–(4) or the applicable model clause requires that a column or row of the table be labeled using the word “monthly” but the periodic payments are not due monthly, the creditor should use the appropriate term, such as “bi-weekly” or “quarterly.” In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan’s term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of §226.18(s) in §226.18(s)(7).

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*Paragraph 18(s)(2)(i)(C)*

1. *Payment increases.* For some loans, the payment may increase following consummation for reasons unrelated to an interest rate adjustment. For example, an adjustable-rate mortgage may have an introductory fixed-rate for the first five years following consummation and permit the borrower to make interest-only payments for the first three years. The disclosure requirement of §226.18(s)(2)(i)(C) applies to all amortizing loans, including interest-only loans, if the consumer’s payment can increase in the manner described in §226.18(s)(3)(i)(B), even if it is not the type of loan covered by §226.18(s)(3)(i). Thus, §226.18(s)(2)(i)(C) requires that the creditor disclose the interest rate that corresponds to the first payment that includes principal as well as interest, even though the interest rate will not adjust at that time. In such cases, if the loan is an interest-only loan, the creditor also must disclose the corresponding periodic payment pursuant to §226.18(s)(3)(ii). The table would show, from left to right: The interest rate and payment at consummation with the payment itemized to show that the payment is being applied to interest only; the interest rate and payment when the interest-only option ends; the maximum interest rate and payment during the first five years; and the maximum possible interest rate and payment. The disclosure requirements of §226.18(s)(2)(i)(C) do not apply to minor payment variations resulting solely from the fact that months have different numbers of days.

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*Paragraph 18(s)(3)(i)(C)*

1. *Taxes and insurance.* An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. If the escrow account will include amounts for items other than taxes and insurance, such as homeowners association dues, the creditor

may but is not required to include such items in the estimate. When such estimated escrow payments must be disclosed in multiple columns of the table, such as for adjustable- and step-rate transactions, each column should use the same estimate for taxes and insurance except that the estimate should reflect changes in periodic mortgage insurance premiums that are known to the creditor at the time the disclosure is made. The estimated amounts of mortgage insurance premiums should be based on the declining principal balance that will occur as a result of changes to the interest rate that are assumed for purposes of disclosing those rates under §226.18(s)(2) and accompanying commentary. The payment amount must include estimated amounts for property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer’s default or other credit loss. Premiums for credit insurance, debt suspension and debt cancellation agreements, however, should not be included. Except for periodic mortgage insurance premiums included in the escrow payment under §226.18(s)(3)(i)(C), amounts included in the escrow payment disclosure such as property taxes and homeowner’s insurance generally are not finance charges under §226.4 and, therefore, do not affect other disclosures, including the finance charge and annual percentage rate.

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*18(s)(7) Definitions.*

1. *Negative amortization loans.* Under §226.18(s)(7)(v), a negative amortization loan is one that requires only a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization. For such a loan, §226.18(s)(4)(iii) requires creditors to disclose the fully amortizing periodic payment for each interest rate disclosed under §226.18(s)(2)(ii), in addition to the minimum periodic payment, regardless of whether the legal obligation explicitly recites that the consumer may make the fully amortizing payment. Some loan types that result in negative amortization do not meet the definition of negative amortization loan for purposes of §226.18(s). These include, for example, loans requiring level, amortizing payments but having a payment schedule containing gaps during which interest accrues and is added to the principal balance before regular, amortizing payments begin (or resume). For example, “seasonal income” loans may provide for amortizing payments during nine months of the year and no payments for the other three months; the required minimum payments (when made) are amortizing payments, thus such loans are

not negative amortization loans under §226.18(s)(7)(v). An adjustable-rate loan that has fixed periodic payments that do not adjust when the interest rate adjusts also would not be disclosed as a negative amortization loan under §226.18(s). For example, assume the initial rate is 4%, for which the fully amortizing payment is \$1500. Under the terms of the legal obligation, the consumer will make \$1500 monthly payments even if the interest rate increases, and the additional interest is capitalized. The possibility (but not certainty) of negative amortization occurring after consummation does not make this transaction a negative amortization loan for purposes of §226.18(s). Loans that do not meet the definition of negative amortization loan, even if they may have negative amortization, are amortizing loans and are disclosed under §§226.18(s)(2)(i) and 226.18(s)(3).

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APPENDIX D—MULTIPLE ADVANCE CONSTRUCTION LOANS

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6. *Relation to §226.18(s)*. A creditor must disclose an interest rate and payment summary table for transactions secured by real property or a dwelling, pursuant to §226.18(s), instead of the general payment schedule required by §226.18(g). Accordingly, home construction loans that are secured by real property or a dwelling are subject to §226.18(s) and not §226.18(g). Under §226.176(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

i. If a creditor uses appendix D and elects pursuant to §226.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §226.18(s). Under §226.18(s), the creditor must disclose the applicable interest rates and corresponding periodic payments during the construction phase in an interest rate and payment summary table. The provision in appendix D, Part I.A.3, which allows the creditor to omit the number and amounts of any interest payments “in disclosing the payment schedule under §226.18(g)” does not apply because the transaction is governed by §226.18(s) rather than §226.18(g). Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose a balloon payment, pursuant to §226.18(s)(5).

ii. On the other hand, if the creditor elects to disclose the construction and permanent phases as a single transaction, the construction phase must be disclosed pursuant to appendix D, part II.C, which provides that the creditor shall disclose the repayment schedule without reflecting the number or amounts of payments of interest only that are made during the construction phase. appendix D also provides, however, that creditors must disclose (outside of the table) the fact that interest payments must be made and the timing of such payments. The rate and payment summary table disclosed under §226.18(s) must reflect only the permanent phase of the transaction. Therefore, in determining the rates and payments that must be disclosed in the columns of the table, creditors should apply the requirements of §226.18(s) to the permanent phase only. For example, under §226.18(s)(2)(i)(A) or §226.18(s)(2)(i)(B)(I), as applicable, the creditor should disclose the interest rate corresponding to the first installment due under the permanent phase and not any rate applicable during the construction phase.

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APPENDICES G AND H—OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES

1. *Permissible changes*. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act’s protection from liability, except formatting changes may not be made to model forms and samples in H-18, H-19, H-20, H-21, H-22, H-23, G-2(A), G-3(A), G-4(A), G-10(A)-(E), G-17(A)-(D), G-18(A) (except as permitted pursuant to §226.7(b)(2)), G-18(B)-(C), G-19, G-20, and G-21, or to the model clauses in H-4(E), H-4(F), H-4(G), and H-4(H). Creditors may modify the heading of the second column shown in Model Clause H-4(H) to read “first adjustment” or “first increase,” as applicable, pursuant to §226.18(s)(2)(i)(C). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

- i. Using the first person, instead of the second person, in referring to the borrower.
- ii. Using “borrower” and “creditor” instead of pronouns.
- iii. Rearranging the sequences of the disclosures.

- iv. Not using bold type for headings.
- v. Incorporating certain state “plain English” requirements.
- vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in “N/A” (not applicable) or “0,” crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)
- vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

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## PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (REGULATION AA)

### Subpart A—General Provisions

- Sec.  
227.1 Authority, purpose, and scope.  
227.2 Consumer complaint procedure.

### Subpart B—Credit Practices Rule

- 227.11 Authority, purpose, and scope.  
227.12 Definitions.  
227.13 Unfair credit contract provisions.  
227.14 Unfair or deceptive practices involving cosigners.  
227.15 Unfair late charges.  
227.16 State exemptions.

### Subpart C [Reserved]

SUPPLEMENT I TO PART 227—OFFICIAL STAFF COMMENTARY

AUTHORITY: 15 U.S.C. 57a(f).

### Subpart A—General Provisions

#### § 227.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Board under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637).

(b) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). This part defines and contains requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices of banks. The prohibitions in this part do not limit the Board’s or any other agency’s authority to en-

force the FTC Act with respect to any other unfair or deceptive acts or practices.

(c) *Scope.* This part applies to banks, including subsidiaries of banks and other entities listed in paragraph (c)(2) of this section. This part does not apply to savings associations as defined in 12 U.S.C. 1813(b). Compliance is to be enforced by:

(1) The Comptroller of the Currency, in the case of national banks and federal branches and federal agencies of foreign banks;

(2) The Board of Governors of the Federal Reserve System, in the case of banks that are members of the Federal Reserve System (other than banks referred to in paragraph (c)(1) of this section), branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(3) The Federal Deposit Insurance Corporation, in the case of banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in paragraphs (c)(1) and (c)(2) of this section), and insured state branches of foreign banks.

(d) *Definitions.* Unless otherwise noted, the terms used in paragraph (c) of this section that are not defined in the Federal Trade Commission Act or in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

[75 FR 7926, Feb. 22, 2010]

#### § 227.2 Consumer-complaint procedure.

(a) *Definitions.* For purposes of this section, unless the context indicates otherwise, the following definitions apply:

(1) “Board” means the Board of Governors of the Federal Reserve System.

(2) “Consumer complaint” means an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a State member bank is unfair or deceptive, or in violation of a regulation