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Presidential Documents

Title 3—

The President

Proclamation 8401 of August 21, 2009

Fiftieth Anniversary of Hawaii Statehood

By the President of the United States of America

A Proclamation

It is with great pride that our Nation commemorates the fiftieth anniversary of Statehood for Hawaii. On August 21, 1959, we welcomed Hawaii into the United States *ohana*, or family. Unified under the rule of King Kamehameha the Great, it was Queen Lili'uokalani who witnessed the transition to a Provisional Government controlled by the United States. As a Nation, we honor the extensive and rich contributions of Native Hawaiian culture to our national character.

Borne out of volcanic activity in the Pacific Ocean, a chain of islands emerged that would bear witness to some of the most extraordinary events in world history. From Pu'ukohola Heiau and the royal residence at the 'Iolani Palace, to the USS ARIZONA Memorial and luaus that pay tribute to Hawaiian traditions, Americans honor the islands' collective legacy and admire their natural beauty. Home to unique and endangered species, active volcanoes, and abundant reefs, the Hawaiian islands actively conserve their distinctive ecosystems with responsible development and a deep-rooted appreciation for the land and surrounding ocean.

The Aloha Spirit of Hawaii offers hope and opportunity for all Americans. Growing up in Hawaii, I learned from its diversity how different cultures blend together into one population—proud of their personal heritage and made stronger by their shared sense of community. Our youngest State, Hawaii faces many of the same challenges other States face throughout our country, and it represents the opportunity we all have to grow and learn from each other.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 21, 2009, as the Fiftieth Anniversary of Hawaii Statehood. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of August, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–20694
Filed 8–25–09; 8:45 am]
Billing code 3195–W9–P

Presidential Documents

Proclamation 8400 of August 20, 2009

Minority Enterprise Development Week, 2009

By the President of the United States of America

A Proclamation

Our Nation's strength rests on the ingenuity and creativity of the American people. Across our country, almost 4 million minority-owned firms exemplify this spirit as they create jobs, develop new products and services, and promote community and economic development. The growth and expansion of these businesses is an increasingly critical part of our economic recovery and long-term prosperity.

At a time when too many Americans are facing extraordinary economic challenges, supporting the development of minority-owned enterprises will help accelerate the revitalization of our economy. Of the 630,000 minority-owned employer firms, these businesses are providing employment and stability to 4.7 million workers while renewing urban neighborhoods and rural communities. They represent a key component of future growth for our economy.

Minority Enterprise Development Week is an opportunity to commemorate the tremendous value minority entrepreneurs and their employees bring to our economy and our Nation as a whole. They embody the timeless American values of hard work, integrity, and optimism. They also serve as role models to countless children who want to start their own business or reach their personal goals. Through their accomplishments and example, these leaders affirm that, with determination and commitment, every American can achieve his or her potential and live out their dreams.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States do hereby proclaim August 23 through August 29, 2009, as Minority Enterprise Development Week. I call upon all Americans to celebrate this week with appropriate programs, ceremonies, and activities to recognize the many contributions of our Nation's minority enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of August, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–20693
Filed 8–25–09; 8:45 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1099; Airspace Docket No. 08–AWP–10]

Modification of Class E Airspace; Lake Havasu, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will modify Class E airspace at Lake Havasu, AZ. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Lake Havasu City Airport, Lake Havasu, AZ. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Lake Havasu City Airport, Lake Havasu, AZ. This also makes a minor change in the airport description. It changes the 2.2-mile radius of Chemehuevi Valley Airport to a 2.3-mile radius.

DATES: *Effective Date:* 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 24, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Lake Havasu, AZ (74 FR 30025). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication of the NPRM, the FAA found an error in the airport description for the excluded airspace. This action corrects that error.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace at Lake Havasu, AZ. Additional controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Lake Havasu City Airport, Lake Havasu, AZ. This action also corrects the 2.2-mile radius exclusion to 2.3 miles.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Lake Havasu City Airport, Lake Havasu, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Lake Havasu, AZ [Modified]

Lake Havasu City, AZ
(Lat. 34°34′16″ N., long. 114°21′30″ W.)
Chemehuevi Valley Airport, CA
(Lat. 34°31′44″ N., long. 114°25′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Lake Havasu City Airport and within 1 mile each side of the Lake Havasu City Airport 150° bearing extending from the 6.7-mile radius to 13 miles southeast of the Lake Havasu City Airport, excluding that airspace with a 2.3-mile radius of Chemehuevi Valley Airport. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°42′47″ N., long. 114°29′37″ W.; to lat. 34°42′47″ N., long. 114°12′06″ W.; to lat. 34°23′00″ N., long. 114°12′06″ W.; to lat. 34°17′19″ N., long. 114°32′12″ W.; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on August 14, 2009.

H. Steve Karnes,

Team Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–20278 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0006; Airspace Docket No. 08–ANM–1]

Establishment of Class D Airspace and Amendment of Class E Airspace; North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class D airspace and amend Class E airspace at Southwest Oregon Regional Airport, North Bend, OR. The establishment of an air traffic control tower has made this action necessary for the safety and management of aircraft within this airspace. This action will also update the name of the airport from North Bend Municipal Airport, North Bend, OR. This action will also make a minor correction to the geographic coordinates of the North Bend VORTAC and the Emire LOM/NDB.

DATES: *Effective Date:* 0901 UTC, October 22, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On March 14, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class D airspace and amend Class E airspace at North Bend, OR (73 FR 13809). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM. Class D and E airspace areas are published in Paragraph 5000 and 6002, respectively, of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class D airspace and amending Class E airspace at Southwest Oregon Regional Airport, North Bend, OR. The establishment of an air traffic control tower has made this action necessary for the safety and management of aircraft within this airspace. This airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. This action will also update the name of the airport from North Bend Municipal Airport, North Bend, OR. Additionally, this action corrects the geographic coordinates of the North Bend VORTAC and the Emire LOM/NDB in the Class E2 airspace area. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class D airspace and amends Class E airspace at Southwest Oregon Regional Airport, North Bend, OR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM OR D North Bend, OR [New]

North Bend Municipal Airport, OR
(Lat. 43°25′02″ N., long. 124°14′46″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the Southwest Oregon Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM OR E2 North Bend, OR [Amended]

North Bend Municipal Airport, OR
(Lat. 43°25′02″ N., long. 124°14′46″ W.)
North Bend VORTAC
(Lat. 43°24′56″ N., long. 124°10′07″ W.)
Emire LOM/NDB
(Lat. 43°23′40″ N., long. 124°18′37″ W.)

Within a 4.2-mile radius of the Southwest Oregon Regional Airport, and within 1.8 miles each side of the North Bend VORTAC 044° radial extending from the 4.2-mile radius to 5.7 miles northeast of the VORTAC, and within 3.7 miles each side of the North Bend VORTAC 092° radial extending from the 4.2-mile radius to 7.5 miles east of the VORTAC, and within 2.7 miles each side of the 241° bearing from the Emire LOM/NDB extending from the 4.2-mile radius to 6.1

miles southwest of the LOM/NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on August 14, 2009.

H. Steve Karnes,

Team Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–20282 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Children's Products Containing Lead; Determinations Regarding Lead Content Limits on Certain Materials or Products; Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (Commission) is issuing a final rule on determinations that certain materials do not exceed the lead content limits specified under section 101(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

DATE: *Effective Date:* This regulation becomes effective on August 26, 2009.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7254, e-mail *khatlelid@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 101(a) of CPSIA, consumer products designed or intended primarily for children 12 years old and younger that contain more than 600 ppm of lead (as of February 10, 2009); 300 ppm of lead (as of August 14, 2009); and 100 ppm after three years (as of August 14, 2011), unless the Commission determines that it is not technologically feasible to have this lower limit, are considered to be banned hazardous substances under the Federal Hazardous Substances Act (FHSA). Products below these lead content limits are not banned; however, in the absence of Commission action, these products and materials used to make children's products remain subject to the lead limits and consequently, the testing requirements of certain provisions of section 14(a) of the Consumer Product Safety Act (CPSA), as amended by section 102(a) of the CPSIA.[1] By this rule, the products and materials determined by the Commission to fall under the lead content limits, are no longer subject to section 101(a) of the CPSIA and no testing of these products and materials is required under section 102(a) of the CPSIA.

B. Statutory Authority

Section 3 of the CPSIA grants the Commission general rulemaking authority to issue regulations, as necessary, to implement the CPSIA. The Commission has the authority under section 3 of the CPSIA to make determinations that certain commodities or classes of materials or products do not, and, by their nature, will not exceed the lead limits prescribed in section 101(a) of the CPSIA. Accordingly, in this rule, the Commission has determined that certain products or materials inherently do not contain lead or contain lead at levels that do not exceed the lead content limits under section 101(a) of the CPSIA. The effect of such a Commission determination would be to relieve the material or product from the testing requirement of section 102 of the CPSIA for purposes of supporting the required certification. However, if the material or product changes such that it exceeds the lead limits of section 101(a) of the CPSIA, then the determination is not applicable to that material or product. The changed or altered material or product must then meet the statutory lead level requirements. The Commission intends to obtain and test products in the marketplace to assure that products comply with the CPSIA lead limits and will take appropriate enforcement action if it finds a product to have lead levels exceeding those allowed by law.

C. Notice of Proposed Rulemaking

In the **Federal Register** of January 15, 2009 (74 FR 2433), the Commission issued a notice of proposed rulemaking on preliminary determinations that certain natural materials do not exceed the lead content limits under section 101(a) of the CPSIA. The preliminary determinations were based on materials that are untreated and unadulterated with respect to the addition of materials or chemicals, including pigments, dyes, coatings, finishes or any other substance, and that did not undergo any processing that could result in the addition of lead into the product or material. These materials included:

- Precious gemstones (diamond, ruby, sapphire, emerald);
- Certain semiprecious gemstones provided that the mineral or material is not based on lead or lead compounds and is not associated in nature with any mineral that is based on lead or lead compounds (minerals that contain lead or are associated in nature with minerals that contain lead include, but are not limited to, the following: Aragonite, bayldonite, boleite, cerussite, crocoite, linarite, mimetite, phosgenite, vanadinite, and wulfenite);
- Natural or cultured pearls;
- Wood;
- Natural fibers (such as cotton, silk, wool, hemp, flax, linen); and
- Other natural materials including coral, amber, feathers, fur, untreated leather.

See 74 FR at 2435.

In addition, in the proposed rule, the Commission preliminarily determined that certain metals and alloys did not exceed the lead content limits under section 101(a) of the CPSIA provided that no lead or lead-containing metal is intentionally added. The metals and alloys considered included surgical steel, precious metals such as gold (at least 10 karat); sterling silver (at least 925/1000); platinum; palladium; rhodium; osmium; iridium; ruthenium. (See 74 FR at 2435). The preliminary determinations did not extend to the non-steel or non-precious metal components of a product, such as solder or base metals in electroplate, clad, or fill applications.

D. Discussion of Comments to the Proposed Rule

The proposed rule generated several hundred comments from a diverse range of interests, including advocacy groups, consumer groups, a State's attorney general's office, and small businesses including crafters. No comment opposed the proposed determinations, and, therefore, the final rule retains those determinations. The proposed rule considered those initial determinations in the context of whether the lead limits

[1] Currently, there is a stay of enforcement of testing and certification requirements of certain provisions of subsection 14(a) of the CPSA, as amended by section 102(a) of the CPSIA until February 10, 2010 (see 74 FR 6936 (February 9, 2009)). The stay does not cover those requirements where testing and certification was required by subsection 14(a) of the CPSA before the CPSIA's enactment, and third party testing and certification requirements for lead paint, full-size and non-full size cribs and pacifiers, small parts, metal components of children's metal jewelry, certifications expressly required by CPSC regulations, certifications required under the Virginia Graeme Baker Pool and Spa Safety Act, certifications of compliance required for All-Terrain Vehicles in section 42(a)(2) of the CPSA, and any voluntary guarantees provided for in the Flammable Fabrics Act.

of such materials would exceed 600 ppm and 300 ppm.

After reviewing the comments and additional data submitted, the Commission further evaluated those materials in the context of whether these materials would exceed 100 ppm, and finds that, for the reasons discussed in the preamble, that such materials would not exceed 100 ppm. Accordingly, the final rule revises the language in former §§ 1500.91(c) and (d) (renumbered as §§ 1500.91(d) and (e)) to remove references to 600 ppm and 300 ppm, and includes a reference to ''lead content limits'' to reflect that the determinations made in the final rule also fall below 100 ppm for such materials. Most comments sought to add to the list of materials; accordingly, the preamble to this final rule will focus on those comments suggesting additions to the list and also describe the changes made to the final rule as a result of those comments. After review of the comments and data, including test results, if any, submitted, the Commission has determined that some materials that fall below the lead content limits may be manufactured or man-made. Accordingly, we have revised proposed § 1500.91(c) (renumbered as § 1500.91(d)) to remove the word ''natural'' before ''materials.'' We note that in the final rule on procedures and requirements for a Commission determination (procedures rule), the Commission explicitly stated that any request for a determination that a specific material or product contains no lead or a lead level below the applicable statutory limit must show that the product or material does not, and would not, exceed the lead limit specified in the request. (74 FR 10475, 10477 (March 11, 2009)). Accordingly, the manufactured materials that the Commission has determined to be below the lead content limits in this rule are limited only to those materials that we could verify do not, and would not contain lead because either their composition or formulation does not contain lead or the use of lead would interfere with or compromise the material or the product on which it is used, and there is no possibility that the product or material can be contaminated with lead or otherwise adulterated. Given the well documented dangers to children for exposure to lead paint, the Commission will not consider any determinations for paints or similar surface-coating materials that are subject to the lead paint ban under the Commission's regulations at 16 CFR part 1303.

For metal (except for the determinations made for certain metals in this rule) and plastic components, the Commission has found that these materials do sometimes contain lead. For example, the Commission previously examined metal and plastic components in the context of children's jewelry. The CPSC Directorate for Laboratory Sciences, Division of Chemistry analyzed 466 children's metal jewelry items from 156 compliance samples since 1996. Nearly 270 items tested had total lead of 600 ppm or more. Numerous metal components including pendants, charms, chains, links, hooks, clasps, and beads contained lead content exceeding 300 ppm, and some components were composed of almost 100 percent lead. In addition, several plastic components such as beads and cords had lead contents ranging from 540 ppm to 5,020 ppm. See CPSC Memorandum from David Cobb to Kristina M. Hatlelid, ''Summary of Test Results for Lead in Children's Metal Jewelry,'' November 29, 2006. Tab B of Briefing Package for Petition Requesting Ban of Lead in Toy Jewelry (Petition No. HP 06–1), December 4, 2006.) The Commission also has found lead in other children's items made of plastic. An analysis of 81 polyvinyl chloride (PVC) bib samples in May 2007 showed samples with total lead content of up to 6,880 ppm. (See CPSC Staff Analysis of Lead Content and Accessible Lead in Vinyl Baby Bibs, May 5, 2007; *http://www.cpsc.gov/CPSCPUB/PREREL/prhtml07/07175.pdf.*) In November, 1997, the CPSC staff also analyzed the lead content for numerous vinyl children's products and found that several children's products, such as an umbrella and toy telephone, showed lead content up to 6,300 ppm. (See CPSC Staff Report on Lead and Cadmium in Children's Polyvinylchloride (PVC) Products, November 21, 2007; *http://www.cpsc.gov/CPSCPUB/PUBS/pbcdtoys.html.*) The Commission has found lead in other products as well. For example, in May 2001, the Commission found that vinyl miniblinds that had lead added to stabilize the plastic in the blinds presented a lead poisoning hazard for young children. The Commission found that over time, the plastic deteriorates from exposure to sunlight and heat to form lead dust on the surface of the blind. In homes where young children were present, children could ingest the lead by wiping their hands on the blinds and then put their hands in their mouths. (See Report on lead in vinyl miniblinds Part 1–Part 3 (May 2, 2001); *http://www.cpsc.gov/library/foia/foia97/os/bp971.pdf.*) In 2003, the Commission banned candles made with metal-cored wicks with lead content exceeding 600 ppm. The Commission found that, as a lead-cored wick candle burns, some of the lead may vaporize and be released into the air. (See Metal-Cored Candlewicks Containing Lead and Candles With Such Wicks, 68 FR 19142 (April 18, 2009).) The Commission stated, ''[s]ome of this lead may deposit onto floors, furniture and other surfaces in the room where children may be exposed to it. One cannot tell by looking at the wick core if it is made of lead, and there is no simple way for a consumer to determine its lead content. The presence of lead in a wick can be determined only by laboratory analysis.'' *Id.* at 19143.

Given the Commission's past experience with lead in plastic and metal, we cannot make a determination that these materials do not or would not contain lead in an amount that does not exceed the lead content limits without a demonstration that the material or product does not and would not contain lead because the inclusion of lead would either interfere with or compromise the manufacture of the material or product, or interfere with or compromise the use of the material or product. Such materials or products must also demonstrate that lead contamination cannot occur during the manufacturing process or be otherwise adulterated. The CPSIA was enacted, in part, to ensure that any material used in any part of a children's product that could contain lead would be tested by a third-party conformity assessment body (laboratory) so that lead-containing materials would not be used, either deliberately, or inadvertently, to make such products. The determinations excluding metal, plastic, and painted components used in children's products will ensure that the materials that do contain lead or could contain lead will continue to be tested consistent with section 102 of the CPSIA.

Most comments requested that the Commission add other materials to the list of materials that the Commission determines are not expected to contain lead above the lead limits prescribed under section 101(a) of the CPSIA. [Ref. 2]. However, most comments were not supported by specific data or other information relevant to the determinations of lead content of the materials, and so we did not have a sufficient evidentiary basis to determine whether those materials would not be expected to contain lead above the statutory limits. For determinations on a specific material or product, a party must submit an application that provides the information requested

under the procedures rule (see 74 FR 10475), including objectively reasonable and representative test results and other evidence showing that the product or material does not and would not exceed the lead content limits. The list of determinations made in this rule is not exhaustive; the Commission will continue to evaluate other requests on materials or products submitted under the procedures rule, and consider whether to re-evaluate a material if new evidence indicates that a re-evaluation is warranted or the Commission receives data or information demonstrating that a particular material does not and would not contain lead. In such circumstances, the Commission will amend the rule, if appropriate.

In other cases, the comments did provide test data and other information relevant to this proceeding, and those comments are addressed in parts D.1 through D.15 of this preamble below.

1. Compliance With Section 101(a) of the CPSIA

Several commenters generally supported the reduction of potentially repetitive and wasteful testing of products and materials that are not expected to contain lead, but they stressed that the Commission should proceed carefully to ensure that the requirements of the law are met. The commenters asserted that the Commission should not only request data from firms, but should test children's products itself, especially those products that have not, to date, been subject to lead content requirements or testing for lead content. One commenter also stated that the final rule should make clear that materials that the Commission determines do not contain excess lead levels must still comply with the statutory lead content standard.

The Commission has already indicated that it intends that all children's products subject to a determination must still comply with the lead limit in its ''Statement of Commission Enforcement Policy on Section 101 Lead Limits,'' dated February 6, 2009 (available on the CPSC's Web site at *http://www.cpsc.gov/about/cpsia/101lead.pdf*). However, the Commission agrees with the comments that the final rule should remind interested parties of their obligation to comply with the lead limits even if their products are the subject of a determination, and so we have amended the final rule to create a new § 1500.91(c) (and renumbering the remaining paragraphs accordingly) stating that:

A determination by the Commission under paragraph (b) of this section that a material or product does not contain lead levels that exceed 600 ppm, 300 ppm, or 100 ppm, as applicable, does not relieve the material or product from complying with the applicable lead limit as provided under paragraph (a) of this section if the product or material is changed or altered so that it exceeds the lead content limits.

In addition, the Commission has in place procedures and requirements for a Commission determination that a specific material or product contains no lead or a lead level below the applicable statutory limit (see 74 FR 10475). Among other things, any request must be supported by objectively reasonable and representative test results or other evidence showing that the product or materials does not, and would not, exceed the lead limit specified in the request. 74 FR at 10477.

As for compliance with the statutory limits, compliance and enforcement activities, including market testing, have always been and continue to be essential to the Commission's mission. Moreover, even when a particular product or material has been relieved of the testing and certification requirements under section 102 of the CPSIA, manufacturers and importers remain responsible for verifying that the material or product has not been altered or modified, or experienced any change in the processing, facility or supplier conditions that could impart lead into the material or product to ensure that it meets the statutory lead levels at all times.

2. Plant and Animal Based Materials

Many commenters asserted that there are many natural, plant or animal-based materials that likely do not contain appreciable lead content and should be suitable for use in children's products without testing for lead content. Materials mentioned include plants in general, and specifically bark, leaves, flowers and flower petals, seeds, cones, loofa, rattan, wicker, bamboo, bamboo fiber, plant-based dyes, nut shells, buckwheat hulls, essential plant oils, lavender, witch hazel, jute, kapok, kenaf, ramie, sisal, hemp, agave, coconut, soy, moss, straw, jojoba oil, and tung oil. Animal-based materials that were mentioned included yak, angora, mohair, llama, alpaca, bison, camel, guanaco, cashmere, horse hair, claws, horn, seashells, bone, animal glue, shellac.

Our review showed that plant and animal-based materials generally do not contain lead at levels that exceed the CPSIA lead limits. [Ref. 1]. However, we find that any determinations made regarding plant and animal-based materials must be confined to those materials that are unadulterated by the addition of chemicals and materials (such as paints and similar surface-coating materials, as discussed further in part D.7 of this preamble) since such treatments or additions may not comply with the lead limits without further testing. Although most materials identified in the comments were not specifically included in the proposed rule, the proposed determinations included three categories of natural materials with examples that are similar to many of these items (*i.e.,* wood; natural fibers, including cotton, silk, wool, hemp, flax, and linen; other natural materials including coral, amber, feathers, fur, and untreated leather). Accordingly, the final rule includes other materials, such as plant and animal-based materials that have not been adulterated or modified as a new § 1500.91(d)(8). Specifically, the new provision covers ''other plant-derived and animal-derived materials, including, but not limited to, animal glue, beeswax, seeds, nut shells, flowers, bone, sea shell, coral, amber, feathers, fur, leather.'' Leather is discussed further in part D.13(c) of this preamble.

3. Foodstuffs

Some commenters stated that foodstuffs or materials suitable in food uses may be used in making children's products and should be determined to comply with lead limits given that they are largely natural plant or animal based materials and are considered edible or safe for use by consumers. Some materials mentioned included vegetable and nut oils, medicinal-grade mineral oil, table salt, flax seed, food coloring, food preservatives, cream of tartar, grain flours, dried beans, dried corn, millet, herbs, cherry pits, rice, seeds, milk, honey, beeswax, candelilla wax, and carnauba wax.

In general, articles that fall within the statutory definition of ''food'' under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 321 et seq.) are excluded from the definition of ''consumer product'' under the Consumer Product Safety Act (CPSA). 15 U.S.C. 2052(a)(5)(I). Section 321(f) of the FFDCA defines ''food'' as ''(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.'' Section 402(a)(1) of the FFDCA provides that a food is deemed to be adulterated if it contains any poisonous or deleterious substances, such as chemical contaminants, which may or ordinarily render it harmful to

health. Under this provision and other provisions in the FFDCA, the Food and Drug Administration (FDA) oversees the safety of much of the food supply. Accordingly, the Commission will not make determinations on lead content limits for foods used in consumer products. However, to the extent that there are materials available to manufacturers, such as beeswax, that are sometimes sold as food, but that are not always sold in a form intended for consumption, the Commission will treat such products as other natural materials if they are unadulterated and have not been treated with lead-containing material, and new § 1500.91(d)(8) specifically identifies some of those products, such as beeswax.

4. Cosmetics

A few commenters suggested that determinations be made for soaps, lotions and dental floss.

In general, articles that fall within the statutory definition of ''cosmetic'' or ''device'' under the FFDCA (21 U.S.C. 321 *et seq.*) are excluded from the definition of ''consumer product.'' 15 U.S.C. 2052(a)(5)(H). Soaps and lotions are considered cosmetics under the FFDCA as ''articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance.'' 21 U.S.C. 321(i). Dental floss is considered a ''device'' under the FFDCA because it is ''an instrument, apparatus, implement, machine, contrivance, implant * * * intended to affect the structure or any function of the body of man * * *'' or, alternatively, is intended for use in the mitigation or prevention of disease. 21 U.S.C. 321(h). Products and materials that are not consumer products under the Commission's jurisdiction are not subject to section 101(a) of the CPSIA, and testing of these products and materials are not required under section 102(a) of the CPSIA. Such cosmetics and devices would, instead, be subject to the requirements of the FFDCA.

5. Glues and Adhesives

A number of commenters sought determinations for glues and adhesives. Certain glues are made entirely from natural materials, such as animal glue. Accordingly, animal glue has been added under new § 1500.91(d)(8). However, we did not receive specific data regarding specific formulations of individual glues and adhesives; therefore we cannot make determination regarding the entire category of glues and adhesives that may be available in the marketplace. However, we believe that in most instances, glues and adhesives will be inaccessible to children.

The Commission has issued a final interpretative rule on inaccessible component parts (inaccessibility rule) which finds that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities and the aging of the product. (74 FR 39535 (August 7, 2009)). In the inaccessibility rule, the Commission provided that accessibility probes specified for sharp points or edges at 16 CFR 1500.48 through 1500.49 should be used to determine whether a lead-containing component can be contacted by a child. In addition, the inaccessibility rule provides that the use and abuse tests specified in 16 CFR 1500.50 through 1500.53 should be used to assess the accessibility of lead-component parts during normal and reasonably foreseeable use and abuse of a product by a child. However, paint, coatings or electroplating may not be considered a barrier that would render lead in the substrate to be inaccessible to a child.

Most glues and adhesive are used to affix decorations and ornamentation to products or to secure sections of fabric, leather, wood, paper and other materials. In most instances, the glue or adhesive is usually not physically exposed because the materials covering the glue or adhesive serve as barrier to the underlying glue or adhesive. For instance, a children's book is bound with adhesives, but the adhesive is not accessible because the spine is covered with paper, cloth, leather, or other materials, and would not become physically exposed through reasonably foreseeable use and abuse of the product. As set forth in the inaccessibility rule, manufacturers of children's products should use the Commission accessibility probes specified for sharp points or edges at 16 CFR 1500.48 through 1500.49, and the use and abuse tests specified in 16 CFR 1500.50 through 1500.53 to determine whether glue or adhesives, or other components, would be accessible to children.

6. Composite Wood Products

Several commenters stated that wood is not expected to contain lead while other commenters asked us to expand the determination to include related products, such as composite wood constructed of wood, adhesives, and other materials.

The commenters did not provide sufficient test data or other information to enable us to assess whether the lead content of manufactured wood products that contain various non-wood materials would fall under the lead content limits prescribed by the CPSIA. A request for a Commission determination for materials that fall under the lead content limits of the CPSIA must provide data and other information requested under the procedures rule. Accordingly, although the final rule does not include composite wood products, a request for a specific materials determination may be submitted to the Commission, consistent with those requirements.

7. Certain Finishes

Several commenters requested that water based paints, acrylic paints, water based clear finishes, varnishes, lacquers, and milk paint be determined to comply with the lead content limits.

We decline to revise the rule as suggested by the comments. The Commission has long-standing regulations on paint and similar surface coatings at 16 CFR part 1303. Section 101(f) of the CPSIA imposed an even stricter lead limit for paint and similar surface coatings from 600 ppm total lead by weight to 90 ppm total lead by weight as of August 14, 2009. Because of the well-documented danger to children from contact with lead-containing paints and similar surface coatings and past instances of children's products bearing lead-containing paints or coatings despite regulations prohibiting the practice, such materials must be tested to show their compliance with the regulations, and we have revised proposed § 1500.91(a) to include the following: ''Materials used in products intended primarily for children 12 and younger that are treated or coated with paint or similar surface-coating materials that are subject to 16 CFR part 1303, must comply with the requirements for lead paint under section 14(a) of the Consumer Product Safety Act (CPSA), as amended by section 102(a) of the CPSIA.''

8. Other Metals Including Titanium, Aluminum, Pewter, Copper

Some commenters requested that certain other metals, including stainless steel, titanium, aluminum, pewter and copper be added to the list of determinations.

We agree, in part, with the commenters that stainless steel (with the exception of one stainless steel alloy) and titanium should be added to

the list of determinations. [Ref. 6]. Stainless steel is a generic name for corrosion-resistant steel alloys. Typically, the manufacturing process for stainless steel uses recycled scrap as well as ''virgin'' (newly refined) steel, yet the manufacturing process heats the steel to temperatures high enough to vaporize any lead and lead oxide present. Once the steel melts, the mix is subjected to a vacuum, and the lead/lead oxide gases are drawn off for condensation and recycling. Consequently, the manufacture of stainless steels results in alloys with lead concentrations less than 100 ppm.

However, we found that one stainless steel alloy, designated as 303Pb, does contain lead. The concentration of lead in 303Pb stainless steel is between 0.12% and 0.30% (1200 to 3000 ppm). The Unified Numbering System designation for 303Pb steel is S30360. Thus, 303Pb stainless steel is excluded from any determination for stainless steel. The Commission has revised proposed § 1500.91(d)(1) (now renumbered as § 1500.91(e)(1)) to add ''other stainless steel within the designations of Unified Numbering System, UNS S13800–S66286, not including the stainless steel designated as 303Pb (UNS S30360).''

Titanium (both α- and β-phase) uses elements such as aluminum, gallium, oxygen, nitrogen, molybdenum, vanadium, tungsten, tantalum, and silicon as alloying materials. Lead is considered an undesired impurity and is not found in titanium alloys. In all of the titanium alloys examined, we did not find an instance where lead was a constituent. Consequently, the Commission has revised proposed § 1500.91(d)(2) (now renumbered as § 1500.91(e)(2)) to add ''titanium'' to the list of determinations on precious metals.

As for other metals and alloys, including aluminum, copper and pewter, such metals and alloys may contain significant amounts of lead, and we cannot verify that the specific products containing such metals or alloys comply with the lead content limits without testing. (See *e.g.*, American Society for Metals: Metals Handbook, *Properties and Selection: Nonferrous Alloys and Pure Metals*, 9th ed., v.2 (1979).) Accordingly, these other metals and alloys continue to be subject to the testing and certification requirements of section 102 of the CPSIA.

9. Other Minerals and Items Found in the Earth

Several commenters stated that, in addition to certain precious and semiprecious gems, other minerals and items found in the earth, such as rocks or fossils, should be determined to contain lead below the lead content limits.

As with the precious gemstones and certain semi-precious stones that the Commission determines do not contain lead at levels that exceed the CPSIA lead content limits, other rocks and stones may comply with lead limits provided that they are not based on lead or lead compounds and are not associated in nature with any mineral that is based on lead or lead compounds. [Ref. 4]. In general, we agree that most minerals do not contain lead.

However, some minerals are known to contain lead or are associated in nature with minerals than contain lead. We have previously identified minerals that can contain lead, such as aragonite, bayldonite, boleite, cerussite, croroite, linarite, mimetite, phosgenite, vanadinite, and wufenite. We have also identified galena, and will add this mineral to the list of lead-containing minerals under section 1500.91(d)(2). Accordingly, these minerals are specifically excluded from the determinations regarding minerals generally, and would require testing if they are used in any children's products to assess whether they are under the lead content limits.

10. Ceramic Glaze and Clay

A few commenters claimed that ceramic glazes and clays comply with lead limits.

We are aware that some products or materials used in ceramics production do not contain lead or use lead-free glazes, but others are known to contain lead at levels that exceed the CPSIA limits for lead content. Lead in ceramic ware typically comes from the varnish or glaze applied to give a shiny finish to the product. In addition, certain colorants used in decoration may contain lead pigments. Without the required testing of ceramic glazes and other materials, compliance with the lead content limits of the CPSIA cannot be verified for the myriad of products that are available. Moreover, in the Joint Conference Report, H.R. Rep. No. 110–787, the conferees stated under the section titled *Special Issues* that they ''believe the Commission should take appropriate action with respect to lead included in any ceramic product within its jurisdiction.'' Conference Report on H.R. 4040, Consumer Product Safety Improvement Act of 2008, 154 Cong. Rec. H7214 (daily ed. July 29, 2008). Accordingly, for children's ceramic ware, until the Commission receives detailed information and test data regarding lead in ceramic ware, the Commission will continue to require the testing and certification requirements under section 102 of the CPSIA.

11. Glass, Crystals, and Rhinestones

Several commenters listed glass, glass beads, rhinestones, leaded glass crystals, and porcelain enamel as items that should be exempted from compliance with the CPSIA requirements for lead content or testing.

While not all glass or glass products, crystals, or rhinestones contain lead at levels that exceed the CPSIA lead limits, in the absence of tests or other data on these products, we cannot verify that such products meet the CPSIA's lead content limits. Further, many leaded glass crystals and other glass-based products contain lead at levels exceeding the statutory limits and, therefore, cannot be included in a determination that they do not and would not contain lead. We also note that, on July 17, 2009, the Commission voted 2–1 to deny a request to exclude crystal and glass beads, including rhinestones and cubic zirconium, from the lead content limits. The Commissioners' statements accompanying that decision can be found at: *http://www.cpsc.gov/about/cpsia/sect101.html#statements*.

12. Pencils, Crayons, Other Materials Regulated as Art Materials

Some commenters requested that certain art materials be determined to not contain lead at levels that exceed the CPSIA lead limits.

The CPSIA's requirements for lead content are in addition to other statutory and regulatory requirements for children's art materials. Compliance under the Labeling of Hazardous Art Materials Act (LHAMA) (15 U.S.C. 1277) requires the submission of art material product formulations to a toxicologist for review to assess chronic adverse health effects through customary or reasonably foreseeable use. If the toxicologist determines that the art material has this potential, the producer or repackager must use cautionary labeling on the product in accordance with the requirements set forth at 16 CFR 1400.14(b)(8), and section 2(p) of the FHSA, 15 U.S.C. 1261(p). Any art material intended for children that is or contains a hazardous substance (by reason either of chronic or acute toxicity) would be a banned hazardous substance under section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A). Art supplies that are intended primarily for use by children must also comply with the lead content

limits under section 101(a) of the CPSIA. Accordingly, without receiving more information and data regarding the lead content of specific art materials intended primarily for children, we are unable to make any determinations in this proceeding.

13. Fabrics, Dyes and Similar Materials

Numerous commenters claimed that many fabrics, yarns, batting, fill, and similar materials (such as ribbon), and related materials (such as elastic), including those that are dyed or similarly processed, do not contain lead. In addition, some commenters requested a determination that fabric dyes comply with the lead content limits. The commenters provided data and other information to support their claims. Additionally, during a public meeting held on January 22, 2009, industry representatives, test laboratories, and stakeholders met with CPSC staff and presented materials and test data on lead levels in textile and apparel products. Several hundred test reports and analyses were submitted. The tests analyzed lead levels in various textile and apparel products, including a range of daywear, sleepwear, and outerwear garments. Tests for lead were also conducted on the many functional and decorative components used on apparel items. These items include adornments (rhinestones and beads), closures and findings (buttons, snaps, and zippers), trims, and fasteners.

Information on the dye industry was also submitted by the Ecological Association of Dye and Organic Pigment Manufacturers (ETAD). ETAD states that it represents about 80% of worldwide dye manufacturers. According to ETAD, 80% or more of dyes used in commercial processing are organic carbon compounds and do not contain lead. Dyes used for cotton, other cellulosics, and polyester, the most commonly used fibers for apparel, account for 70% of total dye consumption. According to ETAD, these fibers use specific dye classes (*e.g.*, disperse, direct, reactive) that would not contain lead. ETAD also recommends that its member companies follow lead limits of 100 ppm using a sampling and testing procedure that ensures the recommended limits.

a. Textiles

We reviewed the data pertaining to textile products intended for children and the general practices used in the textile industry and the modern production and coloration of textiles and apparel. [Refs. 1 and 3]. We conclude that most textile products are manufactured using processes that do not introduce lead or result in an end product that would not exceed the CPSIA's lead limits. Modern textile and apparel production practices are recognized and well-characterized. With a few uncommon exceptions, modern production practices do not involve lead or lead-based chemicals.

In general, textile materials and products do not contain lead and have not undergone any processing or treatment that imparts lead resulting in a total lead content that exceeds the CPSIA total lead limits. Accordingly, new § 1500.91(d)(7) adds ''Textiles'' to the list of determinations. Additionally, with respect to fibers from natural sources, we find that natural fibers are natural materials and do not contain lead, whether they are dyed or undyed. [Ref. 3]. Examples of plant based fibers, from the seed, stem, or leaves of plants, include, but are not limited to, cotton, kapok, flax, linen, jute, ramie, hemp, kenaf, bamboo, coir, and sisal. Animal fibers, or natural protein fibers, include but are not limited to silk, wool (sheep), and hair fibers from alpaca, llama, goat (mohair, cashmere), rabbit (angora), camel, horse, yak, vicuna, qiviut, and guanaco. The final rule thus adds these natural fibers to § 1500.91(d)(7)(a) (formerly proposed § 1500.91(c)(5)).

We also reviewed information pertaining to fibers that are not obtained from natural sources and are classified as manufactured or man-made. [Ref. 3]. Manufactured fibers are created by technology and are classified as regenerated, inorganic, or synthetic. Regenerated fibers are made from natural materials that are reformed into usable fibers. These fibers include, but are not limited to, rayon, azlon, lyocell, acetate, triacetate, and rubber. Synthetic fibers are polymers created through a chemical process and include, but are not limited to, polyester, olefin, nylon, acrylic, modacrylic, aramid, and spandex. The information we have indicates that manufactured fibers are produced in controlled environments by processes that do not use lead or incorporate lead at any time during their production, whether they are dyed or undyed. Consequently, we have added these manufactured fibers as a new § 1500.91(d)(7)(b); specifically, the new provision refers to ''Manufactured fibers (dyed or undyed) including, but not limited to, rayon, azlon, lyocell, acetate, triacetate, rubber, polyester, olefin, nylon, acrylic, modacrylic, aramid, spandex.''

b. Dyes

We also examined the dyes used on textiles. [Refs. 1 and 3]. Dyes are organic chemicals that can be dissolved and made soluble in water or another carrier so they can penetrate into the fiber. Dyes can be used in solutions or as a paste for printing. Commercial dyes are classified by chemical composition or method of application. Many dyes are fiber specific. For example, disperse dyes are used for dyeing polyester, and direct dyes are used for cellulosic fibers. Dyes can be applied to textiles at the fiber, yarn, fabric, or finished product stage. Dye colorants are not lead based. Although not typical, some dye baths may contain lead. However, even if the dye bath contains lead, the colorant that is retained by the finished textile after the rinsing process would not contain lead above a non-detectable lead level.

In contrast to dyes, pigments are either organic or inorganic. Pigments are insoluble in water, are applied to the surface of textile materials, and are held there by a resinous binder. Binders used with pigments for textiles are non-lead based. Processes that are lead-based are used for some industrial textiles that require a greater level of colorfastness or durability, but are not typically intended for apparel textiles. Although most pigments do not contain lead, there may be some lead based paints and pigments on non-textile materials that may be directly incorporated into textile products or added to the surface of textiles, such as decals, transfers, and screen printing. All such non-textile components must be tested for lead content under section 102 of the CPSIA unless they are made entirely from materials that the Commission has determined would not contain lead in excess of the CPSIA lead limits. Since we are allowing the use of dyes and pigments on textile materials, we have revised proposed § 1500.91(c) (now renumbered as § 1500.91(d)) to remove ''or chemicals such as pigments, dyes, coatings, finishes or any other substance, nor undergone any processing.'' However, we have excluded from ''Textiles'' under new paragraph § 1500.91(d)(7), any textiles that are ''after-treatment applications, including screen prints, transfers, decals, or other prints.''

c. Leather

Although leather is not made from fibers like most textiles, it may be used to produce apparel and coverings or may be used along with textile products. Leather begins as natural products, but they undergo processing (*e.g.*, tanning) to convert the natural skin into a usable, durable product. Similar to most textile products, leather products are often colored with dyes or pigments during their processing. Many of the same dyes used in the textile industry also are used

for dyeing leather. According to information submitted by the Leather Industries of America, many processes used to process and finish leather do not use lead or lead-based chemicals.

However, many leather products may be finished with pigment-based coatings, including some that are colored using lead-based pigments. [Refs. 1 and 3]. Currently, any children's leather product that has paint or a similar surface-coating material is subject to the lead paint ban at 16 CFR part 1303. Products that are finished with such coatings are subject to the testing and certification for lead paint under section 102 of the CPSIA. Section 1303.2 (Definitions) specifically provides that paint or other similar surface coating includes application on wood, stone, paper, leather, cloth, plastic or other surface. The treatment that could potentially impart lead onto leather is the application of leaded pigment onto the surface of the leather product. We deleted the term ''untreated'' before the word ''leather'' from former § 1500.91(c)(6) (now renumbered as § 1500.91(d)(8)) because, as discussed in part D.7 of this preamble, § 1500.91(a) makes explicit that the determinations do not cover any material in a children's product that has paint or similar surface-coating materials subject to 16 CFR part 1303. Such materials and products must comply with the testing and certification requirements for lead paint under section 102 of the CPSIA.

d. Other Comments

Several commenters, including the Organic Trade Association, stated that certifications based on standards such as the Global Organic Textile Standard (GOTS) and Oeko-Tex® should be allowed in place of testing for compliance with the CPSIA lead content requirements.

Because the Commission has determined that textiles fall under the lead content limits, the Commission will not require testing on textiles under section 102 of the CPSIA. However, even when a particular product or material has been relieved of the requirement to undergo testing and certification under section 102 of the CPSIA, manufacturers and importers are responsible for verifying that the material or product has not been altered or modified, or experienced any change in the processing, facility or supplier conditions that could impart lead into the material or product and ensure that the material or product meets the statutory lead levels at all times. With respect to the GOTS and Oeko-Tex® standards, we believe that certifications from GOTS and Oeko-Tex® would serve to provide such verifications for textiles. Both GOTS and Oeko-Tex® standards limit lead content in certain textile products to no more than 100 ppm lead.

14. Book Components

Several commenters, such as associations for the publishing, printing, and paper industries, and libraries, asked us to determine that ''ordinary books'' are within the CPSIA's lead content limits. The Association of American Publishers (AAP) defined ''ordinary books'' to mean paper-based, printed books that are designed or intended primarily for 12 years and younger. AAP states that it does not intend the term to include so-called ''novelty'' products such as, for example, plastic-based bath toys or teething products that are made to resemble books in shape and form, or books that have plastic, metal or electronic parts that are not part of the binding and with which children may be expected to interact. According to the commenters, ordinary books generally consist of papers, inks, coatings, adhesives, and bindings. We held three public meetings with representatives of these industries on January 22, 2009, June 9, 2009, and August 11, 2009, in Bethesda, Maryland.

Under section 101(a) of the CPSIA, the Commission is required to evaluate the lead content limit for any *part* of a product. Accordingly, we must assess whether each part of a children's book would contain lead over the lead content limits. Therefore, we reviewed comments, data, and other information regarding papers, inks, coatings, adhesives, and bindings to assess whether those components could contain lead over the lead content limits.

a. Paper

Several commenters stated that paper is derived from natural wood, which inherently has a *de minimis* level of total lead content, and that the primary components in the production of paper are wood fiber and water. They stated that lead-based chemicals are not introduced in the major phases of the paper manufacturing process (*i.e.*, wood preparation/pulping; bleaching/refining; running of the paper machine; and finishing processes, including coating).

After review of the test data and other information submitted by the commenters, we have determined that paper and similar cellulosic materials do not contain lead in excess of the CPSIA's lead content limits. [Refs. 1 and 5]. Paper products include paper, paperboard, linerboard and medium, and pulp. Paper is predominantly made from wood, but also may be made with other cellulosic fibers. For tinting and coloring of fibers, dyes are most commonly used. Dyes, especially basic dyes and direct dyes, are relatively inexpensive and widely available and used in easily processed forms which are highly substantive to fiber and produce a uniform color or shade and which can be varied easily to achieve whatever shades are needed.

Pigments, particularly inorganic pigments, are comparatively expensive and difficult to use due to their density. Complex chemistry must be added to get the pigments to retain the pigments with the fibers and not have them drain out. The comparative expense and difficulty involved in the use of inorganic pigments for coloration limits their use to highly-specialized grades of paper, such as for laminate countertop and flooring applications where the decorative layer must be lightfast, durable, and be able to withstand the heat and chemical conditions of the resin-impregnation stage to convert layers of paper into a countertop, such as Formica®. Such specialty papers are not expected to be used for ordinary printing and writing purposes. As with the fibers and textiles, paper and similar cellulosic materials, including the dyes and treatments used to make them, are not expected to contain lead above the CPSIA lead limits. Accordingly, we have added paper and similar materials made from wood or other cellulosic fiber, including, but not limited to, paperboard, linerboard, and medium to a new § 1500.91(d)(5).

b. Printing Inks and Coatings

With respect to inks, the commenters noted that, in theory, lead pigments can be used in any printing process; however, in practice, lead has been eliminated from all but a few limited applications such as outdoor signage, labels used in harsh environments, or other applications where the product's ability to withstand the weather is a critical factor. The commenters stated that, as a practical matter, lead-based or lead-containing inks are not used in modern printing processes. They explained that the regulations promulgated under the Resource Conservation and Recovery Act of 1976 (RCRA) (40 CFR part 261.24) require that any waste, include printing ink, which contains lead in an amount exceeding five (5) ppm must be treated as hazardous waste. They also pointed to regulations promulgated under the Occupational Safety and Health Act (OSHA) (29 CFR 1910.1025) which requires workplaces in which lead is

used to maintain five (5) micrograms/cubic meter or less permissible exposure limits in workplace air environments, as well as the Coalition of Northeastern Governors (CONEG) standard, known as the Model Toxics in Packaging Legislation which has been adopted as packaging regulations by 19 states and the European Union, as factors discouraging the use of lead-based and lead-containing inks in ''ordinary'' books. Specifically, they stated that the CONEG standard was designed to phase out the use and presence of mercury, lead, cadmium, and hexavalent chromium in packaging and packaging materials and prescribes combined limits for all four of these heavy metals that are lower than the CPSIA's lead content limits. According to the commenters, the CONEG standard has been widely adopted by the children's book publishing industry.

The commenters also stated that lead-based pigments are not compatible with the four-color process. This process, commonly called CMYK, uses transparent cyan (C), magenta (M), and yellow (Y) inks, in addition to black ink, to create a wide range of colors. The comments indicated that lead could be used in ''spot colors'' and described several lead-based pigments, but claimed that the use of the lead pigments is not current practice because of safety and environmental concerns. The commenters also explained that the types of printing inks that might contain lead, such as for screen-printing and for certain processes for printing on plastic or other non-paper materials, are specifically designed for those purposes and cannot be used for printing children's paper-based books and similar paper-based materials because different printing processes require different ink systems.

We evaluated printing inks, which are distinct from the dyes used to color paper and textiles. Data and information provided in response to the notice of proposed rulemaking, at CPSC public meetings with members of the publishing and printing industries (January 22, 2009, June 9, 2009, August 11, 2009), and in written materials following those public meetings indicate that the use of lead in printing inks has largely been eliminated, except for certain inks formulated for use in printing on materials such as plastic or fabric, including screen printing. Lead-based pigments are not compatible with the four-color process (and variations of this process, such as those that add colors or diluted colors to the system to improve the quality of images printed using CMYK). Lead would not be found in paper or similar paper-based materials printed using only the CMYK processes. We confirmed that transparent pigments or dyes are used in CMYK process inks and that leaded pigments, which are opaque, are not compatible with ''process inks.'' Accordingly, we added to the list of determinations CMYK process printing inks under a new § 1500.91(d)(6). [Ref. 1].

On the other hand, lead-based inks could be used for spot colors, including spot colors used in conjunction with the CMYK process (sometimes referred to as CMYK plus spot). Spot colors are only used when a specific color cannot be reproduced with the CMYK process colors; however, unlike CMYK process colors, spot colors could contain leaded pigments. [Ref. 1]. Although the commenters state that, ''[s]pot colors, which could use lead chromate pigments, have been phased out due to safety and environmental concerns'' (Letter from American Publishers Association to Kristina M. Hatlelid, Consumer Product Safety Commission, July 1, 2009), the Commission can only verify that such leaded pigments were not used through additional testing. Accordingly, new § 1500.91(d)(6) specifies that spot colors, other inks that are not used in the CMYK process, and inks that do not become part of the substrate under 16 CFR part 1303 are excluded from the determinations. Inks that do not become part of the substrate are considered to be paints or similar surface-coating material under 16 CFR part 1303 and currently require certification based on third-party testing by an accredited laboratory.

In addition, as discussed in part D.13 of this preamble, we have found that certain after-treatments, including screen printing, may use leaded pigments. The commenters state that screen printing inks use four major types of ink systems: UV inks, water-based ink, plastisols, and the solvent-based ink systems. The Commission cannot determine that all screen printing inks do not contain lead below the lead content limits. Plastisol inks are made with PVC, and, as stated earlier in part D of this preamble, PVC may contain lead. As discussed in part D of this preamble, the Commission will not make determinations for any materials that have been found to contain lead. The Commission recognizes that not all products made of PVC contain lead, but to verify that a component part does not contain lead, we would have to test such plastic parts to assess whether it was over the lead content limits. Such products will continue to require testing under section 102 of the CPSIA. Accordingly, except for CMYK process inks, inks used in any after-treatments, such as screen prints, decals, transfers, and other prints will be excluded from the determinations under new § 1500.91(d)(6).

Transparent or other coatings which soak into the substrate are not considered to be a surface coating for the purpose of 16 CFR part 1303 because they become part of the substrate (16 CFR 1303.3(b)(1)). As discussed in part D.14(a) of this preamble, the comparative expense and difficulty of using inorganic pigments for coloration is a deterrent for ordinary printing and writing purposes. Similarly, paper coatings that use leaded pigments for coloring would not be found for ordinary grades of paper. [Ref. 5]. Because such coatings do not contain lead, insofar as printing is concerned, they do not require testing under section 102 of the CPSIA. Accordingly, we added to the list of determinations on paper under new § 1500.91(d)(5), ''and coatings on such paper which become part of the substrate.''

Other additional treatments such as laminates, including plastic sheet or film, or other coatings, such as foils, that do not become part of the substrate also would continue to require testing and certification under section 102 of the CPSIA. Although commenters sought determinations for these materials, their test data indicates that some of these coating materials contain PVC. As discussed in part D of this preamble, the Commission has found that some products made of PVC can contain lead. In addition, the commenters have described foils to be made primarily of aluminum. Part D.8 of this preamble discusses other metals, including aluminum, which can contain lead. Because the lead content of such items cannot be verified without testing, the Commission cannot make a determination that all laminates and other surface coatings would not contain lead below the lead content limits, and thus, such materials must be tested under section 102 of the CPSIA.

c. Adhesives and Binding Materials

Some commenters stated that the post-press step involves folding, cutting and binding of collated sections into a finished product. According to the commenters, the binding can be done either mechanically or chemically with hot-melt or cold glue adhesives, sewing them with polyester or cotton threads, saddle stitching them with wire or stapling, or punching holes for use with spiral wires.

As discussed in part D.5 of this preamble, we find that most adhesives

in books would not require testing and certification under section 102 of the CPSIA. We have determined that animal glues and threads would not contain lead above the lead content limits. In addition, most adhesives used in children's products, including children's books, would not be accessible under the guidance provided by the Commission in the inaccessibility rule. To the extent that any such adhesive is not covered in the determinations and is accessible, (*i.e.* not covered by any other material), it, too, would be subject to the testing and certification requirements of section 102 of the CPSIA.

Certain binding materials also may be inaccessible if they are enclosed or encased by material which does not permit physical contact with that component part. However, for binding materials that are accessible and contain plastic or metal parts (for which a determination has not been made), the Commission will continue to require testing and certification under section 102 of the CPSIA. Although AAP sought determinations on plastic and metal wire binding, it did not explain why the plastic or metal in those products are distinct or unique from what they describe as ''novelty books that have plastic, metal or electronic parts with which children may be expected to interact.'' Although the commenters claim that all of their materials are CONEG compliant, the certification of compliance under CONEG is currently based on self-certification by the supplier or manufacturer and not based on a third-party certification by a CPSC accredited laboratory as required under section 102 of the CPSIA. Accordingly, the Commission cannot adopt those certifications in lieu of the certifications required under the CPSIA.

Although the commenters seek determinations for metal wire saddlestitch and spiral binding as well as plastic spiral binding, as discussed in part D of this preamble, the Commission has found that certain plastic components have contained lead due to the addition of certain additives or colorants. In addition, the Commission has found that many metals can contain lead and has even banned certain metal components, such as metal-cored wicks over 600 ppm. Although commenters state that their metal components are lead-free because, among other things, they are made of carbon steel and galvanized zinc, carbon steel components often have lead added to it to improve machinability and impart other properties. In addition, there are zinc plating processes that add lead to improve its surface tension and increase its fluidity which would result in a more uniform coating. The added lead could be as high as 16,000 ppm or as low as 100 ppm. Although there are lead-free galvanizing techniques that require more refinement (washing, prefluxing, preheating, *etc.*), the Commission cannot tell which processes are being used without testing the components. Because these metals could contain lead, the Commission cannot make determinations that they fall below the lead content limits. Accordingly, the Commission will continue to require testing and certification on the components parts that have been found to or may contain lead including plastic parts, metal parts, and paints and similar surface-coating materials subject to 16 CFR part 1303.

d. Older Books

Comments were received from the American Library Association (ALA) requesting that books available in libraries not be subject to the CPSIA lead content requirements. In general, ALA claimed that children's books fall outside of the scope of the CPSIA because they are not distributed in interstate commerce. ALA also stated that libraries should not be required to test books that are on the shelf, even new books, given libraries' limited resources.

We disagree with the commenters regarding libraries and the CPSIA. Although ALA requested an exemption from the testing requirements for lead content, ALA may have misinterpreted the testing requirements. Currently, only manufacturers and importers of children's products are required to obtain testing showing compliance with CPSIA lead limits. (See Final Rule on Certificates of Compliance, 74 FR 68328 (November 18, 2008)). A library is neither a manufacturer nor an importer, so it is not required to test products before their sale or distribution.

ALA also argues that library books are not ''distributed'' in interstate commerce. ALA suggests that because children's library books are not sold, therefore, they are not distributed. As explained in the House Report No. 92–1153 accompanying the Consumer Product Safety Act of 1972, the definition of ''consumer product'' was not limited to the sale of a product to a consumer. ''It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use. Thus products which are manufactured for lease and products distributed without charge (for promotional purposes or otherwise) are included within the definition and would be subject to regulation under this bill.'' H.R. 92–1153, 92nd Cong. (2d Sess. 1972). The Commission's authority, therefore, applies to consumer products, including children's products, that are distributed in commerce, whether or not such books are sold or lent, if they are for the use of a child.

According to ALA, library books should not become a ''hazardous substance'' unless they are ''reintroduced'' into interstate commerce after the effective dates of the lead limits. Children's products are consumer products that are distributed in interstate commerce regardless of when they are introduced, and the FHSA does not limit the definition of a banned hazardous substance to new products or to the product's first introduction of such a product into interstate commerce. Under section 2(q)(1) of the FHSA, 15 U.S.C. 1261(2)(q)(1), a ''banned hazardous substance'' is any toy, or other article intend for use by children, which is a banned hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted. Section 4(b) of the FHSA explicitly prohibits ''[t]he alteration, mutilation * * * with respect to, a hazardous substance, if such act is done while the substance is in interstate commerce, or while the substance is held for sale (*whether or not the first sale*)'' (emphasis added). In addition, section 4(c) of the FHSA further prohibits ''[t]he receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay *or otherwise*'' (emphasis added.) Under section 101(a) of the CPSIA, Congress has deemed that children's products that do not meet the lead content limits within the specified dates ''to be banned hazardous substances.'' Accordingly, the Commission may not provide relief from the lead content limits except under the specific exclusions provided under section 101(b) of the CPSIA. Absent a finding that all used children's books fall within the scope of an exclusion, the Commission is bound by the statutory language of the CPSIA. Unfortunately, the Commission is unable to make such a determination in this proceeding. Because older books have not been manufactured using modern printing processes, such as the CMYK color process, and have been found, in some circumstances, to contain leaded ink or components, the Commission is unable to make a determination that the components of

all older children's books fall under the lead content limits.

For older used children's books that are sold, many of these books may be collector's items that are sold to adults. Such books would not be considered to be intended primarily for children, and accordingly, may continue to be sold to adults. For older used children's books that are lent out, ALA has requested additional guidance regarding the treatment of these products. Accordingly, the Commission intends to issue a separate Statement of Policy addressing the treatment of older children's books.

15. Issues Related to Component Part Testing

a. Material Safety Data Sheet (MSDS)

Some commenters indicated that the materials they use should not require testing because the material safety data sheets (MSDS) already show that the materials do not contain lead.

As the Commission stated in the procedures rule, material safety data sheets are insufficient for purposes of demonstrating compliance with the lead limits under the CPSIA (74 FR at 10478). Since regulations concerning MSDS require reporting only for chemicals with content levels that exceed 1000 ppm, the MSDS sheets cannot be used to show that a product complies with the lead limits of the CPSIA, which are 600 ppm for products sold after February 10, 2009, 300 ppm for products sold after August 14, 2009, and 100 ppm for products sold after August 14, 2011 (if deemed to be technologically feasible).

b. Metal, Plastic and Painted Components

Many commenters requested a testing exemption for certain metal and plastic items, such as buttons, zippers, snaps, grommets, eyelets, head bands, hair combs and clips, and barrettes. Other commenters mentioned products such as plastic hangers, dolls and doll accessories (such as shoes and eyeglasses), pipe-stem cleaners, brass or other metal bells, beading wire, and certain construction materials such as Plexiglas and aluminum screening. Some commenters listed fasteners, such as nails, screws, or plastic fasteners, as items that should be exempted from compliance with CPSIA requirements. Most commenters did not provide test data or other information about the lead content of these types of products. However, some commenters from the apparel industry acknowledged that lead has been found sometimes in apparel accessories, such as zippers, buttons, snaps, and grommets.

In general, plastic, metal, and painted materials and products (for which determinations have not been made) have been found, in certain instances, to contain lead at levels that exceed the CPSIA lead limits. Data provided in response to the proposed rule and at the CPSC public meeting with members of the textile industry showed that some items, such as zippers, buttons, and other applied decorations, currently contain lead levels that exceed the CPSIA's lead content levels. In addition, based on the Commission's past experience with other children's products that have been found to contain lead, the Commission cannot make a determination that any component parts made out of plastic or metal (with the exception of metal determinations made in this rule) are below the lead content limits. Accordingly, these products and materials continue to be subject to the lead content limits of section 101(a) of the CPSIA, as well the testing and certification requirements of section 102 of the CPSIA.

The Commission is aware that there are many questions regarding component part testing and certification for lead content given that any children's product may be made with a number of materials and component parts. The questions regarding testing and certification are significant because not all component parts may need to be tested if they fall under the scope of the exclusions approved by the Commission. For example, component parts would not need to be tested if they: (1) Are inaccessible, as set forth under the Commission's regulations at 16 CFR 1500.87; (2) are or contain an electronic device exempt under the Commission's regulations at 16 CFR 1500.88; or (3) are made of material determined by the Commission to fall under lead content limits in this rule (to be codified as 16 CFR 1500.91(a)–(e)(2). However, all other component parts will need to tested and certified under section 102 of the CPSIA. The Commission intends to address component part testing and the establishment of protocols and standards for ensuring that children's products are tested for compliance with applicable children's products safety rules, as well as products that fall within an exemption, in an upcoming rulemaking.

E. Impact on Small Businesses

A few commenters stated that the new rule would have a significant impact on small businesses. These commenters stated that the CPSIA would have devastating economic consequences for small businesses that cannot afford to test their products.

These commenters have misinterpreted the Regulatory Flexibility Act (RFA) section of the proposed rule. That section did not address the impact of the CPSIA on small businesses; that section addressed what impact the proposed rule on the determinations would have on small businesses. The Commission does not have the authority to change the CPSIA. However, under the general rulemaking authority vested to the Commission under section 3 of the CPSIA, the Commission has the authority to promulgate a rule to determine that certain products or materials would not exceed the lead content limits. When an agency issues a proposed rule, it must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of relieving certain materials or products from the testing requirements of section 102 of the CPSIA if they were found to be inherently under the lead content limits prescribed. [Ref. 7]. The number of small businesses that will be directly affected by the rule is unknown, but could be considerable. However, the final rule will not result in any increase in the costs of production for any firm. Its only effect on businesses, including small businesses, will be to reduce the costs that would have been associated with testing the materials under section 102 of the CPSIA. Based on the foregoing assessment, the Commission certifies that the rule would not have significant impact on a substantial number of small entities.

F. Environmental Considerations

Generally, CPSC rules are considered to ''have little or no potential for affecting the human environment,'' and environmental assessments are not usually prepared for these rules (see 16 CFR 1021.5(c)(1)). The determinations rule is not expected to have an adverse impact on the environment, thus, the Commission concludes that no environment assessment or environmental impact statement is required in this proceeding.

G. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The preemptive effect of regulations such as this proposal is stated in section 18 of the FHSA. 15 U.S.C. 1261n.

H. Effective Date

The Administrative Procedure Act requires that a substantive rule must be published not less than 30 days before its effective date, unless the rule relieves a restriction. 5 U.S.C. 553(d)(1). Because the final rule provides relief from existing testing requirements under the CPSIA, the effective date is August 26, 2009.

I. References

The following references are available from the Commission's Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone 301–504–7923; or e-mail: *cpsc-os@cpsc.gov* or from the Commission's Web site (*http://www.cpsc.gov/library/foia/foia09/brief/leadfinalrule.pdf*).

1. Memorandum from Kristina M. Hatlelid and Robert J. Howell, ''Consumer Product Safety Improvement Act of 2008 (CPSIA)—Determination of Lead Content for Certain Products and Materials,'' August 6, 2009.
2. Memorandum from Kristina M. Hatlelid to Mary Ann Danello, ''Response to Public Comments: Determinations,'' August 6, 2009.
3. Memorandum from Allyson Tenney to Kristina Hatlelid, ''Textiles and Apparel Subject to the CPSIA,'' June 5, 2009.
4. Memorandum from Mark F. Gill to Kristina M. Hatlelid, ''Results of Research on Lead Content in Slate,'' July 22, 2009.
5. Memorandum from Joel Recht to Kristina Hatlelid, ''Lead in Paper,'' July 15, 2009.
6. Memorandum from Randy Butturini to Kristina M. Hatlelid, ''Lead in Stainless Steel and Titanium Alloys,'' June 3, 2009.
7. Memorandum from Robert Franklin to Kristina Hatlelid, ''Final regulatory analysis of a rule making determinations that certain materials or products do not have lead contents that exceed the limits established in section 101(a) of the CPSIA,'' July 17, 2009.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

J. Conclusion

■ For the reasons stated above, the Commission amends title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278, 122 Stat. 3016.

■ 2. Add a new § 1500.91 to read as follows:

§ 1500.91 Determinations regarding lead content for certain materials or products under section 101 of the Consumer Product Safety Improvement Act.

(a) The Consumer Product Safety Improvement Act provides for specific lead limits in children's products. Section 101(a) of the CPSIA provides that by February 10, 2009, products designed or intended primarily for children 12 and younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. On August 14, 2011, the limit may be further reduced to 100 ppm, unless the Commission determines that it is not technologically feasible to have this lower limit. Paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child. Materials used in products intended primarily for children 12 and younger that are treated or coated with paint or similar surface-coating materials that are subject to 16 CFR part 1303, must comply with the requirements for lead paint under section 14(a) of the Consumer Product Safety Act (CPSA), as amended by section 102(a) of the CPSIA.

(b) Section 3 of the CPSIA grants the Commission general rulemaking authority to issue regulations, as necessary, either on its own initiative or upon the request of any interested person, to make a determination that a material or product does not exceed the lead limits as provided under paragraph (a) of this section.

(c) A determination by the Commission under paragraph (b) of this section that a material or product does not contain lead levels that exceed 600 ppm, 300 ppm, or 100 ppm, as applicable, does not relieve the material or product from complying with the applicable lead limit as provided under paragraph (a) of this section if the product or material is changed or altered so that it exceeds the lead content limits.

(d) The following materials do not exceed the lead content limits under section 101(a) of the CPSIA provided that these materials have neither been treated or adulterated with the addition of materials that could result in the addition of lead into the product or material:

(1) Precious gemstones: diamond, ruby, sapphire, emerald.

(2) Semiprecious gemstones and other minerals, provided that the mineral or material is not based on lead or lead compounds and is not associated in nature with any mineral based on lead or lead compounds (excluding any mineral that is based on lead or lead compounds including, but not limited to, the following: aragonite, bayldonite, boleite, cerussite, crocoite, galena, linarite, mimetite, phosgenite, vanadinite, and wulfenite).

(3) Natural or cultured pearls.

(4) Wood.

(5) Paper and similar materials made from wood or other cellulosic fiber, including, but not limited to, paperboard, linerboard and medium, and coatings on such paper which become part of the substrate.

(6) CMYK process printing inks (excluding spot colors, other inks that are not used in CMYK process, inks that do not become part of the substrate under 16 CFR part 1303, and inks used in after-treatment applications, including screen prints, transfers, decals, or other prints).

(7) Textiles (excluding after-treatment applications, including screen prints, transfers, decals, or other prints) consisting of:

(i) Natural fibers (dyed or undyed) including, but not limited to, cotton, kapok, flax, linen, jute, ramie, hemp, kenaf, bamboo, coir, sisal, silk, wool (sheep), alpaca, llama, goat (mohair, cashmere), rabbit (angora), camel, horse, yak, vicuna, qiviut, guanaco;

(ii) Manufactured fibers (dyed or undyed) including, but not limited to, rayon, azlon, lyocell, acetate, triacetate, rubber, polyester, olefin, nylon, acrylic, modacrylic, aramid, spandex.

(8) Other plant-derived and animal-derived materials including, but not limited to, animal glue, bee's wax, seeds, nut shells, flowers, bone, sea shell, coral, amber, feathers, fur, leather.

(e) The following metals and alloys do not exceed the lead content limits under section 101(a) of the CPSIA, provided that no lead or lead-containing metal is intentionally added but does not include the non-steel or non-precious metal components of a product, such as solder or base metals in electroplate, clad, or fill applications:

(1) Surgical steel and other stainless steel within the designations of Unified Numbering System, UNS S13800–

S66286, not including the stainless steel designated as 303Pb (UNS S30360).

(2) Precious metals: Gold (at least 10 karat); sterling silver (at least 925/1000); platinum; palladium; rhodium; osmium; iridium; ruthenium, titanium.

Dated: August 19, 2009.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. E9–20589 Filed 8–25–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

[Docket No. FDA–2009–N–0381]

Advisory Committee; Tobacco Products Scientific Advisory Committee; Establishment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Establishment of the Tobacco Products Scientific Advisory Committee. These actions are needed to implement the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act. Elsewhere in this issue of the **Federal Register**, FDA is publishing two separate documents requesting nominations for voting and non-voting membership on this committee. This document also amends the agency's regulations to add the Tobacco Products Scientific Advisory Committee (the committee) to the agency's list of standing advisory committees.

DATES: This rule is effective August 26, 2009. The committee is being established and this charter will remain in effect until amended or terminated by the Commissioner of Food and Drugs (the Commissioner).

FOR FURTHER INFORMATION CONTACT: Erik P. Mettler, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4324, Silver Spring, MD 20993–0002, 301–796–4711, FAX: 301–847–3541, e-mail: *erik.mettler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The committee was established under 21 U.S.C. 387q, as added by section 917 of the Family Smoking Prevention and Tobacco Control Act (Public Law 111–31). The committee is also governed by part 14 (21 CFR part 14), Public Law 92–463 (5 U.S.C. app.), and the Federal Advisory Committee Act, which sets forth standards for the formation and use of advisory committees. The committee advises the Commissioner or designee in discharging responsibilities as they relate to the regulation of tobacco products.

The committee reviews and evaluates safety, dependence, and health issues relating to tobacco products and provides appropriate advice, information, and recommendations to the Commissioner.

Specifically, the committee will submit reports and recommendations on tobacco-related topics, including the following:

- The impact of the use of menthol in cigarettes on the public health, including such use among children, African Americans, Hispanics and other racial and ethnic minorities;
- The nature and impact of the use of dissolvable tobacco products on the public health, including such use on children;
- The effects of the alteration of nicotine yields from tobacco products and whether there is a threshold level below which nicotine yields do not product dependence on the tobacco product involved; and
- Any application submitted by a manufacturer for a modified risk tobacco product.

The committee may provide recommendations to the Secretary of Health and Human Services regarding any regulations to be issued under the Federal Food, Drug, and Cosmetic Act and may review any applications for new tobacco products or petitions for exemption under section 906(e) of the Family Smoking Prevention and Tobacco Control Act. The committee may consider and provide recommendations on any other matter as provided in the Family Smoking Prevention and Tobacco Control Act.

The committee shall consist of 12 members including the Chair. Members and the Chair are selected by the Commissioner or designee from among individuals knowledgeable in the fields of medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The committee shall include nine technically qualified voting members, selected by the Commissioner or designee. The nine voting members shall be physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty. One member shall be an officer or employee of a State or local government or of the Federal Government. The final voting member shall be a representative of the general public. In addition to the voting members, the committee shall include three nonvoting members who are identified with industry interests. These members shall include one representative of the tobacco manufacturing industry, one representative of the interests of tobacco growers, and one representative of the interests of the small business tobacco manufacturing industry. This final position can be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the committee.

The Commissioner or designee shall designate one of the voting members of the committee to serve as chairperson.

As added by section 917 of the Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. 387q(d)(3) provides that section 14 of the Federal Advisory Committee Act does not apply to this committee.

Under 5 U.S.C. 553(b)(3)(B) and (d) and 21 CFR 10.40(d) and (e), the agency finds good cause to dispense with notice and public comment procedures and to proceed to an immediate effective date on this rule. Notice and public comment and a delayed effective date are unnecessary and are not in the public interest as this final rule merely amends the information in § 14.100 to reflect the establishment of the committee.

Therefore the agency is amending § 14.100(a) as set forth in the regulatory text of this document.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended to read as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461, 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264; Pub. L. 107–109; Pub. L. 108–155.

■ 2. In § 14.100, add paragraph (a)(5) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(a) * * *

(5) *Tobacco Products Scientific Advisory Committee.*

(i) Date Established: August 12, 2009.

(ii) Function: The committee reviews and evaluates safety, dependence, and health issues relating to tobacco products and provides appropriate advice, information, and recommendations to the Commissioner of Food and Drugs. Specifically, the committee will submit reports and recommendations on tobacco-related topics, including: The impact of the use of menthol in cigarettes on the public health, including such use among children, African Americans, Hispanics and other racial and ethnic minorities; the nature and impact of the use of dissolvable tobacco products on the public health, including such use on children; the effects of the alteration of nicotine yields from tobacco products and whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and any application submitted by a manufacturer for a modified risk tobacco product. The committee may provide recommendations to the Secretary of Health and Human Services regarding any regulations to be issued under the Federal Food, Drug, and Cosmetic Act and may review any applications for new tobacco products or petitions for exemption under section 906(e) of the Family Smoking Prevention and Tobacco Control Act. The committee may consider and provide recommendations on any other matter as provided in the Family Smoking Prevention and Tobacco Control Act.

* * * * *

Dated: August 19, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20485 Filed 8–26–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 516

[Docket No. FDA–2008–N–0176; Formerly Docket No. 2008N–0011]

RIN 0910–AG03

Defining ''Small Number of Animals'' for Minor Use Designation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The designation provision of the Minor Use and Minor Species Animal Health Act of 2004 (MUMS Act) provides incentives to animal drug sponsors to encourage drug development and approval for minor species and for minor uses in major animal species. Congress provided a statutory definition of ''minor use'' that relied on the phrase ''small number of animals'' to characterize such use. At this time, the Food and Drug Administration (FDA) is amending the implementing regulations of the MUMS Act. In response to Congress' charge to the agency to further define minor use, this amendment establishes a specific ''small number of animals'' for each of the seven major animal species to be used in determining whether any particular intended use in a major species is a minor use.

DATES: This rule is effective November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Meg Oeller, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9005, e-mail: *Margaret.Oeller@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 18, 2008 (73 FR 14411), FDA issued a proposed rule (the March 2008 proposed rule) intended to define the term ''small number of animals'' for each of the seven major animal species to be used in determining whether any particular intended use in a major species is a minor use. As noted in that proposed rule, the MUMS Act (Public Law 108–282) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to provide incentives for the development of new animal drugs for use in minor animal species and for minor uses in major animal species. The MUMS Act defines ''minor use'' as ''the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually'' (section 201(pp) of the FD&C Act (21 U.S.C. 321(pp))). The major species are cattle, horses, swine, chickens, turkeys, dogs, and cats (section 201(nn) of the FD&C Act (21 U.S.C. 321(nn))).

Prior to enactment of the MUMS Act, FDA defined by regulation minor use to mean ''the use of: * * * (b) new animal drugs in any animal species for the control of a disease that (1) occurs infrequently or (2) occurs in limited geographical areas'' (formerly 21 CFR 514.1(d)(1)). The MUMS Act narrowed this definition by restricting it to uses ''in only a small number of animals annually'' (section 201(pp) of the FD&C Act).

The legislative history of the MUMS Act indicates that Congress intended that FDA further define by regulation minor use in a major species and that it do so ''by evaluating, in the context of the drug development process, whether the incidence of a disease or condition occurs so infrequently that the sponsor of a drug intended for such use has no reasonable expectation of its sales generating sufficient revenues to offset the cost of development'' (see S. Rept. 108–226 at 12–13). The legislative history also notes that the new statutory definition for minor use ''incorporates the existing definition in the Code of Federal Regulations (21 CFR 514.1(d)(1)) with a further limitation to small numbers to assure that such intended uses will not be extended to a wider use'' (see S. Rept. 108–226 at 12–13).

Therefore, while the MUMS Act establishes incentives for animal drug development for minor uses, it also limits the availability of those incentives in order to prevent them from stimulating ''wider use'' of new animal drugs marketed under MUMS Act provisions.

Consistent with these dual aims of stimulating animal drug development for minor uses in major species and at the same time preventing ''wider use'' of such new animal drugs, the agency is now defining the term ''small number of animals'' by establishing for each major species a number that would constitute the upper limit of a ''minor use'' under the MUMS Act. In keeping with the goal of creating a drug development incentive, this definition establishes the number of animals eligible to be treated annually based on the number of animals that represents a drug market value that (relative to drug development costs) would not be likely to be pursued

in the absence of the MUMS Act incentives.

II. Comments

The agency received comments from seven organizations or individuals on the March 2008 proposed rule. Comments were received from a trade organization representing new animal drug manufacturers, a trade organization representing turkey producers, a professional association representing veterinarians, an organization concerned with the ethical treatment of animals, an animal pharmaceutical manufacturer, a law firm representing an unidentified client, and a consumer.

(Comment 1) One comment indicated unqualified support for the March 2008 proposed rule and three additional comments stated appreciation for the agency's attempt to establish what was variously described as a ''quantitative,'' ''reasonable,'' ''bright-line,'' ''understandable,'' or ''easy to use'' approach for determining whether an intended use of an animal drug in a major species is a minor use. However, all of the latter comments went on to note various concerns with the proposed approach which are addressed in the following paragraphs.

(Response) FDA appreciates the characterization of its attempted approach as ''quantitative,'' ''reasonable,'' ''bright-line,'' ''understandable,'' and ''easy to use.''

(Comment 2) Three comments indicated that the agency should not establish ''fixed'' or ''static'' small numbers, but instead should establish the small numbers as a percentage of each major species population. Also, three comments stated that, if the agency did elect to use fixed or static numbers, the small numbers (or the entire approach) should be reevaluated at least every 5 years—preferably, more frequently. The comments stated or implied that the suggested reevaluation was associated with the potential for increasing populations of a major species. An additional comment suggested periodic reevaluation of the small numbers based on the potential for an increase in the cost of drug development.

(Response) FDA agrees that there is a need to periodically reevaluate the definition of ''small number of animals.'' Because Congress did not establish by statute what a ''small number'' is, it affords FDA the opportunity to periodically reevaluate and update the definition of ''small number of animals'' as necessary. We further agree that such a reevaluation should take into account the potential for increases in the development cost of new animal drugs, but note that it also should take into account potential increases in the cost that animal owners are willing to pay to treat affected animals as well as other factors involved in establishing ''small numbers,'' such as changes in the total population of major animal species.

As Congress noted in the legislative history of the MUMS Act, it is the relationship between the development cost of an animal drug and the potential market value of an animal drug that determines the need for the minor use drug development incentives provided by the MUMS Act (see S. Rept. 108–226 at 12–13). If the number of animals affected by a given disease is great enough to produce a market potential sufficient to support the development cost of an animal drug in the absence of the minor use incentives of the MUMS Act, then the incentives should not be provided. The incentives should be reserved for cases in which the number of animals affected by a disease is not great enough to produce a market potential sufficient to support the development costs of an animal drug in the absence of the minor use incentives of the MUMS Act.

With respect to population increase as a basis for reevaluation of ''small numbers,'' if the number of animals affected by a disease increases over time due to increasing rate of occurrence of the disease in the population, or simply due to an increase in the total population of animals with a steady rate of disease occurrence, the market value of a drug intended to treat the disease would also tend to increase and the need for minor use incentives to support drug development for that disease would tend to decrease—unless animal drug development cost or other factors change to a greater extent over the same period of time. Therefore, the effects of population change need to be evaluated in the context of periodically reevaluating other factors affecting the establishment of ''small numbers.''

If the relationship between drug development cost and drug market value changes sufficiently over time, the ''small number of animals'' should change as well. Note, however, that once a particular new animal drug has been designated for a particular intended use that has been determined to be a minor use, the designation and associated incentives will not be affected by subsequent changes in drug market value or published ''small numbers'' (see § 516.29(h) (21 CFR 516.29(h))).

Further reason for periodic reevaluation of the ''small numbers'' is that either the agency may have misperceived the current relationship between development cost, market value, and the value of the MUMS minor use incentives, or the animal pharmaceutical industry's perception of the relationship between these factors sufficient to support drug development could change over time.

In any event, as noted previously, FDA agrees that the ''small numbers'' should be periodically reevaluated and intends to do so. FDA will update the numbers through proposed rulemaking, as warranted, based on the results of the reevaluation.

(Comment 3) Two comments suggested that FDA not implement the proposal at all and that the agency make minor use determinations on a case-by-case basis.

(Response) The agency began making minor use determinations ''on a case-by-case basis'' in the absence of published ''small numbers'' over 3 years ago, but found that it could not equitably do so without establishing a standard against which to assess the individual cases.

The agency had no reasonable basis to establish different small numbers for the same intended use depending upon the relative efficiency of each sponsor's drug development processes. Nor could it determine any practical basis to equitably establish a different small number for every intended use based on perceived potential drug market value for each of those uses.

As explained in the preamble to the March 2008 proposed rule, the agency determined that the most equitable means of establishing the small number for each major companion animal species was to use the best available information regarding the relationships between the number of animals eligible to be treated, the potential value of drug treatment for those animals, and the cost of animal drug development to establish a single small number for each major species that would apply for all new animal drugs. Evaluating the relationship between these factors on a case-by-case basis would require sponsors to divulge, and the agency to assess, information regarding the cost of development of specific animal drugs. Sponsors are reluctant to share such information with the agency.

Small numbers for major food animal species were established on a different basis and this process is discussed in response to comment 11 of this document.

Additionally, making one small number for each major species publicly available permits sponsors to independently assess, early in the drug development process, the likelihood that particular potential intended uses

will qualify as minor uses and plan drug development accordingly.

(Comment 4) Two comments indicated that obtaining epidemiological data on animal disease prevalence is ''difficult to impossible'' or ''almost impossible'' to obtain. One comment was apparently made as a basis for arguing against the establishment of small numbers, and the other for the purpose of requesting information regarding how such information might be obtained.

(Response) The agency indicated in the preamble to the 2005 proposed designation regulation that, in order to document minor use status, sponsors needed to provide an estimate of the number of animals eligible to be treated for a particular intended use per year (70 FR 56394 at 56400, September 27, 2005). We acknowledged at that time that such information ''is not readily available for uncommon animal diseases or conditions.'' Nevertheless, there is clearly no way to determine whether the population of animals eligible to be treated for a given disease or condition meets the statutory standard of a small number of animals without determining the number of animals eligible to be treated in the first place.

Whether the agency determines that the population of animals eligible to be treated is a small number by means of applying the objective standard used in this regulation, or by means of some undefined subjective process applied on a case-by-case basis, it does not alter the need to know, in the first place, the number of animals subject to the intended use under consideration.

Fortunately, based on our experience in reviewing requests for minor use determination up to this point, it has not been as difficult as expected to obtain sufficient information to determine whether an indication qualifies as a minor use. In fact, of the designation requests involving non-aquatic species, most have involved minor use in major species. Of these designation requests, more have been granted for minor use in major species than for minor species. Thus, it has routinely proven possible to gather the needed information regarding animal disease occurrence, and this information has been sufficient to support determinations that an intended use actually is a minor use. FDA, therefore, does not agree with the comments that it is ''almost impossible'' to obtain such information.

With respect to the comment that requested information on how to obtain such information, most of the determinations of minor use made by FDA to this point have been based on a compilation of information available in the veterinary literature. In some cases, this information was augmented with unpublished information available from databases containing information on the rate of occurrence of animal diseases, or the results of surveys of appropriate veterinary experts conducted by sponsors or other (third) parties. In at least one case, the determination was based almost exclusively on a sponsor-initiated survey of veterinary experts conducted in accordance with sound statistical practices.

(Comment 5) One comment suggested that FDA should support conditional approval and exclusivity to the greatest extent possible even when the number of animals involved exceeds a small number.

(Response) While we appreciate the commenter's position with respect to the maximization of the minor use incentives, the MUMS Act limits the incentives associated with the development of drugs intended for minor use in major species to intended uses involving a ''small number of animals.'' This statutory restriction prevents FDA from extending MUMS Act provisions to indications in major species that exceed the ''small number'' restriction.

(Comment 6) One comment stated that FDA should not provide an incentive to develop any animal drug product intended for use in industrial aquaculture or agribusiness.

(Response) The MUMS Act does not contain any language excluding ''agribusiness'' from the incentives of the MUMS Act. The incentives are available to all minor uses in major species, including food-producing animals, with the exception of genetically engineered animals. Industrial aquaculture, referred to by the commenter, deals entirely with minor species and minor species are outside the scope of this regulation.

Just as the agency could not ignore a statutory restriction in response to the previous comment, FDA cannot exclude ''agribusiness'' from the MUMS Act provisions in response to this comment when such a restriction does not appear in the statutory language.

(Comment 7) One comment stated that the preamble to the March 2008 proposed rule implies that the purpose of the limitation of minor use to a small number of animals is to prevent wider use and that this contradicts a statement made in the response to a comment on the 2005 proposed designation regulation, which the commenter summarized as ''the purpose (of defining a subset of a major species which may have a particular disease or condition) is not to prevent a drug with MUMS approval for disease A from being used in disease B or C.''

(Response) When Congress expressed concern regarding the prevention of ''wider use'' of minor use animal drugs it was in the context of defining the ''small number of animals'' for which a minor use new animal drug may be intended if such drug were to qualify for MUMS Act incentives (see S. Rept. 108–226 at 12–13). The intended use of a new animal drug is the particular use for which an animal drug sponsor intends that it be used as determined through various means, including statements in the labels and labeling. The cited response to a comment on the 2005 proposed designation regulation dealt with the provision to permit sponsors to decrease the number of animals eligible to be treated by a given drug by the subset of animals for which treatment would be medically inappropriate. In trying to clarify this provision, the agency stated what the provision did not do. FDA did not intend to require a sponsor to demonstrate that the drug at issue could not be administered for a use other than the intended use for which a minor use determination was being sought. FDA's intent was for the MUMS incentives to be available for drug products for labeled intended uses involving a small number of animals.

In the agency's judgment, because neither the ''wider use'' concept articulated by Congress nor the specific provision of the 2005 proposed designation regulation just discussed were intended to involve any use of an animal drug beyond the scope of its intended use, the agency's statements in the recent preamble to the March 2008 proposed rule and in the cited response to a comment on the 2005 proposed designation regulation are consistent.

(Comment 8) One comment noted that the 2007 final designation regulation (72 FR 41010, July 26, 2007) uses the phrase ''* * * total number of animals to which the drug could potentially be administered on an annual basis'' whereas the preamble to the March 2008 proposed rule on ''small numbers'' uses the phrase ''* * * eligible to be treated on an annual basis.'' The comment requested clarification of the meaning of the phrases and suggested that something along the lines of ''* * * number of cases * * *'' rather than ''* * * number of animals likely to be treated * * *'' would be more appropriate.

(Response) FDA did not intend any difference in meaning between the phrases ''* * * eligible to be treated on

an annual basis'' and ''total number of animals to which the drug could potentially be administered on an annual basis.''

As noted in the preamble to the 2005 proposed designation regulation, there is a special circumstance involving drug use in food-producing major species in which drugs are administered on a herd or flock basis so that the drug is administered to animals that do not have the disease or condition. The 2005 proposed designation regulation takes note of this special circumstance, because the phrase ''* * * number of animals to which the drug could potentially be administered on an annual basis * * *'' is followed by the phrase ''* * * including animals administered the drug as part of herd or flock treatment * * *.''

The 2005 proposed designation regulation needed to capture the special case of herd or flock treatment as well as the general principle involved in establishing the population of animals to which a drug might be administered for a particular intended use. As previously noted, it is this total population of animals that the agency relied upon to establish the market potential on an annual basis for the drug under consideration and this market potential, in turn, was a primary factor in establishing the ''small numbers'' in this final rule.

(Comment 9) A related comment requested clarification of the phrase ''on an annual basis'' and suggested that the phrase should be interpreted to mean that the small number of animals would include only new cases of a disease or condition appearing each year, that is, what is typically referred to as the ''incidence'' of a disease or condition in any given year rather than the total number of cases of the disease or condition existing during the year, that is, what is typically referred to as the ''prevalence'' of the disease or condition over the course of the year.

(Response) The agency devoted considerable discussion to this issue in the preamble to the 2005 proposed designation regulation. We concluded that it is the total number of animals, on an annual basis, eligible to be treated or, in some circumstances (in accordance with the previous discussion), the total number of animals that could potentially be administered a drug for a particular intended use (i.e., including whole herds or flocks that might be treated) that represents the annual market potential for an animal drug and, therefore, it is this population of animals that is of concern to the agency. Also, as noted in the preamble to the 2005 proposed designation regulation, because of the variability in the time course of diseases and the variability in life-span of the seven major species of animals, general application of either of the terms ''prevalence'' or ''incidence'' would not be particularly helpful (70 FR 56394 at 56397).

Experience gained in reviewing the veterinary literature in support of requests for minor use determination has led to the understanding that there is considerable inconsistency in how the terms ''incidence'' and ''prevalence'' are used with respect to the reporting of estimates of animal disease occurrence. Therefore, the agency is less concerned with the formal definitions of ''incidence'' and ''prevalence'' relative to the way the terms are used in the context of describing any particular study or body of information, and more concerned with the manner in which a study is performed or information is captured relative to its ability to contribute to an estimate of the total population of animals eligible to be treated for a given disease or condition over the course of a year. As a result, FDA relied upon the total number of animals ''eligible to be treated on an annual basis'' to define ''small numbers'' rather than relying on ''incidence'' or ''prevalence'' of disease.

(Comment 10) Another related comment requested clarification of whether the ''small numbers'' refer to the number of ''animals'' or the number of ''treatments'' on an annual basis.

(Response) The small numbers refer to the number of animals, not the number of treatments, on an annual basis.

Depending on the nature of the disease or condition involved, the treatment of a given animal could consist of a single short course of treatment or could require repeated administration of a drug over a significant period of time, potentially for the entire life of the animal subsequent to the initiation of treatment. Each year that an animal with such a disease or condition lives after the initiation of treatment, it constitutes part of the population of animals eligible for treatment in that year and, therefore, it is part of the market potential for the drug (or drugs) with which it is being treated for that year.

(Comment 11) One comment stated that the agency should consider turkeys to be a quasi-minor species, and that in setting the small number for turkeys the agency should consider that a much higher percentage of turkeys are treated by feed or water on a flock basis than sheep, which are more commonly treated on an individual animal basis.

(Response) The MUMS Act defines turkeys as a major species (section 201(nn) of the FD&C Act). FDA cannot change that definition without a statutory change.

With respect to factoring the method of drug administration into the comparison between turkeys and sheep that was utilized to establish the small number for turkeys, we note that the agency operated on the assumption that all of the sheep existing in the United States in 2004 were eligible to be treated and further assumed that all of the sheep going to slaughter in that year had been treated. Because the assumption was that 100 percent of sheep going to slaughter were treated that year, regardless of the method of drug administration, the treatment rate could not have been any higher if the sheep were treated on a flock basis rather than an individual basis. As a result, the method of drug administration does not affect the small number FDA established for turkeys.

(Comment 12) One comment stated that many compounds that could be developed for a small number of companion animals are likely to be ''specialty compounds'' and/or new classes of drugs that are likely to have substantially higher development costs than the estimate provided in the March 2008 proposed rule, and that, therefore, the agency should utilize an estimated development cost for minor use new animal drugs of $25 million rather than $15 million.

(Response) While development costs for some minor use new animal drugs could exceed the $15 million estimate utilized by the agency in the process of establishing small numbers, we note that the estimates of development costs for companion animal drugs provided by the animal pharmaceutical industry itself generally fall in the range of $10 million to $20 million with a number of estimates as low as $5 million (Ref. 1). There is no evidence to show that the development of ''specialty compounds and/or new classes of drugs'' is unique to minor uses. Moreover, the industry's estimate of its development costs for companion animal drugs did not capture an estimate as high as $25 million even in its overall range of development costs. This indicates that a development cost for a companion animal drug as high as $25 million would be unusual.

In addition, we note that drugs that could be developed for relatively rare conditions in animals are often also under development, or have already been developed, for similar or related conditions in humans so that the relative infrequency of an intended drug use in animals may not correlate with a higher than usual development cost.

Therefore, the agency determines that there is currently no convincing information available to support increasing its estimate of companion animal drug development cost, but will periodically reexamine this estimate along with others supporting the establishment of small numbers for major companion animal species to determine whether the small numbers need to be revised.

(Comment 13) One comment stated that the agency's estimate of $10 million for third-year sales of a companion animal drug was too high for a minor use drug, and that the figure should be lowered to $3 million.

(Response) The agency determined the $10 million figure on the basis of animal drug marketing principles provided by outside experts in the development of animal drugs (Ref. 1). As noted in the preamble to the March 2008 proposed rule, one of those basic principles was that, taking into consideration the current animal drug development incentives associated with exclusivity under the Generic Animal Drug and Patent Term Restoration Act, a sponsor would need to perceive a potential third-year market value for an animal drug equivalent to the development cost of the drug in order to pursue development (73 FR 14411 at 14413). The agency received no comments that contradicted the validity of this basic principle.

The agency also relied on the principle that the 7 years of exclusive marketing rights provided to MUMS drugs ''provides a sponsor an opportunity to lower its perception of an acceptable 'going' market value to support drug development because the sponsor has longer to recoup development costs without competition'' (73 FR 14411 at 14413). Again, the agency received no comments opposing the validity of this basic principle.

The agency then applied these two principles to estimate that the quantitative effect of the additional 2 years of exclusivity associated with the approval of a designated minor use drug was to lower the perceived third-year drug market value needed to support a decision to develop a drug by about one-third (73 FR 14411 at 14413). The agency received no comments opposing the validity of the general conclusion drawn from the application of the basic principles noted in the previous paragraphs.

The figure of $10 million as the perceived third-year market necessary to support the development of a drug with a $15 million development cost is simply the result of applying the general conclusion to a reasonable estimate of the development cost of a companion animal drug.

The implication in the comment that many companion animal drugs have been developed in the past for intended uses whose third-year market values were less than the agency's $10 million estimate could be interpreted in a number of ways, including the following: That the development cost for the drugs was less than $10 million; that the sponsors involved were willing to accept a return on investment lower than a third-year market equal to development costs when they made the decision to develop the drugs; and/or that actual market values routinely fail to achieve the potential market value perceived by sponsors, on the basis of which sponsors decide to develop drugs.

Of these possible interpretations, the latter appears the most improbable, because it is unlikely that animal drug sponsors could survive the economic consequences of routinely failing to accurately predict potential markets. The other two possibilities appear to support a conclusion that the agency may have overestimated drug development cost and/or the perceived return on investment needed to support animal drug development.

Therefore, the implication that third-year market values less than $10 million have routinely supported animal drug development in the past (in the absence of the MUMS incentives), argues in favor of decreasing estimated drug development cost or decreasing the estimated 1:1 relationship between development cost and perceived third-year market value (absent the value of MUMS exclusivity) that the agency assumed was needed to support animal drug development. This would lead to a decrease in the estimated size of the population of animals eligible to be treated that is needed in order to provide a market value sufficient to support drug development.

The agency notes in passing that the comment stating that the agency's estimate of third-year market value needed to support companion animal drug development was too high tends to contradict the preceding comment (comment 12 of this document) which argued that the agency's proposed estimate of companion animal drug development cost for a minor use was too low. More significantly, no comments provided evidence to support decreasing either the proposed estimate of companion animal drug development cost or of the 1:1 relationship between development cost and perceived market value (absent the value of MUMS exclusivity) that the agency assumed was needed to support animal drug development. However, the agency will periodically reexamine these estimates along with others supporting the establishment of small numbers for major companion animal species based on newly available information regarding drug development costs and other factors to determine whether the small numbers need to be revised.

(Comment 14) One comment stated that production costs would be relatively higher for drugs intended for the small number of animals associated with minor use because such drugs lack the economy of scale associated with the production of drugs intended for larger numbers of animals.

(Response) While it is possible that production costs could be a determining factor in the decision to develop a particular drug product for a particular minor use, it appears that many other factors are considerably more important in determining the price of a drug product and, therefore, its market value, and that differences in cost associated with scale of production would rarely be the determining factor in the decision to develop a drug for a minor use (Ref. 2).

Thus far, sponsors seeking minor use determinations have not expressed concern to FDA regarding the effect of limited market size on the cost of drug production.

Therefore, the agency is not convinced that, in general, the potential impact of this factor is sufficient in itself to prevent the development of animal drugs for minor uses in accordance with the small numbers of animals established by this regulation.

(Comment 15) One comment stated that, for a variety of reasons, the agency should consider the drug treatment rate for minor uses in companion animals to be 25 percent rather than 50 percent.

(Response) A number of independent sources appear to agree that a reasonable estimation of the treatment rate for companion animals is on the order of 50 percent (Ref. 3). The comment does not appear to take exception to this as a general estimate of companion animal treatment rate, but argues that it is too high for ''a rare condition * * * especially in the first years of a new drug's availability'' because ''many of these conditions have a poor prognosis or occur in older pets for which the owner is more likely to do nothing or consider euthanasia'' and that the utilization of a drug for a minor use is ''likely to be slower due to higher cost, limited distribution, and less promotion'' than for a major use.

The agency believes that a companion animal owner's decision to treat has a great deal to do with the seriousness of the disease or condition involved, the cost of treatment, and the emotional value of a pet, and has relatively little to do with the rarity of the disease or condition warranting treatment. There is no reliable information to conclude that the treatment rate of a rare disease would be routinely lower than the treatment rate of a common disease, simply on the basis that it is rare.

Based on FDA's experience with minor use determinations thus far, the agency believes that a primary characteristic of the drugs pursued for minor uses in animals under the incentives provided by the MUMS Act will be for uses where there is a long-established need for treatment and no legally available, practical, or affordable treatment option. Because these intended uses most often involve diseases or conditions that are relatively serious and that result in considerable animal suffering, in the absence of legal, practical, safe and effective treatment options an animal owner might turn to euthanasia. However, if an effective treatment were available these are the kinds of diseases and conditions that animal owners would be inclined to treat once a definitive diagnosis was made, irrespective of the frequency of occurrence of the disease or condition in the population (see the results of the surveys cited in the following paragraphs).

Under these circumstances, the factors most likely to affect an animal owner's decision to treat are the pet's perceived value, the cost of treatment, and the potential effects, positive and negative, of treatment. In any particular case in which a veterinarian concludes that the risks associated with treatment outweigh the benefits, the appropriate course of action would be a recommendation of no treatment or euthanasia (depending on the prognosis for an untreated animal). This would be true regardless of the cost of the treatment or whether the disease or condition is rare or common. When a veterinarian concludes that the benefits of treatment outweigh the risks, depending upon the nature of the treatment recommended, the animal owner is faced with a decision that could very well depend upon the cost of treatment relative to the prognosis.

Therefore, the agency gathered considerable information relating to the willingness of companion animal owners to treat serious (significantly debilitating or life-threatening, if untreated) diseases or conditions in their pets in the process of estimating both practical drug treatment values and the likelihood of treatment. The agency found the following:

A 1999 report commissioned by the American Veterinary Medical Association, the American Animal Hospital Association, and the Association of American Veterinary Medical Colleges (Ref. 4) states that:

- Pet owners say they would pay $688 for a 75 percent chance of successfully treating their pet and $356 for only a 10 percent chance of a successful treatment.
- Pet owners say they would pay an average of $1,042 to keep their favorite pet (dog) from dying and $657 to keep their favorite pet (cat) from dying.
- Horse owners would pay an average of $1,827 for a 75 percent chance of successfully treating their horse and $828 for a 10 percent chance.
- Horse owners say they would pay an average of $3,314 to keep their favorite horse from dying and $2,010 for their least favorite horse.

A 2002 survey of pet owners by the American Animal Hospital Association found that 73 percent of pet owners would go into debt to provide for their pet's well-being and 73 percent would spend from $1,000 up to any amount in a life-threatening situation (Ref. 1).

A 2003 survey of veterinarians by DVM Magazine found that, among companion animal practitioners, the cost at which a majority of pet owners would refuse treatment was just under $1,100, and that 26 percent of pet owners would treat regardless of price and an additional 34 percent would treat in accordance with all of the veterinarian's recommendations (Ref. 5).

A 2005 survey of pet owners by Hartz Mountain found that 32 percent said that money was no object when it came to their pet's health (Ref. 6).

These surveys demonstrate that companion animal owner willingness to care for their animals regardless of cost has increased over time, and may have continued to increase since the surveys noted in the previous paragraphs. Given this information, it is difficult to conclude that cost alone would decrease treatment rates for serious diseases or conditions below the estimate of 50 percent proposed by the agency.

With respect to the comment that treatment rate would be negatively influenced by the lack of awareness of, or simply the lack of availability of, a drug once it was developed, approved, and marketed, due to limited promotion or distribution, we note again that many minor uses involve conditions or diseases for which no practical and legal treatment options exist and for which effective treatments may have been desired by veterinarians for years. Under such circumstances, it should not take a significant effort to either inform veterinarians of the availability of a drug for such a disease or condition or to convince them of the need for it.

Therefore, the agency determines that there is currently no reliable evidence to support decreasing the proposed estimate of drug treatment rate for minor uses in companion animals, but will periodically reexamine this estimate along with others supporting the establishment of small numbers for major companion animal species to determine whether the small numbers need to be revised.

(Comment 16) One comment stated that a manufacturer receives approximately 25 percent of the actual cost paid by an animal owner for drug treatment, that the rest goes to those involved in drug distribution up to the point of treatment, and, therefore, that a more appropriate drug treatment value for dogs would be $100 rather than $350.

(Response) The $350 referenced by the comment represents the agency's estimate of the drug treatment value to the manufacturer for a product intended for use in dogs in order to justify drug development for an uncommon, but serious condition—with the understanding that the price to the animal owner would be significantly higher.

While there may be circumstances under which a manufacturer would receive only 25 percent of the actual cost paid by an animal owner for drug treatment, the agency does not agree that 25 percent represents the typical manufacturer share of the cost to an animal owner for new animal drugs of the kind that are likely to qualify for minor use status.

The manufacturer's price for a new animal drug product and the subsequent prices of those involved in the distribution of the product to the animal owner are significantly affected by a number of factors including the nature of the drug involved, the significance of the intended use of the product, the availability of alternative products for the intended use, and ultimately by the amount that animal owners are willing to pay to treat their animals for particular intended uses (see the results of the surveys cited in the response to the previous comment).

Based on the information available to the agency, a more typical example of pricing for a product with an intended use in dogs that would qualify for minor use status would be about $350 from a manufacturer to a distributor, $440 from a distributor to a veterinarian, and $880

from a veterinarian to an animal owner. Thus the manufacturer would receive approximately 40 percent of the cost of the drug to the animal owner. However, for expensive drugs veterinarians may be willing to decrease their price from the routine 200 percent of their cost to something on the order of 135 to 150 percent which would result in a price to the animal owner of about $590 to $660. In this case, the manufacturer would receive approximately 50 to 60 percent of the cost of the drug to the animal owner (Ref. 2).

As explained in response to comment 15 of this document, even a final drug price of $880 would likely be acceptable to most dog owners for the treatment of a serious condition.

The information available to the agency, as cited previously, does not support the comment's assertion that manufacturers receive only 25 percent of the final cost to the animal owner of a new animal drug. However, FDA will periodically reexamine this estimate to determine whether the small numbers need to be revised.

III. Legal Authority

FDA's authority for issuing this final rule is provided by the MUMS Act (section 571 of the FD&C Act *et seq.* (21 U.S.C. 360ccc *et seq.*)). When Congress passed the MUMS Act, it directed FDA to publish implementing regulations (see 21 U.S.C. 360ccc note). In the context of the MUMS Act, the statutory requirements of section 573 of the FD&C Act (21 U.S.C. 360ccc-2), along with section 701(a) of the FD&C Act (21 U.S.C. 371(a)) provide authority for this final rule. Section 701(a) authorizes the agency to issue regulations for the efficient enforcement of the FD&C Act.

IV. Analysis of Economic Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule is only expected to slightly reduce the administrative effort of ''minor use'' requestors while imposing no additional costs, the agency certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

FDA previously published both a proposed rule and final rule on the MUMS designation system. Each of these publications included analyses of the expected economic impacts of the creation and administration of the MUMS designation system as required by the Executive order and two statutes mentioned in the previous paragraphs. The 2007 final designation regulation presented estimates of the annual costs of the MUMS designation system of about $65,000 annually. Additionally, the 2007 final designation regulation provided some discussion of, but was not able to quantify, the expected benefits of the regulation.

The 2007 final designation regulation included a statement that FDA would address the issue of establishing a definition of ''small number of animals'' in a future rulemaking. In the March 2008 proposed rule, FDA proposed a specific ''small number of animals'' for each of the seven major animal species as defined by the MUMS Act, based on the data and analysis described in its preamble.

The March 2008 proposed rule, which this rule finalizes, sets an upper limit on the number of animals of each of the seven major animal species for which a request for designation could be made under the ''minor use'' provisions of the 2007 final designation regulation. When proposing the rule, FDA did not have any additional information to show that the proposed threshold numbers would significantly affect the expected number of MUMS designation requests that are received by the agency each year. The definition of a ''small number'' of each of the seven major species reduces the ambiguity for ''minor use'' requestors. Additionally, the rule provides for a small reduction in administrative effort by ''minor use'' requestors who are no longer required to provide additional information on potential markets and drug development costs due to the proposed removal of § 516.21(c) (21 CFR 516.21(c)).

FDA did not receive any comments pertaining to the analysis of impacts section of the March 2008 proposed rule. Further, FDA has not made any substantive changes to this final rule that would require significant changes to the assumptions used, and conclusions reached, in the impacts section of the March 2008 proposed rule. As such, FDA retains its impacts analysis of the March 2008 proposed rule for this final rule. FDA has determined that the final rule would not impose any additional costs or provide any further health benefits beyond those contained in the 2007 final designation regulation.

V. Paperwork Reduction Act of 1995

This final rule does not contain new information collection provisions that would be subject to review by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520).

Title: Setting ''Small Numbers of Animals'' for Determining Minor Use

Description: This final rule revises the minor use provisions of 21 CFR part 516, subpart B. Part 516 contains the implementing regulations for the MUMS Act and subpart B contains the designation provisions for minor use and minor species new animal drugs. Currently, requests for minor use designation are considered on a case-by-case basis by the agency under a regulation (§ 516.21) requiring that product-specific financial information supporting minor use status be included in the request. In order to further define minor use, this rule provides seven threshold ''small numbers of animals,'' one for each major species, based on industry-wide economic or animal production data. With these numbers in place, drug sponsors requesting minor use designation will no longer be required to submit the confidential product-specific financial information described in § 516.21(c). Therefore, the reporting burden for minor use designation, as currently required in § 516.20(b)(7), will be somewhat lower. However, we anticipate that many requests for designation will be for minor species, not minor use, and furthermore, the current requirement for financial information is only one part of

a request for designation, therefore, the total paperwork burden currently assigned to § 516.20 will not be affected significantly.

This final rule also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the PRA. The collections of information in § 516.20 have been approved under OMB control number 0910–0605.

VI. Environmental Impact

We have carefully considered the potential environmental impacts of this final rule and determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment, nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. References

The following references have been placed on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Brakke Consulting, Inc., ''Disease Incidence Rates, Drug Development and Treatment Costs,'' September 2005.

2. Brakke Consulting, Inc., ''Pharmaceutical Pricing for Companion Animal Products,'' December 2008.

3. American Veterinary Medical Association, ''U.S. Pet Ownership & Demographics Sourcebook,'' 2002.

4. Brown, J.P., and J.D. Silverman, ''The Current and Future Market for Veterinarians and Veterinary Medical Services in the United States,'' *Journal of the American Veterinary Medical Association*, vol. 215, No. 2, July 15, 1999.

5. Verdon, D.R., ''Clients Spending More Before Stopping Treatment, DVMs Say,'' DVM Newsmagazine, July 1, 2003.

6. PR Newswire, ''New National Hartz Survey on the Human-Animal Bond Finds That Pets Are Seen as Part of the Family by Three in Four Pet Owners,'' April 2005.

List of Subjects in 21 CFR part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 516 is amended as follows:

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 1. The authority citation for 21 CFR part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc-1, 360ccc-2, 371.

■ 2. Amend § 516.3 by alphabetically adding a new definition to paragraph (b) as follows:

§ 516.3 Definitions.

* * * * *

(b) * * *

Small number of animals means equal to or less than 50,000 horses; 70,000 dogs; 120,000 cats; 310,000 cattle; 1,450,000 pigs; 14,000,000 turkeys; and 72,000,000 chickens.

* * * * *

§ 516.21 [Amended]

■ 3. Amend § 516.21 by removing paragraph (c).

Dated: August 18, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20553 Filed 8–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 147, and 165

[USCG–2009–0777]

Quarterly Listings; Safety Zones, Security Zones and Special Local Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between January 2007 and January 2008, that expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, and local regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules between 8 January 2007 and 30 January that became effective and were terminated before they could be published in the **Federal Register**.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building, Ground Rloor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862. For questions on viewing, or on submitting material to the docket, contact Ms. Angie Ames, Docket Operations, telephone 202–366–5115.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period,

mariners were personally notified of the contents of these safety zones, security zones or special local regulations by Coast Guard officials' on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of temporary safety zones, security zones, and local regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The temporary rules listed in this notice have been exempted from review under Executive Order 12666, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following unpublished rules were placed in effect temporarily during the period between January 2007 and January 2008, unless otherwise indicated.

Dated: August 19, 2009.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

3RD QUARTER 2008 LISTING

Docket number	Location	Type	Effective date
CGD01–2007–033	South Portland, ME	Safety Zones (Parts 147 and 165)	3/31/2007
CGD01–2007–081	Bellport, NY	Safety Zones (Parts 147 and 165)	7/14/2007
CGD01–2007–083	Nahant, MA	Safety Zones (Parts 147 and 165)	7/4/2007
CGD01–2007–087	Point O' Woods, NY	Safety Zones (Parts 147 and 165)	7/1/2007
CGD01–2007–089	Kennebunkport, ME	Security Zones (Part 165)	7/1/2007
CGD01–2007–089	Kennebunkport, ME	Security Zones (Part 165)	7/1/2007
CGD01–2007–090	Gloucester, MA	Safety Zones (Parts 147 and 165)	7/1/2007
CGD01–2007–106	Point O' Woods, NY	Safety Zones (Parts 147 and 165)	8/11/2007
CGD01–2007–107	Sag Habor, NY	Safety Zones (Parts 147 and 165)	8/18/2007
CGD01–2007–114	Portland Habor, ME	Safety Zones (Parts 147 and 165)	8/18/2007
CGD01–2007–117	Newburyport, MA	Safety Zones (Parts 147 and 165)	8/4/2007
CGD01–2007–119	Kennebunkport, ME	Security Zones (Part 165)	8/11/2007
CGD01–2007–122	Port Jefferson, NY	Safety Zones (Parts 147 and 165)	8/20/2007
CGD01–2007–124	Gloucester, MA	Safety Zones (Parts 147 and 165)	8/9/2007
CGD01–2007–125	New Haven, CT	Safety Zones (Parts 147 and 165)	7/21/2007
CGD01–2007–128	Revere, MA	Safety Zones (Parts 147 and 165)	8/18/2007
CGD01–2007–131	Revere, MA	Safety Zones (Parts 147 and 165)	9/2/2007
CGD01–2007–142	Bayville, NY	Safety Zones (Parts 147 and 165)	10/3/2007
CGD01–2007–143	Southold, NY	Safety Zones (Parts 147 and 165)	10/6/2007
CGD01–2007–144	Boston, MA	Safety Zones (Parts 147 and 165)	10/19/2007
CGD01–2007–146	New London, CT	Safety Zones (Parts 147 and 165)	10/2/2007
CGD01–2007–147	East Haddam, CT	Safety Zones (Parts 147 and 165)	10/6/2007
CGD01–2007–149	New London, CT	Safety Zones (Parts 147 and 165)	10/16/2007
CGD01–2007–154	Salem, MA	Safety Zones (Parts 147 and 165)	10/31/2007
CGD01–2007–159	Patchogue, NY	Safety Zones (Parts 147 and 165)	11/18/2007
CGD01–2007–160	Patchogue, NY	Safety Zones (Parts 147 and 165)	11/18/2007
CGD05–2007–027	Clarksville, TN	Safety Zones (Parts 147 and 165)	10/2/2007
CGD05–2007–036	Wilmington, NC	Safety Zones (Parts 147 and 165)	3/25/2007
CGD05–2007–041	Manasquan, NJ	Safety Zones (Parts 147 and 165)	4/19/2007
CGD05–2007–044	Hampton, VA	Special Local Regulations (Part 100)	8/10/2007
CGD05–2007–054	Jamestown Island, VA	Security Zones (Part 165)	5/3/2007
CGD05–2007–057	Hampton, VA	Security Zones (Part 165)	5/13/2007
CGD05–2007–064	Hampton, VA	Safety Zones (Parts 147 and 165)	7/9/2007
CGD05–2007–067	Washington, DC	Security Zones (Part 165)	7/20/2007
CGD05–2007–068	Baltimore, MD	Safety Zones (Parts 147 and 165)	7/3/2007
CGD05–2007–073	Clarksville, TN	Safety Zones (Parts 147 and 165)	7/21/2007
CGD05–2007–076	Charles County, MD	Safety Zones (Parts 147 and 165)	7/27/2007
CGD05–2007–078	Annapolis, MD	Security Zones (Part 165)	7/27/2007
CGD05–2007–079	Cape Charles, VA	Safety Zones (Parts 147 and 165)	8/5/2007
CGD05–2007–080	Washington, DC	Security Zones (Part 165)	9/23/2007
CGD05–2007–082	Hopewell, VA	Safety Zones (Parts 147 and 165)	9/1/2007
CGD05–2007–086	Virginia Beach, VA	Safety Zones (Parts 147 and 165)	9/29/2007
CGD05–2007–091	Delaware Canal, MD	Safety Zones (Parts 147 and 165)	9/8/2007
CGD05–2007–096	Morehead City, NC	Safety Zones (Parts 147 and 165)	9/26/2007
CGD05–2007–097	Alexandria Channel, DC	Safety Zones (Parts 147 and 165)	10/2/2007
CGD05–2007–102	Talbot County, MD	Security Zones (Part 165)	10/20/2007
CGD05–2007–103	Portsmouth, VA	Security Zones (Part 165)	10/17/2007
CGD05–2007–104	Alexandria Channel, DC	Safety Zones (Parts 147 and 165)	10/30/2007
CGD05–2007–105	Talbot County, MD	Security Zones (Part 165)	10/20/2007
CGD05–2007–106	Washington, DC	Security Zones (Part 165)	10/23/2007
CGD05–2007–110	Baltimore, MD	Safety Zones (Parts 147 and 165)	11/2/2007
CGD05–2007–112	Fairfax County, VA	Security Zones (Part 165)	11/7/2007
CGD05–2007–114	Virigina Beach, VA	Safety Zones (Parts 147 and 165)	11/14/2007
CGD05–2007–115	Washington, DC	Safety Zones (Parts 147 and 165)	11/9/2007
CGD05–2007–117	Alexandria Channel, DC	Safety Zones (Parts 147 and 165)	12/5/2007
CGD05–2007–118	Annapolis, MD	Security Zones (Part 165)	11/27/2007
CGD05–2007–500	Norkfolk, VA	Safety Zones (Parts 147 and 165)	9/1/2007

3RD QUARTER 2008 LISTING—Continued

Docket number	Location	Type	Effective date
CGD07–2007–024	Ft. Lauderdale, FL	Special Local Regulations (Part 100)	5/4/2007
CGD07–2007–209	Savannah, GA	Special Local Regulations (Part 100)	11/3/2007
CGD07–2007–227	Horry County, SC	Safety Zones (Parts 147 and 165)	10/8/2007
CGD09–2006–079	Bayfield, WI	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–2006–080	Duluth, MN	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–2007–022	Webster, NY	Safety Zones (Parts 147 and 165)	5/26/2007
CGD09–2007–024	Alexandria, NY	Safety Zones (Parts 147 and 165)	5/22/2007
CGD09–2007–032	Neebish Island, MI	Safety Zones (Parts 147 and 165)	5/24/2007
CGD09–2007–048	Sodus Point, NY	Safety Zones (Parts 147 and 165)	7/3/2007
CGD09–2007–049	Baldwinsville, NY	Safety Zones (Parts 147 and 165)	7/6/2007
CGD09–2007–053	Brewerston, NY	Safety Zones (Parts 147 and 165)	7/3/2007
CGD09–2007–056	Toledo, OH	Safety Zones (Parts 147 and 165)	6/30/2007
CGD09–2007–063	Detroit, MI	Safety Zones (Parts 147 and 165)	6/24/2007
CGD09–2007–064	Port Detroit Zone	Safety Zones (Parts 147 and 165)	6/1/2007
CGD09–2007–066	Toledo, OH	Safety Zones (Parts 147 and 165)	6/23/2007
CGD09–2007–067	Port Detroit Zone	Safety Zones (Parts 147 and 165)	7/1/2007
CGD09–2007–068	Green Bay, WI	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–2007–070	Port Buffalo Zone, NY	Safety Zones (Parts 147 and 165)	7/1/2007
CGD09–2007–075	Tonawanda, NY	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–2007–086	Lorain, OH	Safety Zones (Parts 147 and 165)	8/26/2007
CGD09–2007–096	Erie, PA	Safety Zones (Parts 147 and 165)	8/11/2007
CGD09–2007–104	Erie, PA	Safety Zones (Parts 147 and 165)	8/19/2007
CGD09–2007–105	Sault Ste. Marie, MI	Safety Zones (Parts 147 and 165)	8/1/2007
CGD09–2007–107	Caseville, MI	Safety Zones (Parts 147 and 165)	8/16/2007
CGD09–2007–111	Bay City, MI	Safety Zones (Parts 147 and 165)	8/11/2007
CGD09–2007–112	St. Clair Shores, MI	Safety Zones (Parts 147 and 165)	8/11/2007
CGD09–2007–113	Algonac, MI	Safety Zones (Parts 147 and 165)	8/18/2007
CGD09–2007–120	Grand Island, NY	Safety Zones (Parts 147 and 165)	9/8/2007
CGD09–2007–124	Milwaukee, WI	Safety Zones (Parts 147 and 165)	10/14/2007
CGD09–2007–125	Harsens Island, MI	Safety Zones (Parts 147 and 165)	10/20/2007
CGD13–2007–005	Portland, OR	Safety Zones (Parts 147 and 165)	1/23/2007
CGD13–2007–010	Puget Sound, WA	Security Zones (Part 165)	3/9/2007
CGD13–2007–021	Portland, OR	Safety Zones (Parts 147 and 165)	7/4/2007
CGD13–2007–022	Tacoma, WA	Safety Zones (Parts 147 and 165)	7/4/2007
CGD13–2007–023	Puget Sound, WA	Safety Zones (Parts 147 and 165)	6/29/2007
CGD13–2007–030	Olympia, WA	Safety Zones (Parts 147 and 165)	9/2/2007
CGD13–2007–033	Puget Sound, WA	Safety Zones (Parts 147 and 165)	9/7/2007
CGD13–2007–034	Seattle, WA	Safety Zones (Parts 147 and 165)	9/14/2007
CGD13–2007–035	Neah, WA	Safety Zones (Parts 147 and 165)	9/10/2007
CGD13–2007–037	Portland, OR	Security Zones (Part 165)	9/19/2007
CGD13–2007–040	Portland, OR	Safety Zones (Parts 147 and 165)	10/9/2007
CGD13–2007–041	Portland, OR	Security Zones (Part 165)	10/23/2007
CGD13–2007–042	Portland, OR	Safety Zones (Parts 147 and 165)	10/17/2007
CGD13–2007–043	Portland, OR	Safety Zones (Parts 147 and 165)	10/21/2007
CGD13–2007–044	Elliott Bay, WA	Security Zones (Part 165)	10/31/2007
CGD13–2007–045	Elliott Bay, WA	Security Zones (Part 165)	11/1/2007
CGD13–2007–046	Elliott Bay, WA	Security Zones (Part 165)	11/2/2007
CGD13–2007–047	Olympia, WA	Security Zones (Part 165)	11/5/2007
CGD13–2007–050	Portland, OR	Safety Zones (Parts 147 and 165)	11/27/2007
CGD13–2007–050	Portland, OR	Safety Zones (Parts 147 and 165)	11/29/2007
CGD13–2007–058	Tillamook Bay, OR	Safety Zones (Parts 147 and 165)	12/24/2007
CGD13–2007–059	Puget Sound, WA	Safety Zones (Parts 147 and 165)	12/30/2007
CGD13–2008–001	Portland, OR	Safety Zones (Parts 147 and 165)	1/3/2008
CGD13–2008–002	Portland, OR	Safety Zones (Parts 147 and 165)	1/5/2008
CGD13–2008–003	Portland, OR	Safety Zones (Parts 147 and 165)	1/9/2008
CGD13–2008–004	Puget Sound, WA	Security Zones (Part 165)	1/23/2008
CGD13–2008–005	Puget Sound, WA	Safety Zones (Parts 147 and 165)	1/5/2008
CGD13–2008–007	Portland, OR	Safety Zones (Parts 147 and 165)	1/22/2008
CGD13–2008–010	Portland, OR	Safety Zones (Parts 147 and 165)	1/30/2008
CGD13–2008–011	Portland, OR	Safety Zones (Parts 147 and 165)	1/30/2008
COTP Charleston–2007–112	The Port of Charleston	Security Zones (Part 165)	5/15/2007
COTP Charleston–2007–114	The Port of Charleston	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Charleston–2007–131	Charleston, SC	Safety Zones (Parts 147 and 165)	5/25/2007
COTP Charleston–2007–162	Moncks Corner, SC	Safety Zones (Parts 147 and 165)	6/30/2007
COTP Guam–2007–002	Apra Harbor, GU	Safety Zones (Parts 147 and 165)	4/10/2007
COTP Honolulu–2008–001	U.S Forces Vessel SBX–1, HI	Security Zones (Part 165)	1/11/2008
COTP Jacksonville–2007–005	Jacksonville, FL	Safety Zones (Parts 147 and 165)	1/8/2007
COTP Jacksonville–2007–074	New Smyra Beach, FL	Safety Zones (Parts 147 and 165)	6/30/2007
COTP Jacksonville–2007–082	Jacksonville, FL	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Jacksonville–2007–147	Orange Park, Flordia	Safety Zones (Parts 147 and 165)	7/1/2007
COTP Jacksonville–2007–180	Port Canaveral, FL	Safety Zones (Parts 147 and 165)	8/4/2007

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Docket number	Location	Type	Effective date
COTP Jacksonville–2007–181	Port Canaveral, FL	Safety Zones (Parts 147 and 165)	8/8/2007
COTP Jacksonville–2007–186	Flager Beach, FL	Safety Zones (Parts 147 and 165)	9/7/2007
COTP Jacksonville–2007–194	Fernandina, FL	Safety Zones (Parts 147 and 165)	8/18/2007
COTP Jacksonville–2007–217	Patrick Air Force Base, FL	Safety Zones (Parts 147 and 165)	9/21/2007
COTP Jacksonville–2007–228	Jacksonville Beach, FL	Safety Zones (Parts 147 and 165)	11/1/2007
COTP Jacksonville–2007–231	Cape Canaveral, FL	Safety Zones (Parts 147 and 165)	11/1/2007
COTP Key West–2007–015	Marathon, FL	Safety Zones (Parts 147 and 165)	5/20/2007
COTP Key West–2007–063	Key Largo, FL	Safety Zones (Parts 147 and 165)	3/17/2007
COTP LA–LB–2007–001	Pacific Ocean, CA	Safety Zones (Parts 147 and 165)	5/24/2007
COTP LA–LB–2007–009	Los Angeles, CA	Safety Zones (Parts 147 and 165)	12/9/2007
COTP Lower Mississippi River–2007–001	Memphis, TN	Safety Zones (Parts 147 and 165)	1/16/2007
COTP Lower Mississippi River–2007–002	Vicksburg, MS	Safety Zones (Parts 147 and 165)	1/19/2007
COTP Lower Mississippi River–2007–004	Natchez, MS	Safety Zones (Parts 147 and 165)	1/25/2007
COTP Lower Mississippi River–2007–005	Vicksburg, MS	Safety Zones (Parts 147 and 165)	2/2/2007
COTP Lower Mississippi River–2007–006	Vicksburg, MS	Safety Zones (Parts 147 and 165)	3/15/2007
COTP Lower Mississippi River–2007–010	Memphis, TN	Safety Zones (Parts 147 and 165)	8/27/2007
COTP Lower Mississippi River–2007–011	Memphis, TN	Safety Zones (Parts 147 and 165)	8/15/2007
COTP Miami–2007–004	Miami, FL	Safety Zones (Parts 147 and 165)	3/18/2007
COTP Miami–2007–020	Hobe Sound, FL	Safety Zones (Parts 147 and 165)	3/24/2007
COTP Miami–2007–032	Miami, FL	Safety Zones (Parts 147 and 165)	2/25/2007
COTP Miami–2007–034	Miami, FL	Safety Zones (Parts 147 and 165)	3/24/2007
COTP Miami–2007–040	Miami, FL	Safety Zones (Parts 147 and 165)	3/1/2007
COTP Miami–2007–041	Miami, FL	Safety Zones (Parts 147 and 165)	3/4/2007
COTP Miami–2007–103	Miami, FL	Safety Zones (Parts 147 and 165)	10/27/2007
COTP Miami–2007–109	Key Biscayne, FL	Security Zones (Part 165)	4/28/2007
COTP Miami–2007–133	Miami, FL	Safety Zones (Parts 147 and 165)	6/18/2007
COTP Miami–2007–167	Miami, FL	Safety Zones (Parts 147 and 165)	7/19/2007
COTP Miami–2007–178	Miami, FL	Safety Zones (Parts 147 and 165)	8/2/2007
COTP Miami–2007–179	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	8/6/2007
COTP Miami–2007–196	Miami, FL	Safety Zones (Parts 147 and 165)	9/11/2007
COTP Miami–2007–199	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	8/29/2007
COTP Miami–2007–201	Miami, FL	Safety Zones (Parts 147 and 165)	8/24/2007
COTP Miami–2007–202	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	8/24/2007
COTP Miami–2007–210	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	9/11/2007
COTP Miami–2007–215	Miami, FL	Safety Zones (Parts 147 and 165)	10/27/2007
COTP Miami–2007–230	Miami, FL	Safety Zones (Parts 147 and 165)	10/10/2007
COTP Miami–2007–232	Miami, FL	Safety Zones (Parts 147 and 165)	10/6/2007
COTP Miami–2007–241	Miami, FL	Safety Zones (Parts 147 and 165)	10/20/2007
COTP Mobile–2007–003	Biloxi, MS	Safety Zones (Parts 147 and 165)	3/24/2007
COTP Mobile–2007–009	Orange Beach, AL	Safety Zones (Parts 147 and 165)	8/11/2007
COTP Mobile–2007–014	Pensacola Beach, FL	Safety Zones (Parts 147 and 165)	7/18/2007
COTP Mobile–2007–018	Mobile, AL	Safety Zones (Parts 147 and 165)	4/27/2007
COTP Mobile–2007–019	Biloxi, MS	Safety Zones (Parts 147 and 165)	4/30/2007
COTP Mobile–2007–021	Mobile, AL	Safety Zones (Parts 147 and 165)	5/19/2007
COTP Mobile–2007–022	Biloxi, MS	Safety Zones (Parts 147 and 165)	6/1/2007
COTP Mobile–2007–023	Fort Walton Beach, FL	Safety Zones (Parts 147 and 165)	6/2/2007
COTP Mobile–2007–024	Biloxi, MS	Safety Zones (Parts 147 and 165)	6/1/2007
COTP Mobile–2007–025	Biloxi, MS	Safety Zones (Parts 147 and 165)	6/11/2007
COTP Mobile–2007–027	Mobile, AL	Security Zone (Part 165)	6/21/2007
COTP Mobile–2007–030	Orange Beach, AL	Safety Zones (Parts 147 and 165)	8/18/2007
COTP Morgan City–2007–001	Morgan City, LA	Safety Zones (Parts 147 and 165)	2/8/2007
COTP Morgan City–2007–003	Morgan City, LA	Safety Zones (Parts 147 and 165)	2/22/2007
COTP Morgan City–2007–004	Amelia, LA	Safety Zones (Parts 147 and 165)	5/26/2007
COTP Morgan City–2007–005	Morgan City, LA	Safety Zones (Parts 147 and 165)	5/26/2007
COTP Morgan City–2007–006	Morgan City, LA	Safety Zones (Parts 147 and 165)	7/24/2007
COTP Morgan City–2007–007	Morgan City, LA	Safety Zones (Parts 147 and 165)	8/13/2007
COTP Morgan City–2007–011	Morgan City, LA	Safety Zones (Parts 147 and 165)	9/26/2007
COTP Ohio Valley–2007–010	Louisville, KY	Safety Zones (Parts 147 and 165)	4/15/2007
COTP Ohio Valley–2007–011	Huntington, WV	Safety Zones (Parts 147 and 165)	5/12/2007
COTP Ohio Valley–2007–013	Parkersburg, WV	Safety Zones (Parts 147 and 165)	5/20/2007
COTP Ohio Valley–2007–014	Saint Albans, WV	Safety Zones (Parts 147 and 165)	6/30/2007
COTP Ohio Valley–2007–015	Clarksville, TN	Safety Zones (Parts 147 and 165)	3/30/2007
COTP Ohio Valley–2007–016	Metropolis, IL	Safety Zones (Parts 147 and 165)	5/25/2007
COTP Ohio Valley–2007–017	Ashland, KY	Safety Zones (Parts 147 and 165)	7/2/2007
COTP Ohio Valley–2007–018	South Point, OH	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Ohio Valley–2007–019	Point Pleasant, WV	Safety Zones (Parts 147 and 165)	7/7/2007
COTP Ohio Valley–2007–020	Portsmouth, OH	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Ohio Valley–2007–021	Evansville, IN	Safety Zones (Parts 147 and 165)	7/1/2007
COTP Ohio Valley–2007–022	Marrietta, OH	Safety Zones (Parts 147 and 165)	7/14/2007
COTP Ohio Valley–2007–023	Cincinnati, OH	Safety Zones (Parts 147 and 165)	7/7/2007
COTP Ohio Valley–2007–024	Bellevue, KY	Safety Zones (Parts 147 and 165)	7/14/2007

3RD QUARTER 2008 LISTING—Continued

Docket number	Location	Type	Effective date
COTP Ohio Valley–2007–027	Tuscumbia, AL	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Ohio Valley–2007–028	Kingston, TN	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Ohio Valley–2007–029	Huntington, WV	Safety Zones (Parts 147 and 165)	8/10/2007
COTP Ohio Valley–2007–030	Clarksville, TN	Safety Zones (Parts 147 and 165)	8/4/2007
COTP Ohio Valley–2007–031	Point Pleasant, WV	Safety Zones (Parts 147 and 165)	9/1/2007
COTP Ohio Valley–2007–032	Warsaw, KY	Safety Zones (Parts 147 and 165)	8/18/2007
COTP Ohio Valley–2007–033	Louisville, KY	Safety Zones (Parts 147 and 165)	8/24/2007
COTP Ohio Valley–2007–034	Aurora, IN	Safety Zones (Parts 147 and 165)	8/18/2007
COTP Ohio Valley–2007–035	Cairo, IL	Safety Zones (Parts 147 and 165)	8/6/2007
COTP Ohio Valley–2007–036	Cairo, IL	Safety Zones (Parts 147 and 165)	7/27/2007
COTP Ohio Valley–2007–037	Grand Tower, IL	Safety Zones (Parts 147 and 165)	8/9/2007
COTP Ohio Valley–2007–038	Cape Giradeau, MO	Safety Zones (Parts 147 and 165)	8/9/2007
COTP Ohio Valley–2007–039	Nashville, TN	Safety Zones (Parts 147 and 165)	8/25/2007
COTP Ohio Valley–2007–040	Huntsville, AL	Safety Zones (Parts 147 and 165)	6/26/2007
COTP Ohio Valley–2007–041	Clarksville, TN	Safety Zones (Parts 147 and 165)	8/29/2007
COTP Ohio Valley–2007–043	Charleston, WV	Safety Zones (Parts 147 and 165)	10/6/2007
COTP Ohio Valley–2007–044	Chattanooga, TN	Safety Zones (Parts 147 and 165)	10/12/2007
COTP Ohio Valley–2007–056	Ledbetter, KY	Safety Zones (Parts 147 and 165)	1/20/2007
COTP San Diego–2007–006	Bullhead City, AZ	Special Local Regulations (Part 100)	3/10/2007
COTP San Diego–2007–014	Oceanside Harbor, CA	Safety Zones (Parts 147 and 165)	3/31/2007
COTP San Diego–2007–017	Lake Havasu, AZ	Safety Zones (Parts 147 and 165)	4/14/2007
COTP San Diego–2007–051	San Diego, CA	Safety Zones (Parts 147 and 165)	3/11/2007
COTP San Diego–2007–051	San Diego, CA	Safety Zones (Parts 147 and 165)	3/19/2007
COTP San Diego–2007–052	San Diego, CA	Safety Zones (Parts 147 and 165)	5/16/2007
COTP San Diego–2007–351	San Diego, CA	Safety Zones (Parts 147 and 165)	12/31/2007
COTP San Francisco Bay–2007–003	Sacramento, CA	Safety Zones (Parts 147 and 165)	3/28/2007
COTP San Francisco Bay–2007–021	Sausalito, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Francisco Bay–2007–028	San Francisco Bay, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Francisco Bay–2007–032	Humboldt Bay, CA	Safety Zones (Parts 147 and 165)	7/3/2007
COTP San Francisco Bay–2007–035	San Francisco Bay, CA	Safety Zones (Parts 147 and 165)	7/28/2007
COTP San Francisco Bay–2007–039	San Joaquin River, CA	Safety Zones (Parts 147 and 165)	8/12/2007
COTP San Francisco Bay–2007–040	Pittsburg, CA	Special Local Regulations (Part 100)	9/9/2007
COTP San Francisco Bay–2007–044	Pittsburg, CA	Safety Zones (Parts 147 and 165)	9/8/2007
COTP San Francisco Bay–2007–045	San Francisco Bay, CA	Safety Zones (Parts 147 and 165)	9/26/2007
COTP San Francisco Bay–2007–046	San Francisco Bay, CA	Safety Zones (Parts 147 and 165)	9/29/2007
COTP San Francisco Bay–2007–048	Franks Tract, CA	Safety Zones (Parts 147 and 165)	10/13/2007
COTP San Francisco Bay–2007–052	San Francisco Bay, CA	Safety Zones (Parts 147 and 165)	9/7/2007
COTP San Francisco Bay–2007–053	San Francisco Bay, CA	Safety Zones (Parts 147 and 165)	9/28/2007
COTP San Francisco Bay–2008–001	Monterey Bay, CA	Safety Zones (Parts 147 and 165)	1/7/2008
COTP San Francisco Bay–2008–002	San Francisco Bay, CA	Safety Zones (Parts 147 and 165)	1/17/2008
COTP San Francisco Bay–2008–003	San Francisco Bay, CA	Safety Zones (Parts 147 and 165)	1/12/2008
COTP San Francisco Bay–2008–004	San Francisco Bay, CA	Safety Zones (Parts 147 and 165)	1/27/2008
COTP San Juan–2007–039	San Juan, PR	Safety Zones (Parts 147 and 165)	7/22/2007
COTP San Juan–2007–068	Charlotte Amalie, USVI	Safety Zones (Parts 147 and 165)	3/23/2007
COTP San Juan–2007–070	San Juan, PR	Safety Zones (Parts 147 and 165)	4/4/2007
COTP San Juan–2007–079	San Juan, PR	Safety Zones (Parts 147 and 165)	4/28/2007
COTP San Juan–2007–098	San Juan, PR	Safety Zones (Parts 147 and 165)	4/22/2007
COTP San Juan–2007–108	San Juan, PR	Safety Zones (Parts 147 and 165)	5/6/2007
COTP San Juan–2007–190	San Juan, PR	Safety Zones (Parts 147 and 165)	8/16/2007
COTP San Juan–2007–193	San Juan, PR	Security Zones (Part 165)	8/23/2007
COTP San Juan–2007–219	San Juan, PR	Safety Zones (Parts 147 and 165)	10/21/2007
COTP San Juan–2007–250	Guanica, PR	Safety Zones (Parts 147 and 165)	9/6/2007

[FR Doc. E9–20508 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0537]

Drawbridge Operation Regulation; Red River Waterway, Torras, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the LA 15 Highway Drawbridge across the Red River Waterway, mile 1.0, near Torras, Louisiana. The deviation is necessary to allow time for conducting needed maintenance to the bridge. This deviation allows the bridge to remain in the closed-to-navigation position for a two week period.

DATES: This deviation is effective from 7 a.m. on October 19, 2009, to 5 p.m. on October 30, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0537 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0537 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspections or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays,

FOR FURTHER INFORMATION, CONTACT: If you have questions on this rule, call or e-mail Roger K. Wiebusch, Bridge Administrator, Coast Guard; (314) 269–2378, *Roger.K.Wiebusch@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development requested a temporary deviation for the LA 15 Highway Drawbridge, across the Red River Waterway, Mile 1.0, near Torras, Louisiana, to remain in the closed-to-navigation position for a two-week period to facilitate critical maintenance. The LA 15 Highway Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to facilitate the needed bridge work, the drawbridge must be kept in the closed-to-navigation position. This deviation allows the bridge to remain in the closed-to-navigation position and is effective from 7 a.m., October 19, 2009, to 5 p.m., October 30, 2009.

Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Access from the Lower Mississippi River to the Atchafalaya River, Red River Waterway, and the Ouachita-Black Waterway is reached by passing under the subject bridge. Navigation will not be significantly impacted due to the scheduled closure of the Lower Old River Lock, at the same river mile as the subject bridge, for approximately 30 days commencing on or about October 15, 2009. The scheduled lock closure will preclude any requests for a bridge drawspan opening.

The LA 15 Highway Drawbridge navigation span has a vertical clearance of 74.0 feet above zero gauge at the bridge in the closed-to-navigation position. Performing maintenance on the bridge, when the number of vessels likely to be impacted is minimal, is preferred to bridge closure requirements during other times when the lock is operational. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators and the Army Corps of Engineers.

To get to Baton Rouge, Louisiana by an alternate route from the Red River Waterway, users may transit down the Atchafalaya River and up the Port Allen Route, adding approximately two days to the transit. For vessels going further north or south of Baton Rouge, additional time would be spent on the transit.

This temporary deviation has been coordinated with waterway users. No objections were received.

Dated: August 7, 2009.

Roger K. Wiebusch,

Bridge Administrator, Eighth Coast Guard District (dwb).

[FR Doc. E9–20514 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0767]

RIN 1625–AA11

Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone and regulated navigation area on the Chicago Sanitary and Ship Canal near Romeoville, IL. This temporary final rule places navigational and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' (USACE) electrical dispersal fish barrier system.

DATES: This temporary final rule is effective from 8 a.m. on August 17, 2009, until 5 p.m. on August 25, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0767 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0767 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216–902–6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the U.S. Army Corps of Engineers (USACE) made the decision, without time for a proper notice period, to permanently increase the voltage of the fish barrier to two-volts per inch in response to data which indicates that Asian carp are closer to the Great Lakes waterway system than originally thought. The electric current in the water created by the electrical dispersal barriers coupled with the uncertainty of the effects of the increased voltage poses a safety risk to commercial vessels and recreational boaters who transit the area. Therefore, it would be against the public interest to delay the issuing of this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because of the safety risk to commercial vessels and recreational boaters who transit the area. The following discussion and the Background and Purpose section below provide additional support of the Coast Guard's determination that good cause exists for not publishing a NPRM and

for making this rule effective less than 30 days after publication.

In 2002, the USACE energized a demonstration electrical dispersal barrier located in the Chicago Sanitary and Ship Canal. The demonstration barrier, commonly referred to as ''Barrier I,'' generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal. In 2006, the USACE completed construction of a new barrier, ''Barrier IIA.'' Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the Chicago Sanitary and Ship Canal, than Barrier I. Testing was conducted by the USACE which indicated that two-volts per inch is the optimal voltage to deter aquatic nuisance species. The USACE's original plan was to perform testing on the effects of the increased voltage on vessels passing through the fish barrier prior to permanently increasing the voltage. However, after receiving data that the Asian carp were closer to the Great Lakes than expected, the decision was made to immediately energize the barrier to two-volts per inch without prior testing.

A comprehensive, independent analysis of Barrier IIA, conducted in 2008 by the USACE at the one-volt per inch level, found a serious risk of injury or death to persons immersed in the water located adjacent to and over the barrier. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-volt per inch level. The Coast Guard and USACE developed regulations and safety guidelines, with stakeholder input, which addressed the risks and hazards associated with operating the barriers at the one-volt per inch level. These regulations were published in 33 CFR 165.923, 70 FR 76692 (Dec 28, 2005) and in a series of temporary final rules: 71 FR 4488 (Jan 27, 2006); 71 FR 19648 (Apr 17, 2006); 73 FR 33337 (Jun 12, 2008); 73 FR 37810 (Jul 2, 2008); 73 FR 45875 (Aug 7, 2008); 73 FR 63633 (Oct 27, 2008); 74 FR 6352 (Feb 9, 2009); and 74 FR 24722 (May 26, 2009).

The USACE recently notified the Coast Guard that it plans to immediately increase the voltage of Barrier IIA to two-volts per inch on a full-time basis starting August 17, 2009. Both Barrier IIA and Barrier I will operate at the same time; hence, Barrier I will provide a redundant back up to Barrier IIA.

In the past, the Coast Guard has advised the USACE that it has no objection to the activation of Barrier IIA and Barrier I at a maximum strength of one-volt per inch. Testing on commercial vessels transiting the canal over the fish barrier was conducted at one-volt per inch indicating that although the barriers create risks to people and vessels, those risks could be mitigated by following certain procedures. These procedures were implemented in a temporary interim rule establishing a regulated navigation area and safety zone that was published in the **Federal Register** on February 9, 2009 (74 FR 6352) as well as a notice of proposed rulemaking published in the **Federal Register** on May 26, 2009 (74 FR 24722).

However, both of these rulemakings contemplated further testing of the effects of higher voltages on commercial and recreational vessels as well as people. Because no tests have been conducted at voltages higher than one-volt per inch, the Coast Guard will implement this safety zone until such tests are conducted indicating it is safe for vessels to pass over and adjacent to the fish barrier. The regulated navigation area will be implemented only in the event that the voltage of the barriers is decreased to one-volt per inch, or it is determined after additional testing that it is safe for vessels to pass.

Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the Chicago Sanitary and Ship Canal. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1300 feet downstream of the Barrier I. The potential field strength for Barrier IIA will be up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for approximately seven weeks in September and October 2008, while Barrier I was taken down for maintenance. Construction on a third barrier (Barrier IIB) is planned; Barrier IIB would augment the capabilities of Barriers I and IIA.

In the spring of 2004, a commercial towboat operator reported an electrical arc between a wire rope and timberhead while making up a tow in the vicinity of the Barrier I. During subsequent USACE safety testing in January 2005, sparking was observed at points where metal-to-metal contact occurred between two barges in the barrier field.

The electric current in the water also poses a safety risk to commercial and recreational boaters transiting the area. The Navy Experimental Diving Unit (NEDU) was tasked with researching how the electric current from the barriers would affect a human body if immersed in the water. The NEDU final report concluded that the possible effects to a human body if immersed in the water include paralysis of body muscles, inability to breathe, and ventricular fibrillation.

A Safety Work Group facilitated by the Coast Guard and in partnership with the USACE and industry initially met in February 2008 and focused on three goals: (1) Education and public outreach, (2) keeping people out of the water, and (3) egress/rescue efforts. The Safety Work Group has regularly been attended by eleven stakeholders. Key partners include the American Waterways Operators, Illinois River Carriers Association, Army Corps of Engineers Chicago District, Coast Guard Marine Safety Unit Chicago, Coast Guard Sector Lake Michigan/Captain of the Port Lake Michigan, and the Ninth Coast Guard District.

Based on the safety hazards associated with electric current flowing through navigable waterways and the uncertainty of the effects of higher voltage on people and vessels that pass over and adjacent to the barriers, the Coast Guard is closing the waterway until proper testing can be conducted by the USACE. The Coast Guard appreciates the commercial significance of this waterway and will work closely with the USACE to re-open the waterway as soon as possible; however, it is imperative that this safety zone be immediately enacted to avoid loss of life.

The Coast Guard plans on publishing a new temporary interim rule (TIR) with requests for comments as soon as safety testing of the waterway is completed in order to accommodate for the results of the testing. The Coast Guard will then likely follow with a supplemental notice of proposed rulemaking (SNPRM) in order to provide a complete notice and

comment period for interested parties. We encourage the public to participate in the rulemaking process by submitting and reviewing comments and related materials at *http://www.regulations.gov* to the dockets associated with this TIR and any subsequent NPRM/SNPRM.

Discussion of Rule

This temporary final rule will suspend 33 CFR 165.T09–1247. This rule also continues the suspension of 33 CFR 165.923 which was earlier suspended from January 18, 2009, until September 30, 2009 (74 FR 6352, Feb. 9, 2009). This rule places a safety zone on all waters located adjacent to and over the electrical dispersal barriers on the Chicago Sanitary and Ship Canal. The safety zone will be enforced at all times the USACE operates the electrical dispersal barrier higher than one-volt per inch until safety testing is conducted that indicates vessels may safely pass. This safety zone, which encompasses all the waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge), will be enforced by the Captain of the Port Lake Michigan, for such times before, during, and after barrier testing as he or she deems necessary to protect mariners and vessels from damage or injury. The Captain of the Port Lake Michigan will cause notice of enforcement or suspension of enforcement of this safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is suspended. In addition, the Captain of the Port Lake Michigan maintains a telephone line that is manned 24-hours a day, seven days a week. The public can obtain information concerning enforcement of the safety zone by contacting the Captain of the Port Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at (414) 747–7182.

In the event that the barrier voltage is dropped back to one-volt per inch; it is deemed safe for vessels to transit the over and adjacent to the barriers; or the Captain of the Port Lake Michigan grants waivers to the safety zone; this rule implements a regulated navigation area to control the movements of all vessels passing over and adjacent to the barriers. This regulated navigation area is the same as those previously implemented in this area. The regulated navigation area encompasses all waters of the Chicago Sanitary and Ship Canal located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge). The requirements placed on commercial vessels include: (1) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the regulated navigation area to announce intentions and work out passing arrangements on either side; (2) commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow; and (3) all up-bound and down-bound barge tows that contain one or more red flag barges must be assisted by a bow boat until the entire tow is clear of the regulated navigation area. Red flag barges are barges certificated to carry, in bulk, any hazardous material as defined in 46 CFR 150.115. Currently, 46 CFR 150.115 defines hazardous material as:

(a) A flammable liquid as defined in 46 CFR 30.10–22 or a combustible liquid as defined in 46 CFR 30.10–15;

(b) A material listed in Table 151.05, Table 1 of part 153, or Table 4 of part 154 of Title 46, CFR; or

(c) A liquid, liquefied gas, or compressed gas listed in 49 CFR 172.101.

The USACE has informed the Coast Guard that they will continue to contract bow boat assistance for barge tows containing one or more red flag barges. Operators of tows containing one or more red flag barges should notify the bow boat contractor at least two hours prior to the need for assistance. The tow operator should then remain in contact with the contractor after the initial call for bow boat assistance and advise the contractor of any delays. Information on how to arrange for bow boat assistance may be obtained by contacting the Army Corps of Engineers at 312–846–5333, during normal working hours. The Coast Guard will also publish this information in its Local Notice to Mariners.

This temporary final rule places additional restrictions and operating requirements on all vessels within a smaller portion of the regulated navigation area, specifically, the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). Within this smaller area, this temporary final rule prohibits all vessels from loitering, mooring or laying up on the right or left descending banks, or making or breaking tows on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). In addition, vessels may only enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge) for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). The temporary final rule also requires all personnel on open decks to wear a Coast Guard approved Type I personal flotation device while on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

These restrictions are necessary for safe navigation of the regulated navigation area and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during safety tests conducted by the USACE. Deviation from this temporary final rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. The Commander, Ninth Coast Guard District designates Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago, as his designated representatives for the purposes of the regulated navigation area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal. This determination is based the following: (1) The Chicago Sanitary and Ship Canal will be re-opened as soon as is practicable; (2) the Coast Guard expects to be able to re-open the Chicago Sanitary and Ship Canal at least to some commercial traffic as soon as the first phase of safety testing is complete; (3) interested parties were already notified by a notice of enforcement under a previous temporary interim rule that this portion of the Chicago Sanitary and Ship Canal would be closed for safety testing by the USACE from 8 a.m. until 8 p.m. August 17, 2009, to August 21, 2009; (4) if the Chicago Sanitary and Ship Canal is re-opened to commercial traffic, the USACE intends to pay the cost of the bow boat required by barge tows containing one or more red flag barges during the time this rule is effective; and (5) vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone while the safety zone is enforced; (6) in exigent circumstances, it may be possible to temporarily drop the voltage of the fish barrier back to one-volt per inch.

Because this safety zone must be implemented immediately without a full notice and comment period, the full economic impact of this rule is difficult to determine at this time. The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of permanent or temporary closures of the Chicago Sanitary and Ship Canal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small: the owners and operators of vessels intending to transit or anchor in a portion of the Chicago Sanitary and Ship Canal.

This safety zone and regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The Chicago Ship and Sanitary Canal will be re-opened as soon as is practicable; (2) the Coast Guard expects to be able to re-open the Chicago Ship and Sanitary Canal at least to some commercial traffic as soon as the first phase of safety testing is complete; (3) interested parties were already notified by a notice of enforcement under the previous temporary interim rule that this portion of the Chicago Ship and Sanitary Canal would be closed for safety testing by the USACE from 8 a.m. until 8 p.m. August 17, 2009, to August 21, 2009, (4) if the Chicago Ship and Sanitary Canal is re-opened to commercial traffic, the USACE intends to pay the cost of the bow boat required by barge tows containing one or more red flag barges during the time this rule is effective; and (5) vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone while the safety zone is enforced; (6) in exigent circumstances, it may be possible to temporarily drop the voltage of the fish barrier back to one-volt per inch.

As noted above, the Coast Guard intends to publish an SNPRM and specifically seek public comment as to a permanent regulated navigation area and safety zone. The Coast Guard encourages public comment regarding the potential economic impact of the regulated navigation area and safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate Tribal concerns. We have determined

that these regulations and fishing rights protection need not be incompatible. We have also determined that this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph (34)(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of regulated navigation areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.T09–1247 [Suspended]

■ 2. Section 165.T09–1247 is suspended.

■ 3. A new temporary section 165.T09–0767 is added as follows:

§ 165.T09–0767 Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Safety Zone.* (1) The following area is a permanent safety zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles northeast of Romeo Road Bridge).

(2) *Enforcement Period.* The safety zone will be enforced from 8 p.m. on August 17, 2009, until 5 p.m. on August 25, 2009.

(3) *Notice of suspension of enforcement.* The Captain of the Port Lake Michigan will enforce the safety zone established by this section at all times. However, the Captain of the Port Lake Michigan may temporarily suspend enforcement of the safety zone. If enforcement of the zone is temporarily suspended, the Captain of the Port Lake Michigan will cause a notice of the suspension of enforcement of this safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will also issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when the temporary suspension of enforcement is over and the zone is once again in operation.

(4) *Regulations.* (i) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his on-scene representative.

(ii) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his on-scene representative.

(iii) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on her behalf. The on-scene representative of the Captain of the Port will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF–FM radio or loudhailer. The Captain of the Port or his on-scene representative may be contacted via VHF–FM radio Channel 16.

(iv) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or her on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

(b) *Regulated Navigation Area.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge).

(1) *Definitions.* The following definitions apply to this section:

Bow boat means a towing vessel capable of providing positive control of

the bow of a tow containing one or more barges, while transiting the regulated navigation area. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

Designated representatives means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

Hazardous material means any material as defined in 46 CFR 150.115.

Red flag barge means any barge certificated to carry any hazardous material in bulk.

(2) *Notice of enforcement or suspension of enforcement.* The Captain of the Port Lake Michigan will enforce the Regulated Navigation Area established by this section only upon notice. Captain of the Port Lake Michigan will cause notice of the enforcement of this regulated navigation area to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of these safety zones is suspended.

(3) *Regulations.* (i) The general regulations contained in 33 CFR 165.13 apply.

(ii) All up-bound and down-bound barge tows that contain one or more red flag barges transiting through the regulated navigation area must be assisted by a bow boat until the entire tow is clear of the regulated navigation area.

(iii) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the regulated navigation area to announce intentions and work out passing arrangements on either side.

(iv) Commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(v) All vessels are prohibited from loitering between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(vi) Vessels may enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge) for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(vii) All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(viii) Vessels may not moor or lay up on the right or left descending banks of the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(ix) Towboats may not make or break tows if any portion of the towboat or tow is located in the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(4) *Compliance.* All persons and vessels must comply with this section and any additional instructions or orders of the Ninth Coast Guard District Commander, or his designated representatives.

(5) *Waiver.* For any vessel, the Ninth Coast Guard District Commander, or his designated representatives, may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of vessel and mariner safety.

Dated: August 17, 2009.

D.R. Callahan,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. E9–20619 Filed 8–24–09; 11:15 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0359]

RIN 1625–AA00

Safety Zone; Sabine River, Orange, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on a portion of the Sabine River, shoreline to shoreline, adjacent to the Naval Reserve Center and the Orange public boat ramps located in Orange, Texas. With the exception of participating vessels and patrol craft, entry into this zone is prohibited unless specifically authorized by the Captain of the Port, Port Arthur, or a designated representative. This safety zone is needed to protect spectators and vessels from potential safety hazards associated with a high speed boat race.

DATES: This rule is effective from 9 a.m. on September 19, 2009, until 6 p.m. on September 20, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0359 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0359 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Scott Whalen, USCG, Marine Safety Unit Port Arthur, TX; telephone (409) 719–5806, e-mail *scott.k.whalen@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 12, 2009, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Sabine River, Orange, TX'' in the **Federal Register** (74 FR 27953). We received no comments

on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to protect vessels and mariners from the safety hazards associated with a high speed boat race.

Background and Purpose

The City of Orange is sponsoring high speed boat races on the Sabine River in Orange, Texas on September 19 and 20, 2009. Race boats will be traveling at a very high rate of speed and at times may not be able to stop or avoid a collision if spectator or other vessels are operating in close proximity to the race course. The proposed safety zone is needed to protect the race boats, persons and spectators from the potential safety hazards associated with high speed boat races.

The safety zone will cover a portion of the Sabine River, from shoreline to shoreline, adjacent to the Naval Reserve Center and the Orange public boat ramps in Orange, Texas. The northern boundary of the safety zone will be from the end of Navy Pier One at 30°05′45″ N and 93°43′24″ W, then easterly to the river's eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N.

Discussion of Comments and Changes

No comments were received and no changes have been made to the proposed rule published in the **Federal Register**.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule will only be in effect for 9 hours each day and notifications to the marine community will be made through broadcast notice to mariners and Marine Safety Information Bulletin. During non-enforcement hours, all vessels will be allowed to transit through the safety zone without permission of the Captain of the Port, Port Arthur or a designated representative. Additionally, two breaks will be provided to allow all waiting vessels to transit safely through the safety zone. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 9 a.m. until 6 p.m. each day that it is effective; (2) during non-enforcement hours, all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port, Port Arthur or a designated representative; and, (3) vessels will be allowed to pass through the zone with permission of the Coast Guard Patrol Commander during scheduled break periods between races and at other times when permitted by the Coast Guard Patrol Commander.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because the rule establishes a temporary safety zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T08–0359 to read as follows:

§ 165.T08–0359 Safety Zone; Sabine River, Orange, TX.

(a) *Definitions.* As used in this section, Participant Vessel means all vessels officially registered with event officials to race or work in the event. These vessels include race boats, rescue boats, tow boats, and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: All waters of the Sabine River, from shoreline to shoreline, adjacent to the Naval Reserve Unit and the Orange public boat ramps located in Orange, Texas. The northern boundary is from the end of Navy Pier One at 30°05′45″ N and 93°43′24″ W then easterly to the river's eastern shore. The southern boundary is a line from shoreline to shoreline at latitude 30°05′33″ N.

(c) *Effective date.* This rule is effective from 9 a.m. on September 19, 2009 until 6 p.m. on September 20, 2009.

(d) *Periods of Enforcement.* This rule will be enforced from 9 a.m. until 6 p.m. on September 19, 2009, and 9 a.m. until 6 p.m. on September 20, 2009. The Captain of the Port, Port Arthur will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(e) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all vessels except participant vessels and those vessels specifically authorized by the Captain of the Port, Port Arthur or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port, Port Arthur, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (409) 723–6500.

(3) All persons and vessels must comply with the instructions of the Captain of the Port, Port Arthur, designated representatives and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 22, 2009.

J.J. Plunkett,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. E9–20512 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319075–1217–02]

RIN 0648–XP75

Fisheries of the Northeastern United States; Tilefish Fishery; Quota Harvested for Part-time Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; tilefish Part-time permit category closure.

SUMMARY: NMFS announces that the percentage of the tilefish annual total allowable landings (TAL) available to the tilefish Part-time permit category for the 2009 fishing year has been harvested. Therefore, commercial vessels fishing under the Part-time tilefish category may not harvest tilefish from within the Golden Tilefish Management Unit for the remainder of the 2009 fishing year. Regulations governing the tilefish fishery require publication of this notification to advise the public of this closure.

DATES: Effective August 21, 2009 through 2400 hrs local time, October 31, 2009.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fisheries Management Specialist, at (978) 281–9165.

SUPPLEMENTARY INFORMATION: Regulations governing the tilefish fishery are found at 50 CFR part 648. The regulations require annual specification of a TAL for federally permitted tilefish vessels harvesting tilefish from within the Golden Tilefish Management Unit. The Golden Tilefish Management Unit is defined as an area of the Atlantic Ocean from the latitude of the VA and NC border (36°33.36′ N. lat.), extending eastward from the shore to the outer boundary of the exclusive

economic zone, and northward to the U.S.-Canada border. After 5 percent of the TAL is deducted to reflect landings by vessels issued an open-access incidental permit category, and after up to 3 percent of the TAL is set aside for research purposes, should research TAL be set aside, the remaining TAL is distributed among three tilefish limited access permit categories: Full-time tier 1 category (66 percent); Full-time tier 2 category (15 percent); and the Part-time category (19 percent).

The TAL for tilefish for the 2009 fishing year was set at 1.995 million lb (905,172 kg) and then adjusted downward by 5 percent to 1,895,250 lb (859,671 kg) to account for incidental catch. There was no research set-aside for the 2009 fishing year. Thus, the Part-time permit category quota for the 2009 fishing year, which is equal to 19 percent of the TAL, was specified at 360,098 lb (163,338 kg). Notification of the 2009 Part-time permit category quota for the 2009 fishing year was sent in a Permit Holder Letter to all tilefish limited access permit holders on October 7, 2008.

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the commercial tilefish quota for each fishing year using dealer reports, vessel catch reports, and other available information to determine when the quota for each limited access permit category is projected to have been harvested. NMFS is required to publish notification in the **Federal Register** notifying commercial vessels and dealer permit holders that, effective upon a specific date, the tilefish TAL for the specific limited access category has been harvested and no commercial quota is available for harvesting tilefish by that category for the remainder of the fishing year, from within the Golden Tilefish Management Unit.

The Regional Administrator has determined, based upon dealer reports and other available information, that the 2009 tilefish TAL for the Part-time category has been harvested. Therefore, effective August 21, 2009, further landings of tilefish harvested from within the Golden Tilefish Management Unit by tilefish vessels holding Part-time category Federal fisheries permits are prohibited through October 31, 2009. The 2010 fishing year for commercial tilefish harvest will open on November 1, 2009. Federally permitted dealers are also advised that, effective August 21, 2009, they may not purchase tilefish from Part-time category federally permitted tilefish vessels who land tilefish harvested from within the Golden Tilefish Management Unit for the remainder of the 2009 fishing year (through October 31, 2009).

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. If implementation of this closure were delayed to solicit prior public comment, the quota for this category would be exceeded, given the rate of harvest of tilefish for vessels in this category. This would conflict with the agency's legal obligation under section 304(e) of the Magnuson-Stevens Act to prevent overfishing and to rebuild this fishery as soon as possible. Overage of the Part-time category quota that occurs in a given fishing year is subtracted from the quota for this category in the following fishing year. Thus, allowing an overage would have a negative economic impact on owners of vessels permitted in the Part-time category, who did not contribute to the overage this year, and who would fish during the next fishing year. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 21, 2009

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–20580 Filed 8–21–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 164
Wednesday, August 26, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AL91

Absence and Leave; Family and Medical Leave

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management is issuing proposed regulations that would provide an eligible employee up to 26 administrative workweeks of leave under the Family and Medical Leave Act (FMLA) to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is injured in the line of duty while on active duty. The proposed regulations would also amend the rules on advancing sick leave, including sick leave that may be substituted for FMLA unpaid leave to care for a covered servicemember and sick leave that may be used to provide care for a family member and/or for bereavement purposes, or in certain other circumstances. Finally, we are also proposing organizational changes to the existing sick leave and FMLA regulations to enhance reader understanding and administration of these programs.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: You may submit comments, identified by RIN number ''3206–AL91'' using either of the following methods:

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

Mail: Jerome D. Mikowicz, Deputy Associate Director, Center for Pay and Leave Administration, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: Doris Rippey by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to implement section 585(b) of the National Defense Authorization Act for Fiscal Year 2008 (NDAA) (Pub. L. 110–181, January 28, 2008) that amends the Family and Medical Leave Act (FMLA) provisions in 5 U.S.C. 6381–6383 (applicable to Federal employees) to provide that a Federal employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness is entitled to a total of 26 administrative workweeks of leave during a single 12-month period to care for the covered servicemember. The covered servicemember must be a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list. The proposed regulations would also permit an employee to substitute annual or sick leave, including advanced annual or sick leave, for any part of the 26-week period of unpaid FMLA leave to care for a covered servicemember. In addition, OPM is proposing to update its sick leave regulations to support agencies in planning for pandemic influenza. We are also proposing to clarify our current regulations regarding the advancement of up to 104 hours of sick leave to provide care for a family member and/or for bereavement purposes, and the amount of sick leave that may be advanced for other conditions specified under 5 CFR 630.401(a). We are also proposing organizational changes to the sick leave and FMLA regulations to enhance reader understanding and administration of the programs.

The amendments to the FMLA became effective on the date of their enactment, January 28, 2008. On February 1, 2008, OPM issued a Compensation Policy Memorandum (CPM 2008–04), outlining the changes in Federal employee pay and leave laws resulting from the enactment of the NDAA, including the changes to the FMLA statute. (*See http://www.opm.gov/oca/compmemo/2008/2008-04.asp.*) In this memorandum, OPM stated that agencies were expected to follow the NDAA statutory provisions upon the effective date provided in law. Agencies are to continue implementing the statute to the best of their ability until OPM final regulations are issued.

In accordance with 5 U.S.C. 6387, OPM is required to prescribe regulations that are consistent, to the extent appropriate, with those prescribed by the Secretary of Labor to carry out title I of the FMLA. The Department of Labor (DOL) issued its final regulations on November 17, 2008 (73 FR 67934) to implement section 585(a) of the NDAA, amending title I of the FMLA, and to make other substantive changes to the DOL FMLA regulations based upon stakeholder meetings, rulings of the U.S. Supreme Court and other Federal courts, DOL's experience administering the law, information from Congressional hearings, and public comments filed with the Office of Management and Budget (OMB) as described by OMB in three annual reports to Congress on the FMLA's costs and benefits. In developing the NDAA portion of its regulations, DOL consulted with the Department of Defense (DOD), the Department of Veterans Affairs (VA), and a number of military service organizations to provide regulations that reflect the unique circumstances facing military families when a servicemember is deployed in support of a contingency operation and injured in the line of duty on active duty. To the extent appropriate, OPM is prescribing regulations consistent with the DOL regulations, as revised to incorporate the NDAA amendments. In order to expedite the implementation of the NDAA provisions for the Federal workforce, our regulations are addressing only the provisions in section 585(b) of the NDAA. After we issue final regulations incorporating the NDAA provisions in our current FMLA regulations, we will further review DOL's final rule to determine whether any additional changes are needed in our regulations. If changes are necessary, we will publish a proposed rule.

We are also considering whether a comprehensive review of OPM's FMLA regulations is needed to identify any problems or concerns that our stakeholders have encountered when

reading and applying the provisions of subpart L, Family and Medical Leave, in part 630 of title 5, Code of Federal Regulations. Our FMLA regulations were initially published in 1993, and agencies have had ample experience in administering FMLA provisions. We expect it would be relatively easy for agencies to provide specific examples and feedback on how they believe our regulations could be improved. Any future OPM review would operate within the then-current FMLA statutory provisions. We are asking agencies for their recommendations on what significant changes, if any, are needed within the existing OPM FMLA regulatory framework.

We are also proposing to reorganize the FMLA regulations in subpart L and the sick leave regulations in subpart D to enhance the reader's understanding of the regulations and make it easier to find relevant topics within the regulatory text.

Subpart D, Sick Leave

Overview of Sick Leave Changes

Under 5 U.S.C. 6307(d), an agency may, when required by the exigencies of the situation, advance up to 30 days of sick leave for a serious disability or ailment, or for purposes relating to the adoption of a child. Under 5 CFR 630.401(f) in OPM's current regulations, an agency may advance a maximum of 30 days of sick leave to a full-time employee at the beginning of a leave year or at any time thereafter when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member, or for purposes relating to the adoption of a child. OPM is proposing to update these regulations to permit an agency to advance sick leave to an employee to care for a covered servicemember, pursuant to the NDAA amendments. These proposed regulations also support agencies in dealing with possible outbreaks of pandemic influenza and other serious communicable diseases, by permitting an agency to grant accrued or accumulated sick leave to an employee providing care for a family member who has been exposed to a serious communicable disease, and by permitting an agency to advance sick leave when an employee or a family member has been exposed to a serious communicable disease. Further, these proposed regulations generally clarify the amount of sick leave that may be advanced for conditions specified under § 630.401(a).

Advanced Sick Leave To Care for a Covered Servicemember

The NDAA amended the FMLA to authorize Federal employees up to 26 administrative workweeks (1040 hours for a full-time employee) of unpaid FMLA leave to care for a covered servicemember with a serious injury or illness. Once an employee has invoked FMLA leave under §§ 630.1203(b) and 630.1204 of the proposed regulations, the NDAA amendments to 5 U.S.C. 6382(d) allow an employee to substitute any accrued or accumulated annual or sick leave for any period of leave without pay. For a full-time employee, the 480-hour (12-week) limitation per leave year on the use of sick leave to care for a family member with a serious health condition under current § 630.401(c) does not apply because the employee may substitute accrued or accumulated sick leave for any or all of the 26 administrative workweeks of unpaid leave to care for a covered servicemember. We believe it is also appropriate to allow the use of advanced sick leave for this purpose within certain limits, provided the employee has invoked FMLA under §§ 630.1203(b) and 630.1204. Although an employee may use up to 26 administrative workweeks of accrued and accumulated sick leave during a single 12-month period if he or she invokes FMLA to care for a covered servicemember, we provide under proposed § 630.402(a)(1)(v) and (b) that an agency may advance sick leave only to the extent that the employee is not indebted for more than 240 hours (30 days) of advanced sick leave at any time. An agency may not advance any sick leave to care for a covered servicemember under § 630.402(a)(1)(v) if the employee has not invoked FMLA to care for a covered servicemember under §§ 630.1203(b) and 630.1204.

For example, a relatively new employee learns that her husband is injured by gunfire in the line of duty on active duty. The employee is entitled to 26 weeks of unpaid leave under the FMLA to care for a covered servicemember; however, she has a combined total of only 160 hours (4 weeks) of accrued and accumulated annual leave and sick leave. The employee requests advanced sick leave, and the agency approves the maximum amount allowable of 240 hours (30 days). The agency may advise the employee that she also can apply for donated annual leave under the voluntary leave transfer program (5 CFR part 630, subpart I) to liquidate the advanced sick leave and cover a portion of the remaining 26 weeks of unpaid leave.

Sick Leave for Pandemic Influenza and Other Serious Communicable Diseases

OPM also is proposing to update its sick leave regulations to support agencies' planning for pandemic influenza and other serious communicable diseases. The current sick leave regulations at § 630.401(a)(5) entitle an employee to use accrued or accumulated sick leave when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's presence on the job would jeopardize the health of others because of the employee's exposure to a communicable disease (*e.g.,* Federal or State quarantine or isolation order).

We propose to amend § 630.401(a)(3) to entitle an employee to use accrued or accumulated sick leave to provide care for a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease. In general, this situation would only arise for serious communicable diseases, such as communicable diseases where federal isolation and quarantine are authorized under Executive Order 13295, as amended by Executive Order 13375, consistent with 42 U.S.C. 264(b). The current consolidated list of communicable diseases for which federal isolation and quarantine are authorized includes: cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers; Severe Acute Respiratory Syndrome (SARS); and influenza that causes or has the potential to cause a pandemic. This list provides types of diseases that result in Federal quarantine and may be revised by the President as the need arises. As a result, this list of diseases is illustrative and not exhaustive. We request comment on whether additional changes to the regulatory text would help clarify the limited cases in which the situation would meet this threshold.

In order to use sick leave in this situation, the relevant health authorities or a health care provider must first make a determination that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease. Secondly, the employee must actively

be providing care for the family member. For example, a minor child of an employee could have been exposed to a communicable disease such as smallpox, and a determination has been made by the relevant health authorities or the health care provider that the child's presence at daycare or at school could jeopardize the health of other children. The employee could use sick leave to provide care for that child at home until it is determined whether or not the child has contracted the disease. The proposed amendment to § 630.401(b) would limit the amount of accrued or accumulated sick leave available for this purpose to 104 hours per leave year, unless the family member contracts the communicable disease. Upon determination by health care officials that the family member has contracted the disease, the employee is entitled to use up to 12 weeks of sick leave in a leave year to care for a family member with a serious health condition under § 630.401(c).

Based on comments received from agencies related to OPM's existing pandemic guidance, we are also proposing to change our regulations under § 630.402(a)(1)(iii) to permit agencies to advance a maximum of 240 hours (30 days) of sick leave to an employee if it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's presence on the job would jeopardize the health of others because of exposure to a communicable disease. Similarly, we propose under § 630.402(a)(2)(iii) an advancement of a maximum of 104 hours (13 days) of sick leave in a leave year to an employee to provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease.

We believe these proposed regulatory changes are consistent with the intent of Federal sick leave laws and would benefit agencies and employees, especially in the event of a health crisis resulting in an outbreak of pandemic influenza or another communicable disease.

Proposed Regulations on Advanced Sick Leave

OPM is also proposing to insert a new section at § 630.402 that reinstates a longstanding practice that is not in our current regulations regarding the advancement of up to 104 hours (13 days) of sick leave to provide general care for a family member and/or for bereavement purposes. In this section, we are also proposing to specify the amount of sick leave that may be advanced for other conditions listed under § 630.401(a).

OPM's proposed regulations at § 630.402(a)(1) would permit an agency to advance up to 240 hours (30 days) of sick leave to a full-time employee (1) who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth; (2) for a serious health condition of the employee or a family member; (3) when the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; (4) for purposes relating to the adoption of a child; or (5) for the care of a covered servicemember with a serious injury or illness, provided the employee has invoked FMLA in accordance with §§ 630.1203(b) and 630.1204. We are also proposing under § 630.402(a)(2) that an agency may advance up to 104 hours (13 days) of sick leave to a full-time employee when he or she (1) receives medical, dental, or optical examination or treatment; (2) provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; (3) provides care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or (4) makes arrangements necessitated by the death of a family member or attends the funeral of a family member.

Under proposed § 630.402(a), the maximum amount of sick leave that may be advanced is 240 hours (30 days). Under proposed § 630.402(b), an employee may not be indebted for more than 240 hours (30 days) at any point in time. For a part-time employee (or an employee on an uncommon tour of duty), the maximum amount of sick leave an agency may advance, and for which an employee may be indebted, must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

Substitution of Sick Leave for Unpaid FMLA Leave To Care for a Covered Servicemember

The NDAA also amended 5 U.S.C. 6382(d) to provide that an employee may elect to substitute any of the employee's accrued or accumulated annual or sick leave for any part of the 26-week period of unpaid FMLA leave to care for a covered servicemember. We are proposing a new § 630.403 in the sick leave regulations to implement this change, which provides that the amount of sick leave that an employee may substitute for unpaid FMLA leave when taking FMLA leave to care for a covered servicemember may not exceed a total of 26 administrative workweeks in a single 12-month period, or, for a part-time employee or an employee with an uncommon tour of duty, a prorated amount of sick leave equal to 26 times the average number of hours in his or her scheduled tour of duty each week.

Subpart L, Family and Medical Leave

Definitions

In § 630.1202 of the proposed regulations, we added definitions for *active duty, contingency operation, covered servicemember, next of kin of a covered servicemember, outpatient status, parent of a covered servicemember, serious injury or illness, single 12-month period,* and *son or daughter of a covered servicemember*—all of which are new terms applicable only to taking FMLA leave to care for a covered servicemember.

Active duty is defined in law (5 U.S.C. 6381(7)) to mean duty under a call or order to active duty under a provision of law referred to in § 101(a)(13)(B) of title 10. OPM's proposed regulations provide an expanded version of this definition for clarity and to enhance the reader's understanding.

Contingency operation is defined in law at 10 U.S.C. 101(a)(13). We are proposing to adopt this statutory definition in our regulations to mean a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10 of the United States Code, chapter 15 of title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Covered servicemember is defined in law (5 U.S.C. 6381(8)) to mean a member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy as an outpatient, or is otherwise on the

temporary disability retired list, for a serious injury or illness.

For the reasons outlined in our discussion of ''Who Is a Covered Servicemember,'' we have altered the statutory definition slightly to clarify that a covered servicemember must be a *current member* of the Armed Forces, or a member on the temporary disability retired list, but may not be a former member of the Armed Forces, National Guard, or Reserve, or a member on the permanent disability retired list. The proposed definition therefore reads: ''*Covered servicemember* means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty, but does not include former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.''

Next of kin of a covered servicemember. The NDAA amendments provide that a covered servicemember's ''next of kin'' is eligible to take FMLA leave to care for the covered servicemember and defines the term *next of kin* as the ''nearest blood relative'' of a covered servicemember (5 U.S.C. 6381(10)).

After consultation with appropriate stakeholders, DOL expanded the definition of *next of kin of a covered servicemember.* We are adopting the DOL definition with modifications to the appropriate citations to our regulations.

Outpatient status is defined in law (5 U.S.C. 6381(9)), with respect to a covered servicemember, to mean ''the status of a member of the Armed Forces assigned to (A) a military medical treatment facility as an outpatient; or (B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.'' We are adopting this statutory definition of *outpatient status* in our proposed regulations.

Parent of a covered servicemember. Under FMLA, the terms ''parent'' and ''parent of a covered servicemember'' refer to different circumstances for purposes of FMLA leave eligibility. Under 5 U.S.C. 6382(a)(1)(C), an employee is entitled to ''basic'' FMLA leave to care for his or her parent if the parent has a serious health condition. However, under 5 U.S.C. 6382(a)(3), in the context of leave to care for a covered servicemember, the parent is the employee who has the entitlement to take FMLA leave to care for a son or daughter. Since the entitlement to leave is expressed differently in the two statutory provisions, the definition of *parent* in the current regulations (which is—''*parent* means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter. This term does not include parents 'in law' '') does not accurately describe the meaning of *parent* as it is used in the context of leave to care for a covered servicemember. Accordingly, in § 630.1202, we propose a separate definition of *parent of a covered servicemember* to mean a ''covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stands or stood in loco parentis to the covered servicemember. This term does not include parents-in-law.''

Based on the new definition of *parent of a covered servicemember,* we also made a conforming change to the definition of *in loco parentis* to add a reference to covered servicemembers so that the definition now reads: ''*In loco parentis* refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee or a covered servicemember, who had such responsibility for the employee or the covered servicemember when either was a child. A biological or legal relationship is not necessary.''

Serious injury or illness is defined in law (5 U.S.C. 6381(11)), in the case of a member of the Armed Forces, to mean an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. Consistent with the approach taken by DOL in its final rule, we are changing the statutory definition of *serious injury or illness* slightly in our proposed regulations to use the term ''covered servicemember,'' so the definition in the proposed regulations reads: ''*Serious injury or illness* means an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating.''

Single 12-month period is described in DOL's final rule to mean the period that ''begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date.'' 29 CFR 825.127(c)(1). We are proposing a new definition: ''*Single 12-month period* means the period beginning on the first day the employee takes FMLA leave to care for a covered servicemember with a serious injury or illness and ending 12 months after that date in accordance with section 630.1205(b) and (c)''.

Son or daughter of a covered servicemember. With respect to who may take leave to care for a covered servicemember, the NDAA amends 5 U.S.C. 6382(a)(3) to provide that such leave is available to an employee who is the ''spouse, son, daughter, parent, or next of kin of a covered servicemember.'' Under the existing FMLA definition of *son or daughter* (5 U.S.C. 6381(6)), a son or daughter must either be (A) under 18 years of age, or (B) 18 years of age or older and incapable of self-care because of a mental or physical disability. Applying this definition to the leave to care for a covered servicemember entitlement would mean that most, if not all, adult children would not be permitted to use this entitlement to take leave to care for a parent who is a covered servicemember. This is so even though the same adult child could take ''basic'' FMLA leave (*i.e.,* leave under 5 U.S.C. 6382(a)(1)(C) and § 630.1203(a)(3)) to care for his or her parent who is a covered servicemember if the parent's serious injury or illness also qualified as a serious health condition under the FMLA. Since applying the current definition of *son or daughter* for purposes of leave to care for a covered servicemember would severely undermine the clear intent of the NDAA provisions, DOL created a new term, *son or daughter of a covered servicemember,* for purposes of FMLA leave taken to care for a covered servicemember. We concur with DOL's opinion that such a result was not intended, and accordingly, § 630.1201 of the proposed rule establishes a separate definition of *son or daughter of a covered servicemember* for the purpose of leave to care for a covered servicemember, which is ''a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.''

Entitlement to Leave To Care for a Covered Servicemember

Under the NDAA, section 6382(a) of title 5, U.S. Code, was amended by adding a new section to entitle an employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember to a total of 26 administrative workweeks of leave during a 12-month period to care for the covered servicemember. This leave is

available only during a single 12-month period.

We added proposed § 630.1203(b) to describe an employee's entitlement to use a total of 26 administrative workweeks of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of a covered servicemember. Consistent with DOL regulations, OPM is applying this entitlement on a per-covered servicemember, per-serious injury or illness basis, such that an employee may be entitled to take more than one period of up to 26 administrative workweeks of leave if the leave is to care for different covered servicemembers or to care for the same covered servicemember with a subsequent serious injury or illness, as long as no more than 26 administrative workweeks of leave is taken within any single 12-month period as described in proposed § 630.1205(b).

Per covered servicemember. An employee who has previously invoked FMLA leave to care for a covered servicemember in a single 12-month period may subsequently invoke FMLA leave in order to care for a different covered servicemember in a different single 12-month period. If the single 12-month periods applicable to the different covered servicemembers do not overlap, the employee may take up to 26 administrative workweeks of leave during each single 12-month period. If the single 12-month periods applicable to the different covered servicemembers do overlap, the employee may take no more than 26 administrative workweeks of leave during any single 12-month period. However, in no case may an employee take more than 26 administrative workweeks of leave during any single 12-month period as described in proposed § 630.1205(b) and (c).

For example, on February 4, 2008, an employee invokes FMLA leave to care for a covered servicemember (her son) who was injured in the line of duty while on active duty. Since she first uses the leave on February 4, 2008, the single 12-month period for her son's care begins on February 4, 2008, and ends on February 3, 2009. She uses a total of 17 weeks out of the 26 week entitlement, between February 4 and May 30, 2008. On June 18, 2008, the employee's husband is seriously injured in the line of duty while on active duty and qualifies as a covered servicemember for FMLA purposes. The employee invokes her FMLA entitlement to care for her husband but she is limited to no more than 9 weeks of FMLA leave to care for her husband between June 18, 2008, and February 3, 2009, because of the limit of 26 weeks of leave in any single 12-month period. If her husband continues to need care after the single 12-month period ends for her son (February 3, 2009), the employee may use an additional 17 weeks to care for her husband until the single 12-month period entitlement for her husband expires on June 17, 2009.

Per serious injury or illness. An employee may take more than one single 12-month period of up to 26 administrative workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness, including a manifestation of a second serious injury or illness at a later time. An employee may not take a subsequent period of leave to care for a covered servicemember who experiences an aggravation or complication of an earlier serious injury or illness. If the different single 12-month periods applicable to the different serious injuries or illnesses do not overlap, the employee may take up to 26 administrative workweeks of leave during each single 12-month period. If the single 12-month periods applicable to the different serious injuries or illnesses do overlap, the employee may take no more than 26 administrative workweeks of leave during any single 12-month period. In no case may an employee take more than 26 administrative workweeks of leave within any single 12-month period as described in proposed § 630.1205(b) and (c).

For example, on June 23, 2008, an employee has a daughter who is seriously injured in the line of duty while on active duty by a road-side bomb. The employee is entitled to use 26 weeks of FMLA leave to care for his daughter, a covered servicemember. The single 12-month period for the daughter's care begins on June 24, 2008, when the employee first uses the leave, and ends on June 23, 2009. The employee takes 16 weeks of FMLA leave to care for his daughter, and the daughter recovers and returns to active duty before the end of the single 12-month period. However, in July, 2009, the daughter is injured in the line of duty while on active duty by a sniper. The employee is entitled to use another 26 weeks of FMLA leave to care for his daughter because the subsequent injury provides the employee with a new 26-week entitlement, and the previous single 12-month period has expired.

In this same example, however, if the daughter's second injury by sniper attack occurred in January of 2009 and the employee first took leave to care for his daughter for that injury on January 7, 2009, (*i.e.,* the single 12-month periods overlapped) the employee is limited to no more than 10 weeks of FMLA leave to care for his daughter between January 7, 2009, and June 23, 2009, because of the limit of 26 weeks of FMLA leave in any single 12-month period. An overlapping single 12-month period begins with the employee's use of leave as of January 7, 2009, and runs until January 6, 2010. If the employee uses 10 weeks of leave to care for his daughter between January 7, 2009, and June 23, 2009, he would then be able to use an additional 16 weeks of leave as of June 24, 2009, until the expiration of the second single 12-month period on January 6, 2010.

As DOL has expressed in its final regulations, applying this entitlement on a per-injury, per-covered servicemember basis acknowledges the reality that servicemembers are injured and treated and then re-injured again on active duty. We would add that some employees have multiple family members who are in the military and, therefore, may have more than one family member who is injured in the line of duty on active duty. Also, we believe there will be relatively few instances in which an employee will have more than one covered servicemember for whom he or she needs to provide care, or a covered servicemember with a subsequent serious illness or injury. However, if an employee is faced with such circumstances, he or she should have access to FMLA leave to care for a covered servicemember.

Who Is a Covered Servicemember

In order for an employee to be entitled to take FMLA leave to care for a servicemember, the NDAA amendments require that the servicemember be a ''covered servicemember'' who is undergoing medical treatment, recuperation, or therapy, otherwise in outpatient status, or on the temporary disability retired list for a ''serious injury or illness'' that ''may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.'' *See* definitions of *covered servicemember* at 5 U.S.C. 6381(8), *serious injury or illness* at 5 U.S.C. 6381(11), and *outpatient status* at 5 U.S.C. 6381(9).

In light of the NDAA's focus on a covered servicemember's ability to perform his or her military duties when determining whether the servicemember has a ''serious injury or illness'' (*i.e.,* a determination must be made that the injury or illness ''may render the

member medically unfit to perform the duties of the member's office, grade, rank, or rating''), DOL regulations specifically exclude a serious injury or illness that manifests itself after the servicemember has left military service. Consistent with DOL's regulations, we added proposed § 630.1203(b)(3) to provide that an employee may not take leave under this paragraph to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

Invoking FMLA Entitlement

We are proposing to reorganize the FMLA regulations in title 5 to create a new § 630.1204 describing the process for invoking the FMLA entitlements, in which we are adding language to account for amendments made by the NDAA. There are certain conditions that would provide an employee an entitlement to both ''basic'' FMLA leave to care for a family member with a serious health condition under § 630.1203(a)(3) and FMLA leave to care for a covered servicemember under § 630.1203(b). This would be the case, for example, if an employee had a spouse or parent who was a covered servicemember, because the serious injury or illness of the covered servicemember would also fit the definition of *serious health condition.* We address this situation in proposed § 630.1204, to which we are adding a new paragraph (c) to clarify that when an employee invokes his or her entitlement to FMLA leave for a circumstance that could qualify under § 630.1203(a)(3) (*i.e.* ''basic'' FMLA leave to care for a family member with a serious health condition) or § 630.1203(b) (*i.e.,* FMLA leave to care for a covered servicemember), the FMLA leave must be designated as being taken under § 630.1203(b). The higher 26-week entitlement applies in this case. Leave to care for a covered servicemember is to be applied on a per-covered servicemember, per-serious injury or illness basis. If, after the single 12-month period for leave to care for a covered servicemember is exhausted, the covered servicemember is still in need of care, the employee may take FMLA leave for any necessary subsequent care as ''basic'' FMLA leave to care for a family member with a serious health condition under § 630.1203(a)(3), subject to all requirements relating to use of such leave.

Application of the 12-Month FMLA Periods

With the creation of the new entitlement for leave to care for a covered servicemember, there are now two distinct 12-month periods during which FMLA leave may be used. The 12-month period referred to in § 630.1203(a) begins on the date the employee first takes leave for a family or medical need specified in § 630.1203(a) and provides an entitlement to 12 administrative workweeks of unpaid leave in a 12-month period. The ''single 12-month period'' referred to in proposed § 630.1203(b) begins on the first day the employee takes FMLA leave to care for a covered servicemember and provides up to 26 administrative workweeks of unpaid leave during a 12-month period. Proposed § 630.1205 is being added to explain the application of the two 12-month periods and how they interact with each other.

Consistent with DOL regulations, we clarify in § 630.1205(b)(1) that any leave used under an employee's 12-week FMLA entitlement prior to the first use of leave to care for a covered servicemember does not count towards the ''single 12-month period'' under § 630.1203(b).

For example, on February 25, 2008, an employee invokes her entitlement to basic FMLA for the birth of her child. She is in her 8th week of FMLA leave (April 17, 2008) when she receives word that her husband was seriously hurt in the line of duty while on active duty. On April 18, 2008, the employee invokes the 26-week FMLA leave entitlement to care for her husband. She is entitled to use up to 26 weeks of FMLA leave from April 18, 2008, to April 17, 2009, for this purpose. The time period during which she used basic FMLA leave does not count toward the 26-week entitlement during a single 12-month period. We note that the employee is not required to invoke the 26-week leave entitlement immediately. She may delay invoking the 26-week entitlement until such time as she is needed to provide care for her husband. Once the employee invokes her 26-week leave entitlement and begins to care for her husband, the single 12-month period begins. In this example, the employee may choose to exhaust her full 12-week basic FMLA entitlement for the birth of a child first, and then invoke the 26-week FMLA entitlement after her husband is released from the hospital and returns home.

In another example, the employee's first use of FMLA leave is on April 18, 2008, when she invokes the 26-week FMLA leave entitlement to care for her husband who was seriously injured in the line of duty while on active duty. She is entitled to use up to 26 weeks of FMLA leave during the single 12-month period from April 18, 2008, to April 17, 2009. On November 25, 2008, the employee's daughter is diagnosed with leukemia which entitles the employee to 12 weeks of ''basic'' FMLA leave under current 5 CFR 630.1203(a)(3), and she invokes her entitlement on this date. At this point, the employee has used a total of 23 weeks of FMLA leave to care for a covered servicemember in order to care for her husband and has 3 weeks of FMLA leave to care for her husband or daughter between November 25, 2008, and April 17, 2009. On April 18, 2009, the employee can use the remaining 9 weeks of ''basic'' FMLA leave to care for her daughter for additional care related to the leukemia.

We state in paragraph (b)(2) that if an employee does not take all of his or her 26 administrative workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of his or her 26 administrative workweeks of leave entitlement to care for the covered servicemember is forfeited. In paragraph (b)(3), we explain that when an employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the ''single 12-month periods'' corresponding to the different leave entitlements to care for a covered servicemember overlap, the employee is limited to taking no more than 26 administrative workweeks of leave in each single 12-month period.

Certification for Leave Taken To Care for a Covered Servicemember

Specific Requirements

The NDAA amended the FMLA certification requirements (5 U.S.C. 6383(f)) to permit an agency to require that a request for leave to care for a covered servicemember ''be supported by a certification issued at such time and such manner as the Office of Personnel Management may by regulation prescribe.'' The NDAA amendments regarding entitlement to FMLA leave to care for a covered servicemember contain specific certification requirements that are unique to military servicemembers. The certification requirements for a family member's serious health condition under current § 630.1207 do not adequately address the certification requirements unique to military

servicemembers. Specifically, the NDAA provision defining *covered servicemember* requires that the servicemember be (1) undergoing medical treatment, recuperation, or therapy; (2) otherwise in outpatient status; or (3) on the temporary disability retired list because of a serious injury or illness. (5 U.S.C. 6381(8)) The NDAA provisions further provide that a serious injury or illness means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating (5 U.S.C. 6381(11)). Therefore, we are proposing to create new § 630.1211 on medical and other certification for leave to care for a covered servicemember that sets forth separate certification requirements for leave to care for a covered servicemember.

This section provides that an agency may require certification that provides information specific to the NDAA requirements for taking leave to care for a covered servicemember, including: (1) Whether the covered servicemember has incurred a serious injury or illness; (2) whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; (3) whether the injury or illness was incurred by the member in the line of duty on active duty; (4) whether the covered servicemember is undergoing medical treatment, recuperation, or therapy, is otherwise on outpatient status, or is otherwise on the temporary disability retired list; and (5) the family relationship of the employee to the covered servicemember.

Besides the information specific to the NDAA requirements for taking leave to care for a covered servicemember, this section also provides that the certification for leave to care for a covered servicemember should also contain certain other information. This information includes: (1) The probable duration of the injury or illness; (2) frequency and duration of leave required; and (3) if leave is requested on an intermittent or reduced schedule basis, an estimate of the frequency and duration of such leave. These provisions are consistent, as appropriate, with the regulations promulgated by DOL in its final rule.

Authorized Health Care Providers

Section 630.1211(a) of the proposed rule lists the health care providers that may complete the medical certification form. As described in the DOL regulations, DOL consulted with DOD and VA, and learned that servicemembers with a serious injury or illness may receive care from a number of different health care providers, including DOD health care providers, VA health care providers, or DOD TRICARE military health system authorized private health care providers.[1] Members of the National Guard and Reserves and members on the temporary disability retired list are more likely to receive care from DOD TRICARE authorized private health care providers, especially if the servicemember resides in a rural or remote area. Consequently, and consistent with the DOL final rule, § 630.1211(a) provides that any one of the following health care providers may complete the certification: (1) A DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider.

Use of DOL Certification Form (WH–385)

Paragraph (b) of proposed § 630.1211 provides the information that is required from health care providers, and paragraph (c) provides the information that is required from the employee and/or covered servicemember. DOL has developed an optional form (Form WH–385) for employees' use in obtaining certification that meets FMLA's certification requirements for leave to care for a covered servicemember. This form can be found at *http://www.dol.gov/esa/whd/forms/WH-385.pdf* and may be used by Federal agencies. The new form includes two additional categories of internal DOD casualty assistance designations used by DOD health care providers ((VSI) Very Seriously Ill/Injured and (SI) Seriously Ill/Injured) that also meet the standard of serious injury or illness.) Consistent with past practice, OPM is not developing its own form, but encourages Federal agencies to use DOL's Form WH–385 to ensure the correct information is gathered for FMLA approval. (Federal agencies should also continue to use DOL's Form WH–380 for ''basic'' FMLA leave certification, but not the new DOL Forms WH–380–E or WH–380–F. The latter were generated by DOL as part of its final FMLA regulations and are based on changes to DOL's FMLA regulations which do not apply to our proposed regulations.)

Request for Military-Related Information

In the supplementary information accompanying DOL's final regulations, DOL stated that, based on consultation with DOD, it was DOL's understanding that every covered servicemember will have a DOD representative who can serve as a point of contact for health care providers should they need information regarding the military-related determinations requested in the FMLA certification form. For example, the most seriously injured or ill covered servicemembers (*i.e.,* those servicemembers with injuries DOD terms catastrophic or severe) will have either a ''Federal Recovery Coordinator'' or ''Recovery Care Coordinator'' assigned to assist the covered servicemember and his or her family. Therefore, proposed § 630.1211(b) provides that if the authorized health care provider is unable to make certain military-related determinations, the health care provider may complete the certification form by relying on determinations from an authorized DOD representative, such as a DOD recovery care coordinator.

No Recertification for Leave To Care for a Covered Servicemember

Proposed section 630.1211(d) specifies that (as is the case with the certification process for leave taken to care for a family member with a serious health condition) no information may be required beyond that specified in this certification section. It also states that an agency may seek authentication or clarification of the certification. Since FMLA leave to care for a covered servicemember is a per-serious injury or illness entitlement limited to a single 12-month period, we do not believe that a recertification process, such as that provided for under current 5 CFR 630.1207(j) for ''basic'' FMLA leave, is necessary for leave to care for a covered servicemember. Also, since several of

[1] TRICARE is the health care program serving active duty service members, National Guard and Reserve members, retirees, their families, survivors and certain former spouses worldwide. As a major component of the Military Health System, TRICARE brings together the health care resources of the uniformed services and supplements them with networks of civilian health care professionals, institutions, pharmacies, and suppliers to provide access to high-quality health care services while maintaining the capability to support military operations. To be eligible for TRICARE benefits, one must be registered in the Defense Enrollment Eligibility Reporting System (DEERS). See *http://tricare.mil/mybenefit/home/overview/WhatIsTRICARE.* The Military Health System is a partnership of medical educators, medical researchers, and health care providers and their support personnel worldwide. This DOD enterprise consists of the Office of the Assistant Secretary of Defense for Health Affairs; the medical departments of the Army, Navy, Marine Corps, Air Force, Coast Guard, and Joint Chiefs of Staff; the Combatant Command Surgeons; and TRICARE providers (including private sector health care providers, hospitals, and pharmacies). *See http:/mhs.osd.mil/aboutMHS.aspx.*

the amendments made by the NDAA contain specific requirements that are unique to military servicemembers and that only the military can determine (such as whether the serious injury or illness was incurred in the line of duty on active duty), we believe that, consistent with DOL regulations, it would be inappropriate to permit a second or third opinion process such as that provided for ''basic'' FMLA leave under current § 630.1207(d) and (e). Therefore, § 630.1211(d) also states that second and third opinions and recertifications are not permitted for leave to care for a covered servicemember.

Invitational Travel Orders (ITOs) or Invitational Travel Authorizations (ITAs)

Proposed section 630.1211(e) provides that an agency requiring an employee to submit a certification for leave to care for a covered servicemember must accept the submission of ''invitational travel orders'' (''ITOs'') or ''invitational travel authorizations'' (''ITAs'') issued for medical purposes as sufficient certification of the employee's request for leave to care for a covered servicemember.

As described in DOL's regulations, based on consultation with DOD, DOL believes, and we concur, that the issuance of such orders or authorizations qualifies a servicemember as a covered servicemember for purposes of the FMLA provisions governing leave to care for a covered servicemember. The issuance of an ITO or ITA for medical purposes permits the named family member of the injured or ill servicemember to travel immediately to the servicemember's bedside, at DOD's expense. These ITOs or ITAs for medical purposes are not routinely issued by DOD, but rather only when the servicemember is, at minimum, seriously injured or ill. In its regulations, DOL further indicated its understanding that, in such cases, the ITO or ITA is issued to a servicemember's family upon the direction of a DOD health care provider and will state on its face that the travel order or authorization is for ''medical purposes.''

We agree that permitting ITOs or ITAs to serve as sufficient certification is appropriate in light of the fact that DOD has determined that the injury or illness incurred by the servicemember is serious enough to warrant the immediate presence of a family member at the servicemember's bedside. Moreover, in many circumstances where ITOs or ITAs are issued, it may be extremely difficult for an employee to provide an agency an otherwise timely certification that complies with the requirements of this section. This approach accommodates an agency's right to obtain a sufficient certification from an employee in order to verify the employee's entitlement to FMLA leave to care for a covered servicemember.

Section 630.1211(e) further provides that an ITO or ITA issued to any family member to join an injured or ill covered servicemember at his or her bedside is sufficient certification regardless of whether the employee is named in the ITO or ITA. These provisions are consistent with those provided in DOL's final rule. Thus, for example, a covered servicemember's son may submit an ITO issued to the covered servicemember's spouse to support the son's request for FMLA leave to care for the covered servicemember during the time period specified by the ITO. DOD does not issue an ITO or ITA to every family member of an injured or ill covered servicemember who might be eligible to take FMLA leave to care for the covered servicemember. In some situations, the servicemember may have additional family members who are eligible to take FMLA leave to care for the covered servicemember, even if DOD has not authorized an ITO for that person. For example, an ITO or ITA can be issued to the spouse of a servicemember without also being issued to a servicemember's parents, children, or siblings. We agree with DOL's determination, as indicated in DOL's regulations, that all family members of a covered servicemember who are eligible to take FMLA leave to care for the covered servicemember should be able to rely on DOD's issuance of an ITO or ITA as sufficient certification to support a request for FMLA leave during the period covered by the ITO or ITA.

Given the seriousness of the injuries or illness incurred by a covered servicemember whose family member receives an ITO or ITA, and the immediate need for the family member at the covered servicemember's bedside, our intention is to remove as many certification impediments for the employee as possible for the duration of the order or authorization. Accordingly, § 630.1211(e)(1) further provides that an ITO or ITA is sufficient certification for the duration of the time specified in the ITO or ITA, and that during this time, an employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. Section 630.1211(e)(2) states that an employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary.

If an employee needs leave to care for a covered servicemember beyond the expiration date specified in an ITO or ITA, paragraph (e)(3) of § 630.1211 permits an agency to request that the employee have one of the authorized health care providers listed under § 630.1211(a) furnish the required certification for the remainder of the employee's necessary leave period. This is consistent with the approach taken by DOL in its final rule. Permitting this additional certification, if an agency chooses to request it, allows the agency to obtain information about the employee's continued need for leave once the ITO or ITA expires, including specific information regarding the covered servicemember's injury or illness and its expected duration, since the ITO or ITA will not provide the agency with such information initially. As DOL stated in its final rule, once an ITO or ITA expires, the employee will be in a better position to have an authorized health care provider furnish a complete certification as to the servicemember's medical condition and the employee's continuing need for leave. Paragraphs (e)(4) and (e)(5) of § 630.1211 state, respectively, that when an employee supports his or her request for leave with an ITO or ITA, a health care provider of the agency may seek authentication and clarification of the ITO or ITA, but the agency may not require a second and third opinion or use a recertification process.

Further Certification Requirements

Paragraphs (f)–(i) of proposed § 630.1211 parallel similar provisions in the certification requirements for ''basic'' FMLA leave. Paragraph (f) provides that the agency must grant provisional leave pending final written certification if the employee cannot provide the certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin. Paragraph (g) states that an employee must provide certification to the requesting agency within 15 calendar days of the agency's request, unless it is not practicable to do so under the particular circumstances, despite the employee's diligent, good-faith efforts, in which case the employee must provide the certification within a reasonable period of time, but no later

than 30 calendar days after the agency's request. Paragraph (h) states that if the employee fails to provide the requested certification after the leave has commenced, the agency may charge the employee as absent without leave (AWOL) or allow the employee to request that the provisional leave be charged as leave without pay or to the employee's annual and/or sick leave account. Paragraph (i) addresses the security and confidentiality of this certification.

Qualifying Exigency Leave

The amendments made by the NDAA provided DOL with the authority to establish ''qualifying exigency leave'' for employees covered by DOL's regulations. See 29 CFR 825.126. This type of leave helps families of members of the National Guard and Reserves manage family affairs when a family member is on active duty. Qualifying exigencies for which employees can use FMLA leave are: (1) Short-notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) additional activities not encompassed in the other categories that the employer and employee agree qualify as exigencies and agree to the timing and duration of the leave. The NDAA amendments did not provide this benefit to Federal employees; therefore, it is not included in OPM's proposed regulations. OPM requests comments on whether we should pursue legislation to obtain this benefit for the Federal workforce.

OPM is publishing subpart L, Family and Medical Leave, in its entirety because of the extent of the additions and the reorganization of the text.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR 630

Government employees.

Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Pub. L. 108–411, 118 Stat 2312; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

* * * * *

2. In § 630.401, remove paragraph (f) and revise paragraphs (a)(3) and (b) to read as follows:

§ 630.401 Granting sick leave.

(a) * * *

(3) Provides care for a family member—

(i) Who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;

(ii) With a serious health condition; or

(iii) Who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease;

* * * * *

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i), (a)(3)(iii), and (a)(4) of this section may not exceed a total of 104 hours (or, for a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave he or she normally accrues during a leave year).

* * * * *

§§ 630.402 through 630.406 [Redesignated as §§ 630.404 through 630.408].

3a. Redesignate §§ 630.402 through 630.406 as §§ 630.404 through 630.408 respectively, and add new §§ 630.402 and 630.403 to read as follows:

§ 630.402 Advancing sick leave.

(a) At the beginning of a leave year or at any time thereafter when required by the exigencies of the situation, an agency may advance sick leave in the amount of:

(1) Up to 240 hours to a full-time employee—

(i) Who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;

(ii) For a serious health condition of the employee or a family member;

(iii) When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;

(iv) For purposes relating to the adoption of a child; or

(v) For the care of a covered servicemember with a serious injury or illness, provided the employee is exercising his or her entitlement under §§ 630.1203(b) and 630.1204.

(2) Up to 104 hours to a full-time employee—

(i) When he or she receives medical, dental or optical examination or treatment;

(ii) To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;

(iii) To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or

(iv) To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

(b) Two hundred forty hours is the maximum amount of advanced sick leave an employee may have to his or her credit at any one time. For a part-time employee (or an employee on an uncommon tour of duty), the maximum amount of sick leave an agency may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

§ 630.403 Substitution of sick leave for unpaid family and medical leave to care for a covered servicemember.

The amount of accumulated and accrued sick leave which an employee may substitute for unpaid family and medical leave under § 630.1203(b) may not exceed a total of 26 administrative workweeks in a single 12-month period

(or, for a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 26 times the average number of hours in his or her scheduled tour of duty each week).

3b. Revise paragraphs (b) and (c) of § 630.502 to read as follows:

§ 630.502 Sick leave recredit.

* * * * *

(b) Except as provided in § 630.407 and in paragraph (c) of this section, an employee who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation), if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the Federal Government before December 2, 1994.

(c) Except as provided in § 630.407, an employee of the government of the District of Columbia who was first employed by the government of the District of Columbia before October 1, 1987, who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation), if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the Federal Government before December 2, 1994.

* * * * *

4. Revise subpart L to read as follows:

Subpart L—Family and Medical Leave

630.1201 Purpose, applicability, and administration.
630.1202 Definitions.
630.1203 Leave entitlement.
630.1204 Invoking FMLA entitlement.
630.1205 Application of the 12-month FMLA periods.
630.1206 Non-standard workschedules and holidays.
630.1207 Intermittent leave or reduced leave schedule.
630.1208 Substitution of paid leave.
630.1209 Notice of leave.
630.1210 Medical certification for basic FMLA leave for serious health condition of the employee or family member.
630.1211 Medical and other certification for leave to care for a covered servicemember.
630.1212 Protection of employment and benefits.
630.1213 Health benefits.
630.1214 Greater leave entitlements.
630.1215 Records and reports.

§ 630.1201 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement sections 6381 through 6387 of title 5, United States Code. This subpart must be read together with those sections of law. Sections 6381 through 6387 of title 5, United States Code, provide a standard approach to providing family and medical leave to Federal employees by prescribing an entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs, as specified in § 630.1203(a) of this part, and an entitlement to a total of 26 administrative workweeks of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness, as specified in § 630.1203(b) of this part.

(b) *Applicability.* (1) Except as otherwise provided in paragraph (b)(2) of this section, this subpart applies to any employee who—

(i) Is defined as an ''employee'' under 5 U.S.C. 6301(2), excluding employees covered under paragraph (b)(2) of this section; and

(ii) Has completed at least 12 months of service (not required to be 12 recent or consecutive months) as—

(A) An employee, as defined under 5 U.S.C. 6301(2), excluding any service as an employee under paragraph (b)(2) of this section;

(B) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1);

(C) A ''teacher'' or an individual holding a ''teaching position,'' as defined in section 901 of title 20, United States Code; or

(D) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds.

(2) This subpart does not apply to—

(i) An individual employed by the government of the District of Columbia;

(ii) An employee serving under a temporary appointment with a time limitation of 1 year or less;

(iii) An intermittent employee, as defined in 5 CFR 340.401(c); or

(iv) Any employee covered by Title I or Title V of the Family and Medical Leave Act of 1993 (Pub. L. 103–3, February 5, 1993). The Department of Labor has issued regulations implementing Title I at 29 CFR part 825.

(3) For the purpose of applying sections 6381 through 6387 of title 5, United States Code—

(i) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1) is subject to regulations prescribed by the Secretary of Veterans Affairs;

(ii) A ''teacher'' or an individual holding a ''teaching position,'' as defined in section 901 of title 20, United States Code, is subject to regulations prescribed by the Secretary of Defense; and

(iii) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds is subject to regulations prescribed by the Secretary of Defense or the Secretary of Transportation, as appropriate.

(4) The regulations prescribed by the Secretary of Veterans Affairs, Secretary of Defense, or Secretary of Transportation under paragraph (b)(3) of this section must, to the extent appropriate, be consistent with the regulations prescribed in this subpart and the regulations prescribed by the Secretary of Labor to carry out Title I of the Family and Medical Leave Act of 1993 at 29 CFR part 825.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

§ 630.1202 Definitions.

In this subpart:

Accrued leave has the meaning given that term in § 630.201 of this part.

Accumulated leave has the meaning given that term in § 630.201 of this part.

Active duty means duty under a call or order to active duty in support of a contingency operation pursuant to:

(1) Section 688 of title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the Retired Reserve retired after 20 years for length of service, and members of the Fleet Reserve or Fleet Marine Corps Reserve;

(2) Section 12301(a) of title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency declared by Congress, or when otherwise authorized by law;

(3) Section 12302 of title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty in time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law;

(4) Section 12304 of title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty;

(5) Section 12305 of title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components;

(6) Section 12406 of title 10 of the United States Code, which authorizes

calling the National Guard into Federal service in certain circumstances;

(7) Chapter 15 of title 10 of the United States Code, which authorizes calling the National Guard and State militia into Federal service in the case of insurrections and national emergencies; or

(8) Any other provision of law during a war or during a national emergency declared by the President or Congress.

Administrative workweek has the meaning given that term in § 610.102 of this chapter.

Adoption refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child—*i.e.,* whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for leave under this subpart.

Contingency operation means a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10 of the United States Code, chapter 15 of title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Covered servicemember means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty, but does not include former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

Employee means an individual to whom this subpart applies as described under § 630.1201(b).

Essential functions means the fundamental job duties of the employee's position, as defined in 29 CFR 1630.2(n). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

Family and medical leave (or FMLA leave) means an employee's entitlement to 12 or 26 administrative workweeks of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of title 5, United States Code.

Foster care means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

Health care provider means, for purposes of leave taken under § 630.1203(a)(3) or (4)—

(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;

(2) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;

(3) A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

(4) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or

(5) A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95–314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103–344, October 6, 1994 (108 Stat. 3125).

(6) For purposes of leave taken to care for a covered servicemember under § 630.1205(b), see the list of authorized health care providers at § 630.1211(a)(1) through (4).

In loco parentis refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee or a covered servicemember, who had such responsibility for the employee or the covered servicemember when either was a child. A biological or legal relationship is not necessary.

Incapacity means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

Intermittent leave or leave taken intermittently means leave taken in separate blocks of time, rather than for one continuous period of time, and may include leave periods of 1 hour to several weeks. Leave may be taken for a period of less than 1 hour if agency policy provides for a minimum charge for leave of less than 1 hour under § 630.206(a).

Leave without pay means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority:

(1) Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions;

(2) Brothers and sisters;

(3) Grandparents;

(4) Aunts and uncles; and

(5) First cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of leave taken under § 630.1203(b). When such designation has been made, the designated individual is deemed to be the covered servicemember's only next of kin. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members will be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously.

Outpatient status means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to—

(1) A military medical treatment facility as an outpatient; or

(2) A unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Parent means a biological parent or an individual who stands or stood in loco

parentis to an employee when the employee was a *son or daughter.* This term does not include parents-in-law.

Parent of a covered servicemember means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stands or stood in loco parentis to the covered servicemember. This term does not include parents-in-law.

Reduced leave schedule means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced are counted as leave for the purpose of this subpart.

Regularly scheduled work has the meaning given that term in § 610.102 of this chapter.

Regularly scheduled administrative workweek has the meaning given that term in § 610.102 of this chapter.

Serious health condition. (1) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves—

(i) Inpatient care (*i.e.,* an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(ii) Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following—

(A) A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves—

(1) Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider (*e.g.,* a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

(B) Any period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that—

(1) Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider,

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (*e.g.,* asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(D) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (*e.g.,* Alzheimer's, severe stroke, or terminal stages of a disease).

(E) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment (*e.g.,* chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

(2) Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of a cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.

Serious injury or illness means an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating.

Single 12-month period means the period beginning on the first day the employee takes FMLA leave to care for a covered servicemember with a serious injury or illness and ending 12 months after that date in accordance with section 630.1205(b) and (c).

Son or daughter means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing in loco parentis who is—

(1) Under 18 years of age; or

(2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the ''activities of daily living'' (ADLs) or ''instrumental activities of daily living'' (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A ''physical or mental disability'' refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j).

Son or daughter of a covered servicemember means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

Spouse means an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

Tour of duty has the meaning given that term in § 610.102 of this chapter.

§ 630.1203 Leave entitlement.

(a) *12-week entitlement for basic FMLA leave.* An employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(1) The birth of a son or daughter of the employee and the care of such son or daughter;

(2) The placement of a son or daughter with the employee for adoption or foster care;

(3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

(4) A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position.

(b) *26-week entitlement for FMLA leave to care for a covered servicemember.* (1) An employee is entitled to a total of 26 administrative workweeks of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of a covered servicemember as defined in § 630.1202.

(2) The leave entitlement described in this section is to be applied on a per-covered servicemember, per-serious injury or illness basis such that an employee may be entitled to take more than one period of up to 26 administrative workweeks of leave if the leave is to care for different covered servicemembers or to care for the same covered servicemember with a subsequent serious injury or illness, except that no more than 26 administrative workweeks of leave may be taken within any single 12-month period as described in § 630.1205(b).

(i) *Per covered servicemember.* Subject to § 630.1205(b) and the conditions in paragraphs (b)(2)(i)(A) through (C) of this section, an employee may take more than one period of up to 26 administrative workweeks of FMLA leave to care for more than one covered servicemember.

(A) An employee who has previously invoked FMLA leave to care for a covered servicemember in a single 12-month period may subsequently invoke FMLA leave to care for a different covered servicemember in a different single 12-month period.

(B) If the single 12-month periods applicable to the different covered servicemembers do not overlap, the employee may take up to 26 administrative workweeks of leave during each single 12-month period. If the single 12-month periods applicable to the different covered servicemembers do overlap, the employee may take no more than 26 administrative workweeks of leave during any single 12-month period. In no case may an employee take more than 26 administrative workweeks of leave during any single 12-month period, as described in § 630.1205(b) and (c).

(C) For purposes of applying paragraphs (b)(2)(i)(A) and (B) of this section, the beginning of each period of leave to care for each covered servicemember begins a new single 12-month period.

(ii) *Per serious injury or illness.* Subject to § 630.1205(b) and the conditions in paragraphs (b)(2)(ii)(A) through (C) of this section, an employee may take more than one single 12-month period of up to 26 administrative workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness, including a manifestation of a second serious injury or illness at a later time. An employee may not take a subsequent period of leave to care for a covered servicemember who experiences an aggravation or complication of an earlier serious injury or illness.

(A) An employee who has previously invoked FMLA leave to care for a covered servicemember in a single 12-month period may subsequently invoke FMLA leave to care for the same covered servicemember in a different single 12-month period for a different serious injury or illness.

(B) If the different single 12-month periods applicable to the different serious injuries or illnesses do not overlap, the employee may take up to 26 administrative workweeks of leave during each single 12-month period. If the different single 12-month periods applicable to the different serious injuries or illnesses do overlap, the employee may take no more than 26 administrative workweeks of leave during any single 12-month period. In no case may an employee take more than 26 administrative workweeks of leave within any single 12-month period, as described in § 630.1205(b) and (c).

(C) For purposes of applying paragraphs (b)(2)(ii)(A) and (B) of this section, the beginning of each period of leave to care for each separate serious injury or illness begins a new single 12-month period.

(3) An employee may not take leave under this paragraph to care for a former member of the Armed Forces, a former member of the National Guard or Reserves, or a member on the permanent disability retired list.

(c)(1) An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave under paragraph (a) or (b) of this section.

(2) An employee's entitlement to the use of leave under paragraphs (a) and (b) of this section is applied in accordance with § 630.1205.

(d) Each agency must inform its employees of their entitlements and responsibilities under this subpart, including the requirements and obligations of employees.

§ 630.1204 Invoking FMLA entitlement.

(a) An employee must invoke his or her entitlement to family and medical leave under § 630.1203(a) or (b), subject to the notification and medical certification requirements in §§ 630.1209, 630.1210, or 630.1211.

(b) An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee and his or her personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave *during the entire period* in which the employee is absent from work for an FMLA-qualifying purpose under § 630.1203(a) or (b), the employee may retroactively invoke his or her entitlement to FMLA leave within 2 workdays after returning to work. In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency, explaining the inability of his or her personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for an FMLA-qualifying purpose.

(c) When an employee invokes his or her entitlement to FMLA leave for a circumstance which could qualify under both § 630.1203(a)(3) and § 630.1203(b), then the FMLA leave must be designated as being taken under § 630.1203(b). The higher 26-week entitlement applies in this case. The single 12-month period starts upon first use of leave for this purpose. Leave to care for a covered servicemember is to be applied on a per-covered servicemember, per-serious injury or illness basis, as described under § 630.1203(b)(2). Once the single 12-month period for leave to care for a covered servicemember is exhausted in accordance with 630.1205(b), leave for

any necessary subsequent care may be taken under § 630.1203(a)(3) subject to all requirements relating to use of such leave.

(d) An agency may not place an employee on family and medical leave and may not subtract leave from an employee's entitlement to leave under § 630.1203(a) or (b) unless the agency has obtained confirmation from the employee or his or her personal representative of the employee's intent to invoke his or her entitlement to leave under paragraph (a) or (b) of this section. An employee's notice of his or her intent to take leave under § 630.1209 may suffice as the employee's confirmation.

§ 630.1205 Application of the 12-month FMLA periods.

(a) *12-week entitlement for basic FMLA leave.* The 12-month period referred to in § 630.1203(a) begins on the date an employee first takes leave under this subpart for a family or medical need specified in § 630.1203(a) and continues for 12 months.

(1) An employee is not entitled to 12 additional administrative workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(2) The entitlement to leave under § 630.1203(a)(1) and (2) expires at the end of the 12-month period beginning on the date of birth or placement. Leave for a birth or placement must be concluded within this 12-month period. Leave taken under § 630.1203(a)(1) and (2) may begin prior to, or on the actual date of, birth or placement for adoption or foster care, and the 12-month period referred to in § 630.1203(a) begins on that date.

(b) *26-week entitlement for FMLA leave to care for a covered servicemember.* The single 12-month period described in § 630.1203(b) begins on the first day the employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date.

(1) Any leave used under § 630.1203(a) prior to the first use under § 630.1203(b) does not count towards the single 12-month period under this paragraph.

(2) If an employee does not take all of his or her 26 administrative workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of his or her 26 administrative workweeks of leave entitlement to care for the covered servicemember is forfeited.

(3) When an employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single 12-month periods corresponding to the different leave entitlements to care for a covered servicemember overlap, the employee is limited to taking a combined total of no more than 26 administrative workweeks of leave in each single 12-month period.

(c) *Limit of combined total of 26 weeks.* During any single 12-month period described in paragraph (b) of this section, an employee's FMLA leave entitlement is limited to a combined total of 26 administrative workweeks of FMLA leave for any reason under § 630.1203 (a) and (b).

§ 630.1206 Non-standard workschedules and holidays.

(a) *Part-time and uncommon tours of duty.* Leave under § 630.1203(a) and (b) is available to full-time and part-time employees. The appropriate total of administrative workweeks (12 if taken under § 630.1203(a), and 26 if taken under § 630.1203(b)) will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The appropriate number (*i.e.,* 12 or 26) of administrative workweeks of leave will be calculated on an hourly basis and will equal 12 or 26 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's administrative workweek varies from week to week, a weekly average of the hours scheduled over the 12 or 26 weeks prior to the date leave commences must be used as the basis for this calculation.

(b) *Holidays.* Any holidays authorized under 5 U.S.C. 6103 or by Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave may not be counted toward the employee's 12 or 26-week entitlement to family and medical leave.

(c) *Change in schedule.* If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

§ 630.1207 Intermittent leave or reduced leave schedule.

(a) Leave under § 630.1203(a)(1) or (2) may not be taken intermittently or on a reduced leave schedule unless the employee and the agency agree to do so.

(b) Leave under § 630.1203(a)(3) or (4) may be taken intermittently or on a reduced leave schedule when medically necessary, subject to §§ 630.1209 and 630.1210(b)(6). Leave under § 630.1203(b) may be taken intermittently or on a reduced leave schedule when medically necessary, subject to §§ 630.1209, 630.1211(b)(7) and (8) and 630.1211(e)(1) and (2).

(c) If an employee takes leave under § 630.1203(a)(3) or (4) or § 630.1203(b) intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment, recovery from a serious health condition, or care of a covered servicemember, the agency may place the employee temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave. Upon returning from leave, the employee is entitled to be returned to his or her permanent position or an equivalent position, as provided in § 630.1212(a).

(d) For the purpose of applying paragraph (c) of this section, an alternative position need not consist of equivalent duties, but must be in the same commuting area and must provide—

(1) An equivalent grade or pay level, including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority;

(2) The same type of appointment, work schedule, status, and tenure; and

(3) The same employment benefits made available to the employee in his or her previous position (*e.g.,* life insurance, health benefits, retirement coverage, and leave accrual).

(e) The agency must determine the available alternative position that has equivalent pay and benefits consistent with Federal laws, including the Rehabilitation Act of 1973 (29 U.S.C. 701) and the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e).

(f) Only the amount of leave taken intermittently or on a reduced leave schedule, as these terms are defined in § 630.1202 of this part, may be subtracted from the total amount of leave available to the employee under § 630.1206 (a) and (c).

§ 630.1208 Substitution of paid leave.

(a) Except as provided in paragraph (b) of this section, leave taken under § 630.1203(a) or (b) must be leave without pay.

(b) An employee may elect to substitute the following paid leave for any or all of the period of leave without pay to be taken under § 630.1203(a) or (b):

(1) Accrued or accumulated annual or sick leave under subchapter I of chapter 63 of title 5, United States Code, consistent with current law and regulations governing the granting and use of annual or sick leave under subparts C and D of this part;

(2) Advanced annual leave under 5 U.S.C. 6302(d) or sick leave under 5 U.S.C. 6307(d) and § 630.402 approved under the same terms and conditions that apply to any other agency employee who requests advanced annual or sick leave; and

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program consistent with subparts I and J of this part.

(c) An agency may not deny an employee's right to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1203(a) or (b), consistent with current law and regulations.

(d) An agency may not require an employee to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1203(a) or (b).

(e) An employee must notify the agency of his or her intent to substitute paid leave under paragraph (b) of this section for the period of leave without pay to be taken under § 630.1203(a) or (b) prior to the date such paid leave commences. An employee may not retroactively substitute paid leave for leave without pay previously taken under § 630.1203(a) or (b).

§ 630.1209 Notice of leave.

(a) If the need for leave taken under § 630.1203(a) or (b) is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for the serious health condition of employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember, the employee must provide notice to the agency of his or her intention to take leave not less than 30 calendar days before the date the leave is to begin. If 30 calendar days notice is not practicable (*e.g.,* due to lack of knowledge of approximately when leave will be required to begin, a change in circumstances, a medical emergency, or the date of birth or placement or planned medical treatment requires leave to begin within 30 calendar days), the employee must provide such notice as soon as is practicable.

(b) If the need for leave taken under § 630.1203(a)(3) or (4) or (b) is foreseeable based on planned medical treatment, the employee must consult with the agency and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider. The agency may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

(c) If the need for leave taken under § 630.1203(a) or (b) is not foreseeable (*e.g.,* a medical emergency, the serious injury of a covered servicemember, or the unexpected availability of a child for adoption or foster care), and the employee cannot provide 30 calendar days' notice of his or her need for leave, the employee must provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (*e.g.,* a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied.

(d) If the need for leave taken under § 630.1203(a) or (b) is foreseeable, and the employee fails to give 30 calendar days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of leave under § 630.1203(a) or (b) until at least 30 calendar days after the date the employee provides notice of his or her need for family and medical leave.

(e) An agency may waive the notice requirements under paragraph (a) of this section and instead impose the agency's usual and customary policies or procedures for providing notification of leave. The agency's policies or procedures for providing notification of leave must not be more stringent than the requirements in this section. However, an agency may not deny an employee's entitlement to leave under § 630.1203(a) or (b) if the employee fails to follow such agency policies or procedures.

(f) An agency may require that a request for leave under § 630.1203(a)(1) and (2) be supported by evidence that is administratively acceptable to the agency.

§ 630.1210 Medical certification for basic FMLA leave for serious health condition of the employee or family member.

(a) An agency may require that a request for leave under § 630.1203(a)(3) or (4) be supported by written medical certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate. An agency may waive the requirement for an initial medical certificate in a subsequent 12-month period if the leave under § 630.1203(a)(3) or (4) is for the same chronic or continuing condition.

(b) The written medical certification must include—

(1) The date the serious health condition commenced;

(2) The probable duration of the serious health condition or a statement that the serious health condition is a chronic or continuing condition with an unknown duration, including whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;

(3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;

(4) For the purpose of leave taken under § 630.1203(a)(3)—

(i) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and

(ii) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent;

(5) For the purpose of leave taken under § 630.1203(a)(4), a statement that the employee is unable to perform one or more of the essential functions of his or her position or requires medical treatment for a serious health condition, based on written information provided by the agency on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his or her position; and

(6) In the case of certification for intermittent leave or leave on a reduced

leave schedule under § 630.1203(a)(3) or (4) for planned medical treatment, the dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(c) The information on the medical certification must relate only to the serious health condition for which the current need for family and medical leave exists. The agency may not require any personal or confidential information in the written medical certification other than that required by paragraph (b) of this section. If an employee submits a completed medical certification signed by the health care provider, the agency may not request new information from the health care provider. However, a health care provider representing the agency, including a health care provider employed by the agency or under administrative oversight of the agency, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.

(d) If the agency doubts the validity of the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information certified under paragraph (b) of this section. Any health care provider designated or approved by the agency may not be employed by the agency or be under the administrative oversight of the agency on a regular basis unless the agency is located in an area where access to health care is extremely limited—*e.g.,* a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the agency.

(e) If the opinion of the second health care provider differs from the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information certified under paragraph (b) of this section. The opinion of the third health care provider is binding on the agency and the employee.

(f) To remain entitled to family and medical leave under § 630.1203(a)(3) or (4), an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from an agency that he or she submit to examination (though not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

(g) If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency must grant provisional leave pending final written medical certification.

(h) An employee must provide the written medical certification required by paragraphs (a), (d), (e), and (g) of this section, signed by the health care provider, no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the agency despite the employee's diligent, good-faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such medical certification.

(i) If, after the leave has commenced, the employee fails to provide the requested medical certification, the agency may—

(1) Charge the employee as absent without leave (AWOL); or

(2) Allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or sick leave account, as appropriate.

(j) At its own expense, an agency may require subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes relating to pregnancy, chronic conditions, or long-term conditions, as these terms are used in the definition of *serious health condition* in § 630.1202. For leave taken for all other serious health conditions and including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that period has passed. An agency may require subsequent medical recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification, if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification.

(k) To ensure the security and confidentiality of any written medical certification under §§ 630.1210 or 630.1212(h), the medical certification shall be subject to the provisions for safeguarding information about individuals under subpart A or part 293 of this chapter.

§ 630.1211 Medical and other certification for leave to care for a covered servicemember.

(a) An agency may require that a request for leave under § 630.1203(b) be supported by a written medical certification issued by an authorized health care provider of the covered servicemember. For purposes of leave taken to care for a covered servicemember under § 630.1203(b), any one of the following health care providers may complete such a certification:

(1) A United States Department of Defense (DOD) health care provider;

(2) A United States Department of Veterans Affairs (VA) health care provider;

(3) A DOD TRICARE network authorized private health care provider; or

(4) A DOD non-network TRICARE authorized private health care provider.

(b) *Required information from health care provider.* An agency may request that the health care provider provide any or all of the information listed below. (If the authorized health care provider is unable to make certain military-related determinations outlined below, the authorized health care provider may rely on determinations from an authorized DOD representative, such as a DOD recovery care coordinator):

(1) The name, address, and appropriate contact information (telephone number, fax number, and/or e-mail address) of the health care provider, the type of medical practice, the medical specialty, and which of the categories listed in paragraph (a) of this section describes the health care provider;

(2) Whether the covered servicemember has incurred a serious injury or illness;

(3) Whether the covered servicemember's serious injury or illness was incurred in the line of duty on active duty;

(4) The approximate date on which the serious injury or illness commenced, and its probable duration;

(5) A statement or description of appropriate medical facts regarding the covered servicemember's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts must include information on whether the serious injury or illness may render the covered servicemember medically unfit to perform the duties of the covered servicemember's office, grade, rank, or rating and whether the member is receiving medical treatment, recuperation, or therapy;

(6) Information sufficient to establish that the covered servicemember is in need of care, (*i.e.,* requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence) and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates of this period of time;

(7) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered servicemember, whether there is a medical necessity for the covered servicemember to have such periodic care and an estimate of the treatment schedule of such appointments; and

(8) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered servicemember other than for planned medical treatment (*e.g.,* episodic flare-ups of a medical condition), whether there is a medical necessity for the covered servicemember to have such periodic care, which can include assisting in the covered servicemember's recovery, and an estimate of the frequency and duration of the periodic care.

(c) *Required information from employee and/or covered servicemember.* In addition to the information that may be required under § 630.1211(b), an agency may also require that such certification set forth the following information provided by an employee and/or covered servicemember:

(1) The name and address of the employing agency of the individual requesting leave to care for a covered servicemember, the name of the employee requesting such leave, and the name of the covered servicemember for whom the employee is requesting leave to care;

(2) The relationship of the employee to the covered servicemember for whom the employee is requesting leave to care;

(3) Whether the covered servicemember is a current member of the Armed Forces or the National Guard or Reserves, and the covered servicemember's military branch, rank, and current unit assignment;

(4) Whether the covered servicemember is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit), and the name of the medical treatment facility or unit;

(5) Whether the covered servicemember is on the temporary disability retired list; and

(6) A description of the care to be provided to the covered servicemember and an estimate of the amount of leave needed by the employee to provide the care.

(d) No information may be required beyond that specified in this section. In all instances, the information on the certification must relate only to the serious injury or illness for which the current need for leave exists. An agency may seek authentication and/or clarification of the certification. However, second and third opinions such as those outlined in § 630.1210(d) and (e) or recertifications such as those outlined in § 630.1210(j) are not permitted for leave to care for a covered servicemember.

(e) An agency requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification ''invitational travel orders'' (ITOs) or ''invitational travel authorizations'' (ITAs) issued to any family member to join an injured or ill covered servicemember at his or her bedside. An ITO or ITA is sufficient certification for an employee entitled to take FMLA leave to care for a covered servicemember regardless of whether the employee is named in the order or authorization.

(1) An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis.

(2) An employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary.

(3) If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or ITA, an agency may request that the employee have one of the authorized health care providers listed under § 630.1211(a) complete the required certification form as certification for the remainder of the employee's necessary leave period.

(4) An agency may seek authentication and clarification of the ITO or ITA.

(5) An agency may not use a second or third opinion process such as those outlined in § 630.1210(d) and (e), or the recertification process such as that outlined in § 630.1210(j), for the period of time in which leave is supported by an ITO or ITA.

(f) If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency must grant provisional leave pending final written medical certification.

(g) An employee must provide the written medical certification required by paragraphs (a), (b), and (f) of this section, signed by the health care provider, no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the agency despite the employee's diligent, good-faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such medical certification.

(h) If, after the leave has commenced, the employee fails to provide the requested medical certification, the agency may—

(1) Charge the employee as absent without leave (AWOL); or

(2) Allow the employee to request that the provisional leave be charged as leave without pay or charged to the

employee's annual and/or sick leave account, as appropriate.

(i) To ensure the security and confidentiality of any written medical certification under § 630.1211, the medical certification shall be subject to the provisions for safeguarding information about individuals under subpart A of part 293 of this chapter.

§ 630.1212 Protection of employment and benefits.

(a) Any employee who takes leave under § 630.1203(a) or (b) is entitled, upon return to the agency, to be returned to—

(1) The same position held by the employee when the leave commenced; or

(2) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) For the purpose of applying paragraph (a)(2) of this section, an equivalent position must be in the same commuting area and must carry or provide at a minimum—

(1) The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority;

(2) An equivalent grade or pay level, including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority;

(3) The same type of appointment, work schedule, status, and tenure;

(4) The same employment benefits made available to the employee in his or her previous position (*e.g.,* life insurance, health benefits, retirement coverage, and leave accrual);

(5) The same or equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payments, consistent with applicable laws and regulations; however, the entitlement to be returned to an equivalent position does not extend to intangible or unmeasurable aspects of the job;

(6) The same or equivalent opportunity for premium pay consistent with applicable law and regulations under 5 CFR part 550, subpart A, or 5 CFR part 551, subpart E; and

(7) The same or equivalent opportunity for training or education benefits, consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for his or her previous position.

(c) As a result of taking leave under § 630.1203(a) or (b), an employee must not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.

(d) Except as otherwise provided by or under law, a restored employee is not entitled to—

(1) The accrual of any employment benefits during any period of leave; or

(2) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(e) For the purpose of applying paragraph (d) of this section, the same entitlements and limitations in law and regulations that apply to the position, pay, benefits, status, and other terms and conditions of employment of an employee in a leave without pay status apply to any employee taking leave without pay under this part, except where different entitlements and limitations are specifically provided in this subpart.

(f) An employee is not entitled to be returned to the same or equivalent position under paragraph (a) of this section if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

(g) An agency may not return an employee to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

(h) As a condition of returning an employee who takes leave under § 630.1203(a)(4), an agency may establish a uniformly applied practice or policy that requires all similarly-situated employees (*i.e.,* same occupation, same serious health condition) to obtain written medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. An agency may delay the return of an employee until the medical certification is provided. The same conditions for verifying the adequacy of a medical certification in § 630.1210(c) apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work may be required. An agency may not require a medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under § 630.1207.

(i) If an agency requires an employee to obtain written medical certification under paragraph (h) of this section before he or she returns to work, the agency must notify the employee of this requirement before leave commences or to the extent practicable in emergency medical situations, and must pay the expenses for obtaining the written medical certification. An employee's refusal or failure to provide written medical certification under paragraph (h) of this section may be grounds for appropriate disciplinary or adverse action, as provided in part 752 of this chapter.

(j) An agency may require an employee to report periodically to the agency on his or her status and intention to return to work. An agency's policy requiring such reports must take into account all of the relevant facts and circumstances of the employee's situation.

(k) An employee's decision to invoke FMLA leave under §§ 630.1203(a) or (b) and 630.1204 does not prohibit an agency from proceeding with appropriate actions under part 432 or part 752 of this chapter.

(l) An employee who does not comply with the notification requirements in § 630.1209 and does not provide medical certification signed by the health care provider that includes all of the information required in §§ 630.1210(b) and 630.1211(b) and (c), as applicable, is not entitled to family and medical leave.

§ 630.1213 Health benefits.

An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program (established under chapter 89 of title 5, United States Code) who is placed in a leave-without-pay status as a result of entitlement to leave under § 630.1203(a) or (b) may continue his or her health benefits enrollment while in the leave-without-pay status and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund (established under section 8909 of title 5, United States Code). The employee must make such contributions consistent with 5 CFR 890.502.

§ 630.1214 Greater leave entitlements.

(a) An agency must comply with any collective bargaining agreement or any agency employment benefit program or plan that provides greater family or medical leave entitlements to employees than those provided under this subpart. Nothing in this subpart prevents an agency from amending such policies, provided the policies comply with the requirements of this subpart.

(b) The entitlements established for employees under this subpart may not be diminished by any collective

bargaining agreement or any employment benefit program or plan.

(c) An agency may adopt leave policies more generous than those provided in this subpart, except that such policies may not provide entitlement to paid time off in an amount greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

(d) The entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart do not modify or affect any Federal law prohibiting discrimination. If the entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart conflict with any Federal law prohibiting discrimination, an agency must comply with whichever statute provides greater entitlements to employees.

§ 630.1215 Records and reports.

(a) So that OPM can evaluate the use of family and medical leave by Federal employees and provide the Congress and others with information about the use of this entitlement, each agency must maintain records on employees who take leave under this subpart and submit to OPM such records and reports as OPM may require.

(b) At a minimum, each agency must maintain the following information concerning each employee who takes leave under this subpart:

(1) The employee's rate of basic pay, as defined in 5 CFR 550.103;

(2) The occupational series for the employee's position;

(3) The number of hours of leave taken under § 630.1203(a) and (b), including any paid leave substituted for leave without pay under § 630.1208(b); and

(4) Whether leave was taken—

(i) Under § 630.1203(a)(1), (2), or (3);

(ii) Under § 630.1203(a)(4); or

(iii) Under § 630.1203(b).

(c) When an employee transfers to a different agency, the losing agency must provide the gaining agency with information on leave taken under § 630.1203(a) or (b) by the employee during the 12 months prior to the date of transfer. The losing agency must provide the following information:

(1) The beginning and ending dates of the employee's 12-month period, as determined under § 630.1205(a) or (b); and

(2) The number of hours of leave taken under § 630.1203(a) or (b) during the employee's 12-month period or single 12-month period, respectively, as determined under § 630.1205(a) or (b), respectively.

[FR Doc. E9–20610 Filed 8–25–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–FV–09–0037; FV09–927–1 PR]

Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Processed Pear Committee (PPC) for the 2009–2010 and subsequent fiscal periods from $6.25 to $8.41 per ton for ''summer/fall'' pears for canning. The PPC is responsible for local administration of the marketing order regulating the handling of pears for processing grown in Oregon and Washington. Assessments upon handlers of pears for processing are used by the PPC to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended or terminated.

DATES: Comments must be received by September 25, 2009.

ADDRESSES: Interested persons are invited to submit written comments regarding this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Susan M. Coleman or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724; Fax: (503) 326–7440; or E-mail: *Sue.Coleman@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon and Washington pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable pears beginning July 1, 2009, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an

inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the PPC for the 2009–2010 and subsequent fiscal periods from $6.25 to $8.41 per ton for ''summer/fall'' pears for canning handled under the order. The assessment rate for ''winter'' and ''other'' pears for processing would remain unchanged at a zero rate.

The order provides authority for the PPC, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the PPC are growers, handlers, and processors of Oregon and Washington pears. They are familiar with the PPC's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–06 and subsequent fiscal periods, the PPC unanimously recommended the following three base rates of assessment: (a) $6.25 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'', excluding pears for other methods of processing; (b) $0.00 per ton for any or all varieties or subvarieties of pears for processing classified as ''winter''; and (c) $0.00 per ton for any or all varieties or subvarieties of pears for processing classified as ''other''. The assessment for ''summer/fall'' pears applies only to pears for canning and excludes pears for other methods of processing as defined in § 927.15, which includes pears for concentrate, freezing, dehydrating, pressing, or in any other way to convert pears into a processed product. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the PPC or other information available to USDA.

The PPC met on May 28, 2009, and unanimously recommended 2009–2010 expenditures of $1,029,554. In comparison, last year's budgeted expenditures were $882,606. The major expenditures recommended by the PPC for the 2009–2010 fiscal period include $860,310 for promotion and paid advertising; $130,944 for research; $24,200 for administration; $13,100 for PPC expenses; and $1,000 for contingency. In comparison, major expenditures for the 2008–09 fiscal period included $700,000 for promotion and paid advertising; $140,106 for research; $28,000 for administration; $13,500 for PPC expenses; and $1,000 for contingency.

The PPC based its recommended assessment rate for ''summer/fall'' pears for canning on the 2009–2010 crop estimate, the 2009–2010 program expenditure needs, and the current and projected size of its monetary reserve. Shipments of ''summer/fall'' pears for canning for 2009–2010 are estimated at 121,000 tons, which should provide $1,017,610 in assessment income. Income derived from handler assessments, along with interest income ($5,000), and funds from the Committee's authorized reserve ($136,420), should be adequate to cover the budgeted expenditures. The estimated 2009–2010 year-end reserve is $129,476, which is within the order's limit of approximately one fiscal period's operational expenses.

Over the past five years, the Northwest processed pear industry has suffered a reduction in crop size by approximately 23 percent. With the decreasing crop size, along with the increasing costs for promotional activities, the PPC has been forced to cut back on some promotional activities and use reserve funds. The PPC recommended the higher assessment rate to increase the funding for promotional activities. The budget for promotion and paid advertising would increase from $700,000 to $860,310. This increase will allow the PPC to effectively carry out the promotional activities needed to maintain the existing market share and increase demand. The PPC recommended no change for the $0.00 assessment rate for both the ''winter'' and ''other'' classification of pears for processing.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the PPC or other available information.

Although this assessment rate would be effective for an indefinite period, the PPC would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the PPC's meetings are available from the PPC or USDA. The PPC meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the PPC's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The PPC's 2009–2010 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,500 growers of pears for canning in the regulated production area and approximately 51 handlers subject to regulation under the order. Small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

According to the *Noncitrus Fruits and Nuts 2008 Preliminary Summary* issued in January 2009 by the National Agricultural Statistics Service, the total farm gate value of ''summer/fall'' processed pears grown in Oregon and Washington for 2008 was $28,868,000. Therefore, the 2008 average gross revenue for a ''summer/fall'' processed pear grower in Oregon and Washington was $19,245. Based on records of the PPC and recent f.o.b. prices for pears, all of the handlers ship less than $7,000,000 worth of processed pears on an annual basis. Thus it can be concluded that the majority of growers and handlers of Oregon and Washington pears may be classified as small entities.

There are five processing plants in the production area, with one in Oregon and four in Washington. All five processors would be considered large entities under the SBA's definition of small businesses.

This rule would increase the assessment rate established for the PPC and collected from handlers for the 2009–2010 and subsequent fiscal

periods from $6.25 to $8.41 per ton for ''summer/fall'' pears for canning. The PPC also unanimously recommended 2009–2010 expenditures of $1,029,554. With a 2009–2010 crop of ''summer/fall'' pears for canning estimate of 121,000 tons in Oregon and Washington, the PPC anticipates assessment income of about $1,017,610. The PPC recommended the higher assessment rate to increase the funding for promotional activities.

The major expenditures recommended by the PPC for the 2009–2010 fiscal period include $860,310 for promotion and paid advertising, $130,944 for research, $24,200 for administration, $13,100 for PPC expenses, and $1,000 for contingency. In comparison, major expenditures for the 2008–09 fiscal period included $700,000 for promotion and paid advertising, $140,106 for research, $28,000 for administration, $13,500 for PPC expenses, and $1,000 for contingency.

The PPC discussed alternatives to this recommended assessment increase. The PPC reviewed a ''critical issue analysis'' of the key components of the PPC's promotion program and discussed individual promotional activities. Leaving the assessment rate at the current $6.25 per ton would have cut core promotional activities. A $0.05 increase to $6.30 per ton would not be sufficient and would limit promotional activities. The assessment rate of $8.41 per ton for ''summer/fall'' pears for canning enables the PPC to achieve the key components of the PPC's promotion program.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2009–2010 season could average about $250 per ton for ''summer/fall'' pears for canning. Therefore, the estimated assessment revenue for the 2009–2010 fiscal period as a percentage of total grower revenue is 3.364 percent for Oregon and Washington ''summer/fall'' pears for canning.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the order.

In addition, the PPC's meeting was widely publicized throughout the Oregon and Washington pear industry and all interested persons were invited to attend and participate in PPC deliberations on all issues. Like all PPC meetings, the May 28, 2009 meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Oregon and Washington pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Additionally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2009–2010 fiscal period will begin on July 1, 2009, and the order requires that the assessment rate for each fiscal period apply to all pears for canning handled during such fiscal period; (2) the Oregon and Washington pear harvest and shipping season is expected to begin in mid-August; (3) the PPC needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (4) handlers are aware of this action, which was recommended by the PPC at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 927.237, the introductory text and paragraph (a) are revised to read as follows:

§ 924.237 Processed pear assessment rate.

On or after July 1, 2009, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) $8.41 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'' excluding pears for other methods of processing;

* * * * *

Dated: August 20, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–20515 Filed 8–25–09; 8:45 am]

BILLING CODE 3410–02–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1119

Civil Penalty Factors; Withdrawal of Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: In the **Federal Register** of July 12, 2006, the Consumer Product Safety Commission (''CPSC'' or ''Commission'') issued a proposed rule that would identify and explain related factors, other than those specified by statute, which the Commission may consider in evaluating the appropriateness and amount of a civil penalty under the Consumer Product Safety Act (''CPSA''). The Consumer Product Safety Improvement Act of 2008 (''CPSIA''), Public Law 110–314, 122 Stat. 3016, supersedes the proposed rule by amending the CPSA, the Federal Hazardous Substances Act (''FHSA''), and the Flammable Fabrics Act (''FFA'') to require the Commission to consider additional factors and to issue a rule providing its interpretation of all statutory factors pertaining to civil penalties. Consequently, the Commission is withdrawing the July 12, 2006 proposed rule.

DATES: The proposed rule is withdrawn as of August 26, 2009.

FOR FURTHER INFORMATION CONTACT: Melissa V. Hampshire, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7631, e-mail *mhampshire@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 12, 2006 (71 FR 39248), the CPSC proposed to amend its regulations to add a new part, 16 CFR 1119, titled ''Civil Penalty Factors.'' The proposed rule would describe the factors the Commission may consider in determining the appropriateness and amount of a civil penalty for violations of section 19(a) of the CPSA, which includes the failure to furnish information required by section 15(b) of the CPSA.

The proposal was intended to provide further clarity and transparency in how the CPSC determines civil penalty amounts. The Commission believed that the proposed rule would result in a better understanding by the public of the Commission's approach to determining the appropriateness and amount of a civil penalty.

The Commission received four comments in response to the proposed rule. The CPSIA was subsequently enacted, and section 217 of the CPSIA revised certain sections of the CPSA, the FHSA, and the Flammable Fabrics Act. In general, section 217 of the CPSIA increased the maximum civil penalty amounts, described new factors for the CPSC to consider when determining civil penalty amounts, and instructed the CPSC to issue a final rule to interpret the ''penalty factors described in section 20(b) of the [CPSA] section 5(c)(3) of the [FHSA] and section 5(e)(2) of the [FFA] as amended by subsection (a) [of the CPSIA].''

Section 217 of the CPSIA, therefore, effectively superseded the July 12, 2006 proposed rule by adding new factors for consideration and directing the Commission to issue a final rule providing its interpretation of all the factors in section 20(b) of the CPSA, section 5(c)(3) of the FHSA, and section 5(e)(2) of the FFA. Consequently, the Commission, through this notice, is withdrawing the July 12, 2006 proposal.

Elsewhere in this issue of the **Federal Register**, the Commission is issuing a new interim final rule to interpret the penalty factors pursuant to section 217 of the CPSIA.

Dated: August 19, 2009.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. E9–20590 Filed 8–25–09; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0558; FRL–8949–4]

Revisions to the Arizona State PM–10 Implementation Plan; Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from non-metallic mineral mining and processing in the Maricopa County (Phoenix) serious PM–10 nonattainment area. We are proposing to approve a local rule that regulates these emission sources under the Clean Air Act, as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *September 25, 2009.*

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2009–0558], by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov*.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sona Chilingaryan, EPA Region IX, (415) 972–3368, *chilingaryan.sona@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates on which it was adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
MCAQD	316	Nonmetallic Mineral Processing	3/10/08	7/10/08

The submittal became complete by operation of law on January 10, 2009 pursuant to section 110(k)(1)(B) of the Clean Air Act.

B. Are there other versions of this rule?

We approved a version of Rule 316 into the SIP on January 4, 2001. MCAQD adopted revisions to the SIP-approved version on June 8, 2005 and ADEQ submitted them to us on October 7, 2005. We proposed approval of the June 8, 2005 version of Rule 316 on July 12, 2006 (71 FR 39251). The June 8, 2005 version of the rule was superseded by the March 10, 2008 version of the rule. Therefore we will not be taking final action on our July 12, 2006 proposed approval.[1] We can act on only the most recently submitted version. We have, however, reviewed materials provided with previous submittals in evaluating the rule that is the subject of this proposed action.

C. What is the purpose of the submitted rule?

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. In addition, SIP rules in serious PM–10 nonattainment areas such as the Maricopa County area must implement at least Best Available Control Measures (BACM), including Best Available Control Technology (BACT) (see CAA section 189(b)(1)(B) and 40 CFR 81.303). Rule 316 limits the emissions of particulate matter from stack, fugitive and process sources at nonmetallic mineral processing plants. Among other things, Rule 316 has opacity requirements for stack emissions, requires that a minimum moisture content be maintained at crushers, shaker screens, and material transfer points, has silt loading and stabilization standards for unpaved roads and disturbed areas, as well as track out control provisions which require the use of rumble grates and wheel washers. EPA's technical support document (TSD) has more information about this rule.

[1] As a result, we are not responding to the comments we received on that proposed approval at this time. Commenters wishing to again raise issues raised in comments on that proposal should resubmit applicable comments to the docket for this rulemaking.

II. EPA's Evaluation and Proposed Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see CAA section 110(a)) and must not relax existing requirements (see section 110(l)). As stated above, SIP rules must also implement at least Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM–10 nonattainment areas such as the Maricopa County area. The CAA does not clearly define what level of control constitutes BACM for specific activities. In guidance, we have defined it to be, among other things, the maximum degree of emission reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic, environmental impacts and other costs.[2] We have outlined in our guidance a four-step process for identifying BACM. Addendum at 42010–42014. These steps include developing a detailed emissions inventory of PM–10 sources and source categories, evaluating the impact on PM–10 concentrations of the various sources and source categories to determine which are significant,[3] identifying potential BACM for significant source categories and evaluating their reasonableness, considering technological feasibility, costs, and energy and environmental impacts, and providing for the implementation of the BACM or providing a reasoned justification for rejecting any potential BACM.

SIP rules in serious PM–10 non-attainment areas, such as the Maricopa area, for which the State has requested an attainment date extension beyond 2001, must also meet the Most Stringent Measures (MSM) requirement in section 188(e).[4] The CAA section 188(e) requirement for MSM is similar to the requirement for BACM. Under section 188(e), serious PM–10 areas applying for an attainment date extension are required to include in their attainment plans the most stringent measures included in other SIPs or in practice in other states and which can be feasibly implemented in the area. Given the similarity between the BACM requirement and the MSM requirement, we believe that determining MSM should follow a process similar to determining BACM, but with one additional step, to compare the potentially most stringent measure against the measures already adopted in the area to determine if the existing measures are most stringent. See 66 FR 50252, 50281, 50284 (October 2, 2001) for a discussion of our interpretation of the BACM and MSM requirements as applied to the Maricopa area.

Guidance and policy documents that we used to help evaluate specific enforceability and BACM requirements include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).

4. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.

5. ''Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,'' EPA 450/2–92–004, September 1992.

We also compared Rule 316 to several regulations in other PM–10 nonattainment areas, which are further described in the TSD.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant guidance and meets the requirements in CAA section 110(a) regarding enforceability, the

[2] ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (Addendum), 59 FR 41998, 42010 (August 16, 1994).

[3] We have established a presumption that a ''significant'' source category is one that contributes 5 $\mu g/m^3$ or more of PM–10 to a location of 24-hour violation. Addendum at 42011. ADEQ identified industrial sources as significant contributors to PM–10 24-hour exceedances at the Salt River monitors (see the *Revised PM–10 State Implementation Plan for the Salt River Area,* September 2005, Table 4.2.1, pgs. 26 and 27). ADEQ found that the vast majority of industrial source PM–10 emissions are generated by nonmetallic mineral processing sources. Additional information about the Salt River Plan can be found at 71 FR 39251 (July 12, 2006).

[4] EPA granted the attainment date extension requested by the State on July 25, 2002 (67 FR 48718).

requirements in CAA section 110(l) regarding SIP relaxation, and the requirements in CAA sections 189(b)(1)(B) and 188(e) regarding BACM and MSM. Monitoring, recordkeeping, reporting and associated requirements generally ensure that the submitted rule can be enforced. The March 10, 2008 version of Rule 316 is more stringent than the SIP-approved rule. Moreover, in addition to reviewing the analysis submitted by ADEQ, we have compared the requirements in Rule 316 to requirements in comparable rules in other PM–10 nonattainment areas and believe that Rule 316 is generally as stringent as the requirements in those other areas. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current proposed action but are recommended for the next time MCAQD modifies the rule.

D. Proposed Action and Public Comment

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it pursuant to CAA section 110(k)(3) as meeting the requirements of sections 189(b)(1)(B) and 188(e). We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the Federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 31, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–20597 Filed 8–25–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 414, 415, 485, and 489

[CMS–9061–N]

Electronic Public Comment Transmission Error for Two Medicare Program Rules

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for resubmission of comments.

SUMMARY: This document requests that the public resubmit their comments on the CY 2010 Physician Fee Schedule or CY 2010 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center Payment System proposed rule before the close of the comment period for these rules (that is, August 31, 2009) if their comments were originally submitted via *www.regulations.gov* during the period from July 26, 2009 through July 30, 2009.

DATES: To be assured consideration, comments on the CY 2010 Physician Fee Schedule proposed rule published July 13, 2009 (74 FR 33520) and the CY 2010 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center Payment System proposed rule published July 20, 2009 (74 FR 35232), must be received at one of the addresses provided below, no later than 5 p.m. on August 31, 2009.

ADDRESSES: In commenting, please refer to file code—

- CMS–1413–P (for the CY 2010 Physician Fee Schedule proposed rule); or
- CMS–1414–P (for the CY 2010 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center Payment System proposed rule).

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on either of these proposed rules via *http://www.regulations.gov.* Enter one of the following docket identification numbers in the keyword search field:

a. CMS–2009–0058, for the CY 2010 Physician Fee Schedule proposed rule.

b. CMS–2009–0060, for the CY 2010 Hospital Outpatient Prospective

Payment System Ambulatory Surgical Center Payment System proposed rule.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1413–P or CMS–1414–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1413–P or CMS–1414–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Shawn Braxton, (410) 786–7292.

SUPPLEMENTARY INFORMATION: In January 2003, the interagency eRulemaking Program launched *www.regulations.gov* to provide citizens with an online portal to learn about proposed regulations and to have their comments shape the rulemaking process. For the first time ever, American citizens could access and comment on all proposed Federal regulations from a single Web site.

A minor software problem resulted in the nontransmittal of some public comments from July 26, 2009 through July 30, 2009. The software error affected only a few Federal agencies, one of which was the Centers for Medicare & Medicaid Services. We were informed that this error affected the receipt of public comments on the following proposed rules (1) Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010 (regulations.gov docket identification (ID) number (CMS–2009–0058)); and (2) Medicare Program: Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2010 Payment Rates; Proposed Changes to the Ambulatory Surgical Center Payment System and CY 2010 Payment Rates (regulations.gov docket ID number (CMS–2009–0060)). (These proposed rules were published in the July 13, 2009 (74 FR 33520) and the July 20, 2009 (74 FR 35232) **Federal Register**, respectively.) Therefore, we are requesting that persons who transmitted comments on either of the aforementioned proposed rules during the period from July 26, 2009 through July 30, 2009 resubmit their comments before the close of the comment period for the proposed rules which is August 31, 2009. Persons wishing to resubmit comments may do so electronically, via mail, hand delivery, or courier as specified in the **ADDRESSES** section of this notice.

We note that the software problem has been corrected and safeguards are now in place to ensure this error will not occur for future rulemaking documents.

Dated: August 20, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–20583 Filed 8–21–09; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1503

[Docket No. TSA–2009–0014]

RIN 1652–AA66

Reporting of Security Issues

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Transportation Security Administration (TSA) proposes to add new procedures by which members of the public could report to TSA a problem, deficiency, or vulnerability regarding transportation security, including the security of aviation, maritime, railroad, motor carrier vehicle, or pipeline transportation, or any mode of public transportation, such as mass transit, in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act).

DATES: Submit comments by October 26, 2009.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Fax 202–493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Sarah Tauber, Office of Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–3964; facsimile (571) 227–1380; e-mail *sarah.tauber@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. TSA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. *See* **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages

commenters to provide their names and addresses. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. The public may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI).[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. However, if TSA determines that portions of these comments may be made publicly available, TSA may include a redacted version of the comment in the public docket. If TSA receives a request to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://DocketInfo.dot.gov.*

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue, SE., Washington, DC 20590.

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Summary of the Rule

Congress required that the Secretary of Homeland Security establish, by regulation and including a proposed rule, a process by which any person may submit a report to the Secretary regarding public transportation, railroad, or motor carrier vehicle security problems, deficiencies, or vulnerabilities.[2] The proposed rule would, if promulgated in final form, establish a process by which reports could be submitted, either by U.S. mail, electronic mail, or telephone.

This reporting mechanism is not intended for issues of immediate or emergency security or safety concern. Immediate or emergency security or safety concerns should be reported to the local emergency services operator by telephoning 911.

Waste, fraud, and abuse in TSA programs should be reported to the Department of Homeland Security Inspector General: (800) 323–8603, or *DHSOIGHOTLINE@dhs.gov.*

TSA proposes to designate in paragraph (a) of the final rule addresses and a telephone number that any person may use to report to TSA a problem, deficiency, or vulnerability regarding transportation security, including the security of aviation, maritime, railroad, motor carrier vehicle, or pipeline transportation, or any mode of public transportation, such as mass transit. TSA will include in the final rule the precise addresses (physical and electronic) for reporting. TSA has included in this NPRM the enumeration of the addresses that will be used and the actual addresses to the extent that they are fixed addresses that are not subject to change. Proposed paragraphs (b) and (c) provide that if the report identifies the person making the report, TSA will acknowledge receipt of the report. TSA will review and consider the information provided in the report and take appropriate steps to address any problems, deficiencies, or vulnerabilities identified.

Proposed paragraph (d) makes clear that a report made voluntarily under proposed § 1503.1 would not satisfy any separate legal obligation of any individual to report information to TSA or any other Government agency under any other law. For example, TSA regulations and TSA-approved airport and aircraft operator security programs require certain reports to TSA. *See* 49 CFR 1542.307(b)(3) and 1544.304(d). Operators must comply with those provisions regardless of whether a report has been submitted through the new part 1503 procedures.

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

[2] *See* Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat. 266 (August 3, 2007), sections 1413(i), 1521(i) (codified at 49 U.S.C. 20109(j)), and 1536(i) (codified at 49 U.S.C. 31105(i)). This rule would, but for the requirements of Public Law 110–53, be a rule of agency procedure that is excepted from the advance notice and public comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b)(B).

The 9/11 Act calls for a process to report security matters regarding public transit, railroad, or motor carrier vehicle transportation.[3] TSA proposes to expand the scope of this provision beyond that required by the statute. The proposed rule provides a single point of contact for reporting transportation security problems, deficiencies, or vulnerabilities in any mode in any mode of transportation. The security benefits of receiving these reports would apply to other modes of transportation as well as to those enumerated in the statute. The broad language of the regulation would encourage members of the public to submit reports for all modes. If warranted, TSA would act to reduce security vulnerabilities that these reports bring to TSA's attention. Separately from this rulemaking, TSA is in the process of developing a program to confer monetary or other recognition on individuals who provide valuable information to TSA about criminal acts or other violations relating to transportation security.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of 44 U.S.C. 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. As protection provided by the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. TSA has determined that there are no current or new information collection requirements associated with this proposed rule.

Economic Impact Analyses

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

Executive Order 12866 Assessment

In conducting these analyses, TSA has determined:

1. This rulemaking is not a ''significant regulatory action'' as defined in the Executive Order. The Office of Management and Budget agrees with this conclusion.
2. This rulemaking would not have a significant economic impact on a substantial number of small entities.
3. This rulemaking would not constitute a barrier to international trade.
4. This rulemaking does not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector.

The bases for these conclusions are summarized below.

Costs

This proposed rule would enhance the public's ability to report to TSA—via e-mail, regular mail, or telephone—security concerns with aviation, maritime, railroad, motor vehicle, pipeline, or public transportation. TSA and the public would incur costs in the operation of this enhanced reporting system.

TSA currently provides the public with two ways to communicate security concerns through logging onto the TSA Web site (*http://www.tsa.gov*): (1) By clicking on the ''Contact Us'' link at the top of the home page, clicking on the ''Security Issues'' link, scrolling down to the heading ''Security Violations and Concerns,'' and filling out and submitting an online form describing the security-related issue; or (2) by clicking on the ''Contact Us'' link at the top of the home page, clicking on the ''Security Issues'' link, and scrolling down to the heading ''Security Violations and Concerns,'' where a toll-free telephone number and e-mail address for the TSA Contact Center are provided. With the implementation of this rule, TSA plans to move the security-related contact information to a more prominent position on the home page to facilitate reporting. This analysis of costs and benefits assumes that TSA will proceed in that manner. After considering public comments and reviewing internal procedures, however, TSA may implement this rule differently.

There is no accurate method for gauging how many additional e-mail messages, telephone calls, and letters reporting transportation-security concerns the new placement of the contact number and address could generate. Consequently, estimating an accurate cost to the public of voluntarily reporting security concerns to TSA is difficult. Nonetheless, one can use fiscal year (FY) 2008 TSA Contact Center data to cost out potential scenarios. For this analysis, it has been projected that the rule will double the number of security-related telephone calls and e-mail messages TSA received in FY 2008.

In FY 2008, the Contact Center fielded 3,241 security-related telephone calls. According to Contact Center statistics, the average security-related call lasts four minutes. If one projects that the public will place an additional 3,241 calls as a result of the rule, then the public will spend 12,964 minutes (3,241 calls at about 4 minutes per call) on the telephone with TSA. At $29.24 per hour (TSA assumes that most of the communications it will receive will be from air travelers),[4] the total annual cost to the public for the additional telephone calls will be $6,318 ($29.24 per hour × 12,964 minutes/60 minutes per hour).

To estimate the cost of contacting TSA electronically, this analysis used other data collected by the Contact Center as a starting point. In FY 2008 the Center received 2,544 security-related e-mail messages from customers who logged onto the TSA Web site,

[3] Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat. 266 (August 3, 2007), sections 1413(i), 1521(i) (codified at 49 U.S.C. 20109(j)), and 1536(i) (codified at 49 U.S.C. 31105(i)).

[4] This cost is the FAA's value of time for air travelers, adjusted for inflation. Go to the following Web site for the FAA's Value of Time: *http://www.faa.gov/regulations%5Fpolicies/policy%5Fguidance/benefit%5Fcost/*. Next, click on Data Files (zip), and then click on 1-1.xls. This FAA table provides a ''Recommended Hourly Value of Travel Time Savings'' of $23.30 (2000 dollars) for personal travel by air carrier. The $23.30 is then converted to 2008 dollars by multiplying it times 1.255, the amount by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) rose between 2000 and 2008 (212.038/168.892). The annual value for 2008 (212.038) was calculated by summing the values for Quarters 1–3 and dividing the total by 3. Here is the source of the CPI–W numbers: *http://www.ssa.gov/OACT/STATS/avgcpi.html.*

clicked on the ''Contact Us/Security Issues/Security Violations and Concerns'' links described above, filled out the Web form, and submitted it. If one assumes that TSA will receive an additional 2,544 e-mail messages as a result of this rule and that the average e-mail message will require fifteen minutes to prepare, one can modify the value-of-time formula used to calculate the FY 2008 cost of security-related telephonic reports to TSA to estimate the cost to the public of e-mailing its concerns: 2,544 e-mail messages × 15/60 hours per e-mail message × $29.24 per hour = $18,597.

The proposed rule would also allow the public to report security concerns by regular mail. If one projects that this rule will generate 1,000 letters and that it takes the average letter writer 30 minutes to write and mail a report, the value of the public's time for this exercise would equate to $14,620 (1,000 letters × 30/60 hour per letter × $29.24 per hour). When the cost of postage is included (1,000 letters × $.42 per stamp = $420), using regular mail to report transportation security concerns to TSA would cost the public $15,040.

The projected cost of the three modes of communication—$6,318 for telephone calls, $18,597 for e-mail, and $15,040 for regular mail—is $39,955. The public would assume this direct cost voluntarily; the cost is not imposed by this rule.

In addition to this direct cost to the public, TSA would incur expenses in handling the increased volume of reports. Although it is not feasible to accurately establish the number of additional telephonic and e-mail reports the new placement of the contact number and address will generate, the Transportation Security Operations Center (TSOC) plans to hire six full time equivalent (FTE) contract watch officers (at an overall cost of $127,000 per year for each officer) to handle the increased volume.[5] The incremental annual labor costs in administering these telephonic and e-mail reports would total $762,000 (6 × $127,000). TSA estimates that the toll-free telephone line would cost approximately $25 per month for the analog line charge and one cent per minute for line usage. If one projects that the rule will generate 3,241 additional telephone calls per year, the cost of the toll-free telephone line amounts to $430 ((3,241 calls × 4 minutes × $.01 per minute) + (12 months × $25)). Taken together, the estimated labor costs ($762,000) and telephone-line costs ($430) yield a total annual cost to TSA of $762,430.[6] Because TSA would not expect to hire additional personnel to handle any increase in security-related letters received via regular mail, no additional mail-administration costs are anticipated.

Benefits

This rulemaking provides the following benefits:

1. It expands the public's ability to report problems, deficiencies, and vulnerabilities regarding transportation security.

2. It reminds the public that TSA wants to receive these reports.

3. It gives the public a simple method of alerting TSA to transportation security concerns that may otherwise have been overlooked. It is quite possible that reports from the public could prevent a national security problem that otherwise would have gone unaddressed.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions per section 601(6) of the RFA. Individuals and States are not included in the definition of a small entity.

This proposed rule enhances the public's ability to report security concerns voluntarily to TSA. TSA and the public will incur some costs in the operation of this enhanced reporting system. As stated previously, the public would voluntarily assume the direct cost of reporting problems and deficiencies to TSA; the cost is not imposed by this rule. TSA certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

TSA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact Analysis

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

[5] This estimate of six FTEs may turn out to be high; the actual number will depend on how many reports TSOC receives, their complexity, and the percentage that require follow-up actions.

[6] TSOC will incur no incremental costs for training because in-house training has already been funded. There also will be no additional expenses for space, computers, and telephones; existing equipment at TSOC will be used to handle the expected increase in telephonic and e-mail reporting.

List of Subjects in 49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties, Transportation.

The Proposed Amendments

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend part 1503 in chapter XII of title 49, Code of Federal Regulations as follows:

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 1503 is revised to read as follows:

Authority: 6 U.S.C. 1142; 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314.

2. Revise subpart A heading and § 1503.1 to read as follows:

Subpart A—Reports by the Public of Security Problems, Deficiencies, and Vulnerabilities

§ 1503.1 Submission of reports to TSA.

(a) Any person may report to TSA a problem, deficiency, or vulnerability regarding transportation security, including the security of aviation, maritime, railroad, motor carrier vehicle, or pipeline transportation, or any mode of public transportation, such as mass transit. Reports may be made to TSA at the following addresses:

(1) U.S. mail at Transportation Security Administration, TSA HQ, TSA–XXX, 601 South 12th Street, Arlington, VA 20598–6002;

(2) By e-mail at *XXX.dhs.gov;* or

(3) By telephone at (XXX) XXX–XXXX.

(b) If a report submitted under this section identifies the person making the report, TSA will respond promptly to such person and acknowledge receipt of the report.

(c) TSA will review and consider the information provided in any report submitted under this section and take appropriate steps to address any problems, deficiencies, or vulnerabilities identified.

(d) Nothing in this section relieves a person of a separate obligation to report information to TSA under another provision of this title, a security program, or a security directive, or to another Government agency under other law.

Issued in Arlington, Virginia, on August 20, 2009.

Keith Kauffman,

Acting Deputy Administrator.

[FR Doc. E9–20551 Filed 8–25–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2007–0004; MO 9221050083]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Black-Footed Albatross (Phoebastria nigripes) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding; reopening of the information solicitation period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public information solicitation period on our October 9, 2007, 90-day finding on a petition to list the black-footed albatross (*Phoebastria nigripes*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). This action will provide all interested parties with an additional opportunity to submit information and materials on the status of the black-footed albatross. Information previously submitted need not be resubmitted as it has already been incorporated into the public record and will be fully considered in the 12-month finding.

DATES: We are reopening the public information solicitation period and request that we receive information on or before September 25, 2009.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: *[FWS–R1–ES–2007–0004],* Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

You should be aware that we will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Gina Shultz, Deputy Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Room 3122, Honolulu, HI 96850 (telephone 808–792–9400; facsimile 808–792–9581). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

We are soliciting information during this reopened information solicitation period on the status of the black-footed albatross. We published a 90-day finding on a petition to list the black-footed albatross as threatened or endangered in the **Federal Register** on October 9, 2007 (72 FR 57278). If you submitted information previously on the status of the black-footed albatross during the previous information solicitation period, please do not resubmit it. This information has been incorporated into the public record and will be fully considered in the preparation of the 12-month finding.

You may submit your information and materials concerning the 90-day finding by one of the methods listed in the **ADDRESSES** section. Please be aware that if you submit information via *http://www.regulations.gov* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will also post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing the 90-day finding for the black-footed albatross, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**, above).

Background

On October 9, 2007, we published a 90-day finding on a petition to list the black-footed albatross as threatened or endangered (72 FR 57278). In that 90-day finding, we found that the petition presented substantial scientific or commercial information indicating that listing the black-footed albatross may be warranted. We also initiated a status review to determine if listing the species

is warranted, and announced a 60-day public information solicitation period on the petition finding and status review, which ended on December 10, 2007.

We received two requests for an extension of the information solicitation period in order to allow agencies and interested persons the opportunity to provide additional information for our consideration during this status review. In particular, these requests were based on the anticipated publication of a formal status assessment of the black-footed (and Laysan) albatross by the U.S. Geological Survey, Biological Resources Discipline (USGS–BRD). This status assessment is now available to the public for review (*http://pubs.usgs.gov/sir/2009/5131/*). The USGS–BRD Status Assessment of Laysan and Black-footed Albatrosses provides a synthesis and review of all existing data and other information about the species, including an assessment of fishery-related mortality and statistical models of the population status and trajectory. This assessment, along with other information provided by the public and reviewers on the 90-day petition finding, will be an important source of information for the status review and 12-month finding on the black-footed albatross.

It is important to note that the standard for ''substantial information'' indicating that the petitioned action may be warranted for a 90-day finding is in contrast to the 12-month finding that determines whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 17, 2009.

Dan Ashe,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–20604 Filed 8–25–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 74, No. 164
Wednesday, August 26, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Superior National Forest, Gunflint Ranger District, Minnesota; South Fowl Lake Snowmobile Access Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The purpose of this project is to develop a safe, legal snowmobile access from the McFarland Lake area to South Fowl Lake on the Gunflint Ranger District, Superior National Forest. This project was previously scoped and analyzed in an Environmental Assessment (EA) in 2005. A Decision Notice on the project was issued in February 2006. The decision was litigated and the Minnesota District Court required that an Environmental Impact Statement (EIS) be prepared to ''evaluate more thoroughly the sound impact in the BWCAW''. This Notice of Intent begins the process for completing the required EIS and fulfilling the court order. Your comments on scoping this EIS will be most useful if they contain new information or issues on the scope of this project that were not submitted in previous comments on this project.

DATES: Comments concerning the scope of the analysis must be received by September 24, 2009. The Draft Environmental Impact Statement is expected January 2010, and the Final Environmental Impact Statement is expected April 2010.

ADDRESSES: Send written comments to Dennis Neitzke, Gunflint District Ranger, RE: South Fowl Lake Snowmobile Access Project EIS, at 2020 W. Highway 61, Grand Marais, MN 55604. Comments may also be sent via e-mail to *comments-eastern superior-gunflint@fs.fed.us,* or via facsimile to (218) 387–3246.

FOR FURTHER INFORMATION CONTACT: Peter Taylor, Forest Environmental Coordinator, at (218) 626–4368 or *prtaylor@fs.fed.us.* Go to *http://www.fs.fed.us/r9/forests/superior/projects/sf.php* for the previously prepared EA and Decision Notice for this project.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this project is to develop a safe, legal snowmobile access from the McFarland Lake area to South Fowl Lake on the Gunflint Ranger District, Superior National Forest. This access would fill the public's desire of access without threatening private land or damaging the wilderness resources. The Forest Service is undertaking this project because the Tilbury Trail is not legal, is closed, and a safe route does not exist. A route designated by the Forest Service, in cooperation with the Minnesota DNR and Cook County, will restrict use to a safer route, better able to handle the existing use.

This project was previously scoped and analyzed in an Environmental Assessment (EA) in 2005. A Decision Notice on the project was issued February 2006. The decision was litigated and the Minnesota District Court required that an Environmental Impact Statement (EIS) be prepared to ''evaluate more thoroughly the sound impact in the BWCAW'' (Civil No. 06–3357 JRT/RLE page 28). This Notice of Intent begins the process for completing the required EIS and fulfilling the court order. A more complete history of this project is available through the EA and Decision Notice at *http://www.fs.fed.us/r9/forests/superior/projects/sf.php.*

Proposed Action

The proposed action is described as Alternative 2 in the previously completed Environmental Assessment for this project. The snowmobile trail begins at McFarland Lake and travels to the east. The public parking area for the John Lake would be used to service this trail. It crosses the Arrowhead Trail, the Border Route hiking trail, and the former Tilbury trail before moving southeast, ascending to a bench on the ridge above the Royal River. The route follows the ridge in an east-southeast direction about 1.3 miles, then down-slope northeast to level ground and directly east to South Fowl Lake. The total length would be approximately 2.22 miles (2.8 acres opened), with 1.62 miles on Federal land and .6 miles on State land. The entire length would be new construction, completely outside the Boundary Waters Canoe Area Wilderness. One thousand feet of the route where it ascends the west side of the ridge would be the standard 16-foot clearing, but the remainder would be a maximum of 10 feet (8-foot tread) to minimize resource impacts. The John Lake public parking area is satisfactory as a snowmobile trailhead and would be graded and resurfaced with crushed gravel.

Possible Alternatives

Several Alternatives were identified by scoping for the previously completed EA. These will be brought forward into the EIS. These include the proposed action alternative, a no action alternative, a south route, and a shortened route. Detailed descriptions and maps of these alternatives may be found in the EA (available at *http://www.fs.fed.us/r9/forests/superior/projects/sf.php*).

Responsible Official

Gunflint District Ranger.

Nature of Decision To Be Made

The decision to be made is whether to or not to develop a safe, legal snowmobile access from the McFarland Lake area to South Fowl Lake on the Gunflint Ranger District, Superior National Forest. The decision will include:

1. What actions would be used to address the purpose and need;

2. Where and when those actions would take place;

3. What mitigation measures and monitoring requirements would be required.

Preliminary Issues

Issues identified in the previously completed EA include Threatened, Endangered and Sensitive Species; Soil Resources; Off-Highway Vehicles; Forest Vegetation; Wilderness Values; Human Use Patterns and Safety; Land Ownership and Economics. These issues will be carried forward for analysis in the Environmental Impact Statement. The Wilderness Values section will include further disclosure of effects of noise to the Boundary Waters Canoe Area Wilderness.

Scoping Process

This project was previously scoped for the preparation of the 2005 EA. The issues identified in scoping for the EA will be brought forward for effects disclosure in the EIS. In addition, response to comments submitted on the EA may be found at Appendix D to the Decision Notice (available at *http://www.fs.fed.us/r9/forests/superior/projects/sf.php*). Your comments on scoping this EJS will be most useful if they contain new information or issues on the scope of this project that were not submitted in previous comments on this project.

The scoping process will include: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues, or those which have been covered by a previous environmental review. Based on the results of scoping and the resource capabilities within the project area, alternatives, including a no-action alternative, will be developed for the draft environmental impact statement.

A Draft Environmental Impact Statement will be prepared for comment. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is important that reviewers provide their comments on the Draft Environmental Impact Statement at such times and in such manner that they are useful to the agency's preparation of the Environmental Impact Statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

Dated: August 17, 2009.

James W. Sanders,

Forest Supervisor.

[FR Doc. E9–20341 Filed 8–25–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will meet in Corvallis, OR. The purpose of the meeting is to hold RAC FY10 Business, Review 2009 Project Monitoring Results, Make recommendations for 2010 Title II Project Proposals.

DATES: The meeting will be held September 17, 2009 beginning at 8 a.m.

ADDRESSES: The meeting will be held at the Siuslaw National Forest Supervisor's Office, 4077 SW Research Way, Corvallis, Oregon.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Siuslaw Public Affairs Officer, Siuslaw National Forest, 541–750–7075 or write to Forest Supervisor, Siuslaw National Forest, 4077 SW Research Way, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: A public input period will begin before 2009 project review.

Dated: August 17, 2009.

Teresa Raaf,

Acting Forest Supervisor.

[FR Doc. E9–20316 Filed 8–25–09; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Wednesday through Friday, September 9–11, 2009, at the times and location noted below.

DATES: The schedule of events is as follows:

Wednesday, September 9, 2009

10:30–Noon Interim Report on Board's Rulemaking Process.
1:30–3 p.m. Technical Programs Committee.
3–4 p.m. Budget Committee.

Thursday, September 10, 2009

1:30–3 p.m. Ad Hoc Committee Meetings (Closed to Public).
3–4:30 p.m. Planning and Evaluation Committee (Closed to Public).

Friday, September 11, 2009

9:30–Noon Committee of the Whole: Board structure discussion.
1:30–3 p.m. Board Meeting.

ADDRESSES: All meetings will be held at the Embassy Suites DC Convention Center Hotel, 900 10th Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on Friday, September 11, the Access Board will consider the following agenda items:

- Approval of the draft July 17, 2009 Board Meeting Minutes.
- Technical Programs Committee Report.
- Budget Committee Report.
- Planning and Evaluation Committee Report.
- Accessible Design in Education Report.
- Acoustics Report.
- Airport Terminal Access Report.
- Emergency Transportable Housing Report.
- Information and Communications Technologies Report.
- Outdoor Developed Areas Report.
- Passenger Vessels Report.
- Public Rights-of-Way Report.
- Transportation Vehicles Report.
- Election Assistance Commission Report.
- Executive Director's Report.
- ADA and ABA Guidelines; Federal Agency Updates.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

David M. Capozzi,

Executive Director.

[FR Doc. E9–20520 Filed 8–25–09; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and

regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the South Carolina Advisory Committee (Committee) to the Commission will convene on Wednesday, September 2, 2009, at 9:30 a.m. and adjourn at 11 a.m. at the University of South Carolina School of Law, 701 Main Street, Columbia, South Carolina 29208. The purpose of the meeting is for the Committee to approve its report on equal education opportunity and plan activities for fiscal year 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by September 30, 2009. The address is U.S. Commission on Civil Rights, 61 Forsyth St., SW., Suite 18T40, Atlanta, GA 30303. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 12, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–20516 Filed 8–25–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Wooden Bedroom Furniture from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 26, 2009.

SUMMARY: The Department of Commerce (Department) has determined that two timely requests for new shipper reviews of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (PRC) meet the statutory and regulatory requirements for initiation. For one of the two new shipper reviews that the Department is initiating, the period of review (POR) is January 1, 2009, through June 30, 2009. For the other new shipper review where the shipment entered after the period January 1, 2009, through June 30, 2009, the Department is initiating and extending the POR by thirty days, pursuant to 19 CFR 351.214(f)(2)(ii). The POR for this new shipper review is January 1, 2009, through July 30, 2009.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5193 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on wooden bedroom furniture from the PRC was published on January 4, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005). On July 31, 2009, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), the Department received timely requests for new shipper reviews from Rise Furniture Co., Ltd. (Rise Furniture), and Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd. (Zhejiang Tianyi). Rise Furniture and Zhejiang Tianyi certified that they are each the producer and exporter of the subject merchandise upon which their respective request for a new shipper review was based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Rise Furniture and Zhejiang Tianyi certified that they did not export wooden bedroom furniture to the United States during the period of investigation (POI). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Rise Furniture and Zhejiang Tianyi certified that, since the initiation of the investigation, they have never been affiliated with any PRC exporter or producer who exported wooden bedroom furniture to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Rise Furniture and Zhejiang Tianyi, also certified that their export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Rise Furniture and Zhejiang Tianyi submitted documentation establishing the following: (1) the date on which Rise Furniture and Zhejiang Tianyi first shipped wooden bedroom furniture for export to the United States and the date on which the wooden bedroom furniture was first entered, or withdrawn from warehouse, for consumption;[1] (2) the volume of their first shipment;[2] and (3) the date of their first sale to an unaffiliated customer in the United States.

The Department conducted U.S. Customs and Border Protection (CBP) database queries and confirmed that Rise Furniture's and Zhejiang Tianyi's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also confirmed by examining the CBP data that Zhejiang Tianyi's entry was made during the POR specified by the Department's regulations.

When the sale of the subject merchandise occurs within the POR specified by the Department's regulations but the entry occurs after the

[1] Rise Furniture reported that its shipment of subject merchandise entered during the POR for this new shipper review (*i.e.*, prior to July 1, 2009); however, the results of the Department's query of CBP data indicate that the shipment entered shortly after the end of the POR. *See* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office 4: New Shipper Review of Wooden Bedroom Furniture, Placing CBP data on the record, dated concurrently with this notice.

[2] Rise Furniture and Zhejiang Tianyi made no subsequent shipments to the United States.

POR, the specified POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. *See* 19 CFR 351.214(f)(2)(ii). Additionally, the preamble to the Department's regulations states that both the entry and the sale should occur during the POR, and that under ''appropriate'' circumstances the Department has the flexibility to extend the POR. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27319–27320 (May 19, 1997). In this instance, Rise Furniture's sale of subject merchandise was made during the POR specified by the Department's regulations but the shipment entered within thirty days after the end of that POR. The Department finds that extending the POR to capture this entry would not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the Department has extended the POR for the new shipper review of Rise Furniture by thirty days. *See* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office 4: New Shipper Review of Wooden Bedroom Furniture, Placing CBP data on the record, dated concurrently with this notice.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that Rise Furniture and Zhejiang Tianyi meet the threshold requirements for initiation of new shipper reviews of their shipments of wooden bedroom furniture from the PRC. *See* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office 4: Initiation of AD New Shipper Review: Wooden Bedroom from the People's Republic of China, and the attached New Shipper Initiation Checklists, dated concurrently with this notice.

The POR for the new shipper review of Zhejiang Tianyi is January 1, 2009, through June 30, 2009. *See* 19 CFR 351.214(g)(1)(i)(B). As discussed above, the POR for the new shipper review of Rise Furniture is January 1, 2009, through July 30, 2009. The Department intends to issue the preliminary results of these reviews no later than 180 days from the date of initiation, and the final results of these reviews no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non–market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Rise Furniture and Zhejiang Tianyi, which will include a separate rate section. The review of each exporter will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to its export of wooden bedroom furniture.

We will instruct the CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Rise Furniture and Zhejiang Tianyi in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Rise Furniture and Zhejiang Tianyi certified that they both produce and export the subject merchandise, the sale of which is the basis for these new shipper review requests, we will apply the bonding privilege to each respondent only for subject merchandise which the respondent both produced and exported.

Interested parties requiring access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: August 20, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–20625 Filed 8–25–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, September 10, 2009. The Judges Panel is composed of twelve members prominent in the fields of quality, innovation, and performance excellence and appointed by the Secretary of Commerce. The purpose of this meeting is to review applicant consensus scores and select applicants for site visit review. The applications under review by Judges contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene September 10, 2009 at 8:15 a.m. and adjourn at 5 p.m. on September 10, 2009. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 08, 2009, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: August 19, 2009.

Katharine Gebbie,

Director, Physics Laboratory.

[FR Doc. E9–20523 Filed 8–25–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership (MEP) Advisory Board, National Institute of Standards and Technology (NIST) will meet Thursday, September 24, 2009, from 8:30 a.m. to 3:30 p.m. This meeting is being held in conjunction with MEP's Quarterly Update meeting in Dallas, TX. The MEP Advisory Board is composed of 10 members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for external input on MEP. MEP is a unique program consisting of centers across the United States and Puerto Rico, with partnerships at the state, federal, and local levels. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. For this meeting, discussions will focus on a review of key findings and policy implications from the MEP Advisory Board's Future of Manufacturing paper. In addition, MEP will provide an overview of its strategy for technology acceleration and gather Board input and advice on open source innovation, including methods and tools for fostering technology adoption by smaller manufacturers. The agenda may change to accommodate Board business.

DATES: The meeting will convene September 24, 2009 at 8:30 a.m. and will adjourn at 3:30 p.m. on September 24, 2009.

ADDRESSES: The meeting will be held at the Embassy Suites Dallas—DFW Airport North Outdoor World, 2401 Bass Pro Drive, Grapevine, TX 76051. Anyone wishing to attend this meeting should submit name, e-mail address and phone number to Susan Hayduk (*susan.hayduk@nist.gov* or 301–975–5614) no later than September 10, 2009.

FOR FURTHER INFORMATION CONTACT: Karen Lellock, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–4269.

Dated: August 19, 2009.

Katharine Gebbie,

Director, Physics Laboratory.

[FR Doc. E9–20524 Filed 8–25–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Oil Country Tubular Goods From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 26, 2009.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–0414, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On April 28, 2009, the Department of Commerce (''the Department'') initiated an antidumping duty investigation on Oil Country Tubular Goods from the People's Republic of China.[1] The notice of initiation stated that, unless postponed, the Department would issue its preliminary determination no later than 140 days after the date of issuance of the initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). The preliminary determination is currently due no later than September 15, 2009.

On August 18, 2009, petitioners, Maverick Tube Corporation, United States Steel Corporation, TMK IPSCO, V&M Star L.P., V&M Tubular Corporation of America, Wheatland Tube Corp., Evraz Rocky Mountain Steel, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (collectively, ''Petitioners''), made a timely request, pursuant to 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determination, in order to allow additional time for the review of complex questionnaire responses.[2] Because there are no compelling reasons to deny the request, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination by 50 days to no later than November 4, 2009. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 24, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–20699 Filed 8–25–09; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Oil Country Tubular Goods From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 74 FR 20671 (May 5, 2009).

[2] *See* letter from Petitioners, ''Certain Oil Country Tubular Goods from the People's Republic of China,'' August 17, 2009.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 27, 2009, the U.S. Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on glycine from the People's Republic of China (PRC). The review covers 86 producers/exporters of glycine from the PRC, including mandatory respondent Baoding Mantong Fine Chemistry Co., Ltd. (Baoding Mantong). Based on a withdrawal of request from GEO Specialty Chemicals, Inc. (GEO), a domestic producer of glycine, we are now rescinding this administrative review in full.

EFFECTIVE DATE: August 26, 2009.

FOR FURTHER INFORMATION CONTACT: Dena Crossland, Brian Davis, or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3362, (202) 482–7924, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2009, the Department published in the **Federal Register** the notice of opportunity to request an administrative review of the antidumping duty order on glycine from the PRC for the period March 1, 2008, through February 28, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 9077 (March 2, 2009). On March 31, 2009, the Department received a request from GEO, a domestic producer of glycine, that the Department conduct an administrative review of the antidumping duty order on glycine from the PRC. GEO requested that the review cover 86 producers/exporters of glycine from the PRC. On April 27, 2009, the Department published in the **Federal Register** the notice of initiation of the 2008–2009 administrative review of glycine from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009).

On May 22, 2009, because it was not practicable in this administrative review to examine all 86 producers/exporters of the subject merchandise, the Department selected Baoding Mantong as the mandatory respondent in the instant administrative review. *See* memo to the file titled, ''Antidumping Duty Administrative Review of Glycine from the People's Republic of China: Respondent Selection Memo,'' dated May 22, 2009. Also on May 22, 2009, the Department issued its antidumping duty questionnaire to Baoding Mantong. Baoding Mantong submitted its response to the Department's section A antidumping duty questionnaire on June 19, 2009 (AQR), and sections C and D of the antidumping duty questionnaire on July 13, 2009. On July 20, 2009, Baoding Mantong supplemented its AQR by submitting its 2008 financial statement which (as explained at page A–14 of Baoding Mantong's June 19, 2009, response) were yet to be completed as of the June 19, 2009, filing. On July 24, 2009, GEO filed a letter withdrawing its request for review of the 86 companies, including Baoding Mantong, for which the Department initiated this review.

Period of Review

The period of review (POR) is March 1, 2008, through February 28, 2009.

Scope of the Order

The product covered by the order is glycine, which is a free–flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This review covers glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Rescission of Antidumping Administrative Review

Pursuant to 19 CFR § 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Because petitioner submitted its request to rescind the administrative review of all 86 companies within 90 days of the date of publication of the notice of initiation, the Department is rescinding this review in accordance with 19 CFR § 351.213(d)(1).

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR § 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR § 351.213(d)(4).

August 19, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–20611 Filed 8–25–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 26, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission

of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 21, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Student Assistance General Provisions Annual Fire Safety Report.

Frequency: On Occasion.

Affected Public: Not for profit institutions; State, Local or Tribal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 3,641.

Burden Hours: 7,283.

Abstract: This new regulation requires the collection of statistics on fires in on-campus student housing facilities, the establishment of a fire log available for public inspection, and the publication of an annual fire safety report containing the institutional policies regarding fire safety and fire statistics.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4077. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20614 Filed 8–25–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 26, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 21, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: General Provisions Readministration for Service Members.

Frequency: On Occasion.

Affected Public: Individuals or households; Not for profit institutions; State, Local or Tribal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 4,512.

Burden Hours: 1,513.

Abstract: The regulations establish the requirements under which an institution must readmit servicemembers with the same academic status they had at the institution when they last attended before being called to uniformed service.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4075. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20616 Filed 8–25–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 26, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 21, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Student Assistance General Provisions Non-Title IV Revenue Requirements (90/10).

Frequency: Annually.

Affected Public: Business/other for profits.

Reporting and Recordkeeping Hour Burden:

Responses: 2,058.

Burden Hours: 3,087.

Abstract: The regulations establish the requirements under which a prorprietary institution of higher education must derive at least ten percent of its annual revenue from resources other than Title IV HEA funds, and implements the Net Present Value formula and its alternative calculation prescribed by the statute and implemented through these regulations.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4076. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20617 Filed 8–8–09; 8:45 am]

BILLING CODE

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OESE–0010]

RIN 1810–AB06

School Improvement Grants—American Recovery and Reinvestment Act of 2009; Title I of the Elementary and Secondary Education Act of 1965

ACTION: Notice of proposed requirements.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes requirements for School Improvement Grants authorized under section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and funded through both the Department of Education Appropriations Act, 2009 and the American Recovery and Reinvestment Act of 2009 (ARRA). The proposed requirements would define the criteria that a State educational agency (SEA) must use to award school improvement funds to local educational agencies (LEAs) with the lowest-achieving Title I schools that demonstrate the greatest need for the funds and the strongest commitment to use those funds to provide adequate resources to their lowest-achieving Title I schools in order to raise substantially the achievement of the students attending those schools. The proposed requirements also would require an SEA to give priority, through a waiver under section 9401 of the ESEA, to LEAs that also wish to serve the lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds. Finally, the proposed requirements would require an SEA to award school improvement funds to eligible LEAs in amounts sufficient to enable the targeted schools to implement one of four specific proposed interventions.

DATES: We must receive your comments on or before September 25, 2009.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID and the term ''School Improvement Grants'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed requirements, address them to Dr. Zollie Stevenson, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W230, Washington, DC 20202–7241.
- *Privacy Note:* The Department's policy for comments received from

members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Zollie Stevenson, Jr.; Telephone: (202) 260–0826 or by e-mail: *Zollie.Stevenson@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. We are particularly interested in comments on the measures of accountability described in Section II.A.7 of the proposed requirements and whether they are appropriate measures for Tier I and Tier II schools that implement one of the interventions proposed in Section I.A.2.a, 2.b, or 2.d of this notice. To ensure that your comments have maximum effect in developing the notice of final requirements, we urge you to identify clearly the specific proposed requirement that each comment addresses.

We invite you also to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of this program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person in Room 3W100, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: In conjunction with Title I funds for school improvement reserved under section 1003(a) of the ESEA, School Improvement Grants under section 1003(g) of the ESEA are used to improve student achievement in Title I schools identified for improvement, corrective action, or restructuring so as to enable those schools to make adequate yearly progress (AYP) and exit improvement status.

Appropriations for School Improvement Grants have grown from $125 million in fiscal year (FY) 2007 to $546 million in FY 2009. The ARRA provides an additional $3 billion for School Improvement Grants in FY 2009. The proposed requirements in this notice would govern the total $3.546 billion in FY 2009 school improvement funds, an unprecedented sum with the potential to support implementation of the fundamental changes needed to turn around some of the Nation's lowest-achieving schools.

Program Authority: 20 U.S.C. 6303(g).

Background

Statutory Context

Section 1003(g) of the ESEA (20 U.S.C. 6303(g)) requires the Secretary to award School Improvement Grants to each SEA based on the SEA's proportionate share of the funds it receives under Title I, Parts A, C, and D of the ESEA. In turn, each SEA must provide subgrants to LEAs that apply for those funds to assist their Title I schools identified for improvement, corrective action, or restructuring under section 1116 of the ESEA. This assistance is intended to help these schools implement reform strategies that result in substantially improved student achievement so that the schools can make AYP and exit improvement status.

To receive school improvement funds under section 1003(g), an SEA must submit an application to the Department at such time, and containing such information, as the Secretary shall reasonably require. An SEA must allocate at least 95 percent of its school improvement funds directly to LEAs, although the SEA may, with the approval of the LEAs that would receive the funds, directly provide assistance in implementing school reform strategies or arrange for their provision through such other entities as school support teams or educational service agencies. A subgrant to an LEA must be of sufficient size and scope to support the activities required under section 1116 of the ESEA. An LEA's *total* subgrant may not be less than $50,000 or more than $500,000 per year for each participating Title I school in improvement, corrective action, or restructuring. An LEA's subgrant is renewable for two additional one-year periods if the LEA's schools are meeting, or are on track to meet, their student achievement goals.

In awarding School Improvement Grants, an SEA must give priority to LEAs with the lowest-achieving schools that, in their application to the SEA, demonstrate (1) the greatest need for the funds and (2) the strongest commitment to ensuring that the funds are used to provide adequate resources to enable the lowest-achieving schools to meet their goals for substantially raising the achievement of their students.

Overview of the Secretary's Proposal

The Secretary views the large FY 2009 investment in school improvement funds made possible by the ARRA as a historic opportunity to face education's most intractable challenge: turning around or closing down our Nation's most persistently low-achieving schools. Although there are noted examples of successful school reforms, the vast majority of the lowest performers have not changed course, either because they have received insufficient support or because interventions have been ineffective. The Secretary is committed to turning around over five years the 5,000 lowest-achieving schools nationwide, and School Improvement Grants are a centerpiece of that strategy.

The Secretary's strategy includes identifying and serving the lowest-achieving Title I schools in each State; supporting only the most rigorous interventions that hold the promise of producing rapid improvements in student achievement and school culture; providing sufficient resources over several years to implement those interventions; and measuring progress in achieving results.

Identifying and Serving the Lowest-Achieving Title I Schools

To drive school improvement funds to LEAs with the greatest need for those funds, the Secretary would require each SEA to identify three tiers of schools:

- *Tier I:* The lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring in the State, or the five

lowest-achieving Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater.[1]

• *Tier II:* Equally low-achieving secondary schools (both middle and high schools) in the State that are eligible for, but do not receive, Title I funds.

• *Tier III:* The remaining Title I schools in improvement, corrective action, or restructuring that are not Tier I schools in the State. The Secretary encourages an SEA to develop criteria to further differentiate among the schools in Tier III, either in the State as a whole or within an LEA.

An LEA that wishes to receive a School Improvement Grant would submit an application to its SEA identifying which Tier I, Tier II, and Tier III schools it commits to serve. The SEA would give priority to LEAs serving Tier I and Tier II schools.

Supporting Only the Most Rigorous Interventions

In order to ensure that the large influx of school improvement funds is used most effectively to improve outcomes for students, the Secretary proposes to require an LEA to use those funds to implement four specific interventions in the lowest-achieving schools intended to improve the management and effectiveness of these schools. Thus, in its application to the SEA, an LEA would be required to demonstrate its strong commitment to raising student achievement by implementing, in each Tier I and Tier II school, one of four rigorous interventions:

• Turnaround model, which would include, among other actions, replacing the principal and at least 50 percent of the school's staff, adopting a new governance structure, and implementing a new or revised instructional program.

• Restart model, in which an LEA would close the school and reopen it under the management of a charter school operator, a charter management organization (CMO), or an educational management organization (EMO) that has been selected through a rigorous review process.

• School closure, in which an LEA would close the school and enroll the students who attended the school in other, high-achieving schools in the LEA.

• Transformation model, which would address four specific areas critical to transforming the lowest-achieving schools.

An LEA with nine or more Tier I and Tier II schools would not be able to implement the same intervention in more than 50 percent of those schools.

Providing Sufficient Resources Over Several Years

The Secretary believes that it takes substantial funds in combination with rigorous interventions to break the cycle of failure and raise student achievement substantially in the Nation's lowest-achieving schools. Therefore, he would require the SEA to allocate sufficient school improvement funds to an LEA to match, as closely as possible, the LEA's budget for implementing one of the four proposed interventions in each Tier I and Tier II school and the costs associated with closing such schools, as well as for serving participating Tier III schools. An LEA's total grant award would contain funds for each Title I school in improvement, corrective action, or restructuring that the LEA intends to serve, including $500,000 per year for each Tier I school that will implement a turnaround, restart, or transformation model.[2] Once an LEA receives its School Improvement Grant, it has the flexibility to spend more than $500,000 per year in its Tier I and Tier II schools so long as all schools identified in its application are served. Recognizing that it takes time to implement rigorous interventions and reap results in the most persistently low-achieving schools, the Secretary would waive the period of availability of school improvement funds beyond September 30, 2011 so as to make those funds available to LEAs for three years.

Measuring Progress in Achieving Results

Because measuring progress is essential to knowing whether an intervention results in improved student achievement, the Secretary would require an LEA to establish three-year student achievement goals in reading/language arts and mathematics. The LEA would hold each Tier I and Tier II school it serves with school improvement funds annually accountable for meeting, or being on track to meet, those goals with respect to the achievement of all students in each school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7),[3] and for making progress on the leading indicators of school reform.

SEA Priorities for Awarding School Improvement Grants

Section 1003(g)(6) of the ESEA requires an SEA, in allocating school improvement funds, to give priority to LEAs with the lowest-achieving Title I schools in improvement, corrective action, or restructuring that demonstrate the greatest need for the funds and the strongest commitment to carrying out the purposes of the program. Consistent with his focus on reforming or closing the 5,000 lowest-achieving schools in the Nation over the next five years, the Secretary proposes to require an SEA that receives a School Improvement Grant to define the terms ''greatest need'' and ''strongest commitment'' as follows to help accomplish this goal.

Greatest need. The Secretary would require an SEA to define three tiers of schools in identifying those LEAs with the greatest need for school improvement funds.

Tier I schools: The Secretary proposes to require each SEA to identify the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring in the State or the five lowest-achieving Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater. These are schools for which the data indicate that overall student achievement is extremely low and that little or no progress has occurred over a number of years. Under the proposed requirements, a school has not made progress if its gains on the State's assessments in reading/language arts and mathematics in the ''all students'' category are less than the average gains of schools in the State on those assessments. The Secretary is targeting these schools because of the urgency to provide their students with a high-quality education. Indeed, in school year 2007–08, based on data reported by each State, the average percentage of students performing at the proficient level in the lowest-achieving 25 Title I-eligible schools in each State, aggregated for the Nation, was approximately 32 percent in reading/language arts and 25 percent in mathematics. Moreover, in most cases, despite years of earlier efforts to turn around the performance

[1] These are the same schools as the Secretary has proposed to target in the Race to the Top competitive grant program and has proposed that States report on under phase two of the State Fiscal Stabilization Fund (SFSF) under the ARRA.

[2] An SEA may award school improvement funds to an LEA based only on the Title I participating schools that the LEA identifies in its application. Tier II schools would, thus, not generate any funds because they are not Title I schools in improvement, corrective action, or restructuring; however, the LEA could serve them, through a waiver requested by the SEA, with the school improvement funds it receives.

[3] The subgroups identified in 34 CFR 200.13(b)(7) include students from major racial and ethnic groups, economically disadvantaged students, student with limited English proficiency, and students with disabilities.

of these schools, they have failed to make sufficient progress in improving student achievement and continue, year after year, to turn out students who are unprepared for further education or the workforce. And in the case of secondary schools, these lowest-achieving schools contribute disproportionately to the more than 1 million students who drop out each year, too often permanently. This diminishes the educational and employment prospects of these young people who deserve the opportunity to acquire the knowledge and skills necessary to be successful in life and to be productive citizens. For these reasons, the Secretary is proposing to use school improvement funds to transform fundamentally the lowest-achieving schools in each State.

Tier II schools: The Secretary also proposes to require an SEA to identify secondary schools (both middle and high schools) that are equally as low-achieving as the State's Tier I schools and are eligible for, but do not receive, Title I funds. Low-achieving secondary schools often present unique resource, logistical, and pedagogical challenges that require rigorous interventions. There are close to 2,000 high schools in the country in which graduation is at best a 50/50 proposition.[4] However, Department data indicate that fewer than half of these schools currently receive Title I, Part A funds. In order to reverse this high dropout rate and drive the attainment of better outcomes for these students, the Secretary also proposes to target some of these extremely low-achieving secondary schools (both high schools and their middle school ''feeder'' schools) that are eligible for, but do not receive, Title I funds.

Because of the importance of identifying and intervening in Tier II schools, the Secretary encourages an SEA to apply for a waiver under section 9401 of the ESEA to enable its LEAs to serve such schools. Such a waiver is necessary because section 1003(g) of the ESEA authorizes an LEA to use school improvement funds only in Title I schools in improvement, corrective action, or restructuring. If the provisions proposed in this notice become final, an LEA would not be required to include Tier II schools in its application; however, including Tier II schools would enhance an LEA's likelihood of funding because, as proposed in this notice, the SEA would be required to give priority to an LEA that commits in its application to serve both Tier I and Tier II schools.

Tier III schools: The Secretary proposes that all Title I schools in improvement, corrective action, or restructuring that are not Tier I schools would be Tier III schools. To urge LEAs to differentiate among these schools in their use of school improvement funds, the Secretary encourages an SEA to establish criteria to give priority to applications from LEAs that, after addressing the needs of their Tier I and Tier II schools, focus school improvement funds on a subset of their Tier III schools. For example, an SEA's criteria might target Tier III schools that are in the lowest-achieving sixth to tenth percentile in the State or might reward and provide public recognition for Tier III schools that would have been in the lowest-achieving five percent but have made progress over several years. Similarly, an SEA's criteria might focus on clusters of Tier III elementary schools that are feeder schools to Tier I or Tier II secondary schools.

Strongest commitment. In awarding school improvement funds among the LEAs with schools in Tier I, Tier II, and Tier III (*i.e.*, those with the greatest need), the Secretary would require each SEA to give priority to those LEAs with the strongest commitment to use school improvement funds to implement one of four specific interventions described in this notice. These interventions are based on research that suggests that the lowest-achieving schools—

(1) Require rigorous interventions, including changes in leadership, staffing, time for learning, governance, operating conditions, student supports, and school culture;

(2) Benefit from intensive, ongoing, coordinated technical assistance and support, such as technical assistance from external providers to build capacity so that LEAs and SEAs can provide them with more concentrated and sustained support; and

(3) Need substantial funding over three to five years to plan, implement, and solidify rigorous interventions that change school culture and result in substantial increases in student achievement.[5]

The Secretary believes that rigorous interventions are essential if LEAs are to reform the lowest-achieving schools and improve educational outcomes for their students. Incremental change in these schools that may result in marginal improvements is not enough to enable each student to achieve to high standards. Fortunately, the large increase in FY 2009 funding for school improvement available through the ARRA provides an unprecedented opportunity to implement intensive interventions. Accordingly, the Secretary proposes to define an LEA that demonstrates the strongest commitment as an LEA that would implement, in each Tier I and Tier II school that it commits to serve, one of the following four rigorous interventions:[6]

(1) *Turnaround model.* To implement a turnaround model, an LEA would be required to replace the principal and at least 50 percent of the staff; adopt a new governance structure, which may include, but is not limited to, reporting to a new ''turnaround office'' in the LEA or SEA, hiring a ''turnaround leader'' who reports directly to the Superintendent or Chief Academic Officer, or entering into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability; and implement a new or revised instructional program. The LEA would also be required to incorporate strategies designed to recruit, place, and retain effective staff, and provide ongoing, high-quality job-embedded professional development designed to ensure that staff members are equipped to facilitate effective teaching and learning; promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students; establish schedules and strategies that increase instructional time for students and time for collaboration and professional development for staff; and provide appropriate social-emotional and community-oriented services and supports for students.

(2) *Restart model.* Under this model, an LEA would close the school and

[4] Balfanz, R. & Legters, N. (2004). Locating the dropout crisis: Which high schools produce the nation's dropouts? Where are they located? Who attends them? Baltimore: The Johns Hopkins University.

[5] *See, e.g.,* Calkins, A., Guenther, W., Belfiore, G., & Lash, D. (2007). The turnaround challenge: Why America's best opportunity to dramatically improve student achievement lies in our worst-performing schools. Boston: Mass Insight Education and Research Institute; American Institutes for Research. (in press). State and local implementation of the No Child Left Behind Act, Volume IX—accountability under NCLB: Final report. Washington, DC.

[6] We note that some of the activities that an LEA would be required to implement as part of a proposed intervention are not allowable uses of Title I funds in a Tier I school that operates a targeted assistance program under section 1115 of the ESEA; therefore, an LEA that wishes to implement one of the proposed interventions in such a school would need to do so through a schoolwide program under section 1114 of the ESEA. To enable the LEA to serve a Tier I targeted assistance school below 40 percent poverty, the SEA would need to apply to the Secretary for a waiver of the poverty threshold in order that the LEA can operate a schoolwide program in its Tier I schools. *See* the Department's Title I, Part A Waiver Guidance available at: *http://www.ed.gov/programs/titleiparta/title-i-waiver.doc.*

reopen it under the management of a charter school operator, a charter management organization (CMO), or an educational management organization (EMO) that has been selected through a rigorous review process. (A CMO is a non-profit organization that operates charter schools by centralizing or sharing certain functions and resources among schools. An EMO is a for-profit or non-profit organization that provides ''whole-school operation'' services to an LEA.) A restart school would be required to admit, within the grades it serves, any former student who wishes to attend.

(3) *School closure.* Under this model, an LEA would close the school and enroll the students who attended the school in other, high-achieving schools within the LEA.

(4) *Transformation model.* To implement a transformation model, an LEA would be required to address four specific areas, as defined in this notice, critical to transforming the lowest-achieving schools: (1) Developing teacher and school leader effectiveness; (2) implementing comprehensive instructional reform strategies; (3) extending learning time and creating community-oriented schools; and (4) providing operating flexibility and sustained support.

In determining the strength of an LEA's commitment to using school improvement funds to implement these interventions in its Tier I and Tier II schools, an SEA would be required to consider, for example, the extent to which the LEA's application shows the LEA's efforts to analyze the needs of its schools and match the interventions to those needs; design interventions consistent with this notice; recruit, screen, and select external providers to ensure quality; embed the interventions in a longer-term plan to sustain gains in achievement; align other resources with the interventions; modify its practices, if necessary, to enable it to implement the interventions fully and effectively; and sustain the reforms after the funding period ends. Moreover, the SEA would be required to consider the LEA's capacity to implement the changes it seeks to make. For example, the SEA could determine that an LEA with ten Tier I and Tier II schools has the capacity to serve only five of those schools at the level of intensity contemplated by the proposed interventions. Accordingly, the SEA may approve the LEA to serve only those schools for which the SEA determines that the LEA can fully and effectively implement one of the proposed interventions.

Providing Flexibility

To fully support an LEA's efforts to intervene in low-achieving schools, the Secretary believes there is need for flexibility in several respects. First, so as not to penalize an LEA that has proactively implemented rigorous reform strategies prior to the publication of this notice, an SEA may award school improvement funds to an LEA that has implemented, in whole or in part, one of the interventions proposed in Section I.A.2.a, 2.b, or 2.d in a Tier I school within the last two years. For example, an LEA might have replaced the principal of a Tier I school and begun to implement improvement activities that meet many, but not all, of the proposed requirements in this notice for a transformation model. In this case, the SEA could award the LEA school improvement funds to fully implement the transformation model in this school without needing to replace the new principal or duplicate the reform activities already in place. Second, an SEA could seek a waiver from the Secretary to permit a school that implements a turnaround or restart model in an LEA that receives a School Improvement Grant to ''start over'' in the school improvement timeline while continuing to receive school improvement funds. In other words, such a school in restructuring could exit that status even though it has not made AYP for two consecutive years and, thus, would not need to continue providing public school choice or supplemental educational services. Finally, an SEA could seek a waiver from the Secretary to enable a Tier I school that operates a targeted assistance program to instead operate a schoolwide program in order to implement one of the proposed interventions.

Awarding School Improvement Grants to LEAs

LEA Applications

Under this proposal, any Title I LEA that can demonstrate the greatest need and strongest commitment, as defined by the SEA consistent with this notice, to reform its lowest-achieving schools would be eligible to apply to the SEA for a School Improvement Grant. In addition to providing information that the SEA may require, the LEA would be required to demonstrate its commitment to use the school improvement funds to provide adequate resources to each Tier I and Tier II school it commits to serve in order to implement fully one of the four proposed interventions described in this notice. If an LEA has nine or more Tier I and Tier II schools, the LEA would not be able to implement the same intervention in more than 50 percent of those schools.

An LEA would be required to serve each of its Tier I schools, unless the LEA demonstrates that it lacks sufficient capacity or sufficient school improvement funds to undertake one of the four proposed interventions in each such school. For example, an LEA might demonstrate a lack of capacity to serve all of its Tier I schools if no EMOs or CMOs of sufficient quality are available to restart its schools. An LEA might also demonstrate a lack of capacity if it lacks a sufficient number of school leaders (*e.g.,* principals, assistant principals, teacher leaders) capable of implementing one of the rigorous interventions proposed in this notice. Additionally, an LEA might decide that it can best impact student achievement by focusing resources heavily in a subset of Tier I schools, attempting to turn around some schools before proceeding to others. In such cases, the LEA would identify in its application the Tier I schools that it can serve effectively with one of the proposed interventions; such an LEA would not be permitted to use school improvement funds to serve a Tier I school that is not implementing one of the four interventions. An LEA would not be required to include Tier II schools in its application, although the SEA would be required to give priority to LEA applications that include both Tier I and Tier II schools. Once an LEA has identified all of the Tier I schools it has capacity to serve, it may also identify Tier III schools it will serve. No LEA would be required to apply for a School Improvement Grant; however, an LEA that has one or more Tier I schools would not be permitted to apply for a grant to serve only Tier III schools.

An LEA would be required to include in its application for a School Improvement Grant a budget indicating the amount of funds needed for each Tier I, Tier II, and Tier III school the LEA commits to serve. In designing its budget, the LEA would be required to ensure, for each Tier I and Tier II school identified in its application, that its request is of sufficient size and scope to ensure that the LEA can implement one of the four rigorous interventions proposed in this notice. The Secretary believes that, in most cases, implementing these interventions (with the exception of closing a school) would require annual amounts that considerably exceed $500,000 per school, the maximum amount per year of school improvement funds that may be generated by a participating school under the statute. (Tier II schools would

not generate any funds because they are not Title I schools in improvement, corrective action, or restructuring; however, the LEA could serve them, through a waiver, with the school improvement funds it receives.) Accordingly, if the Secretary adopts the proposed requirements as final, the LEA should estimate the full cost of implementing its selected intervention in each Tier I and Tier II school it commits to serve and the costs associated with closing a school,[7] as well as the costs of providing services in participating Tier III schools. In estimating costs, the LEA should consider such factors as the size of each school; whether the LEA plans to serve clusters of elementary schools that feed into Tier I or Tier II secondary schools; and whether the schools to be served are elementary, middle, or high schools. The Secretary strongly urges an LEA to develop its budget in a way that sufficiently concentrates school improvement funds to raise student achievement substantially by the end of the grant period in the schools served with those funds.

An LEA would also be required to establish, in its application, three-year student achievement goals in reading/language arts and mathematics. The LEA would be required to hold each Tier I and Tier II school it commits to serve annually accountable for meeting, or being on track to meet, those goals with respect to the achievement of all students in each school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7),[8] and for making progress on the leading indicators described in Section III of this notice. If an LEA implements a restart model, it would also be required to hold the charter school operator, CMO, or EMO accountable for meeting these annual goals for student achievement and for making progress on the leading indicators.

SEA Responsibilities

Under this proposal, to receive a School Improvement Grant, an SEA would submit an application to the Department at such time, and containing such information, as the Secretary shall reasonably require. That application would generally address the SEA's role with respect to school improvement funds, including, at a minimum: (1) Identifying Tier I and Tier II schools in the State; (2) establishing criteria related to the overall quality of the LEA's application and to the LEA's capacity to implement fully and effectively the required interventions; (3) allocating school improvement funds to the LEA; (4) monitoring the LEA's implementation of interventions in and the progress of its participating schools; (5) providing technical assistance to the LEA and its participating schools; and (6) holding each Tier I and Tier II school it has committed to serve annually accountable for meeting, or being on track to meet, the LEA's student achievement goals with respect to the achievement of all students in the school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7), and for making progress on the leading indicators described in Section III of this notice.

An SEA would review and approve the applications for a School Improvement Grant that it receives from its LEAs. Before approving an LEA's application, the SEA would ensure that the application meets the requirements the Secretary establishes in a notice of final requirements, particularly with respect to whether the LEA has demonstrated that it has the capacity to implement one of the four proposed rigorous interventions in the Tier I and Tier II schools it has committed to serve and whether the LEA has budgeted sufficient funds to implement fully and effectively the selected interventions. If an LEA lacks the capacity to implement one of the four interventions in each of its Tier I schools, the SEA would adjust the size of the LEA's School Improvement Grant accordingly. Additionally, the SEA would consider the quality of the application, including the extent to which the LEA analyzed the needs of each school and matched an intervention to those needs, consistent with Section II.A.2; the design of the interventions consistent with this notice; whether the interventions are part of a long-term plan to sustain gains in student achievement; the coordination with other resources; whether the LEA will modify its practices, if necessary, to be able to implement the interventions fully and effectively; and how the LEA will sustain the reforms after the funding period ends. If an SEA does not have sufficient school improvement funds to award a grant to each LEA that submits an approvable application, the SEA would be required to give priority to LEAs that apply to serve both Tier I and Tier II schools and to LEAs that apply to serve Tier I schools before LEAs serving only Tier III schools.

Section 1003(g)(5) of the ESEA requires an SEA to award a School Improvement Grant to an LEA in an amount that is of sufficient size and scope to support the activities required under section 1116 of the ESEA, which include taking corrective actions and restructuring the LEA's lowest-achieving Title I schools. An LEA's *total* grant may not be less than $50,000 or more than $500,000 per year for each participating Title I school (*i.e.*, the Tier I and Tier III schools that the LEA commits to serve); however, the LEA has flexibility to spend higher or lower amounts in serving individual schools.

Experts in implementing effective school reform strategies, such as those proposed in this notice, estimate that the cost of turning around a persistently low-achieving school of 500 students can range from $250,000 to $1,000,000 per year for at least three years; implementation in a larger school would likely cost more.[9] Thus, in order to ensure that an LEA has sufficient resources to turn around its Tier I and Tier II schools, the Secretary proposes to require that an SEA allocate to each such LEA $500,000 per year in school improvement funds (the maximum per-school amount permitted under section 1003(g)(5) of the ESEA) for each Tier I school for which the LEA applies to implement one of the interventions in Section I.A.2.a, 2.b, or 2.d of this notice and for which the SEA approves the LEA to serve. (Due to issues of capacity, an SEA could decide not to approve all the schools included in an LEA's application.) Additionally, the SEA would be required to allocate sufficient school improvement funds in total to the LEA, consistent with section 1003(g)(5), to match, as closely as possible, the LEA's budget for implementing the proposed interventions in each Tier I and Tier II school approved by the SEA and costs associated with closing those schools under Section I.A.2.c, while also serving participating Tier III schools, particularly those schools meeting additional criteria established by the SEA. Further, to provide the sustained support that available research suggests is necessary for successful interventions, the Secretary would require the SEA to apportion its FY 2009 school improvement funds so as to provide funding to LEAs over three

[7] Costs of closing a school may include, for example, parent and community meetings regarding the school closure, services to help parents and students transition to a new school, orientation activities at the new school, *etc.*

[8] The subgroups identified in 34 CFR 200.13(b)(7) are students from major racial and ethnic groups, economically disadvantaged students, students with limited English proficiency, and students with disabilities.

[9] Calkins, A., Guenther, W., Belfiore, G., & Lash, D. (2007). The turnaround challenge: Why America's best opportunity to dramatically improve student achievement lies in our worst-performing schools. Boston: Mass Insight Education and Research Institute.

years, which the Secretary would make possible by waiving the period of availability beyond September 30, 2011.

The following examples illustrate how an SEA might determine the amount of a School Improvement Grant for three hypothetical LEAs, all of which have the same number of Title I schools in improvement, corrective action, or restructuring:

LEA A: LEA A has ten Title I schools in improvement, corrective action, or restructuring; three are Tier I schools and the rest are Tier III schools. The LEA also has one Tier II school. The LEA and SEA agree that the LEA has capacity to serve all of those schools. Under section 1003(g)(5), the maximum School Improvement Grant that the LEA may receive per year is $5,000,000 ($500,000 × 10 Title I schools to be served). Based on the LEA's proposed budget and capacity, the SEA awards the LEA a School Improvement Grant totaling $4,150,000 per year (consistent with section 1003(g)(5)). In spending the school improvement funds, the LEA uses, consistent with its budget, $1,500,000 in one Tier I school; $1,000,000 in the Tier II school; $750,000 in each of the remaining two Tier I schools; $50,000 in each of two Tier III schools; and $10,000 in each of the remaining five Tier III schools.

LEA B: LEA B has ten Title I schools in improvement, corrective action, or restructuring; three are Tier I schools. The LEA also has one Tier II school. The LEA decides, however, that it has capacity to serve only two of its Tier I schools, no Tier II schools, and five of its Tier III schools. Under section 1003(g)(5), the maximum School Improvement Grant that the LEA may receive per year is $3,500,000 ($500,000 × 7 Title I schools to be served). Based on the LEA's proposed budget and capacity, the SEA awards the LEA a School Improvement Grant totaling $2,500,000 (consistent with section 1003(g)(5)). In spending the school improvement funds, the LEA uses, consistent with its budget, $1,200,000 in one Tier I school; $800,000 in the other Tier I school; and $100,000 in each of the five Tier III schools.

LEA C: LEA C has ten Title I schools in improvement, corrective action, or restructuring; none is a Tier I school, although two are among the lowest-achieving Title I schools in the State but are making significant progress. The LEA has one Tier II school. The LEA applies to serve all its Tier III schools as well as its Tier II school. Under section 1003(g)(5), the maximum School Improvement Grant that the LEA may receive per year is $5,000,000 ($500,000 × 10 Title I schools to be served). Based on the LEA's proposed budget and capacity, the SEA awards the LEA a School Improvement Grant totaling $2,500,000 (consistent with section 1003(g)(5)). In spending the school improvement funds, the LEA uses, consistent with its budget, $1,000,000 in its one Tier II school; $500,000 in each of the two Tier III schools making progress; and $62,500 in each of the remaining eight Tier III schools.

Targeting resources in this manner may result in school improvement funds being concentrated in a small number of LEAs and schools, depending on where in a State the Tier I schools are located and the ability of an LEA to implement the proposed interventions. The Secretary believes such targeting is warranted by the significant needs of the students in the lowest-achieving schools and is fully consistent with the priorities stated in the statute.

With the approval of its LEAs, an SEA could also directly implement the proposed interventions in a Tier I or Tier II school and provide services in a Tier III school or arrange for their provision through other entities such as EMOs, school support teams, or educational service agencies. An SEA also plays a critical role in building capacity at the State and local levels to raise achievement in the State's lowest-achieving schools, including by supporting efforts to increase the supply of effective teachers and principals who have the ability to implement one of the proposed interventions and to recruit external providers to support implementation of such interventions. The SEA might also establish a specific unit at the State level to provide support to its lowest-achieving schools. Moreover, the SEA should seek to eliminate barriers to the implementation of the proposed interventions, such as State laws, regulations, or policies that limit the SEA's authority to intervene in low-achieving schools, limit the number of charter schools that may operate in the State, or impede efforts to recruit and retain effective teachers and principals in low-achieving schools.

Reporting Metrics

Because data are critical to informing and evaluating the effectiveness of the rigorous interventions proposed in this notice, the Secretary proposes that SEAs and LEAs report specific school-level data related to the use of school improvement funds and the impact of the specific interventions implemented. Local educators need the data on an ongoing basis to evaluate the extent to which effective reform strategies are being implemented, to monitor the impact of changes, to track progress against their own goals, and to identify areas where, during implementation, assistance or adjustments are needed. SEAs can use the data to identify trends across schools and LEAs and to inform technical assistance efforts targeted to schools and LEAs receiving school improvement funds, as well as to other LEAs with schools in improvement, corrective action, or restructuring. Analyses of these data at the national level would inform the Nation's collective knowledge of what works in turning around our lowest-achieving schools.

The Secretary proposes to collect data in three general categories: (1) Interventions (those an LEA is implementing); (2) Leading Indicators (instructional minutes per school year and teacher attendance); and (3) Student Achievement Outcomes (average scale scores on State assessments, in the aggregate and disaggregated by subgroup as identified in 34 CFR 200.13(b)(7), and number of students enrolled in advanced coursework). These data, which are not currently available at the national level, would augment, and not duplicate, other important school-level data collected through EDFacts and through State Fiscal Stabilization Fund (SFSF) reporting that are identified in Section III of this notice. Turning around the lowest-achieving schools is particularly challenging; however, with the development and implementation of statewide longitudinal data systems, increased resources, and more concentrated focus on data, the Secretary believes that the availability of an increased body of knowledge in this area will help educators understand and meet this challenge.

Coordination with Section 1003(a) Funds:[10] Implementing intensive interventions that would dramatically turn around the lowest-achieving schools in a State requires substantial planning at the LEA and school levels. Although the proposed requirements in this notice are being published for comment and thus are not final, they reflect the Secretary's expectation that school improvement funds will be used to support rigorous interventions in Tier I and Tier II schools. Because the identity of potential Tier I and Tier II schools will likely not change significantly from this year to next year,

[10] In addition to school improvement funds available through a separate appropriation under section 1003(g) of the ESEA, an SEA must reserve under section 1003(a) of the ESEA four percent of the Title I, Part A funds the State receives for school improvement activities. Of this amount, the SEA must distribute at least 95 percent to LEAs for schools identified for improvement, corrective action, or restructuring under section 1116 of the ESEA.

the Secretary strongly encourages each SEA to allocate its FY 2009 section 1003(a) funds to LEAs with these schools in order to provide the resources needed to remove barriers to, and set the conditions for, implementing the proposed interventions.[11]

The Secretary also encourages an LEA with Tier I and Tier II schools to conduct an analysis of these schools' and the LEA's ability to implement the proposed interventions; review student achievement outcomes; evaluate current policies and practices that may support or impede successful reform strategies; assess the strengths and weaknesses of school leaders, teachers, and other school staff; recruit and train principals with the needed skills to lead a school that would implement one of the proposed interventions; screen and identify necessary external partners (*e.g.*, an EMO, institution of higher education, or educational service agency); and design a multi-pronged strategy for changing the school culture and reforming the lowest-achieving schools. At the same time, an SEA should consider what steps it can take now to set the conditions for reform, especially those, such as taking actions to support changes to State laws, regulations, and policies that cap the number of charter schools or place restrictions on school calendars, that are not dependent on which LEAs ultimately receive a School Improvement Grant.

Although not every LEA and school participating in this planning process would likely receive section 1003(g) funds, all LEAs and schools can become better positioned to implement interventions that improve student achievement. Using section 1003(a) funds to set the conditions for reform would also allow participating LEAs and schools that actually receive section 1003(g) funds to move more quickly in implementing the interventions as soon as they receive funds. Moreover, an LEA would be able to use the information gathered from this planning process to inform its application to the SEA for section 1003(g) funds. This information might also help the SEA determine the amount of funding that it would allocate to the LEA on behalf of individual schools. In addition, this planning would inform the SEA as to the kinds of technical assistance or external partners that would be needed in LEAs and schools that do not have the capacity to implement the rigorous interventions necessary to turn around their lowest-achieving schools.

Proposed Requirements

The Secretary proposes the following requirements with respect to the allocation and use of School Improvement Grants.

I. SEA Priorities in Awarding School Improvement Grants

A. Defining Key Terms

To award School Improvement Grants to its LEAs, consistent with section 1003(g)(6) of the ESEA, an SEA must define three tiers of schools, in accordance with the requirements in paragraph 1, to enable the SEA to select those LEAs with the greatest need for such funds. From among the LEAs in greatest need, the SEA must select, in accordance with paragraph 2, those LEAs that demonstrate the strongest commitment to ensuring that the funds are used to provide adequate resources to enable the lowest-achieving schools to meet, or be on track to meet, the LEA's three-year student achievement goals in reading/language arts and mathematics. Accordingly, the Secretary proposes to require an SEA to use the following definitions to define key terms:

1. *Greatest need.* An LEA with the greatest need for a School Improvement Grant must have one or more schools in at least one of the following tiers:

a. *Tier I schools:* A Tier I school is a school in the lowest-achieving five percent of all Title I schools in improvement, corrective action, or restructuring in the State, or one of the five lowest-achieving Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater.

(i) In determining the lowest-achieving Title I schools in the State, an SEA must consider both the absolute performance of a school on the State's assessments in reading/language arts and mathematics and the school's lack of progress on those assessments over a number of years as defined in paragraph (a)(ii).[12]

(ii) A school has not made progress if its gains on the State's assessments in reading/language arts and mathematics, in the ''all students'' category (as used in section 1111(b)(2)(C)(v)(I) of the ESEA), are less than the average gains of schools in the State on those assessments.

b. *Tier II schools:* A Tier II school is a secondary school (middle school or high school) that is equally as low-achieving as a Tier I school and that is eligible for, but does not receive, Title I, Part A funds.

c. *Tier III schools:* A Tier III school is a Title I school in improvement, corrective action, or restructuring that is not a Tier I school. An SEA may establish additional criteria to encourage LEAs to differentiate among these schools in their use of school improvement funds and to use in setting priorities among LEA applications for funding.

2. *Strongest Commitment.* An LEA with the strongest commitment is an LEA that agrees to implement, and demonstrates the capacity to implement fully and effectively, one of the following rigorous interventions in each Tier I and Tier II school that the LEA commits to serve:

a. *Turnaround model.* A turnaround model must include—

(i) Replacing the principal and at least 50 percent of the staff;

(ii) Adopting a new governance structure, which may include, but is not limited to, reporting to a new ''turnaround office'' in the LEA or SEA, hiring a ''turnaround leader'' who reports directly to the Superintendent or Chief Academic Officer, or entering into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;

(iii) Implementing a new or revised instructional program;

(iv) Implementing strategies designed to recruit, place, and retain effective staff;

(v) Providing ongoing, high-quality, job-embedded professional development to staff to ensure that they are equipped to facilitate effective teaching and learning;

(vi) Promoting the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students;

(vii) Establishing schedules and strategies that increase instructional time for students and time for collaboration and professional development for staff; and

(viii) Providing appropriate social-emotional and community-oriented services and supports for students.

b. *Restart model.* A restart model is one in which an LEA closes a school and reopens it under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that

[11] If an LEA wishes to use FY 2009 section 1003(a) funds in a Tier II school, it would need to apply for a waiver from the Secretary, because Tier II schools do not now receive Title I funds.

[12] As noted in footnote 1, these are the same schools as the Secretary has proposed to target in the Race to the Top competitive grant program and has proposed to require States to report on under phase two of SFSF under the ARRA.

has been selected through a rigorous review process. A restart model must admit, within the grades it serves, all former students who wish to attend the school.

c. *School closure.* An LEA closes a school and enrolls the students who attended that school in other, high-achieving schools in the LEA, which may include charter schools.

d. *Transformation model.* A transformation model must include each of the following strategies:

(i) *Developing teacher and school leader effectiveness.*

(A) *Required activities.* The LEA must—

(*1*) Use evaluations that are based in significant measure on student growth to improve teachers' and school leaders' performance;

(*2*) Identify and reward school leaders, teachers, and other staff who improve student achievement outcomes and identify and remove those who do not;

(*3*) Replace the principal who led the school prior to commencement of the transformation model;

(*4*) Provide staff ongoing, high-quality, job-embedded professional development (*e.g.*, regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed to ensure staff are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies; and

(*5*) Implement strategies designed to recruit, place, and retain effective staff.

(B) *Permissible activities.* An LEA may also implement other strategies to develop teachers' and school leaders' effectiveness, such as—

(*1*) Providing additional compensation to attract and retain high-quality educators to the school;

(*2*) Instituting a system for measuring changes in instructional practices resulting from professional development; or

(*3*) Ensuring that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority.

(ii) *Comprehensive instructional reform strategies.*

(A) *Required activities.* The LEA must—

(*1*) Use data to identify and implement comprehensive, research-based, instructional programs that are vertically aligned from one grade to the next as well as aligned with State academic standards; and

(*2*) Promote the continuous use of individualized student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students.

(B) *Permissible activities.* An LEA may also implement other strategies for implementing comprehensive instructional reform strategies, such as—

(*1*) Conducting periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;

(*2*) Implementing a schoolwide ''response-to-intervention'' model; or

(*3*) In secondary schools—

(*a*) Increasing rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement or International Baccalaureate), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers, including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;

(*b*) Improving student transition from middle to high school through summer transition programs or freshman academies; or

(*c*) Increasing graduation rates through, for example, credit-recovery programs, smaller learning communities, and acceleration of basic reading and mathematics skills.

(iii) *Extending learning time and creating community-oriented schools.*

(A) *Required activities.* The LEA must—

(*1*) Provide more time for students to learn core academic content by expanding the school day, the school week, or the school year, or increasing instructional time for core academic subjects [13] during the school day;

(*2*) Provide more time for teachers to collaborate, including time for horizontal and vertical planning to improve instruction;

(*3*) Provide more time or opportunities for enrichment activities for students (*e.g.*, instruction in financial literacy, internships or apprenticeships, service-learning opportunities) by partnering, as appropriate, with other organizations, such as universities, businesses, and museums; and

(*4*) Provide ongoing mechanisms for family and community engagement.

(B) *Permissible activities.* An LEA may also implement other strategies that extend learning time and create community-oriented schools, such as—

(*1*) Partnering with parents, faith- and community-based organizations, health clinics, the police department, and others to create safe school environments that meet students' social, emotional and health needs;

(*2*) Extending or restructuring the school day to add time for such strategies as advisory periods to build relationships between students, faculty, and other school staff; or

(*3*) Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment.

(iv) *Providing operating flexibility and sustained support.*

(A) *Required activities.* The LEA must—

(*1*) Give the school sufficient operating flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes; and

(*2*) Ensure that the school receives ongoing, intensive technical assistance and related support from the LEA, the SEA, or a designated external lead partner organization (such as a school turnaround organization or an EMO).

(B) *Permissible activities.* The LEA may also implement other strategies for providing operational flexibility and intensive support, such as—

(*1*) Allowing the school to be run under a new governance arrangement, such as a turnaround division within the LEA or SEA; or

(*2*) Implementing a weighted per-pupil school-based budget formula.

In determining the strength of an LEA's commitment to using school improvement funds to implement these interventions, an SEA must consider, at a minimum, the extent to which the LEA's application shows the LEA's efforts to: (1) Analyze the needs of its schools and match the interventions to those needs; (2) design interventions consistent with this notice; (3) recruit, screen, and select external providers to ensure quality; (4) embed the interventions in a longer-term plan to sustain gains in achievement; (5) align other resources with the interventions; (6) modify its practices, if necessary, to enable it to implement the interventions fully and effectively; and (7) sustain the reforms after the funding period ends. Moreover, the SEA must consider the

[13] Under section 9101(11) of the ESEA, ''core academic subjects'' are English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

LEA's capacity to implement the proposed interventions and may approve the LEA to serve only those schools for which the SEA determines that the LEA can implement fully and effectively one of the proposed interventions.

B. Providing Flexibility

1. An SEA may award school improvement funds to an LEA for a Tier I school that has implemented, in whole or in part, an intervention that meets the requirements under Section I.A.2.a, 2.b, or 2.d of these proposed requirements within the last two years so that the LEA and school can continue or complete the intervention being implemented in that school.

2. An SEA may seek a waiver from the Secretary of the requirements in section 1116(b) of the ESEA in order to permit a Tier I school implementing an intervention that meets the requirements under Section I.A.2.a or 2.b of these proposed requirements in an LEA that receives a School Improvement Grant to ''start over'' in the school improvement timeline. Even though the school is no longer in improvement, corrective action, or restructuring, it may receive school improvement funds.

3. An SEA may seek a waiver from the Secretary to enable a Tier I school that is ineligible to operate a Title I schoolwide program and is operating a Title I targeted assistance program to operate a schoolwide program in order to implement an intervention that meets the requirements under Section I.A.2.a, 2.b, or 2.d of these proposed requirements.

II. Awarding School Improvement Grants to LEAs

A. LEA Applications

1. An LEA may apply for a School Improvement Grant if it has one or more schools that qualify under the State's definition of a Tier I, Tier II, or Tier III school.

2. In its application, in addition to other information that the SEA may require, the LEA must identify the Tier I, Tier II, and Tier III schools it commits to serve and demonstrate that it has the capacity to use the school improvement funds to provide adequate resources and related support to each of the Tier I and Tier II schools in order to implement fully and effectively one of the interventions identified in Section I.A.2 of this notice. If an LEA has nine or more Tier I and Tier II schools, the LEA may not implement the same intervention in more than 50 percent of those schools.

3. The LEA must include in its application a budget indicating how it will allocate school improvement funds among the Tier I, Tier II, and Tier III schools it commits to serve. The LEA must serve each Tier I school using one of the four interventions identified in Section I.A.2 of this notice, unless the LEA demonstrates that it lacks sufficient capacity to undertake intensive interventions in each such school, in which case the LEA must indicate the Tier I schools that it can effectively serve. An LEA may not serve with these school improvement funds a Tier I school in which it does not implement one of the proposed interventions.

4. The LEA's budget for each Tier I and Tier II school it commits to serve must be of sufficient size and scope to ensure that the LEA can implement one of the rigorous interventions identified in Section I.A.2 of this notice. A budget should cover three years. The LEA's budget may, and likely would, exceed $500,000 per year for each Tier I and Tier II school that implements an intervention in Section I.A.2.a, 2.b, or 2.d in order to reform the school consistent with the LEA's application and the requirements in this notice. The LEA's budget may include less than $500,000 per year for a Tier I or Tier II school for which it proposes to implement the school closure intervention in Section I.A.2.c. In addition, a school closure typically would be completed in less than three years.

5. The LEA's budget for each Tier III school it commits to serve must include the services it will provide the school, particularly if the school meets additional criteria established by the SEA, although those services do not need to be commensurate with the funds the SEA provides the LEA based on the school's inclusion in the LEA's School Improvement Grant application.

6. An LEA in which a Tier I school is located and that does not apply to serve that school for reasons other than lack of capacity may not apply for a grant to serve only Tier III schools.

7. An LEA must establish, in its application, three-year student achievement goals in reading/language arts and mathematics. The LEA must hold each Tier I and Tier II school it commits to serve annually accountable for meeting, or being on track to meet, those goals with respect to the achievement of all students in each school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7),[14] and for making progress on the leading indicators described in Section III of this notice. If an LEA proposes to implement a restart model, it must also describe how it will hold the charter school operator, CMO, or EMO accountable for meeting, or being on track to meet, the LEA's student achievement goals and making progress on the leading indicators.

8. An LEA must demonstrate how it will sustain the interventions implemented with its School Improvement Grant after the funding period for the grant has ended.

B. SEA Responsibilities

1. To receive a School Improvement Grant, an SEA must submit an application to the Department at such time, and containing such information, as the Secretary shall reasonably require.

2. An SEA must review and approve, consistent with the requirements in this notice, an application for a School Improvement Grant that it receives from an LEA. Before approving the application, the SEA must ensure that it meets the requirements of this notice, particularly with respect to: (1) Whether the LEA has agreed to implement one of the four rigorous interventions identified in Section I.A.2 of this notice in each Tier I and Tier II school included in its application; (2) the extent to which the LEA's application shows the LEA's efforts to analyze the needs of each school and match an intervention to those needs, consistent with Section II.A.2; design and implement interventions consistent with this notice; recruit, screen, and select external providers to ensure quality; embed the interventions in a longer-term plan to sustain gains in student achievement; coordinate with other resources; modify its practices, if necessary, to enable it to fully and effectively implement the interventions; and sustain the reforms after the funding period ends; (3) whether the LEA has the capacity to implement the selected intervention fully and effectively in each Tier I and Tier II school; and (4) whether the LEA has submitted a budget that includes sufficient funds to implement the selected intervention fully and effectively in each Tier I and Tier II school.

3. An SEA must review and approve the LEA's three-year student achievement goals to ensure that they are sufficiently rigorous to hold each Tier I and Tier II school accountable for

[14] The subgroups identified in 34 CFR 200.13(b)(7) include students from major racial and ethnic groups, economically disadvantaged students, students with limited English proficiency, and students with disabilities.

meeting, or being on track to meet, those goals with respect to all students in the school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7), and for making progress on the leading indicators described in Section III of this notice.

4. If an SEA does not have sufficient school improvement funds to award, for up to three years, a grant to each LEA that submits an approvable application, the SEA must give priority to LEAs that apply to serve both Tier I and Tier II schools.

5. An SEA must award a School Improvement Grant to an LEA in an amount that is of sufficient size and scope to support the activities required under section 1116 of the ESEA and this notice. The LEA's total grant may not be less than $50,000 or more than $500,000 per year for each Tier I and Tier III school that the LEA commits to serve.

6. In awarding the school improvement funds, an SEA must allocate $500,000 per year for each Tier I school that will implement a rigorous intervention under Section I.A.2.a, 2.b, or 2.d for which the LEA has requested funds in its budget and for which the SEA determines the LEA has the capacity to serve. The SEA must also allocate sufficient school improvement funds in total to the LEA, consistent with section 1003(g)(5), to match, as closely as possible, the LEA's budget for implementing one of the four interventions in each Tier I and Tier II school it commits to serve, including costs associated with closing such schools under Section I.A.2.c, as well as for serving participating Tier III schools, particularly those meeting additional criteria established by the SEA.

7. If an SEA does not have sufficient school improvement funds to allocate to each LEA with a Tier I or Tier II school an amount sufficient to enable the school to implement fully the specified intervention for three years, the SEA may take into account the distribution of Tier I and Tier II schools among such LEAs in the State to ensure that Tier I and Tier II schools throughout the State can be served.

8. If an SEA has provided a School Improvement Grant to each LEA that has requested funds to serve a Tier I or Tier II school in accordance with this notice, the SEA may award remaining school improvement funds to an LEA with only Tier III schools that applies to receive those funds.

9. In awarding School Improvement Grants, an SEA must apportion its FY 2009 school improvement funds, including those available through the ARRA, in order to make grants that are renewable for two additional years, which the Secretary will make possible by waiving the limitation on the period of availability beyond September 30, 2011.

C. Renewal for Two Additional One-Year Periods

An SEA must renew an LEA's School Improvement Grant for two additional one-year periods if the LEA demonstrates that its Tier I and Tier II schools are meeting, or are on track to meet, the LEA's student achievement goals with respect to all students in the school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7), and are making progress on the leading indicators described in Section III of this notice and that its Tier III schools are meeting the goals in their plans developed under section 1116 of the ESEA. If an SEA does not renew an LEA's School Improvement Grant because the LEA's participating schools are not meeting or on track to meet their student achievement goals, the SEA may reallocate those funds to other eligible LEAs, consistent with the requirements of this notice.

D. State Reservation for Administration, Evaluation, and Technical Assistance

An SEA may reserve from the total FY 2009 school improvement funds it receives under section 1003(g) of the ESEA no more than five percent for administration, evaluation, and technical assistance expenses.

E. States Whose School Improvement Grant Exceeds the Amount the State May Award to Eligible LEAs

In some States in which a limited number of Title I schools are identified for improvement, corrective action, or restructuring, the SEA may be able to make School Improvement Grants, renewable for two additional years, to each LEA with a Tier I, Tier II, or Tier III school without using the State's full allocation under section 1003(g) of the ESEA. An SEA in this situation may reserve up to five percent of its FY 2009 allocation of school improvement funds for administration, evaluation, and technical assistance expenses under section 1003(g)(8) of the ESEA. The SEA may retain sufficient school improvement funds to serve, for two succeeding years, each Tier I, II, and III school that generates funds for an eligible LEA in the 2010–2011 school year. The Secretary proposes to reallocate to other States, before September 30, 2010, any remaining school improvement funds from the States with surplus funds.

III. Reporting and Evaluation

A. Reporting Metrics

To inform and evaluate the effectiveness of the interventions in this notice, the Secretary proposes to collect data on the metrics in the following chart. The Department already collects most of these data through EDFacts and will collect data on two metrics through SFSF reporting. Accordingly, an SEA must only report the following new data with respect to school improvement funds:

1. A list of the LEAs that received a School Improvement Grant under section 1003(g) and the amount of the grant.

2. For each LEA that received a School Improvement Grant, a list of the schools that were served and the amount of funds or value of services each school received.

3. For any Tier I or Tier II school, school-level data on the metrics designated on the following chart as ''SIG'' (School Improvement Grant):

Metric	Source	Achievement indicators	Leading indicators
School Data			
Which intervention the school used (*i.e.,* turnaround, restart, closed, or transformation).	NEW SIG		
AYP status	EDFacts	✓	
Which AYP targets the school met and missed	EDFacts	✓	
School improvement status	EDFacts	✓	

Metric	Source	Achievement indicators	Leading indicators
Student Outcome/Academic Progress Data			
Percentage of students at or above each proficiency level on State assessments in reading/language arts and mathematics (*e.g.,* Basic, Proficient, Advanced), by grade and by student subgroup.	EDFacts	✓	
Student participation rate on State assessments, by student subgroup.	EDFacts		✓
Average scores on State assessments across subgroups—scale scores by quartile.	NEW SIG	✓	
Title III LEP students English language proficiency	EDFacts	✓	
AMAO status for LEP students	EDFacts	✓	
Graduation rate	EDFacts	✓	
Dropout rate	EDFacts		✓
Student attendance	EDFacts		✓
Students enrolled in advanced coursework (*e.g.,* AP/IB), early-college high schools, or dual enrollment classes.	NEW SIG HS only		✓
College enrollment rates	NEW SFSF phase two HS only	✓	
Student Connection and School Climate			
Discipline incidents	EDFacts		✓
Truants	EDFacts		✓
Number of instructional minutes	NEW SIG		✓
Talent			
Distribution of teachers by performance level on LEA's teacher evaluation system.	NEW SFSF phase two		✓
Teacher attendance	NEW SIG		✓

B. Evaluation

An LEA that receives a School Improvement Grant must participate in any evaluation of that grant conducted by the Secretary.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects a section of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is economically significant under section 3(f)(1) of the Executive order.

Potential Costs and Benefits

The proposed costs have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Department has assessed the costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed requirements, the Department has determined that the benefits of the proposed requirements exceed the costs. The Department also has determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed requirements without impeding the effective and efficient administration of the program.

Summary of Costs and Benefits

The Department believes that the proposed requirements will not impose significant costs on States, LEAs, or other entities that receive school improvement funds. As noted elsewhere, these proposed requirements would drive school improvement funds to LEAs that have the lowest-achieving schools in amounts sufficient to turn those schools around and significantly increase student achievement. They would also require participating LEAs to adopt the most effective approaches to turning around low-achieving schools. In short, the Department believes that the proposed requirements would ensure that limited school improvement funds are put to their optimum use—that is, that they would be targeted to where they are most needed and used in the most effective manner possible. The benefits, then, would be more effective schools serving children from low-income families and a better education for those children.

The Department believes that the State and local costs of implementing the proposed requirements (including State costs of applying for grants, distributing the grants to LEAs, ensuring compliance with the proposed requirements, and reporting to the Department, and LEA costs of applying for subgrants and implementing the interventions) will be financed through the grant funds. The Department does not believe that the proposed requirements will impose a financial

burden that States and LEAs will have to meet from non-Federal sources.

Need for Federal Regulatory Action

The proposed requirements are needed to implement the School Improvement Grants program in FY 2009 in a manner that the Department believes will best enable the program to achieve its objective of supporting comprehensive and effective efforts by LEAs to overcome the challenges faced by low-achieving schools that educate concentrations of children living in poverty. The proposed requirements for SEAs to target school improvement funds on schools that are among the very lowest-achieving in their State will ensure that limited Federal funds will go to the schools in which they are most needed, including high schools with high dropout rates. The requirement for LEAs receiving school improvement funds to implement one of four specific interventions would ensure that those funds are not used for activities that are unlikely to produce the improvement in outcomes that the lowest-achieving schools need to achieve.

The reporting requirements proposed in this notice would ensure that the Department receives limited but essential data on the results of this major Federal investment in school improvement. The Department does not believe that the State and local costs of providing those data will be significant and, as noted earlier, those costs can be met with grant funds.

The definitions proposed would give clearer meaning to some of the terms used elsewhere in the notice.

Regulatory Alternatives Considered

A likely alternative to promulgation of the requirements proposed in this notice would be for the Secretary to allocate the FY 2009 school improvement funds without setting any regulatory requirements governing their use. Under such an alternative, States and LEAs would be required to meet the statutory requirements, but funds likely would not be targeted to the very lowest-achieving schools and LEAs would likely not use all the funds for activities most likely to result in a real turn-around of those schools and significant improvement in the educational outcomes for the students they educate.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed requirements. This table provides our best estimate of the Federal payments to be made to States under this program as a result of these proposed requirements. Expenditures are classified as transfers to States.

TABLE—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Annual Monetized Transfers.	$3,545,633,000.
From Whom to Whom	Federal Government to States.

As previously noted, the ARRA provides $3 billion for School Improvement Grants in FY 2009 in addition to the previously appropriated $546 million. The proposed requirements in this notice would govern the total $3.546 billion in FY 2009 school improvement funds.

The proposed requirements will have a distributional impact on the allocation of school improvement funds nationally. The implementation of these requirements would likely result in a larger proportion of program funds flowing to LEAs that have larger concentrations of the lowest-achieving schools (Tier I and Tier II schools) and a smaller portion flowing to other LEAs. However, because the FY 2009 appropriation for the program is much larger than the appropriation for FY 2008, the negative impact on the latter category of LEAs may be minimal. The Department is unable to project the amount of the shift but will collect data on the allocations through the procedures described under Reporting and Evaluation.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed requirements will not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or school districts (LEAs) with a population of less than 50,000. Approximately 11,900 LEAs that receive Title I funds qualify as small entities under this definition. However, the small entities that the proposed requirements will affect are small LEAs receiving school improvement funds under section 1003(g) of the ESEA—*i.e.,* a small LEA that has one or more schools in improvement, corrective action, or restructuring and that meets the SEA's priorities for greatest need for those funds and demonstrates the strongest commitment to use the funds to provide adequate resources to their lowest-achieving Title I schools to raise substantially the achievement of their students.

SEAs would develop their own definitions for their lowest-achieving schools, consistent with the requirements of this notice, but preliminary data analyses by the Department suggest that 15–25 percent of the lowest-performing schools in the Nation are located in rural areas, which are likely to contain most of the targeted schools that are operated by small LEAs. Assuming a maximum of 1,000 turnaround schools nationwide, and that few if any rural LEAs will contain more than one of their State's lowest-performing schools, there would be a range of 150 to 250 small LEAs affected by the requirements in this notice, including a limited number of small suburban and urban LEAs.

The requirements proposed in this notice would not have a significant economic impact on these small LEAs because (1) the costs of implementing the required interventions would be covered by the grants received by successful applicants, and (2) in most cases the costs of developing turnaround plans and submitting applications would not be significantly higher than the costs that would be incurred in applying for School Improvement Grants under the statutory requirements.

Successful LEAs would receive up to three years of funding under section 1003(g) of the ESEA to implement their proposed interventions, consistent with the Secretary's intention that SEAs ensure that awards are of sufficient size and duration to turn around the Nation's lowest-achieving schools.

Small LEAs may incur costs to develop and submit plans for turning around their lowest-achieving schools but, in general, such costs would be similar to those incurred to apply for School Improvement Grant funding under existing statutory requirements. Moreover, since nearly all of the schools included in the applications submitted by small LEAs would be schools that already are in improvement status, these LEAs would be able to incorporate existing data analysis and planning into their applications, at little additional cost. Also, small LEAs may receive technical assistance and other support from their SEAs in developing turnaround plans and applications for these funds.

In addition, the Department believes the benefits provided under this

proposed regulatory action will outweigh the burdens on these small LEAs of complying with the proposed requirements. In particular, the proposed requirements potentially make available to eligible small LEAs significant resources to make the fundamental changes needed to turn around their lowest-achieving schools, resources that otherwise may not be available to small and often geographically isolated LEAs.

The Secretary invites comments from small LEAs as to whether they believe the requirements proposed in this notice would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

The proposed requirements in this notice contain information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). It is our plan to offer a comment period for the information collection provisions at the time of the notice of final requirements. This is because we cannot finalize the requirements and develop the application package until we have received and responded to comments on the underlying proposed requirements in this notice. At that time, the Department will submit the information collection to OMB for its review and provide the burden hours associated with each requirement for comment.

Because it is likely that the information collection requirements will be reviewed under emergency OMB processing, however, the Department encourages the public to comment on the burden hours associated with the contents of the SEA application proposed in this notice. As noted earlier, that application would generally address the SEA's role with respect to school improvement funds, including establishing criteria to approve an LEA's application, allocating school improvement funds to the LEA, monitoring the implementation of interventions by the LEA and the progress participating schools in the LEA are making with respect to both student achievement outcomes and the leading indicators described in Section III of this notice, providing technical assistance to the LEA and its participating schools, and holding the LEA and its schools accountable for acceptable progress. We estimate that an SEA would spend approximately 90 hours of staff time to plan and prepare its application at a cost of $2,700 per State ($30.00 (average cost per hour of SEA staff) times 90 hours). Thus, we estimate the total burden to be up to 4,680 hours (52 SEAs (50 States, the District of Columbia, and Puerto Rico) times 90 hours) or $140,400 ($30.00 times 4,680) for all States.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.377)

Dated: August 21, 2009.

Arne Duncan,

Secretary of Education.

[FR Doc. E9–20612 Filed 8–25–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Initial H-Prize Competition for Breakthrough Advances in Materials for Hydrogen Storage

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Initial H-Prize Competition for Breakthrough Advances in Materials for Hydrogen Storage (''H-Prize Competition'').

SUMMARY: As authorized in Section 654 of the Energy Independence and Security Act of 2007, DOE is announcing the Initial H-Prize Competition which will be a single award for $1 million in the subject area of advanced materials for hydrogen storage—a critical challenge to enable widespread commercialization of hydrogen and fuel cell technologies. Evaluation of entries will begin approximately 15 months after the date this announcement appears in the **Federal Register** (FR). A single prize of $1 million will be awarded, unless no entries are significant enough to merit an award. The essential elements of the H-Prize Competition are included in this announcement; further updates and answers to questions asked by participants will be available on a public Web site, *http://hydrogenprize.org*, and through future FR notices as required. We encourage prospective participants to visit the Web site, as it will be updated periodically.

DATES:

- *February 15, 2010:* Deadline for Registration and Eligibility Documentation.
- *November 15, 2010:* Deadline for submittal of material samples for testing.
- *Dec 2010/Jan 2011:* Sample testing by an independent third party laboratory.
- *Dec 2010/Jan 2011:* Panel of Judges reviews and evaluates the independent third party testing data.
- *February 2011:* Award of $1 million prize, if the Panel of Judges determines that there is a winning entry.

ADDRESSES: Questions may be submitted through *http://hydrogenprize.org.*

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Dr. Ned Stetson, Technology Development Manager, Office of Hydrogen, Fuel Cells and Infrastructure Technologies; EE–2H; 1000 Independence Ave., SE., Washington, DC 20585; (202) 586–9995. More information on DOE's hydrogen storage program, targets and current research information can be found at *http://www1.eere.energy.gov/hydrogenandfuelcells/storage/.*

Prize contest: Jeffrey Serfass, Project Director, Hydrogen Education Foundation, 1211 Connecticut Ave., NW.; Suite 600; Washington, DC 20036–2701; (202) 223–5547. The HEF H-Prize Web site is *http://hydrogenprize.org.*

SUPPLEMENTARY INFORMATION:

Background: The H-Prize is authorized by Section 654 of the Energy Independence and Security Act of 2007, Public Law 110–140, as an amendment to Sec. 1008 of the Energy Policy Act of 2005, Public Law 109–58. Under Section 654, the Secretary of Energy is authorized to carry out a program to competitively award cash prizes to advance the research, development, demonstration and commercial application of hydrogen energy technologies. The purpose is to accelerate the development of hydrogen and fuel cell technologies by offering prizes to motivate and reward outstanding scientific and engineering advancements. The mobilization of private funding, in concert with a core

of Federal and other public funding, is at the heart of the H-Prize concept. This broadens the base of investment in incentivizing notable scientific and engineering breakthroughs, while elevating their significance with the public, and builds on DOE's steady achievements in research, development and demonstration. The H-Prize is administered by the Hydrogen Education Foundation (HEF) for the Department of Energy.

DOE is developing hydrogen and fuel cell technologies for multiple applications, including the transportation sector where the largest benefits in reductions in greenhouse gas emissions and oil use are likely. Hydrogen storage is one of the challenging critical barriers to the widespread market penetration of hydrogen-fueled vehicles. Techniques and materials are needed to store hydrogen on-board a vehicle while meeting consumer expectations for driving range, performance, and refueling time without compromising safety or payload.

I. Subject of the Competition

The initial H-Prize is to be awarded for demonstrated advancements in developing an on-board hydrogen storage material for light-duty vehicles that meets or exceeds a specified set of verifiable performance targets (*http://hydrogenprize.org*) as ascertained by an independent Panel of Judges to be selected by DOE in consultation with HEF. Note that the H-Prize is for a material only, not a complete on-board system.

II. Duration of the Competition

The H-Prize Competition begins with this Notice and is anticipated to end in approximately February 2011, when the Panel of Judges determines whether there is a winning entry. (*See also,* ''Key Dates'' section of this Notice).

III. Eligibility

This H-Prize Competition is open to participants, defined as individuals, entities or teams, that meet the following requirements:

1. Comply with all Registration and H-Prize Competition Rules and Requirements;

2. In the case of an entity: be organized or incorporated in the United States, and maintain for the duration of the H-Prize Competition a primary place of business in the United States;

3. In the case of all individuals (whether participating singly or as part of an entity or team): be a citizen of, or an alien lawfully admitted for permanent residence into, the United States as of the date of Registration in the H-Prize Competition and maintain that status for the duration of the H-Prize Competition;

4. In the case of U.S. Citizens: provide proof of U.S. Citizenship with Registration, as follows:

a. Notarized copy of U.S. Passport, or

b. Notarized copies of both a current U.S. driver's license issued from one of the 50 States or a U.S. Territory and a birth certificate;

5. In the case of aliens lawfully admitted for permanent residence in the United States: Provide notarized copy of Permanent Resident Card (Form 1–551) (green card) with Registration;

6. In the case of entities: Provide a copy of the entity formation documentation (*e.g.* Articles of Incorporation) showing the place of formation, as well as a self-certification of the primary place of business;

7. The participant, or any member of a participant, shall not be a Federal entity, a Federal employee acting within the scope of his or her employment, or an employee of a National Laboratory acting within the scope of his or her employment;

8. The participant, or any member of a participant, cannot have received Federal funding for research and development of hydrogen storage materials since October 2008;

9. Provide a statement attesting to the participant's use of government funding as part of the Registration documentation;

10. Sign a waiver of claims against the Federal Government and the HEF. *See* 42 U.S.C. 16396(f)(5)(A);

11. Obtain liability insurance, or satisfactorily demonstrate financial responsibility pursuant to 42 U.S.C. 16396(f)(5)(B)(i);

12. Name the Federal Government as an additional insured under the Registered participants' insurance policy and agree to indemnify the Federal Government against third party claims pursuant to 42 U.S.C. 16396(f)(5)(B)(ii);

13. Teams and Entities:

a. Teams may be comprised of any combination of individuals or entities;

b. Each team or entity will designate a team leader who will be the sole point of contact with H-Prize Competition officials;

c. Team or entity members will be identified at the time of Registration on the team roster. Team members may be on only one team roster;

d. Changes to team rosters will be allowed up to 72 hours prior to the award presentation, provided citizenship and immigration requirements are met;

14. The winner must be present at the award presentation in order to win the H-Prize. If a team or entity is the winner, only the team leader must be present;

15. An individual cannot participate on more than one team or compete with multiple entries; and

16. Participants cannot be on more than one team or compete with multiple entries.

IV. Registration Process, Competition Schedule, Amount of Prize and Intellectual Property

Registration process. Registration, along with all required eligibility documentation, must be completed through the Web site *http://hydrogenprize.org* no later than February 15, 2010.

H-Prize competition schedule. After announcement in the **Federal Register,** prospective participants have until February 15, 2010, to register and certify their teams or individuals. Once registered, they will receive all notices and rules updates, including answers to questions asked by the participants. The public Web site, *http://hydrogenprize.org*, will also post this same information, including publicity about various teams and sponsors. We encourage participants to utilize the Web site as a means of highlighting any information they would like to convey to the public or potential sponsors. There are no entry fees.

At the end of 15 months, on or about November 15, 2010, participants will be required to submit their samples for testing by a designated independent laboratory. The location, shipping instructions and testing procedures will be posted on the Web site and sent electronically to the designated contact person for each participant.

Testing and evaluations are planned to be completed in January 2011, and the winner, if any, named by the Panel of Judges in February 2011.

Amount of the prize. Will be $1 million.

Intellectual property. Intellectual property rights developed by the participant for H-Prize technology are set forth in Section 654 of Public Law 110–140. No parties managing the contest, including the U.S. Government, their testing laboratories, judges or H-Prize administrators will claim rights to the intellectual property derived by a registered participant as a consequence of, or in direct relation to, their participation in this H-Prize Competition. The Government and the participant may negotiate a license for the Government to use the intellectual property developed by the participant.

V. Criteria for Awarding the Prize

Technical Evaluation Criteria for Hydrogen Storage Materials

Breakthrough materials that meet the following material-level criteria:

- Goal is for a material that has the potential to be an on-board rechargeable hydrogen storage material.
- Gravimetric capacity of greater than 7.5 weight percent releasable hydrogen:
  - Reversible H_2 capacity between −40 to +85 degrees C, and between 1.5 to 150 bar H_2 pressure.
- Volumetric capacity of greater than 70 g/liter total releasable hydrogen:
  - *i.e.,* total volume of H_2 ab/adsorbed by the solid plus the pressurized hydrogen contained within the pore spaces all divided by the total sample volume including the material's skeletal volume.
- Charging kinetics: greater than or equal to 4×10^{-4} (*i.e.* 0.0004) grams of hydrogen per gram of material per second:
  - Charging kinetics are to be measured with an inlet hydrogen gas temperature of between −40 to +85 degrees C and an inlet hydrogen pressure of not greater than 150 bar.
- Discharge kinetics: greater than or equal to 2×10^{-5} (*i.e.* 0.00002) grams of hydrogen per gram of material per second:
  - Discharge kinetics are to be measured at a sample temperature between −40 to + 85 degrees C and with an outlet hydrogen pressure of greater than or equal to 1.5 bar.
- Cycle life: 100 cycles:
  - At completion of 100 charge/discharge cycles from less than 5% to greater than 95% of reversible capacity, the sample's reversible capacity must still be greater than or equal to 95% of the gravimetric capacity target (*i.e.* ≥ 0.95 times 7.5 wt.% or ≥ 7.1 wt.%).

Final test results and award qualifications. Performance data must be submitted on an entered material demonstrating the principal requirements from above, based on data obtained by an independent laboratory. The participant must provide at least a 10 gram sample of the material(s) for independent verification of the above criteria by a laboratory specified by the Panel of Judges in consultation with DOE. The Panel of Judges will evaluate the test results and determine if there is a winner and honorable mentions. An award will be made only if all the technical evaluation criteria are met or exceeded. In the case of multiple entries exceeding all of the performance criteria in the final test results, the entry with the highest gravimetric capacity will be the winner. In the case that two or more entries have the same highest gravimetric capacity, then the entry with the highest result for the above cycle life test will be declared the winner. Further details are provided on the criteria, scoring and rules in the H-Prize Rules and Requirements document at *http://hydrogenprize.org.*

VI. Cancellation and Team Disqualification

A participant may be disqualified for the following reasons:

- At the request of the registered participant or team leader;
- Failure to meet or maintain eligibility requirements (*note* that at the time of the prize award, if it is determined that a participant has not met or maintained all eligibility requirements, they shall be disqualified without regard to H-Prize Competition performance);
- Failure to comply with H-Prize Rules and Requirements;
- Failure to submit required documents or materials on time;
- Fraudulent acts, statements or misrepresentations involving any H-Prize participation or documentation; or,
- Violation of any Federal, State or local law or regulation inconsistent with the H-Prize Competition.

Cancellation. DOE reserves the right to cancel this prize program at any time prior to the completion of materials' testing by the independent third party laboratory.

For more information about the DOE Hydrogen Program and related on-board hydrogen storage activities visit the Program's Web site at *http://www.hydrogen.energy.gov* and *http://www.eere.energy.gov/hydrogenandfuelcells.*

Issued in Golden, CO, on August 18, 2009.

Carol Hellman,

Acting Procurement Director, Golden Field Office.

[FR Doc. E9–20552 Filed 8–25–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2005–0023; FRL–8949–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Clean Water Act Section 404 State-Assumed Programs; EPA ICR No. 0220.11, OMB Control No. 2040–0168

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on February 28, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OW–2005–0023, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.*
- *Mail:* Office of Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Office of Water Docket, Environmental Protection Agency, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2005–0023. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Kathy Hurld, Office of Wetlands, Oceans, and Watersheds, Wetlands Division (4502T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: 202–566–1348; fax number: 202–566–1349; e-mail address: *hurld.kathy@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2005–0023, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are those States/Tribes requesting assumption of the Clean Water Act section 404 permit program; States/Tribes with approved assumed programs; and permit applicants in States/Tribes with assumed programs.

Title: Clean Water Act Section 404 State-Assumed Programs.

ICR Numbers: EPA ICR No. 0220.11, OMB Control No. 2040–0168.

ICR status: This ICR is currently scheduled to expire on February 28, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the Federal Register when approved, are listed in 40 CFR part 9, are displayed either by publication in the Federal Register or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 404(g) of the Clean Water Act authorizes States [and Tribes] to assume the section 404 permit program. States/Tribes must demonstrate that they meet the statutory and regulatory requirements (40 CFR part 233) for an approvable program. Specified information and documents must be submitted by the State/Tribe to EPA to request assumption. Once the required information and documents are submitted and EPA has a complete assumption request package, the statutory time clock for EPA's decision to either approve or deny the State/Tribe's assumption request starts. The information contained in the assumption request is made available to the other involved Federal agencies (Corps of Engineers, U.S. Fish and Wildlife Service, and National Marine Fisheries Service) and to the general public for review and comment. These minimum information requirements are based on the information that must be submitted when applying for a section 404 permit from the Corps of Engineers. [33 CFR 328].

States/Tribes must be able to issue permits that comply with the 404(b)(1) Guidelines, the environmental review criteria. States/Tribes and the reviewing Federal agencies must be able to review proposed projects to evaluate, avoid, minimize and compensate for anticipated impacts. EPA's assumption regulations establish recommended elements that should be included in the State/Tribes's permit application, so that sufficient information is available to make a thorough analysis of anticipated impacts. These minimum information requirements are based on the information that must be submitted when applying for a section 404 permit from the Corps of Engineers (CWA section 404(h)(1)(A)(i) and section 404(j) and 40 CFR 230.10, 233.20, 233.21, 233.34, and 233.50) (33 CFR 325.1).

EPA is responsible for oversight of assumed programs to ensure that State/Tribal programs are in compliance with applicable requirements and that State/Tribal permit decisions adequately consider, avoid, minimize and compensate for anticipated impacts. States/Tribes must evaluate their

programs annually and submit the results in a report to EPA. EPA's assumption regulations establish minimum requirements for the annual report (40 CFR 233.52).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 520 hours to request program assumption, 5 hours to complete a permit application and 80 hours to prepare the annual report per assumed program. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 2 States/Tribes to request program assumption; 20,000 permit applicants, 4 assumed States/Tribes.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: One time to request assumption; one time when requesting a permit; annually for the annual permit and annual report.

Estimated total annual burden hours: 101,360 (520 hours to request assumption times two States/Tribes (1,040 hours); 20,000 permit applicants times 5 hours per application (100,000 hours); 80 hours per annual report times 4 States/Tribes (320 hours).

Estimated total annual costs: $45,120 (includes $0 annualized capital and O&M costs).

Are There Changes in the Estimates From the Last Approval?

There are changes in the estimates from the last approval. These changes are to account for increases in wages.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 19, 2009.

Suzanne Schwartz,

Acting Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. E9–20603 Filed 8–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0162; FRL–8949–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Information Collection Request for Proposed Regional Haze Regulations; EPA ICR No. 1813.07, OMB Control No. 2060–0412

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 25, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0162, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail: *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Agency Information Collection Request Activities: Proposed Collection and Comment Request for the Regional Haze Regulations Docket, Docket ID No. EPA–HQ–OAR–2003–0162, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget OMB, Attention: Desk Office for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Hawes, Air Quality Policy Division, Office of Air Quality Planning and Standards, (C539–04), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5591; fax number: (919) 541–0824; e-mail address: *hawes.todd@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 8, 2009 (74 FR 21680), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0162, which is available for online viewing at *http://www.regulations.gov*, or in person at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential

business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Proposed Regional Haze Regulations (Renewal).

ICR numbers: EPA ICR No. 1813.07, OMB Control No. 2060–0412.

ICR status: This ICR is scheduled to expire on October 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR is for activities related to the implementation of EPA's 1999 regional haze rule for the time period between October 31, 2009, and October 30, 2012, and renews the previous ICR. The regional haze rule, as authorized by sections 169A and 169B of the Clean Air Act (CAA), requires States to develop implementation plans to protect visibility in 156 Federally-protected Class I areas. Tribes may choose to develop implementation plans. For this time period, States will be completing their implementation plans to comply with the rule. Before any agency, department, or instrumentality of the Federal government engages in, supports in any way, provides financial assistance for, licenses, permits, approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State Implementation Plan (SIP) required under the regional haze rule. Section 176(c) of the CAA (42 U.S.C. 7401 *et seq.*) require that all Federal actions conform with the SIP requirements. Depending on the type of action, the Federal entities must collect information themselves, hire consultants to collect the information or require applicants/sponsors of the Federal action to provide the information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 859.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 31,841 hours.

Estimated total annual costs: $1,880,000, which is comprised of labor costs exclusively. This includes $0 for both capital investment and maintenance and operational costs.

Changes in the Estimates. There are only minor revisions to the cost estimates since the last renewal of this ICR (July 11, 2006; 71 *FR* 39104). The last collection request anticipated the program progressing from the planning stages to implementation. That transition has been somewhat delayed as most States were late in getting their implementation plans submitted by the December 2007 deadline. Also, the decision by the U.S. Court of Appeals for the DC Circuit to both vacate (on July 11, 2008) and subsequently remand (on December 23, 2008) the Clean Air Interstate Rule has added much uncertainty to the implementation phase of the program. Consequently, the amount of effort anticipated in July 2006 remains the same today, and burden estimates are essentially unchanged, except for revised labor and wage rates using 2007 cost estimates. Also, in 2006, it was estimated that one Tribe would submit a SIP; however no Tribes elected to submit SIPs and the number of respondents has been reduced by one.

Dated: August 20, 2009.

John Moses,

Director, Collection of Strategies Division.

[FR Doc. E9–20600 Filed 8–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0143; FRL–8432–8]

Birnbaum Interpreting Services; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Birnbaum Interpreting Services in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Birnbaum Interpreting Services has been awarded multiple contracts to perform work for OPP, and access to this information will enable Birnbaum Interpreting Services to fulfill the obligations of the contract.

DATES: Birnbaum Interpreting Services will be given access to this information on or before August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0786; e-mail address: *croom.felicia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0143. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Contractor Requirements

Under these contract numbers, the contractor will perform the following:

Under Contract No. EP-08-H000383, The Birnbaum Intrepreting Services will provide with Sign Language interpreting services. The work will be performed in a space to be designated by EPA, primarily at EPA Headquarters and other Washington, DC area EPA facilities. Occasional travel will be involved. The sign language personnel will report to the location specified by the EPA Headquarters Interpreting Coordinator, also identified as the Project Officer under this contract. The contract does not employ any subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Birnbaum Interpreting Services, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, Birnbaum Interpreting Services is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Birnbaum Interpreting Services until the requirements in this document have been fully satisfied. Records of information provided to Birnbaum Interpreting Services will be maintained by EPA Project Officers for these contracts. All information supplied to Birnbaum Interpreting Services by EPA for use in connection with these contracts will be returned to EPA when Birnbaum Interpreting Services has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: August 19, 2009.

Oscar Morales,

Acting Director, Office of Pesticide Programs.

[FR Doc. E9–20606 Filed 8–25–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8941–2]

Final EPA Region 4 National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: EPA Region 4 is issuing the final National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from new dischargers engaged in large and small construction activities on Indian Country Lands within Region 4. Hereinafter, this NPDES general permit will be referred to as ''permit'' or ''2009 construction general permit'' or ''2009 CGP.'' ''New dischargers'' are those who did not file a notice of intent (''NOI'') to be covered under the 2004 construction general permit (''2004 CGP'') before it expired. Existing dischargers who properly filed an NOI to be covered under the 2004 CGP continue to be authorized to discharge under that permit according to its terms. This 2009 CGP contains generally the same limits and conditions as the National CGP that was issued by other EPA regions and became effective on June 30, 2008 (''2008 National CGP''). EPA Region 4 is issuing this CGP for a period not to exceed two (2) years and will make the permit available to new construction activities and unpermitted ongoing activities only.

DATES: The effective date of this permit is September 1, 2009 and will expire at midnight August 31, 2011. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2004 CGP. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on September 15, 2009. Under Section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings.

FOR FURTHER INFORMATION CONTACT: Alanna Conley, Water Protection Division, Stormwater and Nonpoint Source Section, Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; telephone number: (404) 562–9443. In addition, copies of the permit and fact sheet may be downloaded at *http://www.epa.gov/region4/water/permits/stormwater.html.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

If a discharger chooses to apply to be authorized to discharge under the 2009 construction general permit (''2009 CGP''), the permit provides specific requirements for preventing contamination of stormwater discharges from the following construction activities:

Category	Examples of affected entities	North American Industry Classification System (NAICS) code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Building, Developing and General Contracting	233
	Heavy Construction	234

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition of ''construction activity'' and ''small construction activity'' in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Eligibility for coverage under the 2009 CGP would be limited to operators of ''new projects'' or ''unpermitted ongoing projects.'' A ''new project'' is one that commences after the effective date of the 2009 CGP. An ''unpermitted ongoing project'' is one that commenced prior to the effective date of the 2009 CGP, yet never received authorization to discharge under the 2004 CGP or any other NPDES permit covering its construction-related stormwater discharges. This proposal is limited to those areas where EPA Region 4 is the permitting authority, including all Indian Country Lands within the States of Alabama, Florida, Mississippi, and North Carolina.

II. Background of Permit

A. Statutory and Regulatory History

The Clean Water Act (''CWA'') establishes a comprehensive program ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). The CWA also includes the objective of attaining ''water quality which provides for the protection and propagation of fish, shellfish and wildlife.'' 33 U.S.C. 1251(a)(2). To achieve these goals, the CWA requires EPA to control the discharges through the issuance of National Pollutant Discharge Elimination System (''NPDES'') permits.

Section 405 of the Water Quality Act of 1987 (WQA) added Section 402(p) of the CWA, which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. EPA published a final regulation in the **Federal Register** on the first phase of this program on November 16, 1990, establishing permit application requirements for ''storm water discharges associated with industrial activity.'' See 55 FR 47990. EPA defined the term ''storm water discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the United States were included in the definition of ''industrial activity'' pursuant to 40 CFR 122.26(b)(14)(x). Phase II of the stormwater program was published in the **Federal Register** on December 8, 1999, and required NPDES permits for discharges from construction sites disturbing at least one acre, but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. EPA is issuing the 2009 CGP under the statutory and regulatory authority cited above.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306. Once an effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, NPDES permits are required to incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national effluent limitations and standards, permitting authorities incorporate technology-based effluent limitations on a best professional judgment basis. CWA Section 402(a)(1)(B); 40 CFR 125.3(a)(2)(ii)(B).

B. Summary of Permit

EPA noticed the draft 2009 CGP for public review and comment on May 7, 2009. No comments were received from the public, and therefore, the requirements and provisions of the final permit are not different from those proposed in the draft permit.

Construction operators choosing to be covered by the 2009 CGP must certify in their notice of intent (NOI) that they meet the requisite eligibility requirements, described in Subpart 1.3 of the permit. If eligible, operators are authorized to discharge under this permit in accordance with Part 2. The 2009 CGP includes conditions and limits that are generally identical to the 2008 National CGP issued by other EPA Regional offices, with a few requirements carried over from the 2004 CGP. Note that the 2009 CGP only applies to new and unpermitted ongoing construction projects. Discharges from ongoing projects (or ''existing dischargers'') continue to be covered under the existing 2004 CGP. (However, EPA clarifies that if an operator of a permitted ongoing project transfers ownership of the project, or a portion thereof, to a different operator, that subsequent operator will be required to submit a complete and accurate NOI for a new project under the 2009 CGP.) Dischargers who filed NOIs to be authorized under the 2004 permit prior to the expiration date will continue to be authorized to discharge in accordance with EPA's regulations at 40 CFR 122.6. Operators of new projects or unpermitted ongoing projects seeking coverage under the 2009 CGP are expected to use the same electronic Notice of Intent (eNOI) system that is currently in place for the 2004 CGP. Permittees must install and implement control measures to meet the effluent limits applicable to all dischargers in Part 3, and must inspect such stormwater controls and repair or modify them in accordance with Part 4. The permit in Part 5 requires all construction operators to prepare a stormwater pollution prevention plan (SWPPP) that identifies all sources of

pollution, and describes control measures used to minimize pollutants discharged from the construction site. Part 6 details the requirements for terminating coverage under the permit.

C. What Is EPA's Rationale for the Two-Year Duration of the 2009 CGP?

The 2009 CGP is effective for a period not to exceed two years. As a result of recent litigation brought against EPA concerning the promulgation of effluent limitations guidelines and standards for the construction and development (''C&D'') industry, EPA was required by court order to propose effluent limitations guidelines and new source performance standards (hereinafter, ''effluent guidelines'') for the C&D industry by December 2008, and promulgate those effluent guidelines by December 2009. See *Natural Resources Defense Council, et al.* v. *U.S. Environmental Protection Agency*, No. CV–0408307–GH (C.D. Cal.) (Permanent Injunction and Judgment, December 5, 2006). EPA believes it is appropriate to propose a revised National CGP once EPA has issued C&D effluent guidelines, and therefore proposes a maximum two-year duration for this permit to better coincide with the court-ordered deadlines for the C&D rule. EPA intends to propose and finalize a new, revised National CGP sooner, if the C&D rule is promulgated earlier than the date directed by the court.

D. Why Is EPA Using Requirements That Are Nearly Identical to the 2004 CGP?

In consideration that the 2004 CGP expired on April 30, 2009, it is incumbent upon EPA Region 4 to make available a similar general permit that provides coverage for any new dischargers commencing construction in the areas where EPA Region 4 is the permitting authority. Without such a permit vehicle, the only other available option for construction site operators is to obtain coverage under an individual permit. EPA is issuing a CGP that adopts generally the same limits and conditions of the 2008 National CGP issued by other EPA regions for a limited period of time. This action is appropriate for several reasons. One main reason, as discussed above, is that EPA is working on the development of a new effluent guideline that will address stormwater discharges from the same industrial activities *(i.e.*, construction activities disturbing one or more acres) as the CGP. Because the development of the C&D rule and the issuance of the CGP are on relatively similar schedules, and the C&D rule will establish national technology-based effluent limitations and standards for construction activities, EPA believes that it is more appropriate to proceed along two tracks to permit construction discharges. The first track entails issuing a CGP for a limited period of time, not to exceed 2 years, that contains the 2004 CGP limits and conditions, but for only operators of new and unpermitted ongoing projects, so that such entities can obtain valid permit coverage for their discharges. The second track involves proposing and issuing a revised 5-year CGP that incorporates the requirements of the new C&D rule after the rule is promulgated.

In addition, EPA believes that issuing a substantially revised CGP would be impracticable given the number of unknowns concerning the outcome of the C&D rule. EPA does not believe that it would be appropriate to issue a permit containing technology-based limitations that could be quickly outdated, given the timing of a promulgation of the C&D rule and permit issuance. If EPA had attempted to approximate the requirements of the new C&D rule and incorporate such limits into a new CGP, such a permit would presuppose the outcome of the C&D rule and potentially conflict with the scope and content of the effluent limitation guideline. Instead, EPA Region 4 has decided to wait the short time until after the C&D rule promulgation to issue a revised CGP that is fully reflective of the new effluent limitation guideline. In the meantime, during this relatively short period of time prior to the C&D rule's promulgation and prior to the issuance of the revised CGP that incorporates those standards, EPA is proposing to use similar permit limits and conditions as the 2004 CGP as an effective vehicle to control new discharges. EPA notes that it has minimized the amount of time during which the 2009 CGP will remain effective in order to underscore the Agency's intention to issue a revised CGP once the C&D rule is finalized.

E. Significant Changes From 2004 CGP

As discussed above, the 2009 CGP will provide coverage for a period not to exceed two years. This permit would include similar limits and conditions as the 2004 CGP with the following noteworthy differences:

1. Clarification that eligibility for coverage under the 2009 CGP is limited to operators of new and unpermitted ongoing construction projects.

2. Clarification that operators of ongoing permitted construction projects are not eligible for coverage under the 2009 CGP.

F. Geographic Coverage

EPA is only authorized to provide permit coverage for classes of discharges that are outside the scope of a State's NPDES program authorization. The EPA Region 4, 2009 CGP replaces the expired 2004 CGP for operators of new and unpermitted ongoing construction projects. The geographic coverage and scope of the 2009 CGP includes all Indian Country Lands within the States of Alabama, Florida, Mississippi, and North Carolina, where EPA Region 4 is the NPDES permitting authority. There is no change in the scope of coverage from the 2004 CGP.

III. Compliance With the Regulatory Flexibility Act

A. EPA's Approach to Compliance With the Regulatory Flexibility Act for General Permits

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a ''rule'' or as an ''adjudication'' under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the CWA Section 404 Nationwide general permit before the court did qualify as a ''rule'' and therefore that the issuance of that general permit needed to comply with the applicable legal requirements for the issuance of a ''rule.'' *National Ass'n of Home Builders* v. *U.S. Army Corps of Engineers*, 417 F.3d 1272, 1284–85 (DC Cir.2005) (Army Corps general permits under Section 404 of the CWA are rules under the APA and the Regulatory Flexibility Act; ''Each NWP [nationwide permit] easily fits within the APA's definition 'rule.' * * * As such, each NWP constitutes a rule * * *'').

As EPA stated in 1998, ''the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit.'' 63 FR 36489, 36497 (July 6, 1998). At that time, EPA ''reviewed its previous NPDES general permitting actions and related

statements in the **Federal Register** or elsewhere,'' and stated that ''[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits.'' *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency ''concluded, as set forth in the proposal, that NPDES general permits are permits [*i.e.*, adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA.'' *Id.* Accordingly, the Agency stated that ''the APA's rulemaking requirements are inapplicable to issuance of such permits,'' and thus ''NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA.'' *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: ''[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities.'' *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that ''the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied.'' *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications rather than rules, as noted above, the DC Circuit recently held that Nationwide general permits under Section 404 are ''rules'' rather than ''adjudications.'' Thus, this legal question remains ''a difficult one'' (supra). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (*e.g.*, small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the CWA. Accordingly, EPA has committed to operate in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency has committed that it will apply the RFA in its issuance of general permits as if those permits do qualify as ''rules'' that are subject to the RFA).

B. Application of RFA Framework to Proposed Issuance of CGP

EPA has concluded, consistent with the discussion in Section IV.A above, that the issuance of the 2009 CGP could affect a handful of small entities. In the areas where the CGP is effective (see Section II.E), (those areas where EPA is the permit authority), a total of 27 construction projects were authorized under the 2004 CGP—some of these project could have been operated by small entities. However, EPA has concluded that the proposed issuance of the 2009 CGP is unlikely to have an adverse economic impact on small entities. The 2009 CGP includes the same requirements as those of the national 2008 CGP issued by other EPA regions. Additionally, an operator's use of the CGP is volitional *(i.e.*, a discharger could apply for an individual permit rather than for coverage under this general permit) and, given the more streamlined process for obtaining permit coverage, is less burdensome than an individual NPDES permit. EPA intends to include an updated economic screening analysis with the issuance of the next national CGP.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: August 17, 2009.

James D. Giattina, Director,

Water Protection Division, Region 4.

[FR Doc. E9–20595 Filed 8–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0008; FRL–8433–4]

Tribal Pesticide Program Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC) will hold a two-day meeting on Wednesday, October 14, 2009 and Thursday, October 15, 2009. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

DATES: The meeting will be held on Wednesday, October 14, 2009 and Thursday, October 15, 2009 from 9 a.m. to 5 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held in the Office of Pesticide Programs (OPP) 4th Floor South Conference Room, One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mary Powell, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7384; fax number: (703) 308–1850; e-mail address: *powell.mary@epa.gov*; or Lillian Wilmore, TPPC Administrator, 1595 Beacon St. #3, Brookline, MA 02446–4617; telephone number: (617) 232–5742; fax number: (617) 277–1656; e-mail address: *NAEcology@aol.com*. For information about the TPPC, please see *http://www.epa.gov/oppfead1/tribes/tppc.htm*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be interested in this meeting if you are interested in the TPPC's information-exchange relationship with EPA regarding important issues in Indian country related to human and environmental exposure to pesticides and insight into EPA's decision-making process. All parties are invited and encouraged to participate as appropriate. Potentially affected entities may include, but are not limited to, those who use, or conduct testing of, chemical substances under the Federal

Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug and Cosmetic Act (FFDCA).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2009–0008. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Tentative Agenda

1. Report from the new TPPC Administrator.

2. Report on the international IPM conference.

3. Presentation on the inspection needs of tribes along the Colorado River.

4. Updates from OPP and EPA's Office of Enforcement and Compliance Assurance.

5. EPA Regional reports.

6. Discussion on the use of restricted-use pesticides in Indian country.

7. Tribal Caucus (TPPC only).

III. How Can I Request to Participate in this Meeting?

If you wish to participate in this meeting, you may submit a request to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered Confidential Business Information. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2009–0008, must be received on or before September 8, 2009.

List of Subjects

Environmental protection, pesticides and pests, Tribes.

Dated: August 17, 2009.

William R. Diamond,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. E9–20605 Filed 8–25–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8949–9]

National Emission Standards for Hazardous Air Pollutants; Announcement of EPA Letter Addressing Recent Court Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On December 19, 2008, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) vacated two provisions in EPA's General Provisions Rule promulgated under section 112 of the Clean Air Act that exempt sources from the requirement to comply with otherwise applicable section 112(d) emission standards during periods of startup, shutdown and malfunction. We are announcing the public availability of a letter that EPA has issued addressing concerns that have been raised regarding the impact of that decision if the mandate effectuating the vacatur issues.

DATES: August 26, 2009, EPA announces the availability of EPA's letter related to a recent court decision regarding 40 CFR 63.6(f)(1) and (h)(1).

FOR FURTHER INFORMATION CONTACT: Mr. Charlie Garlow, U.S. EPA Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, Air Enforcement Division (MAIL CODE 2242A), 1200 Pennsylvania Avenue, Washington, DC 20460, telephone number (202) 564–1088, fax number (202) 564–0068, e-mail address: *garlow.charlie@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA recently issued a letter, dated July 22, 2009, from Adam Kushner, Director, Office of Civil Enforcement, to various parties that addresses concerns that have been raised regarding the impact of the decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008). In that decision, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) vacated 40 CFR 63.6(f)(1) and (h)(1), which are two provisions in EPA's General Provisions Rule promulgated under section 112 of the Clean Air Act that exempt sources from the requirement to comply with otherwise applicable section 112(d) emission standards during periods of startup, shutdown and malfunction. Industry Intervenors appealed the December 2008 *Sierra Club* decision by filing petitions for rehearing. On July 30, 2009, the DC Circuit denied these petitions. On August 5, 2009, EPA filed a motion seeking a 60-day stay of the mandate. On August 6, 2009, Industry Intervenors filed a motion to stay the mandate pending their appeal of the decision to the United States Supreme Court. Until the D.C. Circuit issues a mandate effectuating the vacatur, 40 CFR 63.6(f)(1) and (h)(1) remain in effect. EPA has posted a copy of the July 22, 2009 letter and a copy of the *Sierra Club* decision on the EPA Office of Enforcement and Compliance Assurance Web site at http://*www.epa.gov/compliance/civil/caa/ssm.html.* EPA has also included on the Web site a copy of relevant pleadings in the *Sierra Club* litigation. EPA intends to update this Web site as appropriate with additional information relating to the *Sierra Club* decision.

Dated: August 14, 2009.

Cynthia Giles,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. E9–20593 Filed 8–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0208; FRL–8429–6]

Maneb; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide maneb, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a September 12, 2008 **Federal Register** Notice of Receipt of Requests from the United Phosphorous, Inc. registrant to voluntarily cancel all their maneb product registrations. These are not the last maneb products registered for use in the United States. In the September 12, 2008 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive

comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency erroneously issued a Cancellation Order on October 14, 2008. For the reasons set forth below, on October 31, 2008, EPA revoked the October 14, 2008 cancellation. The Agency received and subsequently reviewed comments on the notice. The comments are summarized below in Unit III. This order took into consideration the comments received. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the maneb products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective August 26, 2009.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7740; fax number: (703) 308–5320; e-mail address: *giles-parker.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0208. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by registrants, of maneb products registered under section 3 of FIFRA. These registrations are listed in ascending sequence by registration number in Table 1 of this unit.

TABLE 1—MANEB PRODUCT CANCELLATIONS

EPA Registration Number	Product Name
70506-177	Maneb 80 WP Fungicide
70506-181	Maneb Technical
70506-184	Maneb 4FL Flowable Fungicide
70506-186	Maneb 75DF Dry Flowable Fungicide

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANT OF CANCELED MANEB PRODUCTS

EPA Company Number	Company Name and Address
70506	United Phosphorous Inc. 630 Freedom Business Center, Suite 402 King of Prussia, Pennsylvania 19406

III. Summary of Public Comments Received and Agency Response to Comments

The Agency received timely comments in regards to the **Federal Register** notice of September 12, 2008 (73 FR 53007)(FRL-8380-7). E.I. du Pont de Nemours and Company (DuPont) provided a comment expressing their concerns about the loss of the chemical if the effective date of the cancellation is prior to May 29, 2009, due to the supply demand to manufacture their products. On December 12, 2008, DuPont submitted to the Docket a request to withdraw their earlier comment to the Docket. The Florida Fruit and Vegetable Association (FFVA) expressed concern about the cancellation of these products because of loss of use on their winter crops in Florida which could lead to economic loss and loss of their resistance management and IPM strategies. The alternative chemical, mancozeb is not currently approved for many of the uses on the maneb labels. Until a decision is made on granting tolerances for many of these uses, this commenter believes that there is still a high need to have maneb products in place. The final commenter expressed their approval of the Agency's decision to remove this chemical from the market. On October 14, 2008, the Agency issued a cancellation order effective October 14, 2008, and 12 months to use existing stocks. The order was issued in error and rescinded on October 31, 2008, due to: (1) Miscommunication between EPA staff and United Phosphorous Inc. regarding what the effective date of the cancellation time period for sale and distribution of existing stocks should have been and (2) the need to review the timely submitted comments.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of maneb registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the maneb product registrations identified in Table 1 of Unit II. are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are

currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

1. The registrant may continue to sell or distribute existing stocks of maneb products identified in Table 1 of Unit II. with previously approved labeling until December 31, 2009.

2. Persons other than the registrant may continue to sell or distribute existing stocks of maneb products identified in Table 1 of Unit II. with previously approved labeling until such stocks are exhausted.

3. Persons other than the registrant may only use existing stocks of maneb products identified in Table 1 of Unit II. for the purposes of formulating end use products until March 2010. Any use of existing stocks must be in a manner consistent with the previously approved labeling for that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 11, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–20399 Filed 8–25–09; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on [enter date 30 days after date of publication in the FR]. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith–B.Herman, Federal Communications Commission (FCC). To submit your comments by e–mail send them to: *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith Boley Herman, OMD, PERM. For additional information about the information collection(s) send an e–mail to *PRA@fcc.gov* or contact Judith Boley Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0810.

Title: Procedures for Designation of Eligible Telecommunications Carriers (ETCs). Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: 2 – 60 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151 – 154, 201 – 205, 214, 218 – 220, 254, 303(r), and 403.

Total Annual Burden: 6,200 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: No.

Nature and Extent of Confidentiality: Pursuant to 47 CFR 0.459 of the Commission's rules, a respondent may request confidential treatment of their information. The respondent must state the reasons they do not want their information in the public record and the facts on which those reasons are based. The appropriate Bureau or Office Chief of the Commission may grant a confidentiality request that presents, by a preponderance of the evidence, a case for non–disclosure consistent with the Freedom of Information Act (FOIA), 5 U.S.C. section 552. If a confidentiality request is denied, the respondent has five days to appeal the decision before the Commission. If the appeal before the Commission is denied, the respondent has five days to seek a judicial stay.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as an extension during this comment period to obtain the full three–year clearance from them. The Commission reported an increase in the total annual burden in the 60 day notice (74 FR 27544). However, the Commission has determined that the total annual burden was not 9,200 hours but should remain unchanged at 6,200 hours.

Section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible to receive universal service support. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. The Commission concluded that petitions for designation filed under Section 214(e)(6) relating to ''near reservation'' areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking eligible telecommunications carrier (ETC) designation in such areas must follow the procedures outlined in CC Docket No. 96–45, Twelfth Report and Order and Further Notice of Proposed Rulemaking, FCC 00–258 (rel. June 8, 2000), (Tribal Lands Order), for non–tribal lands prior to submitting a request for designation to this Commission under Section 214(e)(6).

OMB Control Number: 3060–0824.

Title: Service Provider Identification Number (SPIN) and Contact Information Form.

Form No.: FCC Form 498.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit and not–for–profit institutions.

Number of Respondents: 5,000 respondents; 5,000 responses.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151 – 154 and 254.

Total Annual Burden: 7,500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. However, respondents may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as a revision during this comment period to obtain the full three–year clearance from them. There is no change in the estimated burden hours. As detailed in the Supporting Statement that will be submitted to the OMB for review and approval, the Commission proposes changes to certain parts of the FCC Form 498 to improve the efficiency of administering the universal service support mechanism. Specifically, the Commission proposes:

1) adding two options for service providers to indicate the reason for submitting the FCC Form 498;

2) clarifying the information for the general contact person, the program specific contact persons, and the officer certifying the form;

3) requiring the submission of the service provider's Dunn and Bradstreet number;

4) eliminating the option to receive paper checks and requiring financial institution remittance information in order to make electronic disbursements in accordance with the requirements of the Debt Collection Improvement Act of 1996;

5) requiring the submission of study area codes for service providers that receive High–Cost and Low–Income support; and

6) giving service providers the option of choosing more than one business description for their companies.

The information collected on FCC Form 498 is used by the Universal Service Administrative Company (USAC) to disburse federal universal service support consistent with the specifications of carriers and service providers who participate and receive support from any of the four universal service support mechanisms (High–Cost, Low–Income, Rural Health Care and Schools and Libraries). FCC Form 498 submissions also provide USAC with updated contact information, enabling USAC to contact universal service fund participants when necessary.

OMB Control Number: 3060–0876.

Title: Section 54.703, USAC Board of Directors Nomination Process and Sections 54.719 through 54.725, Review of Administrator's Decision.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit and not–for–profit institutions.

Number of Respondents: 1,312 respondents; 1,312 responses.

Estimated Time Per Response: 20 – 32 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. sections 151 – 154, 201 – 205, 218 – 220, 254, 303(r), 403 and 405 and section 553 of the Administrative Procedures Act, 5 U.S.C. 553.

Total Annual Burden: 41,840 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. However, respondents may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as an extension during this comment period to obtain the full three–year clearance from them. There is no change in the Commission's estimated burden.

Section 54.703 states that industry and non–industry groups may submit to the Commission for approval nominations for individuals to be appointed to the Universal Service Administrative Company (USAC) Board of Directors.

Sections 54.719 through 54.725 describes the procedures for Commission review of USAC decisions including the general filing requirements pursuant to which parties must file requests for review. The information is used by the Commission to select USAC's Board of Directors and to ensure that requests for review are filed properly with the Commission.

Federal Communications Commission.

Alethea Lewis,

Information Specialist.

BILLING CODE 6712–01–S

[FR Doc. E9–20556 Filed 8–25–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on October 26, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Cathy Williams, Federal Communications Commission (FCC), Room 1–C823, 445 12th Street S.W.

Washington, D.C. 20554 . To submit your comments by e–mail send then to: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to *PRA@fcc.gov* or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0349.

Title: Equal Employment Opportunity (''EEO'') Policy, 47 CFR Sections 73.2080, 76.73, 76.75, 76.79 and 76.1702.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions.

Number of Respondents and Responses: 14,178 respondents; 14,178 responses.

Estimated Time per Response: 42 hours.

Frequency of Response: Recordkeeping requirement; Annual and five–year reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 595,476 hours

Total Annual Costs: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex. Therefore, Section 73.2080 requires that each broadcast station employment unit with 5 or more full–time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice.

Section 76.73 provides that equal opportunity in employment shall be afforded by all multichannel video program distributors (''MVPD'') to all qualified persons and no person shall be discriminated against in employment by such entities because of race, color, religion, national origin, age or sex.

Section 76.75 requires that each MVPD employment unit shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a cable entity's policy and practice.

Section 76.79 requires that every MVPD employment unit maintain, for public inspection, a file containing copies of all annual employment reports and related documents.

Section 76.1702 requires that every MVPD place certain information concerning its EEO program in the public inspection file.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E9–20558 Filed 8–25–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, August 27, 2009

Date: August 20, 2009. The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 27, 2009, which is scheduled to commence at 10:00 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

ITEM NO.	BUREAU	SUBJECT
1	WIRELESS TELE–COMMUNICATIONS & OFFICE OF ENGINEERING AND TECHNOLOGY.	TITLE: Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan For Our Future (GN Docket No. 09–51) SUMMARY: The Commission will consider a Notice of Inquiry to seek to understand better the factors that encourage innovation and investment in wireless and to identify concrete steps the Commission can take to support and encourage further innovation and investment in this area.
2	WIRELESS TELE–COMMUNICATIONS	TITLE: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (WT Docket No. 09–66); Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services SUMMARY: The Commission will consider a Notice of Inquiry soliciting information for the next annual report to Congress on the status of competition in the mobile wireless market, including commercial mobile services.
3	CONSUMER AND GOVERNMENTAL AFFAIRS.	TITLE: Consumer Information and Disclosure; Truth–in–Billing and Billing Format (CC Docket No. 98–170); IP–Enabled Services (WC Docket No. 04–36) SUMMARY: The Commission will consider a Notice of Inquiry that seeks comment on whether there are opportunities to protect and empower American consumers by ensuring sufficient access to relevant information about communications services.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e–mail to: fcc504@fcc.gov <mailto:fcc504@fcc.gov> or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events web page at www.fcc.gov/realaudio <http://www.fcc.gov/realaudio>.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to www.capitolconnection.gmu.edu <http://www.capitolconnection.gmu.edu>.

Federal Communications Commission

William F. Caton,

Deputy Secretary.

[FR Doc. E9–20562 Filed 8–24–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, August 25, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Web site and Internet Communications Improvement Initiative.

DATE AND TIME: Tuesday, August 25, 2009, 2:30 p.m. and its Continuation on Wednesday, August 26, 2009, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: These meetings will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 27, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2009–14: Mercedes-Benz USA, LLC and Sterling Truck Corporation by Jan Witold Baran, Esq. and Caleb Burns, Esq.

Draft Advisory Opinion 2009–19: Club for Growth, by David Keating, Executive Director.

Draft Advisory Opinion 2009–20: Visclosky for Congress, by Treasurer Michael C. Malczewski.

Draft Advisory Opinion 2009–21: West Virginia Secretary of State, by Timothy G. Leach, Assistant General Counsel, Office of the Secretary of State.

Future Meeting Dates.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–20505 Filed 8–25–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 10, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Mackinaw Farms LLC; Armory Partners II LLC, both of Champaign, Illinois; Elisabeth Meyer Kimmel, La Jolla, California, individually and as trustee of the Elisabeth Meyer Kimmel 2009 Grantor Retained Annuity Trust 1, the Elisabeth Meyer Kimmel 2009 Grantor Retained Annuity Trust 2 and the Elisabeth Meyer Kimmel 2009 Grantor Retained Annuity Trust 3; August C. Meyer, Jr., Champaign, Illinois, individually and as trustee of the August C. Meyer, Jr. 2009 Grantor Retained Annuity Trust 1, the August C. Meyer, Jr. 2009 Grantor Retained Annuity Trust 2, the August C. Meyer, Jr. 2009 Grantor Retained Annuity Trust 3, the Katharine Clara Kimmel Exempt Trust C/U Elisabeth M. Kimmel 2002 Special Trust, the John August Kimmel Exempt Trust C/U Elisabeth M. Kimmel 2002 Special Trust, the Thomas Conrad Kimmel Exempt Trust C/U Elisabeth M. Kimmel 2002 Special Trust, the Katharine Clara Kimmel Trust C/U Elisabeth M. Kimmel 2002–1 Grantor Retained Annuity Trust, the John August Kimmel Trust C/U Elisabeth M. Kimmel 2002–1 Grantor Retained Annuity Trust and the Thomas Conrad Kimmel Trust C/U Elisabeth M. Kimmel 2002–1 Grantor Retained Annuity Trust; Inna A. Meyer, St. Petersburg, Russia; Gregory B. Lykins, individually and as trustee of the August C. F. Meyer Exempt Trust U/A of August C. Meyer, Jr. 2001 Special Trust and the Elisabeth Meyer Kimmel Exempt Trust U/A of August C. Meyer, Jr. 2001 Special Trust; Margo L. Lykins; the August C. Meyer, Jr. 2009 Grantor Retained Annuity Trust 1; the August C. Meyer, Jr. 2009 Grantor Retained Annuity Trust 2; the August C. Meyer, Jr. 2009 Grantor Retained Annuity Trust 3; the Elisabeth Meyer Kimmel 2009 Grantor Retained Annuity Trust 1; the Elisabeth Meyer Kimmel 2009 Grantor Retained Annuity Trust 2; the Elisabeth Meyer Kimmel 2009 Grantor Retained Annuity Trust 3; the Katharine Clara Kimmel Exempt Trust C/U Elisabeth M. Kimmel 2002 Special Trust; the John August Kimmel Exempt Trust C/U Elisabeth M. Kimmel 2002

Special Trust; the Thomas Conrad Kimmel Exempt Trust C/U Elisabeth M. Kimmel 2002 Special Trust; the Katharine Clara Kimmel Trust C/U Elisabeth M. Kimmel 2002–1 Grantor Retained Annuity Trust; the John August Kimmel Trust C/U Elisabeth M. Kimmel 2002–1 Grantor Retained Annuity Trust; the Thomas Conrad Kimmel Trust C/U Elisabeth M. Kimmel 2002–1 Grantor Retained Annuity Trust; the August C. F. Meyer Exempt Trust U/A of August C. Meyer, Jr. 2001 Special Trust; and the Elisabeth Meyer Kimmel Exempt Trust U/A of August C. Meyer, Jr. 2001 Special Trust, all of Champaign, Illinois; to retain 10 percent or more of the voting shares, and to acquire additional voting shares of First Busey Corporation, Urbana, Illinois, and thereby indirectly retain and acquire additional voting shares of Busey Bank, Champaign, Illinois, and Busey Bank, National Association, Fort Myers, Florida.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Richard A. Jensen, WaKeeney, Kansas; David J. Steeples, Stockton, Kansas; Lila J. Alexander, Houston, Texas; all as trustees; Brian J. Berkley GST Trust; and James E. Berkley GST Trust, both of Stockton, Kansas; as members of the Berkley family group, to retain control of Relianz Bancshares, Inc., and thereby indirectly retain control of RelianzBank, both of Wichita, Kansas.

In connection with this application, Vicki A. Berkley, Stockton, Kansas, as trustee, has applied to acquire individual control of Relianz Bancshares, Inc., and thereby indirectly acquire control of RelianzBank, both in Wichita, Kansas.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Aim Bancshares, Inc. 401(k) and Employee Stock Ownership Plan, Scott Wade, and Kenneth Willmon, all of Levelland, Texas; as Trustees, to acquire voting shares of Aim Bancshares, Inc., Levelland, Texas, and thereby indirectly acquire voting shares of AimBank, Littlefield, Texas.

Board of Governors of the Federal Reserve System, August 21, 2009.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E9–20560 Filed 8–25–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 2009.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. 1889 Bancorp MHC and 1889 Financial Services Corporation, both of Norwood, Massachusetts; to become a mutual bank holding company and stock bank holding company, respectively, by acquiring 100 percent of the voting shares of Norwood Co–operative Bank, Norwood, Massachusetts.

Board of Governors of the Federal Reserve System, August 21, 2009.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E9–20559 Filed 8–25–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Bumerang Freight Limited Liability Company, 275 Park Avenue, Lyndhurst, NJ 07071. *Officer:* Tuncer Murat, Manager, (Qualifying Individual)

TSI Logistics, Inc., 19401 S. Vermont Avenue, G–107, Torrance, CA 90502. *Officers:* Seung Tae Hwang, CEO, (Qualifying Individual), Jae Kweon Shim, Secretary.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

EDI Transport LLC, 1150 Eastport Center Dr., Ste. G, Valpariso, IN 46383. *Officers:* Imelda G. Post, Secretary, (Qualifying Individual), Eric Charles, President.

Network America Lines, Inc., 226 Chestnut Street, Roselle Park, NJ 07204. *Officer:* R. Kenneth Johns, Chairman, (Qualifying Individual)

Customs Cleared Company, Inc., 2725 S. Mendenhall, Ste. 20, Memphis, TN 38115. *Officer:* Karen Wood, President, (Qualifying Individual)

Samrat Container Lines, Inc., 2060 Oak Tree Road, 1st Floor East, Edison, NJ 08820. *Officer:* Satish V. Anchan, President, (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Celestial Care Health Systems, Inc., 2901 Druid Park Drive, Ste. 300, Baltimore, MD 21215. *Officers:* Oluranti J. Awe, Vice President, (Qualifying Individual), Emmanuel O. Iroanya, Jr., Director.

Dated: August 21, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–20608 Filed 8–25–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0095]

Federal Acquisition Regulation; Submission for OMB Review; Commerce Patent Regulations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Commerce Patent Regulations.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 25, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration (GSA), Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Division, GSA, (202) 501–3775 or e-mail *ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

As a result of the Department of Commerce (Commerce) publishing a final rule in the **Federal Register** implementing Pub. L. 98–620 (52 FR 8552, March 18, 1987), a revision to FAR Subpart 27.3 to implement the Commerce regulation was published in the **Federal Register** as an interim rule on June 12, 1989 (54 FR 25060). The final rule was published without change on June 21, 1990.

A Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227–11(c), 52.227–13(e)(1). The contracting officer may modify 52.227–11(e) or otherwise supplement the clause to require contractors to submit periodic or interim and final reports listing subject inventions (27.303(b)(2)(i) and (ii)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227–11, Alternate IV; 52.227–13(e)(1)). In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227–11(e)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(f).

B. Annual Reporting Burden

Respondents: 1,200.
Responses per Respondent: 9.75.
Total Responses: 11,700.
Hours per Response: 3.9.
Total Burden Hours: 45,630.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration (GSA), Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

Dated: August 20, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–20517 Filed 8–25–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public. Pre-registration is required for both public attendance and comment. Individuals who wish to attend the meeting and/or participate in the public comment session should e-mail nvpo@hhs.gov, call 202–690–5566, or complete the on-line form on the NVAC Web site (*http://www.hhs.gov/nvpo/nvac/.*) to register.

DATES: The meeting will be held on September 15, 2009, from 9 a.m. to 5:30 p.m. and on September 16, 2009, from 8:30 a.m. to 1:30 p.m.

ADDRESSES: Department of Health and Human Services; Hubert H. Humphrey Building, Room 800; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Krull, Public Health Advisor, National Vaccine Program Office, Department of Health and Human Services, Room 715–H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Phone: (202) 690–5566; Fax: (202) 260–1165; e-mail: *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. Section 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program, on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

Topics to be discussed at the meeting include vaccine safety working group activity, the National Vaccine Plan, implementation plans for recent NVAC recommendations, financial considerations for adult immunizations,

seasonal influenza, and issues related to the 2009 H1N1 influenza response and vaccine development. The meeting agenda will be posted on the NVAC Website: *http://www.hhs.gov/nvpo/nvac* by August 31, 2009.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at least one week prior to the meeting. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to three to five minutes per speaker. Individuals who would like to submit written statements should e-mail or fax their comments to the National Vaccine Program Office at least five business days prior to the meeting. Register by sending an e-mail to *nvpo@hhs.gov,* or by calling 202–690–5566, or by completing the on-line registration form at *http://www.hhs.gov/nvpo/nvac* and providing name, e-mail address and organization.

Dated: August 19, 2009.

Bruce Gellin,

Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.

[FR Doc. E9–20572 Filed 8–25–09; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

AUTHORITY: Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996; and Section 222 of the Public Health Service Act (42 U.S.C. 217a). The Council is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Office of HIV/AIDS Policy (OHAP), a program office within the Office of Public Health and Science, Department of Health and Human Services (HHS), is soliciting nominations of qualified candidates to be considered for appointment as members to the Presidential Advisory Council on HIV/AIDS (PACHA). The activities of this council are governed by the Federal Advisory Committee Act (FACA). Management support for the activities of this Council is the responsibility of the OHAP.

The Council provides advice, information, and recommendations to the Secretary of Health and Human Services regarding programs and policies to promote effective prevention and cure of HIV disease and AIDS. The functions of the Council shall be solely advisory in nature.

DATES: All nominations for membership on the Council must be received no later than September 11, 2009.

ADDRESSES: All nominations should be mailed or delivered to: Christopher Bates, Director, OHAP, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Hubert H. Humphrey Building; Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Joppy, Program Specialist, Office of HIV/AIDS Policy, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690–5560; *melvin.joppy@hhs.gov*.

A copy of the charter which includes the Council's structure and functions can be obtained by contacting Mr. Joppy or by accessing the PACHA Web site at *http://www.pacha.gov*.

SUPPLEMENTARY INFORMATION:

Committee Function, Qualifications, and Information Required: The Council consists of not more than 25 members; one or more members are selected as Chair, Vice Chair and/or Co-Chairs. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV/AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members, as well as the Council leadership, are appointed by the Secretary or designee, in consultation with the White House Office of National AIDS Policy. All Council members are classified as special Government employees (SGEs). The Council composition may include ex officio members from relevant HHS components, as deemed necessary to accomplish the established mission of the Council.

Council members are invited to serve for overlapping terms of up to four years; terms are contingent upon the authorized continuation of the Council. A member can serve after the expiration of their term until their successor has taken office and/or until notified in writing that their term has ended or expired, but no longer than 180 days.

Pursuant to advance written agreement, Council members receive no stipend for the advisory service they render as members of PACHA. However, as authorized by law and in accordance with Federal travel regulations, PACHA members receive per diem and reimbursement for travel expenses incurred in relation to performing duties for the Council.

With approval of the Secretary or designee, subcommittees may be established to perform specific functions within the jurisdiction of the Council. Compositions for the subcommittee are members of the Council. The subcommittees make preliminary recommendations to be considered by the Council membership.

Nominations

In accordance with the charter, persons nominated for appointment as members of the PACHA should be prominent community leaders or national leaders who are held in high esteem from other sectors of society with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, and marketing or business. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity); (2) a statement from the nominee, bearing an original signature, that, if appointed, he or she is willing to serve as a member of the Council; (3) the nominator's name, address and daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (4) a current copy of the nominee's curriculum vitae.

Individuals can nominate themselves for consideration of appointment to the Council. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable. Applications cannot be submitted by facsimile. The names of Federal employees should not be nominated for consideration of appointment to this Council.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made that a broad representation of geographic areas, gender, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to the Council shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as public members of Federal advisory committees. Individuals appointed to serve as public members of Federal advisory committees are classified as special Government employees (SGEs). SGEs are Government employees for purposes of the conflict of interest laws. Therefore, individuals appointed to serve as public members of HHS are subject to an ethics review. The ethics review is conducted to determine if the individual has any interests and/or activities in the private sector that may conflict with performance of their official duties as a member of the Council. Individuals appointed to serve as public members of the Council will be required to disclose information regarding financial holdings, consultancies, and research grants and/or contracts.

Dated: August 20, 2009.

Christopher H. Bates,

Director, Office of HIV/AIDS Policy, Interim Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. E9–20571 Filed 8–25–09; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nomination for Appointment to the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: The Office of Public Health and Science, Office on Women's Health, HHS, is seeking nominations of qualified candidates to be considered for appointment as a member of the Chronic Fatigue Syndrome Advisory Committee (CFSAC). CFSAC provides science-based advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on a broad range of issues and topics pertaining to chronic fatigue syndrome (CFS). CFSAC, which was formerly known as the Chronic Fatigue Syndrome Coordinating Committee, was established by the Secretary of Health and Human Services on September 5, 2002. The appointments of five Committee members are scheduled to end on January 3, 2010. Nominations of qualified candidates are being sought to fill these scheduled vacancies.

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. EDT on September 20, 2009, at the address listed below.

ADDRESSES: All nominations should be mailed or delivered to Wanda K. Jones, DrPH, Executive Secretary, Chronic Fatigue Syndrome Advisory Committee; Office on Women's Health; Department of Health and Human Services; 200 Independence Avenue, SW.; Room 712E; Washington, DC, 20201.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H.; Department of Health and Human Services; 200 Independence Avenue, SW; Room 712E; Washington, DC 20201; (202) 690–7650.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002. The Committee was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) the current state of the knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about chronic fatigue syndrome advances.

AUTHORITY: 42 U.S.C. 217a, section 222 of the Public Health Service (PHS) Act, as amended. The committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App 2), which sets forth standards for the formation and use of advisory committees.

Nominations

The Office on Women's Health is requesting nominations to fill five positions for the CFSAC. The positions are scheduled to become vacant on January 3, 2010. The Committee is composed of seven scientists with demonstrated expertise in biomedical research and four individuals with demonstrated expertise in health services, insurance, or voluntary organizations concerned with the problems of individuals with CFS. The vacant positions include all four categories. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in the designated fields or disciplines, as well as expert knowledge of the broad issues and topics pertinent to chronic fatigue syndrome.

Individuals selected for appointment to the Committee will serve as voting members. Individuals selected for appointment to the Committee can be invited to serve terms of up to four years. Committee members receive a stipend for attending Committee meetings and conducting other business in the interest of the Committee. Committee members also are authorized to receive per diem and reimbursement for travel expenses incurred for conducting Committee business.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, and daytime telephone number, and the home and/or work address, telephone number, and e-mail address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, females, ethnic and minority groups, and people with disabilities are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. Nominations must state that the nominee is willing to serve as a member of CFSAC and

appears to have no conflict of interest that would preclude membership. Potential candidates are required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Dated: August 21, 2009.

Wanda K. Jones,

Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. E9–20568 Filed 8–25–09; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0393]

Acrylamide in Food; Request for Comments and for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and scientific data and information.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments and scientific data and information on acrylamide in food. Acrylamide is a chemical that can form in some foods during certain types of high-temperature cooking. FDA is seeking information on practices that manufacturers have used to reduce acrylamide in food and the reductions they have been able to achieve in acrylamide levels. FDA is considering issuing guidance for industry on reduction of acrylamide levels in food products.

DATES: Submit comments and scientific data and information by November 24, 2009.

ADDRESSES: Submit written comments and scientific data and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments and scientific data and information to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Lauren Posnick Robin, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1639.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

In 2002, scientists in Sweden announced the discovery of the chemical acrylamide in a variety of heated foods (Ref. 1). Further research subsequently determined that acrylamide can form in some foods during certain types of high-temperature cooking (Refs. 2 and 3). Acrylamide in food is a concern because it has been found to be carcinogenic in rodents and is therefore considered a potential carcinogen for humans (Refs. 4 and 5).

Since the identification of acrylamide in food, research around the world has centered on measuring acrylamide exposure in the diet, studying the toxicology and epidemiology of acrylamide exposure, and reducing (mitigating) acrylamide levels in food. Information on FDA's activities on acrylamide can be found on FDA's Web site (Ref. 6). FDA's research program has focused on toxicology but has also included research on mitigation for consumers (Ref. 7). Based on this research and other findings, FDA added information to its Web site in 2008 for consumers interested in reducing their acrylamide exposure from food. However, FDA's general advice for acrylamide and eating is for consumers to adopt a healthy eating plan consistent with the Dietary Guidelines for Americans (Refs. 6 and 8). The Dietary Guidelines for Americans suggests a diet that emphasizes fruits, vegetables, whole grains, and fat-free or low-fat milk and milk products; includes lean meats, poultry, fish, beans, eggs, and nuts; and is low in saturated fats, *trans* fats, cholesterol, salt (sodium), and added sugars.

FDA has not issued guidance for manufacturers on reducing acrylamide in food. However, it is anticipated that new information will soon be available about the toxicology of acrylamide, which may confirm acrylamide's carcinogenicity in laboratory animals. International efforts to develop approaches to acrylamide mitigation are also beginning to prove successful. Moreover, FDA is aware that at least some manufacturers in the United States are seeking ways to reduce acrylamide in their products. For these reasons, FDA is considering issuing guidance for industry on reduction of acrylamide levels in food products.

This document summarizes information available to FDA about acrylamide formation, exposure, toxicology, levels in food, and techniques to mitigate acrylamide. This notice also identifies areas in which additional data and information would be helpful to FDA in learning more about acrylamide mitigation techniques and levels of acrylamide in food. These areas are outlined in more detail in section II of this document.

B. Formation and Exposure

Acrylamide forms in foods primarily from a reaction between asparagine, an amino acid, and reducing sugars such as glucose and fructose. This reaction is part of the Maillard reaction, which leads to color, flavor, and aroma changes in cooked foods (Refs. 2, 3, and 9). Acrylamide formation usually occurs at elevated temperatures used when frying or baking (above 120 °C (248 °F)) and in low moisture conditions, although acrylamide has also been identified in some fruit and vegetable products heated at lower temperatures or higher moisture conditions (Refs. 10 through 13). Also, formation occurs primarily in plant-based foods, notably potato products such as French fries and potato chips; coffee; and cereal-grain-based foods such as cookies, crackers, breakfast cereals, and toasted bread.

Thousands of food samples have been analyzed for acrylamide since 2002. Based on its own database of acrylamide levels in U.S. foods (Refs. 12 and 13), FDA estimates acrylamide intake for the average U.S. consumer as 0.4 microgram/kilogram body weight/day (µg/kg-bw/d) (Ref. 14). International estimates for the average consumer range from 0.2 to 1.4 µg/kg-bw/d (Ref. 15). Based on estimates from different countries, the Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Expert Committee on Food Additives (JECFA) identified an average acrylamide intake of 1 µg/kg-bw/d for the general consumer and 4 µg/kg-bw/d for high consumers (Ref. 4).

Based on measured levels of acrylamide in certain foods and on how frequently these foods are consumed in the United States, FDA identified the following 10 foods (in ranked order) that contribute the most acrylamide to the U.S. diet: French fries (restaurant prepared), French fries (oven baked), potato chips, breakfast cereals, cookies, brewed coffee, toast, pies and cakes, crackers, and soft (nontoasted) breads (Ref. 14). The JECFA evaluation concurred that the major foods contributing to total exposure for most countries were French fries, potato chips, coffee, pastry and sweet cookies, and breads and toasts (Ref. 4).

C. Toxicology

Several international toxicology evaluations of acrylamide have been completed since the identification of

acrylamide in food in 2002 (Refs. 4 and 5). An initial FAO/WHO consultation in 2002 called the presence of acrylamide in food ''a major concern'' based on acrylamide's ability to induce cancer and heritable mutations in laboratory animals. In 2005, an international evaluation of acrylamide by JECFA identified margins of exposure (MOEs) for acrylamide of 300 for general consumers and 75 for high consumers. JECFA considers the MOE of 300 calculated for acrylamide to be low for a compound that is genotoxic and carcinogenic and concluded that the levels of acrylamide in food were of concern.

Under the sponsorship of the National Toxicology Program, FDA's National Center for Toxicological Research (NCTR) embarked in 2002 on a series of new toxicology assays for acrylamide. These studies were designed to address deficiencies in earlier carcinogenicity studies and to provide more reliable data on potential carcinogenic risk of acrylamide and other potential effects of acrylamide exposure. The work at NCTR includes long-term carcinogenicity bioassays of acrylamide and its metabolite glycidamide in mice and rats, as well as toxicokinetic, bioavailability, mutagenicity, and neurodevelopmental studies (Refs. 16 through 34). NCTR's work also includes the development of a physiologically based pharmacokinetic model for acrylamide and glycidamide (Refs. 19 and 34).

D. Reduction of Acrylamide Levels in Food

Since the discovery of acrylamide in food in 2002, the international research community has explored numerous strategies for reducing acrylamide levels in food products. This work is summarized in the scientific literature (e.g., Refs. 35 through 48), as well as in guidance materials prepared by industry, other governments, and international organizations. Notable guidance materials include the Acrylamide ''Toolbox'' produced by the Confederation of Food and Drink Industries of the European Union (CIAA) (Ref. 49), CIAA ''Toolbox'' brochures on selected foods for small- and medium-sized businesses (Refs. 50 through 54), the ''Review of Acrylamide Mitigation in Biscuits, Crackers and Crispbread'' produced by the Association of the Chocolate, Biscuits, and Confectionary Industries of the European Union (CAOBISCO) (Ref. 55), and ''Guidelines to Authorities and Consumer Organisations on Home Cooking and Consumption'' and ''Manual on strategies to food industries, restaurants, etc., to minimize acrylamide formation'' produced by the Heat-Generated Food Toxicants: Identification, Characterization and Risk Minimisation (HEATOX) Project (Refs. 56 and 57). The Codex Committee on Contaminants in Foods (CCCF) has also prepared a Code of Practice for the Reduction of Acrylamide in Foods (Ref. 58), with the U.S. Delegation to CCCF participating in preparation of the code of practice as co-lead of the document working group.

Research on acrylamide mitigation has focused on reducing acrylamide in potato products, cereal-grain-based products (e.g., baked goods), and coffee through interventions directed at raw materials, additional ingredients, and processing (Ref. 58). As a result of this research, effective mitigation measures have been identified for reducing acrylamide levels in some potato and cereal products; however, no proven mitigation measures have been devised for coffee (Refs. 49 and 58).

Potato products. For potato products, mitigation practices directed at raw materials focus on controlling reducing sugar levels, for example: (1) Selecting potato cultivars that are low in reducing sugars, (2) checking sugar levels of incoming potato lots using chemical analysis or fry testing, (3) storing potatoes above 6 °C (43 °F) to avoid low-temperature sweetening, (4) using reconditioning to lower sugar levels in stored potatoes, and (5) avoiding use of immature potatoes, which have higher sugar levels. Other mitigation practices for potato products address additional ingredients, including using the enzyme asparaginase to reduce levels of the acrylamide precursor asparagine, partially substituting potato ingredients with nonpotato ingredients, and formulating recipes to include ingredients such as sodium pyrophosphate and calcium salts (Refs. 49 and 58). Finally, acrylamide mitigation practices for potato products also address processing steps. For French fries, such practices include: (1) Washing or blanching (with or without added ingredients such as sodium pyrophosphate and cation salts), (2) cutting thicker potato pieces, (3) removing fines (fine pieces of potato), (4) setting fryer temperature no higher than 175 °C (347 °F), and (5) cooking fries to a golden yellow color rather than a golden brown color. For potato chips, such practices include: (1) Optimizing time and temperature cooking conditions, (2) cooking to a golden yellow color, (3) utilizing vacuum frying or flash frying with rapid cooling, and (4) using optical sorting to remove darker chips (Refs. 49 and 58).

Cereal grain products. In cereal-grain-based foods, strain selection and agronomic practices targeted at reducing asparagine levels in raw materials (such as ensuring adequate sulfur fertilization) show potential to reduce acrylamide (Refs. 49 and 58). Mitigation measures directed at additional ingredients include use of asparaginase to deplete asparagine and partial substitution of higher-asparagine flours (e.g., wheat, rye) with lower-asparagine flours (e.g., rice). Substitution of whole-grain flours with highly processed flours can also reduce acrylamide, but use of highly processed flours does not provide the nutritional benefits associated with whole-grain flours. Other ingredient-directed measures that may reduce acrylamide in baked goods include substitution of ammonium-based raising agents with potassium- and sodium-based raising agents, avoidance of reducing sugars during baking, addition of calcium salts, and modification of the use of minor ingredients (e.g., spices) and rework (Refs. 49 and 58). Processing changes shown to decrease acrylamide in cereal-based foods include adjusting the time-temperature profile of baking processes, extending dough fermentation times, controlling final moisture content, and not over-baking or over-toasting foods (Refs. 49 and 58).

E. Levels of Acrylamide in Food

Measured acrylamide levels in food are summarized in multiple databases, publications, and evaluations (e.g., Refs. 4, 12, 13, and 59). Levels of acrylamide in food vary widely, from undetectable amounts in some cereal grain- and potato-based products (e.g., untoasted bread and mashed potatoes) to more than 5000 µg/kg in a cereal grain product (e.g., grain-based coffee substitute) (Refs. 12 and 13). Acrylamide levels also can vary widely within individual food types (e.g., Ref. 12). For example, in data collected by FDA, levels of acrylamide in potato chips varied from nearly 120 µg/kg to over 1200 µg/kg (Ref. 12). There may also be considerable variation within different lots of the same product due to variation in raw materials and processing conditions. Despite the wide range of acrylamide levels for a given food, the availability of proven mitigation practices (Refs. 49 through 58) suggests that it may be feasible to recommend, for some foods, levels for acrylamide that all manufacturers should be capable of achieving.

II. Request for Comments and for Scientific Data and Information

FDA is seeking additional scientific data and information on (1) methods for

reducing acrylamide levels in food and (2) reductions that manufacturers have been able to achieve in acrylamide levels. Accordingly, FDA invites all interested parties to submit comments and scientific data and information on the topics identified. FDA is also seeking specific data and other information on the following questions:

A. Methods for Reducing Acrylamide Levels in Food

1. Are you (manufacturers) currently taking any steps to reduce acrylamide levels in your food products? If yes, what methods are you using? Please list mitigation methods by food type (e.g., potato chip) and, where possible, by product line (e.g., potato chip line one). It is not necessary to identify product line by brand name. Please provide as many details as possible, including being specific about changes to methods, e.g., identify new and previous frying temperatures rather than simply indicating that the frying temperature was lowered.

2. Which methods, if any, have not proved successful or cost-effective for reducing acrylamide in your products? Please identify food types and/or product lines for which particular methods have not proved successful or cost-effective. Where possible, identify the reasons these methods have not proved successful or cost-effective.

3. What changes in ingredients (e.g., addition of cation salts, amino acids, or spices; blanching with sodium pyrophosphate; substitution of grains or sugars; replacement of ammonium bicarbonate) have proved effective and feasible in lowering acrylamide levels in your products? Please provide specific details about product types and manufacturing process changes.

4. Do you use asparaginase to lower acrylamide levels in any of your products? If so, in which of your products has asparaginase proved effective and feasible in lowering acrylamide levels? Please provide specific details about product types and manufacturing process changes.

5. What changes in precooking parameters (e.g., blanching, fermentation) and cooking parameters (e.g., time and temperature of cooking, final moisture content) have proved effective and feasible in lowering acrylamide levels in your products? Please provide specific details about product types and manufacturing process changes. Are techniques such as flash frying and vacuum frying feasible methods of acrylamide reduction?

6. What mitigation methods might be more or less appropriate for small manufacturers? Please provide a rationale for your response.

7. Do you monitor acrylamide formation and reduction? If yes, what endpoint (e.g., browning, measurement of acrylamide levels) do you use?

8. What are standard practices in the United States for delivery, storage, temperature control, reconditioning, and screening (e.g., by fry testing) of potatoes? What potato cultivars in the United States are appropriate for production of French fries, potato chips, and other potato-based snacks? What cultivars are not acceptable for producing these products and/or roasting or frying potatoes at home? Is it appropriate to specify an acceptable level of reducing sugars in incoming lots of potatoes and, if so, what level is appropriate?

9. What changes have you made, if any, to the instructions on food packaging to reduce acrylamide formation during final preparation of food products by consumers?

10. Aside from changes to the instructions on food packaging, are there other steps that manufacturers can take to help consumers reduce acrylamide in food, such as labeling in-store potatoes for appropriate use?

11. Are there other important sources of information on reducing acrylamide levels in food that FDA has not identified in this document? If yes, please identify such sources.

12. Are there any other sources of information about proposed acrylamide mitigation techniques (particularly as applied to U.S. products) that might be more useful or accurate than the information described in this document?

B. Levels of Acrylamide in Food

Among the information that would be helpful to FDA in potentially recommending levels for acrylamide in food is data on reductions achieved by manufacturers using mitigation techniques. Some information on acrylamide levels can be found in existing databases and publications (Refs. 4, 12, 13, and 59), but these databases may reflect, at least in part, acrylamide levels before mitigation measures were applied. Data from more targeted or ongoing sampling plans (e.g., Refs. 60 through 64) and from legal settlements (Ref. 65) may also be useful sources of information on acrylamide levels in food, although some of this information may be limited in scope or applicable primarily to European products.

1. What acrylamide levels have you observed before and after applying mitigation practices? Please break down your data by food type (e.g., potato chip) and, where possible, by product line (e.g., potato chip line one). It is not necessary to identify a product line by brand name. Please include, if possible, measurements of acrylamide levels in individual samples, as well as statistical endpoints (e.g., means, medians, standard deviations). Finally, please identify the acrylamide mitigation measures you used to achieve these reductions.

2. Do you anticipate being able to achieve further reductions by applying different or additional approaches? If yes, please identify the approaches. If no, please explain what limits your ability to further reduce the levels of acrylamide in particular products.

3. What factors, if any, have affected your ability to consistently achieve certain levels of acrylamide or certain percentage reductions?

4. For what food types, if any, would it be appropriate to recommend levels for acrylamide? Please provide an explanation of your response.

5. What reduced acrylamide levels should manufacturers be able to achieve for the following foods: French fries, potato chips, breakfast cereals, coffee, and cookies and other baked goods? What reduced acrylamide levels should manufacturers be able to achieve for other potato- or corn-based snacks?

6. What additional factors, if any, should FDA consider if it recommends levels for acrylamide in foods?

7. Are there important sources of information that FDA has not identified in this document on levels of acrylamide in food and reductions in acrylamide levels achieved by manufacturers? If yes, please identify such sources.

8. Are there any other sources of information about attainable levels of acrylamide in food that might be more useful or accurate than the information described in this notice?

C. Comments

Interested parties may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

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Dated: August 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20495 Filed 8–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0789]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Program Effectiveness Evaluation of Workplace Intervention for Intimate Partner Violence (IPV)—[OMB# 0920–0789] [expiration date 12/31/09]—Extension—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Intimate partner violence (IPV) affects a substantial number of Americans, and there has recently been increasing recognition of the impact it has on the workplace. In addition to direct impacts (batterers often stalk or even attack IPV victims at their place of work), IPV has indirect impacts on the workplace environment through lost productivity due to medical leave, absenteeism, and fear and distraction on the part of victims and coworkers. The Centers for Disease Control and Prevention (CDC) contracted with RTI International (RTI) to evaluate an ongoing workplace IPV prevention program being implemented at a national corporation. The purpose of the proposed evaluation is to document in detail the workplace IPV prevention activities delivered by the company, to determine the impact of these activities on short-term and long-term outcomes, and to determine the cost-effectiveness of the program. All managers at the corporate office of the corporation have been screened to assess training experiences. More in-depth surveys were conducted with managers who had not completed the corporation's IPV training. Approximately 200 managers have been surveyed at baseline, and 6 months later. Manager surveys focus on knowledge/awareness of IPV and company resources for IPV and number of referrals for IPV assistance. This extension is requested to cover the 12-month follow-up administration of this survey. Due to unexpected delays at the evaluation site and an inability to field the 6-month follow up survey with managers when originally scheduled, the project will need to be continued an additional 3 months.

Employees (N = 400) of those managers who completed the baseline survey using an anonymous web-based survey at baseline have been surveyed. These employees will also be surveyed 12 months later (during the reinstatement period) to assess their self-evaluated productivity, absenteeism, and perceptions of manager behavior. Responses of managers (and their employees) who received the IPV training in the study period (*i.e.,* sometime between the baseline and 12 month surveys) with untrained managers will be compared. The study will provide CDC and employers information about the potential effectiveness and cost-effectiveness of workplace IPV intervention strategies.

There are no costs to respondents except their time to participate in the interview.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Employee	400	1	30/60	200
Manager	200	2	30/60	200
Total				400

Dated: August 19, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–20578 Filed 8–25–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Grant Application Data Summary (GADS) Form.

OMB No.: 0970–0328.

Description: The Grant Application Data Summary (GADS) form collects information from applicants seeking grants from the Administration for Native Americans (ANA). Applicants complete the GADS form as part of their funding package. This standardized format allows ANA to evaluate applications for financial assistance and to determine the relative focus of the projects for which such assistance is requested. The data collected focuses on the specific ANA program area for which the applicant is applying. ANA awards annual grants in the following nine competitive areas: (1) Social & Economic Develop Strategies (SEDS); (2) Alaska SEDS; (3) Special Initiative: Family Preservation: Improving the Well-Being of Children Planning; (4) Special Initiative: Family Preservation: Improving the Well-Being of Children Implementation; (5) Native Language Preservation & Maintenance Assessment; (6) Native Language Preservation & Maintenance Planning; (7) Native Language Preservation & Maintenance Implementation; (8) Native Language Preservation & Maintenance Immersion; (9) Environmental Regulatory Enhancement.

Respondents: Federally Recognized Indian Tribes, Tribal Governments, Native American Non-profits, Tribal Colleges and Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grant Application Data Summary (GADS)	500	1	0.50	250

Estimated Total Annual Burden Hours: 250

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: August 21, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–20547 Filed 8–25–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Summary Data Component, National Child Abuse and Neglect Data System (NCANDS).

OMB No.: 0980–0229.

Description: The Child Abuse and Neglect Treatment Act (42 U.S.C. 5101 *et seq.*) as amended requires States to annually work with the Secretary to provide to the maximum extent practical, a report that includes 12 data items listed in the statute. The National Child Abuse and Neglect Data System (NCANDS), administered by the Children's Bureau, meets this reporting requirement. In addition, the amendments of 1988 require that the data system shall be universal and case specific and integrated with other case-based foster care and adoption data collected by the Secretary. There are two data components, the Detailed Case Data Component (DCDC), which includes the case-level data submitted through the Child File and some aggregated data submitted through the Agency File, and the Summary Data component (SC), which is used by States that cannot submit case-level data. No changes are being requested. The Summary Data Component will be phased out over the next few years as the number of States that can complete the Child File increases.

Respondents: State Child Welfare Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child File	50	1	80	4,000
Agency File	50	1	24	1,200
Summary Data Component (SDC)	2	1	32	64

Estimated Total Annual Burden Hours: 5,264.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project. *Fax:* 202–395–7245. *Attn:* Desk Officer for the Administration for Children and Families.

Dated: August 21, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–20546 Filed 8–25–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0383]

Request for Notification From Industry Organizations Interested in Participating in the Selection Process for a Nonvoting Industry Representative on the Tobacco Products Scientific Advisory Committee and Request for Nominations for a Nonvoting Industry Representative on the Tobacco Products Scientific Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on its Tobacco Products Scientific Advisory Committee notify FDA in writing. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice. Elsewhere in this issue of the **Federal Register**, FDA is publishing two separate documents announcing the establishment of the committee and the request for nomination of the Tobacco Products Scientific Advisory Committee.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating the interest to FDA by September 25, 2009, for vacancies listed in the notice. Concurrently, nomination material for

prospective candidates should be sent to FDA by September 25, 2009.

ADDRESSES: All nominations for membership should be sent electronically to *cv@oc.fda.gov*, or by mail to Advisory Committee Oversight & Management Staff, 5600 Fishers Lane (HF–4), rm. 14C03, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Erik P. Mettler, Office of Policy, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 4324, Silver Spring, MD 20993, 301–796–4711, FAX: 301–847–3541, e-mail: *erik.mettler@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The agency requests nominations for nonvoting industry representatives on the Tobacco Products Scientific Advisory Committee. Elsewhere in this issue of the **Federal Register**, FDA is publishing two separate documents announcing the establishment of the committee and the request for nomination of the Tobacco Products Scientific Advisory Committee.

I. Center for Tobacco

Tobacco Products Scientific Advisory Committee

The Tobacco Products Scientific Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to the regulation of tobacco products. The Committee reviews and evaluates safety, dependence, and health issues relating to tobacco products and provides appropriate advice, information, and recommendations to the Commissioner of Food and Drugs.

The Committee shall include three nonvoting members who are identified with industry interests. These members shall include one representative of the tobacco manufacturing industry, one representative of the interests of tobacco growers, and one representative of the interests of the small business tobacco manufacturing industry. This final position can be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Committee.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document. Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the Tobacco Products Scientific Advisory Committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner of Food and Drugs will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. A current curriculum vitae and the name of the committee of interest should be sent to the FDA contact person within the 30 days. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees, and therefore, encourages, nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 19, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20483 Filed 8–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Industry Exchange Workshop on Food and Drug Administration Drug and Device Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Philadelphia District, in cosponsorship with the Society of Clinical Research Associates (SoCRA) is announcing a public workshop entitled: ''FDA Clinical Trial Requirements, Regulations, Compliance and GCP.'' This 2-day public workshop is intended to provide information about FDA clinical trial requirements to the regulated industry.

Date and Time: The public workshop will be held on October 21, 2009, from 8:30 a.m. to 5 p.m. and October 22, 2009, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Hyatt Regency Pittsburgh International Airport, 1111 Airport Blvd., Pittsburgh, PA 15231, 724–899–1234 or 1–800–233–1234.

Attendees are responsible for their own accommodations. To make reservations at the Hyatt Regency Hotel, contact the Hyatt Regency Hotel.

Contact: Marie Falcone, Food and Drug Administration, U.S. Customhouse, 200 Chestnut St., rm. 900, Philadelphia, PA 19106, 215–717–3703, FAX: 215–597–4660, e-mail: *marie.falcone@fda.hhs.gov*.

Registration: You are encouraged to register by October 19, 2009. The SoCRA registration fees cover the cost of facilities, materials, and breaks. Seats are limited; please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted in to the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration is as follows:

COST OF REGISTRATION

Affiliation	Fee
FDA Employee	Fee Waived
Government (Non-Member)	$525.00

COST OF REGISTRATION—Continued

Affiliation	Fee
Non-Government (SoCRA Member)	$575.00
Non-Government (Non SoCRA Member)	$650.00

If you need special accommodations due to a disability, please contact Marie Falcone (see *Contact*) at least 7 days in advance of the workshop.

Registration Instructions: To register, please submit a registration form with your name, affiliation, mailing address, telephone, fax number, and e-mail address, along with a check or money order payable to ''Socra.'' Mail to: SoCRA, 530 West Butler Ave., suite 109, Chalfont, PA 18914. To register via the Internet, go to *http://www.socra.org/html/FDA_Conference.htm*. FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).The registrar will also accept payment by major credit cards (VISA/MasterCard/AMEX only). For more information on the public workshop, or for questions on registration, contact the Society of Clinical Research Associates at 800–762–7292 or 215–822–8644, FAX: 215–822–8633, or e-mail: *SoCRAmail@aol.com*.

SUPPLEMENTARY INFORMATION: The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The workshop will provide those engaged in FDA-regulated (human) clinical trials with information on a number of topics concerning FDA requirements related to informed consent, clinical investigation requirements, institutional review board (IRB) inspections, electronic record requirements, and investigator initiated research. Topics for discussion include the following:

- What FDA Expects in a Pharmaceutical Clinical Trial;
- Adverse Event Reporting—Science, Regulation, Error, and Safety;
- Part 11 Compliance—Electronic Signatures;
- Informed Consent Regulations;
- IRB Regulations and FDA Inspections;
- Keeping Informed and Working Together;
- FDA Conduct of Clinical Investigator Inspections;
- Meetings With FDA: Why, When, and How;
- Investigator Initiated Research;
- Medical Device Aspects of Clinical Research;
- Working With FDA's Center for Biologics Evaluation and Research; and
- The Inspection is Over—What Happens Next? Possible FDA Compliance Actions.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The public workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The public workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by Government agencies to small businesses.

Dated: August 18, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20340 Filed 8–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Public Health Informatics (BSC, NCPHI)

Correction: The notice was published in the **Federal Register** on August 18, 2009 [Volume 74, Number 158] [page 41712]. The ''Matters To Be Discussed'' has been revised: The board will discuss public health informatics issues related to the H1N1 virus; CDC public health informatics strategies and goals, including future program activities; and how the board can provide informatics scientific input to CDC.

Contact Person for More Information: Dr. Scott McNabb, National Center for Public Health Informatics, CDC, 1600 Clifton Road, NE., Mailstop E–78, Atlanta, Georgia 30333, Telephone (404) 498–6427, Fax (404) 498–6235.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substance and Disease Registry.

Dated: August 18, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–20575 Filed 8–25–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine Announcement of Wellness Workshop

ACTION: Notice.

SUMMARY: The National Center for Complementary and Alternative Medicine (NCCAM) invites the research community to participate in a workshop focused on wellness.

The purpose of this workshop is to review several measures of wellness, identify their strengths and weaknesses, and make recommendations on how best to capture the construct. This information will help NCCAM guide development of questions for the 2012 National Health Interview Survey.

The Workshop will take place on September 25, 2009. Those interested in CAM research are particularly encouraged to attend.

Background: The National Center for Complementary and Alternative Medicine (NCCAM) was established in 1999 with the mission of exploring complementary and alternative healing practices in the context of rigorous science, training CAM researchers, and disseminating authoritative information to the public and professionals. NCCAM funds research grants that explore the science of CAM. For more information, see *http://nccam.nih.gov/grants/whatnccamfunds/.*

Participating: The public is invited to attend and observe this workshop. Those interested in attending are required to RSVP via e-mail to Edward Culhane Jr. at *culhane@mail.nih.gov* with their name, affiliation, e-mail and phone number. Space constraints limit the number of attendees at this workshop and participation will be on a first come, first served basis. For more information about what will be covered at the workshop, *see http://nccam.nih.gov/news/events/.*

FOR FURTHER INFORMATION CONTACT: To request more information, visit the NCCAM Web site at *http://nccam.nih.gov/news/events/,* call 301–594–3391 (Edward Culhane Jr.) or e-mail at *culhanee@mail.nih.gov.*

Dated: August 12, 2009.

Richard Nahin,

Senior Advisor for Scientific Coordination and Outreach, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. E9–20309 Filed 8–25–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Office of Health Information Technology, Office for the Advancement of Telehealth

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of non-competitive supplemental funding to Center for Telehealth & E-Health Law.

SUMMARY: The Health Resources and Services Administration (HRSA) is issuing non-competitive supplemental funding under the Office of Health Information Technology, Office for the Advancement of Telehealth, Telehealth Resource Center Grant Program to ensure that the Center for Telehealth & E-Health Law, the National Telehealth Resource Center (NTRC) in Washington, DC, can continue to provide much needed technical assistance services to the Regional Telehealth Resource Centers (RTRCs), HRSA grantees and new and existing telehealth organizations in order to address legal and regulatory barriers to the effective implementation of telehealth technologies at the State and national level.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Center for Telehealth & E–Health Law.

Amount of the Non-Competitive Supplemental Funding: $225,000.

Project Period: The original project period for this grant is September 1, 2008, through August 31, 2009.

Period of Supplemental Support: September 1, 2009, through August 31, 2010.

Authority: This activity is under the authority of the Health Care Safety Net Amendments of 2002, section 330I(d)(2) of the Public Health Service Act as amended.

Catalogue of Federal Domestic Assistance Number: 93.211.

Background

The purpose of the National Telehealth Resource Center is to support the RTRCs and other relevant organizations by providing technical assistance to address the policy, legislative, and regulatory barriers that affect telehealth services at the national and State levels, to give guidance to new programs in the development and implementation of an effective sustainable telehealth program and serve as a resource for existing programs regarding changes in technology or other issues affecting telehealth in a State or region. The necessary requirements to serve as a NTRC involve the organization's ability to recognize critical policy, legislative, and regulatory barriers to the deployment of effective telehealth technologies. The NTRC should have a means to facilitate the transfer of knowledge between telehealth programs and others in the field. Additional requirements are the establishment of an effective plan to meet the demands for technical assistance, conduct on-going analysis of the market for its services and track evolving trends in the market. The NTRC has to address the following areas in relation to telemedicine and the exchange of health information across institutions: State and Federal regulations regarding privacy, security, reimbursement, licensure, Internet practice, telecommunications, technology safety, etc.

Justication for Non-Competitive Supplemental Funding

The Telehealth Resource Center Grant Program competition yielded 17 applicants requesting to serve as a Regional Telehealth Resource Center. HRSA received no applications for the National Telehealth Resource Center (NTRC). Since no organization applied to serve in the capacity as a NTRC, it is urgent that the Center for Telehealth & E–Health Law (CTeL) continue to provide its services until next year without disruption when HRSA can conduct a new competition for the provision of these services.

CTeL has served as the National Telehealth Resource Center since September 2006. Continued funding from HRSA will allow CTeL to continue convening telehealth leaders from around the nation to discuss key legal and regulatory issues facing the telehealth industry. CTeL will continue to monitor and analyze State and national legislation, such as reimbursement, licensure, privacy, security and confidentiality, Food and Drug Administration regulation, private credentialing and accreditation issues as well as telecommunications issues, changes in technology or any other barriers that affect the delivery of telehealth services. During the extension CTeL will continue assessing clients' needs to develop technical assistance products as well as a means for marketing these products, maintaining its Web site, providing technical assistance to new and existing telehealth organizations, implementing special projects that involve collaboration among the RTRCs, conducting quarterly roundtables with the RTRC's, planning and inviting the RTRCs to participate in the biannual collaboration meetings. CTeL will also ensure that the RTRC's are adequately represented at all telehealth conferences and events. CTeL will share its expertise in legal and regulatory issues at conferences, work shops and roundtables, including the OAT Annual Telehealth Workshop.

HRSA will hold another full and open competition for the National Telehealth Resource Center in 2010.

FOR FURTHER INFORMATION CONTACT: Dena S. Puskin, Sc.D., Director, or Monica Cowan, Public Health Analyst, Office for the Advancement of Telehealth, Office of Health Information Technology, Health Resources and Services Administration, Room 7C–26, 5600 Fishers Lane, Rockville, MD 20857; phone 301–443–3682 (Puskin) or 301–443–0076; e-mail *dpuskin@hrsa.gov* or *mcowan@hrsa.gov*.

Dated: July 16, 2009.

Mary K. Wakefield,

Administrator.

[FR Doc. E9–20518 Filed 8–25–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Privacy Act of 1974; Report of an Altered System of Records; Sanitation Facilities Construction Individual Applicant Records; System Number 09–17–0004

AGENCY: Department of Health and Human Services (HHS), Indian Health Service (IHS).

ACTION: Notice of an Altered System of Records (SOR).

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), the IHS has amended and is publishing the proposed alteration of a SOR, System No. 09–17–0004, ''Sanitation Facilities Construction Individual Applicant (SFCIA) Records.'' Under the provisions of the Indian Sanitation Facilities Act, Public Law 86–121 (42 U.S.C. 2004a), IHS is charged with carrying out the

functions to determine basic individual and home eligibility for sanitation services. The primary change to this SOR notice is to delete the reference to the Social Security Numbers (SSNs) under the Categories of Records; Retrievability; Notification; Record Access; and Contesting Record Procedures to comply with the Office of Management and Budget (OMB) Memorandum (M)07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information (May 22, 2007); and the HHS Directive Memorandum of October 6, 2008 to all Operating Division Heads to develop and execute a plan to eliminate the unnecessary collection and use of SSNs.

DATES: *Effective Dates:* IHS filed an altered system report with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, OMB on August 26, 2009. To ensure that all parties have adequate time in which to comment, the altered SOR will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless IHS receives comments on all portions of this notice.

ADDRESSES: The public should address comments to: Mr. William Tibbitts, IHS Privacy Act Officer, Division of Regulatory Affairs, Office of Management Services, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852–1627; call non-toll free (301) 443–1116; send via facsimile to (301) 443–9879, or send your e-mail requests, comments, and return address to: *William.Tibbitts@ihs.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald C. Ferguson, Director, Division of Sanitation Facilities Construction (DSFC), Office of Environmental Health and Engineering (OEHE), 801 Thompson Avenue, TMP, Suite 610, Rockville, MD 20852–1627, Telephone (301) 443–1046.

SUPPLEMENTARY INFORMATION: Under the provisions of 25 U.S.C. 1632, it is IHS policy that all Indian communities and Indian homes, new and existing, shall be provided with safe and adequate water supply systems and sanitary sewage waste disposal for preventive health measures.

Dated: August 13, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

Department of Health and Human Services
09–17–0004

SYSTEM NAME:

Indian Health Service Sanitation Facilities Construction Individual Applicant Records, HHS/IHS/OEHE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Each Indian Health Service (IHS) Area and local Sanitation Facilities Construction (SFC) office. (See Appendix 1).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting and/or receiving sanitation facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, home and/or mailing address, e-mail address, telephone phone number, Tribal roll/census number, request for service application to obtain sanitation facilities and all pertinent documents necessary to determine eligibility for such services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- Indian Sanitation Facilities Act, Public Law 86–121; 42 U.S.C. 2004a.
- Safe Water and Sanitary Waste Disposal Facilities, Public Law 94–437 Section 302; 25 U.S.C. 1632.
- Indian Lands Open Dump Cleanup, 25 U.S.C. 3901 *et seq*.
- Department Regulation, 5 U.S.C. 301.
- Privacy Act of 1974 as amended, 5 U.S.C. 552a.
- Federal Records Act, 44 U.S.C. 2901.
- Section 321 of the Public Health Service Act as amended, 42 U.S.C. 248, and
- Indian Health Care Improvement Act, 25 U.S.C. 1601 *et seq*.

Purpose(s): The purposes of this system of records are:

1. To determine basic individual and home eligibility for sanitation services provided by the SFC Program under Public Law 86–121.

2. Budget justification for appropriation and project development to serve eligible homes and persons with sanitation facilities.

3. To monitor, track and report status and progress of services provided.

4. To maintain records on and to verify individuals' eligibility for services.

5. To link with the IHS Resource and Patient Management System (RPMS) for purposes of verifying and determining individuals' eligibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

1. IHS may disclose records to a congressional office in response to a verified inquiry from the Congressional office made at the written request of the subject individual.

2. IHS may disclose records to other Federal agencies or Tribes that provide funding for or are involved in providing sanitation facilities to individuals or communities. In addition, records may be disclosed to individuals specifically involved in the process of providing sanitation facilities, including but not limited to Tribal officials, Tribal housing authorities, Tribal utilities, contractors, State and local entities and consultants.

3. IHS may disclose information from these records in litigations and/or proceedings related to an administrative claim when:

(a) IHS has determined that the use of such records is relevant and necessary to the litigation and/or proceedings related to an administrative claim and would help in the effective representation of the affected party listed in subsections (i) through (iv) below, and that such disclosure is compatible with the purpose for which the records were collected. Such disclosure may be made to the Department of Justice (DOJ) when any of the following is a party to litigation and/or proceedings related to an administrative claim or has an interest in the litigation and/or proceedings related to an administrative claim:

(i) HHS or any component thereof; or

(ii) Any HHS employee in his or her official capacity; or

(iii) Any HHS employee in his or her individual capacity where the DOJ (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(iv) The United States or any agency thereof (other than HHS) where HHS/OGC has determined that the litigation and/or proceedings related to an administrative claim is likely to affect HHS or any of its components.

(b) In the litigation and/or proceedings related to an administrative claim described in subsection (a) above, information from these records may be disclosed to a court or other tribunal, or to another party before such tribunal

when such records are relevant and necessary to the litigation and such use by the court, tribunal, or other party is compatible with the purpose for which the agency collected the records.

4. In the event that a SOR maintained by the IHS to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the SOR may be referred to the appropriate agency, whether Federal, state, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

5. IHS may disclose records contained in this system of records to HHS contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain Privacy Act safeguards with respect to such records.

6. IHS may disclose records contained in this system of records to other Federal or Tribal entities that provide sanitation facilities at the request of these entities in conjunction with a computer-matching program conducted by these entities to detect or curtail fraud and abuse in similar types of program services.

7. To appropriate Federal agencies and Departmental contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this SOR, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in folders and/or ledgers. Electronic records are stored on computer servers.

RETRIEVABILITY:

Records, which identify individual persons, are indexed by name; address, phone number; Tribal/Census ID or SFC identification numbers.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the record system in performance of their official duties. Paper records are stored in locked standard file cabinets. Electronic records are stored on servers and access or updates to information require a system password, thereby preserving the integrity of the data. All IHS personnel who make use of records contained in this system are made aware of their responsibilities under the provisions of the Privacy Act and are required to maintain Privacy Act safeguards with respect to such records.

RETENTION AND DISPOSAL:

For individuals who receive IHS sanitation facility services, the proposed IHS Records Disposition Authority (Schedule 3, Section 11, Item No. 11–11a) states the following: Transfer to the Federal Records Center (FRC) when administrative value ends, or after 10 years of inactivity, whichever is sooner. Destroy 20 years after retirement to FRC.

For individuals who do not receive IHS sanitation facility services, the proposed IHS Records Disposition Authority (Schedule 3, Section 11, Item No. 11–11b) states the following: Transfer to the FRC when administrative value ends, or after 10 years of inactivity, whichever is sooner. Destroy 20 years after retirement to the FRC.

SYSTEM MANAGERS AND ADDRESSES:

See Appendix 1.

Policy Coordinating Official: Director, DSFC, OEHE, IHS, 801 Thompson Avenue, TMP, Suite 610, Rockville, Maryland 20852. The IHS Area Office SFC Director or designee is the System Manager for all SFC offices located within their respective IHS Area. Each SFC Office Manager is the System Manager for the respective local IHS SFC office within an Area and is the point of contact for written request(s) from the individual of the record. The local IHS SFC Office Manager will process the written request by locating all or parts of the records stored either physically or electronically.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, make a written request to the IHS Area SFC Director, local IHS SFC Office Manager or designee at the appropriate location. A list of all locations is provided in Appendix 1.

Individuals must provide their full name, current address and telephone number, Tribal/census ID and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should make a written request to the IHS Area SFC Director, local IHS SFC Office Manager or designee at the appropriate location. A list of all locations is provided in Appendix 1.

Individuals must provide their full name, current address and telephone number, Tribal/Census ID and signature.

CONTESTING RECORD PROCEDURES:

Make a written request to the IHS Area SFC Director, local IHS SFC Office Manager or designee at the appropriate location. A list of all locations is provided in Appendix 1.

Individuals must provide their full name, current address and telephone number, Tribal/census ID and signature.

Provide a reasonable description of the record, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information will be collected from the following sources:

- From the individual and/or a by individual's family member or designated representative.
- RPMS.
- Tribal entities.
- Tribal housing authorities.
- Tribal utilities.
- Other Federal agencies, including but not limited to the Bureau of Indian Affairs, state or local governments or non-governmental entities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1: System Managers and IHS locations under their Jurisdiction Where Records are Maintained.

Director, Aberdeen Area IHS; Attention: Division of Sanitation Facilities Construction, 115 4th Avenue, SE., Aberdeen, South Dakota 57401.

Director, Belcourt Hospital IHS; Attention: Sanitation Facilities Construction, P.O. Box 160, Belcourt, North Dakota 58316.

Director, Martin Field Office IHS; Attention: Sanitation Facilities Construction, P.O. Box F, Martin, South Dakota 57551.

Director, Minot Field Office IHS; Attention: Sanitation Facilities Construction, Federal Building, Room 302, Minot, North Dakota 58701.

Director, Mobridge Field Office IHS; Attention: Sanitation Facilities Construction, P.O. Box 159, Mobridge, South Dakota 57601.

Director, Pierre Field Office IHS; Attention: Sanitation Facilities Construction, 420 South Garfield, Suite 200, Pierre, South Dakota 57501.

Director, Rosebud Hospital IHS; Attention: Sanitation Facilities Construction, P.O. Box 400, Rosebud, South Dakota 57570.

Director, Sioux City Field Office IHS; Attention: Sanitation Facilities Construction, 6th and Douglas, Room 207, Box 19, Sioux City, Iowa 51101.

Director, Alaska Area Native Health Service; OEHE—Division of Sanitation Facilities Construction, 4141 Ambassador Drive, Suite 300, Anchorage, Alaska 99508.

Director, Albuquerque Area IHS; Attention: Sanitation Facilities Construction, 5300 Homestead Road, NE., Albuquerque, New Mexico 87110.

Director, Albuquerque Service Unit IHS; Attention: Sanitation Facilities Construction, 801 Vassar Drive, NE., Albuquerque, New Mexico 87106.

Director, Santa Fe Service Unit IHS; Attention: Sanitation Facilities Construction, 1700 Cerrillos Road, Santa Fe, New Mexico 87505.

Director, Southern Ute Service Unit IHS; Attention: Sanitation Facilities Construction, 322 Buckskin Charlie, Ignacio, Colorado 81137.

Director, Bemidji Area IHS; Attention: Sanitation Facilities Construction, 522 Minnesota Avenue, NW., Room 216, Bemidji, Minnesota 56601.

Director, Ashland Field Office IHS; Attention: Sanitation Facilities Construction, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806.

Director, Minnesota District Office IHS; Attention: Sanitation Facilities Construction, 522 Minnesota Avenue, NW., Room 216, Bemidji, Minnesota 56601.

Director, Rhinelander District Office IHS; Attention: Sanitation Facilities Construction, 9A South Brown Street, Rhinelander, Wisconsin 54501.

Director, Sault St. Marie Field Office IHS; Attention: Sanitation Facilities Construction, 2847 Ashmun Street, Suite 1, Sault Ste. Marie, Minnesota 49783.

Director, Billings Area IHS; Attention: Sanitation Facilities Construction, 2900 4th Avenue North, Box 36600, Billings, Montana 59107.

Director, PHS Indian Hospital; Attention: Sanitation Facilities Construction, P.O. Box 760, Browning, Montana 59417.

Director, Crow Agency PHS Indian Hospital; Attention: Sanitation Facilities Construction, P.O. Box 9, Crow Agency, Montana 59022.

Director, Wind River Service Unit IHS; Attention: Sanitation Facilities Construction, #76 Black Cole Drive, Box 128, Fort Washakie, Wyoming 82514.

Director, Harlem PHS Indian Hospital; Attention: Sanitation Facilities Construction, RR1, Box 67, Harlem, Montana 59526.

Director, Lame Deer PHS Indian Health Center; Attention: Sanitation Facilities Construction, Lame Deer, Montana 59043.

Director, Wolf Point PHS Indian Health Center; Attention: Sanitation Facilities Construction, Chief Redstone Health Center, #729, Wolf Point, Montana 59201.

Director, California Area IHS; Attention: Division of Sanitation Facilities Construction, 650 Capitol Mall, Suite 7–100, Sacramento, California 95814.

Director, Arcata Field Office, IHS; Attention: Sanitation Facilities Construction, 1125 16th Street, Suite 100, Arcata, California 95521.

Director, Escondido District Office IHS; Attention: Sanitation Facilities Construction, 1320 West Valley Parkway, Suite 309, Escondido, California 92029.

Director, Fresno Field Office IHS; Attention: Sanitation Facilities Construction, 1551 East Shaw Avenue, Suite 117B, Fresno, California 93710.

Director, Redding District Office IHS; Attention: Sanitation Facilities Construction, 1900 Churn Creek Road, Suite 210, Redding, California 96002.

Director, Ukiah Field Office IHS; Attention: Sanitation Facilities Construction, 609 South State Street, Suite A, Ukiah, California 95482.

Director, Nashville Area IHS; Attention: Division of Sanitation Facilities Construction, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214–2634.

Director, Atmore Field Office IHS; Attention: Sanitation Facilities Construction, 5811 Jack Springs Road, Atmore, Alabama 46502.

Director, Bangor Field Office IHS; Attention: Sanitation Facilities Construction, 304 Hancock Street, #3H, Bangor, Maine 04401–6573.

Director, Opelousas Field Office IHS; Attention: Sanitation Facilities Construction, 2341 Larkspur Lane, Suite 2, Opelousas, Louisiana 70570.

Director, Manlius Field Office; Attention: Sanitation Facilities Construction, 122 East Seneca Street, Manlius, New York 13104.

Director, Navajo Area IHS; Attention: Director, Division of Sanitation Facilities Construction, P.O. Box 9020 (Physical Address: Hwy 264 & St. Michael Road), Window Rock, Arizona 86515.

Director, Crownpoint Health Care Facility; Attention: Sanitation Facilities Construction, P.O. Box 680, Crownpoint, New Mexico 87313.

Director, Farmington Field Office IHS; Attention: Sanitation Facilities Construction, 300 West Arrington, Suite 121, Farmington, New Mexico 87401.

Director, Flagstaff Field Office IHS; Attention: Sanitation Facilities Construction, P.O. Box KK, Flagstaff, Arizona 86002.

Director, Fort Defiance Indian Hospital; Attention: Sanitation Facilities Support Center, P.O. Box 648, Fort Defiance, Arizona 86504.

Director, Gallup Indian Medical Center IHS; Attention: Sanitation Facilities Construction, 3412 East Highway 66, Gallup, New Mexico 87301.

Director, Kayenta Indian Health Center; Attention: Sanitation Facilities Construction, P.O. Box 368, Kayenta, Arizona 86033.

Director, Many Farms Field Office IHS; Attention: Sanitation Facilities Construction, P.O. Box 694, Many Farms, Arizona 86538.

Director, Northern Navajo Medical Center IHS; Attention: Sanitation Facilities Construction, P.O. Box 160, Shiprock, New Mexico 87420.

Director, Tuba City Regional Health Care Center; Attention: Sanitation Facilities Construction, P.O. Box 600, Tuba City, Arizona 86045.

Director, Winslow Indian Health Care Center; Attention: Sanitation Facilities Construction, 500 N. Indiana Avenue, Winslow, Arizona 86047.

Director, Oklahoma City Area IHS; Attention: Director, Division of Sanitation Facilities Construction, Five Corporate Plaza, 3625 NW. 56th Street, Oklahoma City, Oklahoma 73112.

Director, Clinton Field Office IHS; Attention: Sanitation Facilities Construction, Route 1, Box 3060, Clinton, Oklahoma 73601.

Director, Holton Field Office IHS; Attention: Sanitation Facilities Construction, 324 New York Avenue, Holton, Kansas 66436.

Director, Lawton Indian Hospital IHS; Attention: Sanitation Facilities Construction, 1515 Lawrie Tatum Road, Lawton, Oklahoma 73507.

Director, Miami Field Office IHS; Attention: Sanitation Facilities Construction, P.O. Box 1498, Miami, Oklahoma 74354.

Director, Okmulgee Field Office IHS; Attention: Sanitation Facilities Construction, P.O. Box 67, Okmulgee, Oklahoma 74447.

Director, Pawnee Field Office IHS; Attention: Sanitation Facilities Construction, 1201 Heritage Circle, Pawnee, Oklahoma 74058.

Director, Shawnee Field Office IHS; Attention: Sanitation Facilities Construction, 14106 Highway 177, Shawnee, Oklahoma 74804.

Director, Phoenix Area IHS; Attention: Director, Division of

Sanitation Facilities Construction, Two Renaissance Square, Suite 720, 40 North Central Avenue, Phoenix, Arizona 85004–4424.

Director, Elko Field Office IHS; Attention: Sanitation Facilities Construction, 557 W. Silver Street, Suite 204, Elko, Nevada 89801.

Director, Fort Duchesne Indian Health Center; Attention: Sanitation Facilities Construction, P.O. Box 489, Fort Duchesne, Utah 84026.

Director, Eastern Arizona District Office IHS; Attention: Sanitation Facilities Construction, 5448 S. White Mountain Road, Suite 220, Lakeside, Arizona 85929.

Director, Hopi Health Care Center; Attention: Sanitation Facilities Construction, P.O. Box 4000, Polacca, Arizona 86042

Director, San Carlos PHS Indian Hospital; Attention: Sanitation Facilities Construction, P.O. Box 208, San Carlos, Arizona 85550.

Director, Reno District Office IHS; Attention: Sanitation Facilities Construction, 1395 Greg Street, Suite 101, Sparks, Nevada 89431.

Director, Western Arizona District Office IHS; Attention: Sanitation Facilities Construction, 1553 West Todd Drive, Suite 107, Tempe, Arizona 85283.

Director, Whiteriver PHS Indian Hospital; Attention: Sanitation Facilities Construction, P.O. Box 860, Whiteriver, Arizona 85941.

Director, Fort Yuma PHS Indian Hospital; Attention: Sanitation Facilities Construction, P.O. Box 1368, Yuma, Arizona 85364.

Director, Portland Area IHS; Attention: Director, Division of Sanitation Facilities Construction, 1220 SW. Third Avenue, Room 476, Portland, Oregon 97204.

Director, Olympic District Office IHS; Attention: Sanitation Facilities Construction, 4060 Wheaton Way, Suite B, Bremerton, Washington 98310.

Director, Fort Hall Field Office IHS; Attention: Sanitation Facilities Construction, P.O. Box 717, Mission Road, Fort Hall, Idaho 83203.

Director, Port Angeles Field Office IHS; Attention: Sanitation Facilities Construction, 1601 East Front Street, Building B, Suite C, Port Angeles, Washington 98362.

Director, Western Oregon Service Unit IHS; Attention: Sanitation Facilities Construction, 3750 Chemawa Road, NE., Salem, Oregon 97305.

Director, Seattle District Office IHS; Attention: Sanitation Facilities Construction, 2201 Sixth Avenue, Room 300, Seattle, Washington 98121.

Director, Spokane District Office IHS; Attention: Sanitation Facilities Construction, 1919 E. Francis Avenue, Spokane, Washington 99208.

Director, Tucson Area IHS; Attention: Director, Division of Sanitation Facilities Construction, 7900 S.J. Stock Road, Tucson, Arizona 85746–7012.

Director, Western District Office IHS; Attention: Sanitation Facilities Construction, 2250 North Final Avenue, Suite 4, Casa Grande, Arizona 85222.

Director, Sells Service Unit IHS; Attention: Sanitation Facilities Construction, P.O. Box 548, Mesquite Street, Sells, Arizona 85634.

[FR Doc. E9–20410 Filed 8–25–09; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0394]

Request for Nominations for Voting Members on a Public Advisory Committee; Tobacco Products Scientific Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Tobacco Products Scientific Advisory Committee (the committee) in the Office of Science, Center for Tobacco Products. Elsewhere in this issue of the **Federal Register**, FDA is publishing a document announcing the establishment of this committee.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations received on or before October 13, 2009, will be given first consideration for membership on the Tobacco Products Scientific Advisory Committee. Nominations received after October 13, 2009, will be considered for nomination to the Tobacco Products Scientific Advisory Committee should nominees still be needed.

ADDRESSES: All letters of interest and nominations should be submitted in writing to Erik P. Mettler (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Erik P. Mettler, Office of Policy, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., WO1, rm. 4324, Silver Spring, MD 20993, 301–796–4711, FAX: 301–847–3541, e-mail: *erik.mettler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on the Tobacco Products Scientific Advisory Committee. Elsewhere in this issue of the **Federal Register**, FDA is publishing a Request for Notification from Industry Organizations interested in participating in the selection process for nonvoting industry representatives on the Tobacco Products Scientific Advisory Committee.

I. Function of the Tobacco Products Scientific Advisory Committee

The Tobacco Products Scientific Advisory Committee advises the Commissioner of Food and Drugs (the Commissioner) or designee in discharging responsibilities as they relate to the regulation of tobacco products. The committee reviews and evaluates safety, dependence, and health issues relating to tobacco products and provides appropriate advice, information, and recommendations to the Commissioner.

II. Criteria for Voting Members

The committee shall consist of 12 members including the Chair. Members and the Chair are selected by the Commissioner or designee from among individuals knowledgeable in the fields of medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products. Almost all non-Federal members of this committee serve as Special Government Employees. The committee shall include nine technically qualified voting members, selected by the Commissioner or designee. The nine voting members shall be physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty. One member shall be an officer or employee of a State or local government or of the Federal Government. The final voting member shall be a representative of the general public.

In addition to the voting members, the committee shall include three nonvoting members who are identified with industry interests. These members shall include one representative of the tobacco manufacturing industry, one representative of the interests of tobacco growers, and one representative of the interests of the small business tobacco manufacturing industry. This final position can be filled on a rotating, sequential basis by representatives of

different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the committee. Elsewhere in this issue of the **Federal Register**, FDA is publishing a Request for Notification from Industry Organizations interested in participating in the selection process for nonvoting industry representatives on the Tobacco Products Scientific Advisory Committee.

The Commissioner or designee shall designate one of the voting members of the committee to serve as chairperson.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the advisory committee. Self-nominations are also accepted. Nominations must include a current resume or curriculum vitae of each nominee, including current business address and/or home address, telephone number, and e-mail address if available. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask the potential candidates to provide detailed information concerning matters related to financial holdings, employment, and research grants and/or contracts.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 19, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20487 Filed 8–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0737]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting; request for applications.

SUMMARY: The Coast Guard announces the Great Lakes Pilotage Advisory Committee (GLPAC) 2009 annual meeting and seeks applications to fill one vacancy on the GLPAC. GLPAC provides advice and recommendations to the Secretary on issues related to pilotage on the Great Lakes. GLPAC's meeting will be open to the public.

DATES: GLPAC will meet on Monday, September 21, 2009, from 10 a.m. to 2 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations or to have a copy of your material distributed to each member of the committee should reach us on or before September 14, 2009. Applications for GLPAC membership should reach us by October 2, 2009.

ADDRESSES: GLPAC will meet at Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001, Room 6303. Send written material and requests relating to the GLPAC meeting to Mr. John Bobb (see **FOR FURTHER INFORMATION CONTACT**). Electronically submitted material must be in Adobe or Microsoft Word format. Also, send applications for GLPAC membership to Mr. Bobb. An application form for GLPAC membership, as well as this notice, is available in our online docket, USCG–2009–0737, at *http://www.regulations.gov;* enter the docket number for this notice (USCG–2009–0737) in the Search box, and click ''Go.'' You may also contact Mr. Bobb for a copy of the application form.

FOR FURTHER INFORMATION CONTACT: Mr. John Bobb, GLPAC Assistant Designated Federal Official (ADFO), Commandant (CG–54121), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Stop 7581, Washington, DC 20593–7581; telephone 202–372–1532, fax 202–372–1929, or e-mail at *john.k.bobb@uscg.mil.*

SUPPLEMENTARY INFORMATION: The GLPAC is a Federal advisory committee under 5 U.S.C. App. 2 (Pub. L. 92–463). It was established under the authority of 46 U.S.C. 9307, and advises the Secretary of Homeland Security and the Coast Guard on Great Lakes pilot registration, operating requirements, training policies, and pilotage rates.

GLPAC meets at least once a year, normally at Coast Guard Headquarters, Washington, DC. It may also meet for extraordinary purposes. Further information about GLPAC is available by searching on ''Great Lakes Pilotage Advisory Committee'' at *http://www.fido.gov/facadatabase/.*

Notice of Meeting

GLPAC's 2009 annual meeting will be held at Coast Guard Headquarters on September 21, 2009.

The agenda includes the following:

(1) GLPAC review of public comments solicited by the Coast Guard in the **Federal Register** of July 21, 2009 (''Great Lakes Pilotage Ratemaking Methodology,'' 74 FR 35838), in accordance with requirements of 46 U.S.C. 9307(d) for consultation with GLPAC before taking any significant action relating to Great Lakes pilotage;

(2) Appointment of seventh member in compliance with requirements of 46 U.S.C. 9307(b)(2)(E);

(3) Election of chairman and vice chairman in compliance with requirements of 46 U.S.C. 9307(c)(1);

(4) GLPAC recommendation to Congress whether GLPAC be renewed and continued beyond its current termination date of September 30, 2010 in compliance with requirements of 46 U.S.C. 9307(f)(2).

(5) Report from the Director of Great Lakes Pilotage.

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. John Bobb (see **FOR FURTHER INFORMATION CONTACT**) as soon as possible.

Request for Applications

We will consider applications to fill one vacancy on the committee. To be eligible, candidates must have a background in finance or accounting. The person selected must be recommended to the Secretary by unanimous vote of GLPAC's other members, and may be appointed without regard to the requirement that each member have five years of practical experience in maritime operations. The person selected may, but need not, come from among those who respond to this request for applications. The person selected will serve for a term of three years, which may be renewed once. Members serve at their own expense and receive no salary but may be reimbursed for travel expenses.

In support of the Coast Guard policy on gender and ethnic nondiscrimination, we encourage qualified men and women and members of all racial and ethnic groups to apply. The Coast Guard values diversity; all the different characteristics and attributes of persons that enhance the mission of the Coast Guard.

The person selected to fill this vacancy will be appointed and serve as a Special Government Employee (SGE) as defined in section 202 (a) of title 18, United States Code. As a candidate for appointment as SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an

order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official or the DAEO's designate may release a Confidential Financial Disclosure Report.

Dated: August 19, 2009.

Rajiv Khandpur,

U.S. Coast Guard, Acting Chief, Office of Waterways Management.

[FR Doc. E9–20510 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5284–N–01]

Notice of Proposed Information Collection: Comment Request; Maintenance Wage Rate Recommendation, and Maintenance Wage Rate Survey; and Report of Additional Classification and Wage Rate

AGENCY: Office of Departmental Operations and Coordination, Office of Labor Relations, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 26, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 4178, Washington, DC 20410 or *Lillian.L.Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 7th Street SW., Room 2102, Washington, DC 20410 or *Jade.M.Banks@hud.gov,* telephone (202) 402–5475 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Maintenance Wage Rate Recommendation; Maintenance Wage Rate Survey; Report of Additional Classification and Wage Rate.

OMB Control Number, if applicable: 2501–0011.

Description of the need for the information and proposed use: Public housing agencies (PHAs), Tribally-designated housing entities (TDHEs), and the Department of Hawaiian Homelands (DHHL) are required to ensure that maintenance laborers and mechanics employed in the operation of HUD-assisted low-income or affordable housing are paid no less than prevailing wages that are determined or adopted by HUD (section 12(a), U.S. Housing Act of 1937, as amended; sections 104(b) and 805(b) of the Native American Housing Assistance and Self-Determination Act of 1996, as amended). Except that, TDHEs may, at their discretion, implement tribally determined prevailing maintenance wage rates which would apply in place of HUD-determined or -adopted wage rates.

HUD determines or adopts a schedule of prevailing maintenance wage rates for each PHA, TDHE (except for those TDHEs that implement tribally-determined prevailing wage rates), and the DHHL, annually, coinciding with the agency's fiscal year. In order to ensure that the wage rates are reflective of current economic conditions, HUD requests that each PHA, TDHE and the DHHL submit a recommendation of prevailing wage rates for HUD consideration. PHA, TDHE, and DHHL recommendations may be based on a wide variety of economic indicators including, at the discretion of the PHA, TDHE, or DHHL, the results of a wage survey that the PHA, TDHE or DHHL may conduct of maintenance employers in their operating jurisdiction. In addition, HUD may conduct a maintenance wage rate survey in the absence of a PHA/TDHE/DHHL recommendation or to evaluate a recommendation that has been provided by a PHA, TDHE or DHHL.

In order to assist PHAs, TDHEs and the DHHL to submit prevailing wage rate recommendations and, if they choose, to conduct and evaluate the results of a maintenance wage survey, and to assist HUD personnel in the conduct and evaluation of a maintenance wage survey, HUD instituted three forms: Maintenance Wage Rate Recommendation; Maintenance Wage Rate Survey Summary; and a Maintenance Wage Rate Survey. PHA, TDHE or DHHL submission of a recommendation is highly encouraged by HUD. In the absence of an agency recommendation, HUD will issue a prevailing wage rate schedule based upon its own actions, which may include a maintenance wage survey conducted by HUD. Participation in any maintenance wage survey conducted by a PHA, TDHE, DHHL, or HUD is voluntary on the part of maintenance employers. Maintenance wage rate recommendations, survey summaries and survey responses must be retained by PHAs, TDHEs, the DHHL and HUD to document compliance with the statutory labor standards provisions.

Agencies, contractors and subcontractors engaged on HUD-assisted construction and maintenance projects subject to Federal labor standards must pay no less than the wages determined to be prevailing by the Secretary of Labor (for construction work) or determined to be prevailing by the Secretary of HUD (for maintenance work) to all laborers and mechanics engaged on such work. Occasionally, the applicable wage decision schedule does not contain a prevailing wage rate for all classifications of work needed to complete the project. In such cases, the employer that will utilize the classification(s) missing from the wage decision must propose a wage rate for each such classification for the consideration of the Department of Labor (DOL) or HUD, as the case may be. The employer must submit its request in writing; there is no form specified or required for employer submissions. HUD and local agencies that administer HUD-assisted projects use the form HUD–4230A to record and submit employer additional classification and wage rate requests to DOL, when DOL approval is required.

Agency form numbers, if applicable: Forms HUD–4750 for Maintenance Wage Rate Recommendation, HUD–4751 for Maintenance Wage Rate

Survey, HUD–4752 Maintenance Wage Rate Survey Summary Sheet, and HUD–4230A for Report of Additional Classification and Wage Rate.

ESTIMATION OF THE TOTAL NUMBERS OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE

Item	Number of respondents	Amount of time required (hours)	Total time required/annum hours)
Maintenance Wage Recommendation	3,400	4	13,600
Survey Summary	1,800	4	7,200
Survey Form Agency Evaluation	1,800	8	14,400
Survey Form Employer Response	1,800	4	7,200
Record keeping	3,400	1	3,400
Additional Classification and Wage Rate	500	2	1,000
Recordkeeping	500	1	500
Total Annual Burden	.....	.....	47,300

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 14, 2009.

Waite H. Madison,

Director, Office of Labor Relations.

[FR Doc. E9–20601 Filed 8–25–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Information Collection for Tribal Self-Governance Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission of Information Collection to the Office of Management and Budget.

SUMMARY: The Bureau of Indian Affairs (BIA) is submitting a request to renew the information collection entitled ''Tribal Self-Governance Program, 25 CFR 1000'' to OMB, as required by the Paperwork Reduction Act. This information collection is currently authorized by OMB Control Number 1076–0143. Respondents include potential and existing Self-Governance Indian tribes. The information collected will be used to establish requirements for entry into the pool of qualified applicants for Self-Governance and to meet reporting requirements of the Tribal Self-Governance Act.

DATES: Submit comments on or before September 25, 2009.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile at (202) 395–5806 or by e-mail to *OIRA_DOCKET@omb.eop.gov.* Please also send a copy to Sharee M. Freeman, Director, Office of Self-Governance, 1951 Constitution Avenue, NW., Mail Stop 355–G SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Dr. Kenneth Reinfeld, Senior Policy/Program Analyst, 1951 Constitution Avenue, NW., Mail Stop 355–G SIB, Washington, DC 20240, (202) 208–5734.

SUPPLEMENTARY INFORMATION:

I. Abstract

A notice seeking comments from the public on a request to OMB to extend information collection activities was published in the **Federal Register** on January 9, 2009 (74 FR 917). No comments were received in response to this notice. You are advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB control number.

II. Request for Comments

BIA requests you to send your comments on this collection to the two locations listed in the **ADDRESSES** section. Your comments should address: (a) Necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them by the date indicated in the **DATES** section.

Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0143.

Title: Tribal Self-Governance Program, 25 CFR 1000.

Brief Description of Collection: The Self-Governance program is authorized by the Tribal Self-Governance Act of 1994, Public Law 103–413 (the Act), as amended. Indian tribes interested in entering into Self-Governance must submit certain information as required by the Act. In addition, those tribes and tribal consortia that have entered into Self-Governance funding agreements will be requested to submit certain information as described in 25 CFR 1000. This information will be used to justify a budget request submission on their behalf and to comport with section 405 of the Act that calls for the Secretary to submit an annual report to the Congress. Responses are required to obtain or retain a benefit or are voluntary, depending upon the parts of the program being addressed.

Type of Review: Extension of a currently approved collection.

Respondents: Tribes and tribal consortia participating or wishing to enter into Tribal Self-Governance.

Number of Respondents: 289.

Number of Responses: 204.

Estimated Time per Response: Completion times vary from 15 minutes to 400 hours, with an average of approximately 55 hours.

Frequency of Response: On occasion or annually.

Total Annual Burden: 11,203 hours.

Total Annual Cost: $10,500.

Dated: August 19, 2009.

Alvin Foster,

Chief Information Officer—Indian Affairs.

[FR Doc. E9–20507 Filed 8–25–09; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14870–A; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act will be issued to Kaktovik Inupiat Corporation. The lands are in the vicinity of Kaktovik, Alaska, and are located in:

Umiat Meridian, Alaska

T. 8 N., R. 32 E.,
Secs. 7, 8, and 18.
Containing approximately 44 acres.

T. 8 N., R. 33 E.,
Secs. 22, 23, and 24.
Containing approximately 1,920 acres.

T. 9 N., R. 33 E.,
Secs. 14, 15, and 16;
Secs. 21, 26, and 35.
Containing approximately 360 acres.

T. 8 N., R. 34 E.,
Secs. 18, 19, and 20.
Containing approximately 1,603 acres.

T. 8 N., R. 35 E.,
Secs. 21 and 22.
Containing approximately 1,280 acres.
Aggregating approximately 5,207 acres.

The subsurface estate in these lands will be conveyed to Arctic Slope Regional Corporation when the surface estate is conveyed to Kaktovik Inupiat Corporation. Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 25, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Michael Bilancione,

Land Transfer Resolution Specialist, Land Transfer Adjudication I.

[FR Doc. E9–20550 Filed 8–25–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14908–B, F–14908–C; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of modified decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the decision approving lands for conveyance to Sitnasuak Native Corporation, notice of which was published in the Federal Register on May 15, 2009, 74 FR 22955, 22956, will be modified by including any right-of-way interest in Federal Aid Secondary Route No. 1412 (Osborne Road), which was inadvertently omitted from the interests to which the conveyance will be made subject to. Notice of the modified decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal on the change made by the modified decision are:

1. Any party claiming a property interest which is adversely affected by the changes made by the modified decision shall have until September 25, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights. Except as modified, the decision, notice of which was given May 15, 2009, is final.

ADDRESSES: A copy of the modified decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen Ford,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. E9–20549 Filed 8–25–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2009–N164; 10120–1113–0000–F5]

Endangered Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on the following applications for a permit to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act), which requires that we solicit public comment on permit applications involving endangered species.

DATES: We must receive your written data or comments by September 25, 2009.

ADDRESSES: Program Manager, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service,

911 NE. 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Grant Canterbury, Fish and Wildlife Biologist, at the above address or by telephone (503–231–2071) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We are soliciting review of and comment on these applications by local, State, and Federal agencies and the public.

Permit No. TE188214

Applicant: Richard Pender, Honolulu, Hawaii.

The applicant requests a scientific research permit to remove and reduce to possession *Clermontia pyrularia* ('oha wai) and to take (collect voucher specimens) the pomace fly (*Drosophila heteroneura* and or *D. ochrobasis*) in conjunction with research in the State of Hawaii, for the purpose of enhancing their survival.

Permit No. TE003483

Applicant: U.S. Geological Survey, Biological Resources Discipline, Hawaii National Park, Hawaii.

The applicant requests a permit amendment to take (inoculate) the Laysan duck (*Anas laysanensis*) in conjunction with prevention of botulism type C in the State of Hawaii, for the purpose of enhancing its survival.

Public Comments

Please refer to the permit number for the application when submitting comments.

We are soliciting public review and comment on these recovery permit applications. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: August 18, 2009.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E9–20585 Filed 8–25–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L14300000.ET0000241A; AZA–35138]

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Withdrawal in the Vicinity of the Grand Canyon, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM), Arizona Strip District office is the lead agency on behalf of the BLM and the United States Forest Service for preparing an Environmental Impact Statement (EIS) to address potential effects of a proposed withdrawal of approximately 633,547 acres of BLM-administered public lands and 360,002 acres of National Forest System lands for up to 20 years from location and entry under the Mining Law of 1872. The purpose of the withdrawal, if determined to be appropriate, would be to protect the Grand Canyon watershed from adverse effects of locatable mineral exploration and mining, except for those effects stemming from valid existing rights. The U.S. Forest Service (Kaibab National Forest), National Park Service (Grand Canyon National Park), U.S. Fish and Wildlife Service, and U.S. Geological Survey have been invited and have agreed to participate as cooperating agencies. Additional local state and Federal agencies and Tribes may request cooperating agency status during this process.

DATES: By this notice, the BLM is announcing the beginning of the public scoping process for the EIS and soliciting input on the identification of issues. The public scoping period will end on October 26, 2009. During the public scoping period, the BLM solicits public comment on issues, concerns, and opportunities that should be considered in the analysis of the proposed action. Comments on issues, potential impacts, or suggestions for additional alternatives may be submitted in writing to the address listed below. To be considered in the Draft EIS analysis, comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later.

The BLM will announce public scoping meetings to identify relevant issues through news media, newspapers, and the BLM's Web site. A meeting is planned to be held in Fredonia, Arizona on September 30, 2009, and in Flagstaff, Arizona on October 15, 2009. The time and location of the meetings will be announced at least 30 days in advance by the methods mentioned above. Other meetings will be scheduled and announced at least 15 days in advance by the same methods. Further opportunities for public participation will be provided upon publication of the Draft EIS, including a minimum 45-day public comment period.

ADDRESSES: Comments may be submitted by either of the following methods:

- *Mail:* Grand Canyon Mining Withdrawal Project, ATTN: Scott Florence, District Manager, Bureau of Land Management, Arizona Strip District Office, 345 East Riverside Drive, St. George, UT 84790–6714,

Electronic Mail: azasminerals@blm.gov.

FOR FURTHER INFORMATION CONTACT: For information regarding the EIS process or to have your name added to the mailing list, send requests to Scott Florence, BLM District Manager, 345 East Riverside Drive, St. George, Utah 84790–6714, (435) 688–3200. For information pertaining to the National Forest System Lands included in the proposed withdrawal, contact Michael Williams, Forest Supervisor, Forest Service, Kaibab National Forest, 800 South Sixth Street, Williams, Arizona 86046, (928) 635–8200.

SUPPLEMENTARY INFORMATION: The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives. The Secretary of the Interior proposes to withdraw approximately 633, 547 acres of BLM-administered public lands and 360,002 acres of National Forest System lands for up to 20 years from location and entry under the Mining Law of 1872, 30 U.S.C. 22 *et seq.* The proposed withdrawal applies to Federal locatable minerals, subject to valid existing rights, including locatable minerals that underlie non-Federal surface. It would not apply to non-Federal mineral estate. The purpose of the withdrawal, if determined to be appropriate, would be to protect the Grand Canyon watershed from adverse effects of locatable mineral

exploration and mining, except for those effects stemming from valid existing rights. The EIS will analyze at least two alternatives, including a withdrawal as currently proposed and the ''No Action'' alternative, which would be to continue to allow location of new mining claims. Other alternatives may be analyzed as appropriate, including withdrawal of a smaller area.

The proposed action is to withdraw, subject to valid existing rights, certain public lands and National Forest System lands from location and entry under the 1872 Mining Law, but not the mineral leasing, geothermal leasing, mineral materials laws, or public land laws. The subject areas were previously described in BLM's Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona which published in the **Federal Register** on July 21, 2009 [74 FR 35887]. The map for the ''Petition/Application for Withdrawal'' is available from the BLM Arizona Strip District office and the Forest Service Kaibab National Forest office at the addresses listed above.

The total areas described aggregate approximately 993,549 acres of BLM-administered public lands and National Forest System lands and any Federal locatable minerals underlying non-Federal surface in Coconino and Mohave Counties located adjacent to the Grand Canyon National Park in Arizona. The total non-Federal lands within the area aggregate approximately 85,673 acres in Coconino and Mohave Counties.

If the withdrawal were to be approved by the Secretary of the Interior, the closure to location and entry under the Mining Law would be subject to valid existing rights and authorized in accordance with section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and the Federal regulations at 43 CFR part 2300.

You may submit comments on issues in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments within 15 days after the last public meeting. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR part 2300)

Helen M. Hankins,

Arizona Associate State Director.

[FR Doc. E9–20626 Filed 8–25–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Contract for Hydroelectric Power Development on the South Canal, Uncompahgre Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: notice of intent to accept proposals, select lessee, and contract for hydroelectric power development on the South Canal, Uncompahgre Project, Colorado.

SUMMARY: Current Federal policy allows non-Federal development of electrical power resource potential on Federal water resource projects. The Bureau of Reclamation (Reclamation) will consider proposals for non-Federal development of hydroelectric power on the South Canal of the Uncompahgre Project. Reclamation is considering such hydroelectric power development under a lease of power privilege. No Federal funds will be available for such hydroelectric power development. The Uncompahgre Project is a Federal Reclamation project. This Notice presents background information, proposal content guidelines, and information concerning selection of a non-Federal entity to develop hydroelectric power on the South Canal.

DATES: A written proposal and seven copies must be submitted on or before 5 p.m. (Mountain Standard Time) on Monday, February 1, 2010. A proposal will be considered timely only if it is received in the office of the Area Manager on or before 5 p.m. on the above-designated date. Interested entities are cautioned that delayed delivery to the Area Manager's office due to failures or misunderstandings of the entity and/or of mail, overnight, or courier services will not excuse lateness and, accordingly, are advised to provide sufficient time for delivery. Late proposals will not be considered.

ADDRESSES: Send written proposal and seven copies to Ms. Carol DeAngelis, Area Manager, Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, Colorado 81506; telephone (970) 248–0600.

FOR FURTHER INFORMATION CONTACT: Technical data may be obtained from Mr. Dan Crabtree, Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, Colorado 81506; telephone (970) 248–0652. Reclamation will be available to meet with interested entities only upon written request to Mr. Dan Crabtree at the above-cited address. Upon request, Reclamation will provide an opportunity for a site visit. Reclamation reserves the right to schedule a single meeting and/or visit to address the questions of all entities that have submitted questions or requested site visits.

Information related to operation and maintenance of the South Canal may be obtained from Mr. Marc Catlin, Uncompahgre Valley Water Users Association, P.O. Box 69, Montrose, Colorado 81402; telephone (970) 249–3813.

SUPPLEMENTARY INFORMATION: The Uncompahgre Project, located in west-central Colorado along the Uncompahgre River in the Colorado River Basin, was authorized by the Secretary of the Interior on March 14, 1903, under provisions of the Reclamation Act of 1902. After the passage of the Reclamation Act of 1902, the Uncompahgre Project was selected for development and the United States began construction in 1904. The Act of June 22, 1938, 52 Stat. 941, authorized the Secretary of the Interior to develop or sell surplus power from the Uncompahgre Project. The Uncompahgre Valley Water Users Association, under its contracts with the United States, has certain operation, maintenance, and replacement responsibilities and obligations concerning the South Canal and Uncompahgre Project.

Reclamation is considering hydroelectric power development on the South Canal under a lease of power privilege. A lease of power privilege is an alternative to Federal hydroelectric power development. A lease of power privilege is a contractual right given to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. Leases of power privilege have terms not to exceed 40 years. The general authority for lease of power privilege under Reclamation law includes, among others, the Town Sites and Power Development Act of 1906 (43 U.S.C. Sec. 522) and the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act).

Reclamation will be the lead Federal agency for ensuring compliance with the National Environmental Policy Act (NEPA) of any lease of power privilege

considered in response to this Notice. Leases of power privilege may be issued only when Reclamation has completed NEPA and related environmental compliance. Any lease of power privilege on the South Canal must accommodate existing contractual commitments related to operation and maintenance of the South Canal and other Uncompahgre Project facilities. The lessee (*i.e.,* successful proposing entity) would be required to enter into a contract with the Uncompahgre Valley Water Users Association to coordinate operation and maintenance of any proposed hydropower developments with existing Federal features.

All costs incurred by the United States related to development and operation and maintenance under a lease of power privilege, including NEPA compliance and development of the lease of power privilege, would be at the expense of the lessee. In addition, the lessee would be required to make annual payments to the United States for the use of a government facility in the amount of at least 3 mills per kilowatt-hour of generation. Under the lease of power privilege, provisions will be included for inflation of the annual payment with time. Such annual payments to the United States would be deposited as a credit to the Reclamation Fund.

Proposal Content Guidelines

Interested parties should submit proposals explaining in as precise detail as is practicable how the hydropower potential would be developed. Factors which a proposal should consider and address include, but are not limited to, the following:

(a) Provide all information relevant to the qualifications of the proposing entity to plan and implement such a project, including, but not limited to, information about preference status, type of organization, length of time in business, experience in funding, design and construction of similar projects, industry rating(s) that indicate financial soundness and/or technical and managerial capability, experience of key management personnel, history of any reorganizations or mergers with other companies, and any other information that demonstrates the interested entity's organizational, technical, and financial ability to perform all aspects of the work. Include a discussion of past experience in operating and maintaining similar facilities and provide references as appropriate. The term ''preference entity,'' as applied to a lease of power privilege, means an entity qualifying for preference under Section 9(c) of the 1939 Act as a municipality, public corporation or agency, or cooperative or other nonprofit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, as amended.

(b) Provide geographical locations and describe principal structures and other important features of the proposed development including roads and transmission lines. Estimate and describe installed capacity and the capacity of the power facilities. Also describe seasonal or annual generation patterns. Include estimates of the average amount of electrical energy that would be produced from the facility for each month of average, dry, or wet water years. If capacity and energy can be delivered to another location, either by the proposing entity or by potential wheeling agents, specify where capacity and energy can be delivered. Include concepts for power sales and contractual arrangements, involved parties, and the proposed approach to wheeling, if required.

(c) Indicate plans for acquiring title to or the right to occupy and use lands necessary for the proposed development, including such additional lands as may be required during construction.

(d) Identify water rights applicable to the operation of the proposed development(s), the holder of such rights, and how these rights would be used, acquired, or perfected.

(e) Discuss any studies necessary to adequately define impacts of the development on the Uncompahgre Project and the environment. Describe any significant environmental issues associated with the development and the proposing entity's approach for gathering relevant data and resolving or mitigating such issues to protect and enhance the quality of the environment. Explain any proposed use of the hydropower development for conservation and utilization of the available water resources in the public interest.

(f) Describe anticipated contractual arrangements with the Uncompahgre Valley Water Users Association which has operation and maintenance responsibility for the Uncompahgre Project feature(s) that are proposed for utilization in the hydropower development under consideration. Define how the hydropower development would operate in harmony with the Uncompahgre Project and existing applicable contracts related to operation and maintenance of Uncompahgre Project feature(s) being considered for modification.

(g) Describe plans for assuming liability for damage to the operational and structural integrity of the Uncompahgre Project caused by construction, operation, and/or maintenance of the hydropower development.

(h) Identify the organizational structure planned for the long-term operation and maintenance of any proposed hydropower development.

(i) Provide a management plan to accomplish such activities as planning, NEPA compliance, lease of power privilege development, design, construction, facility testing, and start of hydropower production. Prepare schedules of these activities as applicable. Describe what studies are necessary to accomplish the hydroelectric power development and how the studies would be implemented.

(j) Estimate development cost. This cost should include all investment costs such as the cost of studies to determine feasibility, NEPA compliance, design, construction, and financing as well as the amortized annual cost of the investment. Also, the annual operation, maintenance, and replacement expense for the hydropower development; annual payments to the United States; expenses that may be associated with the Uncompahgre Project; and the anticipated return on investment should be included. If there are additional transmission or wheeling expenses associated with the hydropower development, these should also be included. Identify proposed methods of financing the hydropower development. An economic analysis should be presented that compares the present worth of all benefits and the costs of the hydropower development.

Selection of Lessee

Reclamation will evaluate proposals received in response to this published Notice. Reclamation will give more favorable consideration to proposals that (1) are well adapted to developing, conserving, and utilizing the water and protecting natural resources; (2) clearly demonstrate that the offeror is qualified to develop the hydropower facility and provide for long-term operation and maintenance; and (3) best share the economic benefits of the hydropower development among parties to the lease of power privilege. A proposal will be deemed unacceptable if it is inconsistent with Uncompahgre Project purposes, as determined by Reclamation.

Reclamation will give preference to those entities that qualify as preference entities (as defined under Proposal Content Guidelines, item (a), of this Notice) provided that their proposal is at least as well adapted to developing,

conserving, and utilizing the water and natural resources as other submitted proposals and that the preference entity is well qualified. Preference entities would be allowed 90 days to improve their proposals, if necessary, to be made at least equal to a proposal(s) that may have been submitted by a non-preference entity.

Power Purchasing and/or Marketing Considerations

The lessee would be responsible for transmission and marketing of the power generated by the proposed project.

Notice and Time Period To Enter Into Lease of Power Privilege

Reclamation will notify, in writing, all entities submitting proposals of Reclamation's decision regarding selection of the potential lessee. The selected potential lessee will have two years from the date of such notification to accomplish NEPA compliance and enter into a lease of power privilege for the proposed development of hydropower at South Canal. The lessee will then have up to two years from the date of execution of the lease to complete the designs and specifications and an additional year to begin construction. Such timeframes may be adjusted for just cause resulting from actions and/or circumstances that are beyond the control of the lessee.

Dated: July 24, 2009.

Larry Walkoviak,

Regional Director—UC Region.

[FR Doc. E9–20652 Filed 8–25–09; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–167 (Third Review)]

Pressure Sensitive Plastic Tape From Italy

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty finding on pressure sensitive plastic tape from Italy.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty finding on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* August 20, 2009.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On August 4, 2009, the Commission determined to conduct a full review pursuant to section 751(c)(5) of the Act (74 FR 40845, August 13, 2009). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on December 21, 2009, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on January 14, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 8, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 11, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 5, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 25, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of

the review on or before January 25, 2010. On February 12, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 16, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 21, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–20555 Filed 8–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on August 20, 2009, a proposed Consent Decree in *United States* v. *First Chemical Corporation,* Civil Action No. 1:09-cv-00637–LG–RHW was lodged with the United States District Court for the Southern District of Mississippi, Southern Division.

In this action, the United States sought civil penalties and injunctive relief against First Chemical Corporation (''FCC'') for alleged violations of the general duty of care under Section 112(r)(1) of the Clean Air Act, 42 U.S.C. 7412(r)(1) with respect to a chemical manufacturing complex, located in Pascagoula, Mississippi. FCC failed to identify the hazards associated with distilling mononitrotoluene (''MNT''), and failed to maintain a safe facility by reducing the risks associated with MNT.

The United States has agreed to resolve these claims under the proposed Consent Decree wherein FCC has agreed to pay $731,000 in civil penalties, and perform injunctive relief in terms of completing a process hazards analysis relative to the MNT distillation process.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *First Chemical Corporation,* D.J. Ref. 90–5–2–1–08312.

The Consent Decree may be examined at the Office of the United States Attorney, 1575 20th Ave., 2d Floor, Gulfport, MS 39501, ATTN: Crockett Lindsey, and at U.S. EPA Region 4, 61 Forsyth Street, SE., Atlanta, GA 30303, ATTN: Ellen Rouch. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–20526 Filed 8–25–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on August 20, 2009, a proposed Modification to Settlement Agreement and Final Order (''Modification'') in *United States and State of California ex rel. California Regional Water Quality Control Board, Los Angeles Region* v. *City of Los Angeles,* Civil Action No. 01–191–RSWL, was lodged with the United States District Court for the Central District of California, Western Division. The United States and the State's action is consolidated with *Santa Monica Baykeeper* v. *The City of Los Angeles,* Civil Action No. 98–9039–RSWL.

Under the proposed Modification, the Odor Control provisions of the Settlement Agreement and Final Order, entered by the Court on October 28, 2004, will be amended. The City of Los Angeles (''the City'') will take new and/or modified actions to control odors from the City's sewers and to involve affected communities in the planning process for these actions. The Modification also replaces two Supplemental Environmental Projects specified in the Settlement Agreement and Final Order with a new project, the Garvanza Park Water Quality Enhancement BMP Project, at the same cost to the City.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the Modification between the United States, the State of California and the City of Los Angeles, DOJ Ref. No. 90–5–1–1–809/1.

The Modification may be examined at EPA's office, 75 Hawthorne Street, San

Francisco, CA 94105. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–20525 Filed 8–25–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606 et seq.

Notice is hereby given that on August 20, 2009 a consent decree in *United States of America and the State of Missouri* v. *Childress Royalty Company et al.,* Civil Action No. 3:09–cv–05071–GAF was lodged with the United States District Court for the Western District of Missouri.

The Complaint, filed by the Plaintiffs alleges that the Defendants are liable under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 *et seq.,* for the performance of response actions and payment of response costs incurred by the United States and the State of Missouri at OU1 and OU4 of the Oronogo/Duenweg Mining Belt Superfund Site in Jasper County, Missouri (hereinafter ''the Site'').

The proposed Consent Decree settles the Plaintiffs' claims against all the Defendants. In the Consent Decree, the Defendants have agreed to perform the response actions at the Site which were selected by the Record of Decision for the Site issued by the United States Environmental Protection Agency on September 30, 2004 and to reimburse the Plaintiffs the past and future costs incurred at the Site.

Pursuant to 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, for thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States of America and The State of Missouri* v. *Childress Royalty Company et al.,* Civil Action No. 3:09–cv–05071–GAF (W.D. Mo.), Ref. No. 90–11–2–06280/6.

During the comment period, the Consent Decrees may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be examined at the Office of the United States Attorney, Western District of Missouri, Charles Evans Whittaker Courthouse, 400 East Ninth Street, Kansas City, Missouri 64106. Copies of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $33.25 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. E9–20521 Filed 8–25–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ice Crystal Consortium

Notice is hereby given that, on July 28, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Ice Crystal Consortium (''ICC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: National Institute for Aerospace Studies and Services, Inc., Arlington, VA; The Boeing Company, Seattle, WA; Cessna Aircraft Company, Wichita, KS; General Electric Company, Cincinnati, OH; Hawker Beechcraft Corporation, Wichita, KS; Honeywell International Inc., Tucson, AZ; Rolls Royce plc, Derby, UNITED KINGDOM; Snecma, Moissy Cramayel, FRANCE; and United Technologies Corporation, Pratt & Whitney Group, East Hartford, CT. The general area of ICC's planned activity is to conduct research arid testing on the physical characteristics and behavior of high altitude ice crystals.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–20413 Filed 8–25–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,401]

Qimonda 200MM Facility, Including On-Site Leased Workers From Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., Kla-Tencor, Craftcorps, Inc., Colonial Webb and Novellus Systems, Inc. and Qimonda North America Corporation, Qimonda Richmond, a Subsidiary of Qimonda AG, Sandston, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 11, 2008, applicable to workers of Qimonda 200MM Facility, Sandston, Virginia.

The notice was published in the **Federal Register** on December 30, 2008 (73 FR 79914). The certification was amended on February 10, 2009, March 3, 2009, March 31, 2009, June 12, 2009, and July 21, 2009 to include on-site leased workers of Tokyo Electron America, Nikon Precision, Ebara Technologies, Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., KLA-Tencor, Craftcorps and Colonial Webb and Qimonda North America Corp., Qimonda Richmond, an on-site subsidiary of the subject firm. These notices were published in the **Federal Register** on February 23, 2009 (74 FR 8111), March 11, 2009 (74 FR 10619), April 7, 2009 (74 FR 15752) and June 24, 2009 (74 FR 30112). The July 21, 2009 notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of DRAM semiconductor wafers.

The company reports that workers leased from Novellus Systems, Inc. were employed on-site at the Sandston, Virginia location of Qimonda 200MM Facility. The Department has determined that these workers were sufficiently under the control of Qimonda 200MM Facility to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Novellus Systems, Inc. working on-site at the Sandston, Virginia location of the subject firm.

The intent of the Department's certification to include all workers employed at Qimonda 200MM Facility, Sandston, Virginia who were adversely affected by a shift in production to a foreign country followed by increased imports of articles like or directly competitive with DRAM semiconductor wafers produced by the subject firm.

The amended notice applicable to TA–W–64,401 is hereby issued as follows:

All workers of Qimonda 200MM Facility, including on-site leased workers from Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., KLA-Tencor, Craftcorps, Inc., Colonial Webb, and Novellus Systems, Inc., and including on-site workers of Qimonda North America Corp., Qimonda Richmond, a subsidiary of Qimonda AG, Sandston, Virginia, who became totally or partially separated from employment on or after November 11, 2007 through December 11, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20447 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,715; TA–W–64,715A; TA–W–64,715B; TA–W–64,715C; TA–W–64,715D; TA–W–64,715E; TA–W–64,715F; TA–W–64,715G; TA–W–64,715H; TA–W–64,715I; TA–W–64,715J]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

TA–W–64,715
Cadence Innovation, LLC Groesbeck Plant Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Clinton Township, Michigan;

TA–W–64,715A
Cadence Innovation, LLC Metrology Location Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Chesterfield Township, Michigan;

TA–W–64,715B
Cadence Innovation, LLC Chesterfield Plant Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Chesterfield Township, Michigan;

TA–W–64,715C
Cadence Innovation, LLC Information Systems Technology Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Chesterfield Township, Michigan;

TA–W–64,715D
Cadence Innovation, LLC Hillsdale Plant Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Hillsdale, Michigan;

TA–W–64,715E
Cadence Innovation, LLC Hartford Plant Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Hartford City, Indiana;

TA–W–64,715F
Cadence Innovation, LLC 17400 Malyn Street Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Fraser, Michigan;

TA–W–64,715G
Cadence Innovation, LLC 17350 Malyn Street Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Fraser, Michigan;

TA–W–64,715H
Cadence Innovation, LLC 17300 Malyn Street Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Fraser, Michigan;

TA–W–64,715I
Cadence Innovation, LLC Processing Center Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. Fraser, Michigan;

TA–W–64,715J
Cadence Innovation, LLC Commerce Location Including On-Site Leased Workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation and Time Services, Inc. Fraser, Michigan.

In accordance with Section 223 of the Trade Act of 1974, (19 U.S.C. 2273), and Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 6, 2009, applicable to workers of Cadence Innovation, LLC, Incorporated, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, and TAC Transportation at the following locations: Cadence Innovation, LLC, Groesbeck Plant, Clinton Township, Michigan (TA–W–64,715); Cadence Innovation, LLC, Metrology Location, Chesterfield Township, Michigan (TA–W–64,715A); Cadence Innovation, Chesterfield Plant, Chesterfield Township, Michigan (TA–W–64,715B); Cadence Innovation, LLC, Information Systems Technology Location, Chesterfield Township, Michigan (TA–W–64,715C); Cadence Innovation, LLC, Hillsdale Plant, Hillsdale, Michigan (TA–W–64,715D); Cadence Innovation, LLC, Hartford City Plant, Hartford City, Indiana (TA–W–64,715E); Cadence Innovation, LLC, 17400 Malyn Street Location, Fraser, Michigan (TA–W–64,715F); Cadence Innovation, LLC, 17350 Malyn Street Location, Fraser, Michigan (TA–W–64,715G); Cadence

Innovation, LLC, 17300 Malyn Street, Fraser, Michigan (TA–W–64,715H); Cadence Innovation, LLC, Processing Center, Fraser, Michigan (TA–W–64,715I); and Cadence Innovation, LLC, Commerce Location, Fraser, Michigan (TA–W–64,715J). The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9282–9283).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of vehicle interior systems such as instrument panels, door panels, load floors, quarter panels and consoles.

The intent of the Department's certification is to include all secondarily affected workers employed at the above mentioned locations of Cadence Innovation, LLC.

New information shows that workers leased from Time Services, Inc. were employed on-site at the above mentioned locations of Cadence Innovation, LLC. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Time Services, Inc. working on-site at the above mentioned locations of Cadence Innovation, LLC.

The amended notice applicable to TA–W–64,715 is hereby issued as follows:

''All workers of Cadence Innovation, LLC, Groesbeck Plant, Clinton Township, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715); Cadence Innovation, LLC, Metrology Location, Chesterfield Township, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation and Time Services, Inc. (TA–W–64,715A); Cadence Innovation, LLC, Chesterfield Plant, Chesterfield Township, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715B); Cadence Innovation, LLC, Information Systems Technology Location, Chesterfield Township, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715C); Cadence Innovation, LLC, Hillsdale Plant, Hillsdale, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715D); Cadence Innovation, LLC, Hartford City Plant, Hartford City, Indiana, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715E); Cadence Innovation, LLC, 17400 Malyn Street Location, Fraser, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715F); Cadence Innovation, LLC, 17350 Malyn Street Location, Fraser, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715G); Cadence Innovation, LLC, 17300 Malyn Street, Fraser, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715H); Cadence Innovation, LLC, Processing Center, Fraser, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715I); and Cadence Innovation, LLC, Commerce Location, Fraser, Michigan, including on-site leased workers from Michigan Staffing, LLC, Modern Professional Services, LLC, TAC Transportation, and Time Services, Inc. (TA–W–64,715J), who became totally or partially separated from employment on or after December 15, 2007 through February 6, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 3rd day of August, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20448 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,576]

SGL Carbon, LLC, A Subsidiary of SGL Group—The Carbon Company Including On-Site Leased Workers of Manpower and Reflex Services, St. Marys, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 21, 2009, applicable to workers of SGL Carbon, LLC, a subsidiary of SGL Group—The Carbon Company, St. Marys, Pennsylvania. The notice was published in the **Federal Register** on May 7, 2009 (74 FR 21407).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of carbon and graphite products.

New information provided by the company shows that workers leased from Manpower and Reflex Services were employed on-site at SGL Carbon, LLC, a subsidiary of SGL Group—The Carbon Company, St. Marys, Pennsylvania.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected by the shift in production of carbon and graphite products to Germany.

The Department has determined that these workers were sufficiently under the control of SGL Carbon, LLC, to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from working on-site at the St. Marys, Pennsylvania location of the subject firm. The amended notice applicable to TA–W–65,576 is hereby issued as follows:

All workers of SGL Carbon, LLC, a subsidiary of SGL Group—The Carbon Company, St. Marys, Pennsylvania, including on-site leased workers from Manpower and Reflex Staffing, who became totally or partially separated from employment on or after March 11, 2008 through April 21, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 30th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20449 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Proposed Information Collection for Reporting and Performance Standards System for the Migrant and Seasonal Farmworker Program Under Title I, Section 167 of the Workforce Investment Act of 1998, Extension without Change (OMB No. 1205–0425)

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the extension (without change) of the following data collection and reporting forms for the Migrant and Seasonal Farmworker Program, also known as the National Farmworker Jobs Program (NFJP): ETA Form 9093, ETA Form 9094, and ETA Form 9095 (OMB Approval Number 1205–0425, expires December 31, 2009).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before October 26, 2009.

ADDRESSES: Submit written comments to Alina Walker, Program Manager, National Farmworker Jobs Program, Division of Adult Services, Office of Workforce Investment, Employment and Training Administration, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–2706 (this is not a toll-free number), Fax: 202–693–3817.

SUPPLEMENTARY INFORMATION:

I. Background

Each NFJP grantee administering funds is required to submit a Budget Information Summary report (ETA Form 9093), a Program Planning Report (ETA Form 9094), and a quarterly Program Status Report (ETA Form 9095). ETA Form 9095 contains information related to levels of participation and service, related assistance activities, and actual placements in employment. In addition, each grantee submits a quarterly file of individual records on all participants who exit the program, called the Workforce Investment Act Standardized Participant Record (WIASPR).

In 2001, OMB and other Federal agencies developed a set of common measures to be applied to certain Federally-funded employment and training programs with similar strategic goals. As part of this initiative, ETA issued Training and Employment Guidance Letter (TEGL) 28–04, Common Measures Policy. The value of implementing common measures is the ability to describe in a similar manner the core purposes of the workforce system—how many people found jobs, did they keep those jobs, and what were their earnings. Implementing a set of common measures can facilitate the integration of service delivery, reduce barriers to cooperation among programs, and enhance the ability to assess the effectiveness and impact of the workforce investment system, including the performance of the system in serving individuals facing significant barriers to employment.

The common measures are an integral part of ETA's performance accountability system, and ETA will continue to collect from grantees the data on program activities, participants, and outcomes that are necessary for program management and to convey full and accurate information on the performance of workforce programs to policymakers and stakeholders.

The extension to the NFJP reporting system identifies a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, holds grantees appropriately accountable for the Federal funds they receive, assesses progress against a set of common performance measures, and allows the Department to fulfill its oversight and management responsibilities.

The three adult common measures that apply to NFJP grantees are Entered Employment Rate, Employment Retention Rate, and Average Earnings. Grantees currently collect and submit the data necessary to report on these performance measures.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without change.

Title: Reporting and Performance Standards System for the National Farmworker Jobs Program under Title I of section 167 of the Workforce Investment Act.

OMB Number: 1205–0425.

Affected Public: State, local, or Tribal governments; not-for-profit institutions.

Form: ETA Form 9093, ETA Form 9094, and ETA Form 9095.

Total Respondents: 53 States and grantees.

Frequency: ETA Form 9093, once per year; ETA Form 9094, once per year; ETA Form 9095, once per quarter.

Total Responses: 318.

Average Time per Response: ETA Form 9093, 15 hours; ETA Form 9094, 16 hours; ETA Form 9095, 7 hours.

Estimated Total Burden Hours: 3,127.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 20th day of August 2009.

Jane Oates,

Assistant Secretary.

[FR Doc. E9–20554 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment

and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 8, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 8, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of August 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/1/09 and 6/5/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70811	Rockwell Automation (Comp)	Manchester, NH	06/01/09	05/28/09
70812	Performances Fibers Operations, Inc. (Comp)	Salisbury, NC	06/01/09	05/29/09
70813	Sparton Electronics (Comp)	Jackson, MI	06/01/09	05/19/09
70814	Findlay Industries Inc. (Wkrs)	Dublin, VA	06/01/09	05/27/09
70815	Product Action (Wkrs)	Princeton, IN	06/01/09	05/28/09
70816	Callaway Golf Ball Operations, Inc. (Comp)	Chicopee, MA	06/01/09	05/28/09
70817	Hill Corporation (State)	Anaheim, CA	06/01/09	05/28/09
70818	Hendricks Furniture Group, Boyles Furniture, Classic Moving and Storage (Comp).	Conover, NC	06/01/09	05/28/09
70819	CA Inc. (State)	Lisle, IL	06/01/09	05/27/09
70820	Marshall Manufacturing Corp. (Comp)	Lewisburg, TN	06/01/09	05/28/09
70821	Standby Screw Machine, Inc (Wkrs)	Berea, OH	06/01/09	05/28/09
70822	Wagner Equipment Co. (comp)	Tyrone, NM	06/01/09	05/27/09
70823	Blount, Inc. (Comp)	Milwaukie, OR	06/01/09	05/29/09
70824	Bridgestone APM, Plant 1 (Wkrs)	Findlay, OH	06/01/09	05/29/09
70825	Vitec Group Communication (State)	Alameda, CA	06/01/09	05/29/09
70826	NASCOM Industries Inc (Wkrs)	Knama, WA	06/01/09	05/27/09
70827	FormTech Industries LLC (USW)	Minerva, OH	06/01/09	05/29/09
70828	Botech Industries LLC (Comp)	Hohenwald, TN	06/01/09	05/26/09
70829	Schnadig Corp (Wkrs)	Des Plaines, IL	06/01/09	05/29/09
70830	Eclipse Manufacturing Company (Comp)	Pikeville, TN	06/01/09	05/21/09
70831	A.W. Pratt, Inc. (Comp)	Glasgow, MT	06/01/09	05/28/09
70832	American Standard Brands (IUE)	Mansfield, OH	06/01/09	06/01/09
70833	Thomasville Furniture Industries (Comp)	Thomasville, NC	06/01/09	05/29/09
70834	Celerity, Inc. (Wkrs)	Austin, TX	06/01/09	05/29/09
70835	Faurecia Exhaust Systems, Inc. (Comp)	Troy, OH	06/01/09	05/20/09
70836	Anderson Products Inc. (Comp)	Worcester, MA	06/01/09	06/01/09
70837	Harco Manufacturing Group, LLC (Comp)	Moraine, OH	06/01/09	05/27/09
70838	The Berry Company LLC (Wkrs)	Dayton, OH	06/01/09	06/01/09
70839	Tele Atlas North America, Inc (Comp)	Lebanon, NH	06/01/09	05/20/09
70840	Thomasville Furniture Industries, Inc. #8 (Comp)	Hickory, NC	06/01/09	05/29/09
70841	Alliance Carolina Tool and Mold (wkrs)	Arden, NC	06/01/09	05/29/09
70842	Dometic Sanitation Corp (Wkrs)	Big Prairie, OH	06/01/09	05/28/09
70843	Abbot Building Restoration Co., Inc. (Wkrs)	Boston, MA	06/01/09	05/29/09
70844	Allied Barton Security (Wkrs)	El Paso, TX	06/01/09	05/29/09
70845	Thomasville Furniture Industries Inc, Plant 9 (Comp)	Hickory, NC	06/01/09	05/29/09
70846	Thomasville Furniture Industries (Comp)	Hickory, NC	06/02/09	05/29/09
70847	Intermountain Forest Technology Corp. (Wkrs)	Clancy, MT	06/02/09	05/27/09
70848	Spec-Temp (Wkrs)	Antwerp, OH	06/02/09	05/29/09
70849	Venta Airwasher LLC (Wkrs)	Titasca, IL	06/02/09	05/28/09
70850	PCC Airfoils LLC (Union)	Minerva, OH	06/02/09	05/29/09
70851	Kennametal Inc, Irwin Plant (Wkrs)	Irwin, PA	06/02/09	05/28/09
70852	Victaulic (Comp)	Leland, NC	06/02/09	05/29/09
70853	Parkdale Mills, Inc Plant #41 (Comp)	Gastonia, NC	06/02/09	05/20/09
70854	Daido Metal Bellefontaine, LLC (Wkrs)	Bellefontaine, OH	06/02/09	06/02/09
70855	Smurfit-Stone Container (AFLCIO)	Knoxville, TN	06/02/09	06/01/09
70856	IPSCO Tubulars, Inc. (Comp)	Camanche, IA	06/02/09	05/28/09
70857	DPWN Holdings (Rep)	Plantation, FL	06/02/09	06/01/09
70858	Excalibur Machine Company, Inc. (Comp)	Meadville, PA	06/02/09	05/20/09
70859	Custom Tool and Die (Wkrs)	Stevensville, MI	06/02/09	05/18/09
70860	Excalibur Machine Company, Inc.—Linesville (Comp)	Linesville, PA	06/02/09	05/20/09
70861	Parkdale America, LLC., Plant 29 (Comp)	Sanford, NC	06/02/09	05/20/09
70862	Toshiba America Business Solutions, Inc (State)	Irvine, CA	06/02/09	05/29/09

APPENDIX—Continued

[TAA petitions instituted between 6/1/09 and 6/5/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70863	Chevron Mining, Inc. (Comp)	Questa, NM	06/02/09	05/29/09
70864	Western/Scott Fetzer Company (Comp)	Avon Lake, OH	06/02/09	05/31/09
70865	San Antonio Express-News (Comp)	San Antonio, TX	06/02/09	06/01/09
70866	Davis-Standard, LLC (Comp)	Fulton, NY	06/02/09	06/01/09
70867	Convergys (Wkrs)	Cincinnati, OH	06/02/09	05/28/09
70868	Davis-Standard, LLC—Somerville (Comp)	Somerville, NJ	06/02/09	06/01/09
70869	Paragon Molding Limited (Wkrs)	West Milton, OH	06/02/09	05/31/09
70870	H. W. Wilson Company (State)	Bronx, NY	06/02/09	05/29/09
70871	Diamond Homes/Solitaire Holdings (Wkrs)	Waurika, OK	06/02/09	05/29/09
70872	Mars Petcare (Comp)	McKenzie, TN	06/02/09	05/26/09
70873	Group Dekko, Inc. (Comp)	Murray, IA	06/02/09	05/20/09
70874	Advance Industrial Machinery, Inc. (Comp)	Hickory, NC	06/02/09	05/30/09
70875	Sappi Fine Paper N.A. (USW)	Westbrook, ME	06/02/09	06/01/09
70876	Chromalox (Wkrs)	Pittsburgh, PA	06/02/09	05/28/09
70877	Schmidt-Hardy Chevrolet (Wkrs)	Cuba, MO	06/02/09	05/23/09
70878	Wachovia (Comp)	Charlotte, NC	06/02/09	06/02/09
70879	Presto Products (State)	Weyauwega, WI	06/02/09	06/02/09
70880	Roadrunner Transportation Services (Wkrs)	Cudahes, WI	06/02/09	06/02/09
70881	Superior Fibers—Shawnee (GMP)	Shawnee, OH	06/03/09	06/02/09
70882	Diversified Systems, Inc (Wkrs)	Indianapolis, IN	06/03/09	06/02/09
70883	Agilent Technologies (Comp)	Liberty Lake, WA	06/03/09	06/02/09
70884	Glacier Line Logging, Inc. (Comp)	Kalispell, MT	06/03/09	05/29/09
70885	Neff-Perkins Company (Union)	Perry, OH	06/03/09	05/28/09
70886	Johnson Bros.—West Salem Inc. (Comp)	West Salem, OH	06/03/09	06/02/09
70887	Berryville Graphics (Wkrs)	Berryville, VA	06/03/09	06/02/09
70888	Camcar LLC—Rochester Operation (Comp)	Rochester, IN	06/03/09	06/02/09
70889	Hesco Parts LLC (Comp)	Louisville, KY	06/03/09	05/28/09
70890	UAW Local #235 (Wkrs)	Hamtramck, MI	06/03/09	06/02/09
70891	Lapp Insulators LLC (Comp)	Sandersville, GA	06/03/09	06/02/09
70892	Eastern Screw (Wkrs)	Johnston, RI	06/03/09	06/01/08
70893	Alpha Sintered Metals Inc (Comp)	Ridgway, PA	06/03/09	06/01/09
70894	Marathon Equipment Company (Wkrs)	Clearfield, PA	06/03/09	06/01/09
70895	North American Refractories Company (Comp)	White Cloud, MI	06/03/09	05/29/09
70896	Neenah Paper (comp)	Neenah, WI	06/03/09	05/27/09
70897	Nortel Networks (Wkrs)	Richardson, TX	06/03/09	05/21/09
70898	Ram Tool (Wkrs)	Conneaut Lake, PA	06/03/09	06/02/09
70899	Agfa HealthCare, Inc. (Comp)	Hartland, WI	06/03/09	06/01/09
70900	Acushnet Company (Comp)	Carlsbad, CA	06/03/09	06/01/09
70901	Dana Classic Fragrances, Inc. (Comp)	Deerfield Beach, FL	06/03/09	06/01/09
70902	Tech Molded Plastics, LP (Comp)	Meadville, PA	06/03/09	05/27/09
70903	Severstal Warren, Inc (USWA)	Warren, OH	06/03/09	06/01/09
70904	PHD:US (Wkrs)	New York, NY	06/03/09	05/29/09
70905	T and S Hardwoods (Wkrs)	Sylva, NC	06/03/09	05/18/09
70906	Republic Door (Other)	McKenzie, TN	06/03/09	05/20/09
70907	TRW (Wkrs)	Mt. Vernon, OH	06/03/09	06/02/09
70908	Rohm and Haas Co/DOW Chemical (Wkrs)	West Alexandria, OH	06/03/09	05/19/09
70909	Martinsville Emulsion Products (Comp)	Ridgeway, VA	06/03/09	05/25/09
70910	Sypris Technologies (Union)	Kenton, OH	06/03/09	05/18/09
70911	R. H. Donnelley, Inc. (State)	Dunmore, PA	06/03/09	05/18/09
70912	Beck Manufacturing (Comp)	Greencastle, PA	06/03/09	05/20/09
70913	Automatic Systems, Inc. (Comp)	Brighton, MI	06/03/09	05/22/09
70914	Gilmour Manufacturing Company (Comp)	Louisville, KY	06/03/09	06/01/09
70915	Gardner Bender (Comp)	Milwaukee, WI	06/03/09	06/01/09
70916	Agilent Technologies, Digital Test Division (Comp)	Santa Rosa, CA	06/03/09	06/01/09
70917	Agilent Technologies, Network Solutions Division (Comp)	Colorado Springs, CO	06/03/09	06/01/09
70918	Agilent Technologies, Systems Product Division (Comp)	Loveland, NJ	06/03/09	06/01/09
70919	The Stride Rite Corporation (Wkrs)	Lexington, MA	06/03/09	06/01/09
70920	TCS Design (Wkrs)	Hickory, NC	06/03/09	06/01/09
70921	Golden State Box Factory (State)	San Diego, CA	06/03/09	05/11/09
70922	Hewes Marine Company (Comp)	Colville, WA	06/03/09	05/27/09
70923	Acme Architectural Products (Wkrs)	Brooklyn, NY	06/03/09	06/01/09
70924	Dawn Food Products, Inc. (Comp)	Osslan, IN	06/03/09	05/06/09
70925	Troy Laminating and Coating, Inc. (Wkrs)	Troy, OH	06/03/09	06/01/09
70926	BLC Consulting Service, LLC (Comp)	New London, CT	06/03/09	05/26/09
70927	Ingersoll-Rand, Security Technologies (Comp)	Colorado Springs, CO	06/03/09	06/01/09
70928	TRG Customer Solutions (Wkrs)	Jacksonville, FL	06/03/09	05/27/09
70929	International Polarizer, A Company of PPG Industries, Inc. (Comp).	Marlborough, MA	06/03/09	05/29/09
70930	Sandvik Materials Technology (Union)	Scranton, PA	06/03/09	05/26/09
70931	Castec, Inc. (Wkrs)	North Hollywood, CA	06/03/09	05/18/09

APPENDIX—Continued

[TAA petitions instituted between 6/1/09 and 6/5/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70932	PMG Pennsylvania Corporation (Wkrs)	Philipsburg, PA	06/03/09	06/01/09
70933	California Newspaper Partnership (Comp)	Novato, CA	06/03/09	06/01/09
70934	Airtex Products, LP (Wkrs)	Fairfield, IL	06/03/09	06/01/09
70935	Regal Beloit Manufacturing (Comp)	Lebanon, MO	06/03/09	05/28/09
70936	ITW Ark-Les (Comp)	Stoughton, MA	06/03/09	06/01/09
70937	Viscatec (Wkrs)	Morganton, NC	06/03/09	05/29/09
70938	Imperial Carbide (Wkrs)	Meadville, PA	06/03/09	06/01/09
70939	Super Value, Inc (Comp)	Pleasant Prairie, WI	06/04/09	06/03/09
70940	Ray Lewis and Son (Wkrs)	Marysville, OH	06/04/09	05/18/09
70941	Performance Powder Coating LLC (Comp)	Kokomo, IN	06/04/09	06/03/09
70942	Precise Engineering (State)	Lowell, MI	06/04/09	05/26/09
70943	Kenco Komatsu Reman (Comp)	Lexington, KY	06/04/09	06/03/09
70944	Enterprise Automotive Systems, Inc. (comp)	Warren, MI	06/04/09	05/18/09
70945	GMAC Insurance (Wkrs)	Winston Salem, NC	06/04/09	06/03/09
70946	MTD Products Inc (Other)	Brownsville, TN	06/04/09	05/26/09
70947	Chrysler LLC, National Customer Service, Hamlin Road Center (UAW).	Rochester Hills, MI	06/04/09	05/27/09
70948	Chrysler LLC, Plymouth Road Office Complex (UAW)	Detroit, MI	06/04/09	05/27/09
70949	Chrysler LLC, MOPAR Parts Distribution Center (UAW)	Center Line, MI	06/04/09	05/27/09
70950	Chrysler LLC, Chelsea Proving Grounds (Union)	Chelsea, MI	06/04/09	05/26/09
70951	AT&T Yellow Pages (State)	Troy, MI	06/04/09	05/23/09
70952	Paul Marino Gage Inc. (Wkrs)	Warren, MI	06/04/09	05/01/09
70953	ABB, Inc. (Comp)	Muskegon, MI	06/04/09	05/29/09
70954	SNC Manufacturing Company, Inc (Wkrs)	Oshkosh, WI	06/04/09	05/27/09
70955	B and B Engineering Corp (Wkrs)	Medford, WI	06/04/09	06/02/09
70956	Snorkel International (Wkrs)	Elwood, KS	06/04/09	06/02/09
70957	Focus Products Group, LLC (Other)	St. Louis, MO	06/04/09	06/02/09
70958	Liang's Sewing (Wkrs)	San Francisco, CA	06/04/09	05/19/09
70959	Alpha Technology Corporation (UAW)	Howell, MI	06/04/09	06/01/09
70960	GE Consumer and Industrial Lighting (Comp)	Willoughby, OH	06/04/09	05/21/09
70961	LSI Corporation (Wkrs)	Allentown, PA	06/04/09	05/29/09
70962	BG Labs (Comp)	Binghamton, NY	06/04/09	05/26/09
70963	Delaware Valley Financial Services (Wkrs)	Berwyn, PA	06/04/09	05/19/09
70964	Yorktowne Cabinetry (Wkrs)	Mifflinburg, PA	06/04/09	05/19/09
70965	Heatllator Inc (State)	Mt. Pleasant, IA	06/04/09	06/03/09
70966	Gerdau Ameristeel (USW)	Wilton, IA	06/04/09	05/22/09
70967	Gerstenslager (Comp)	Wooster, OH	06/04/09	05/18/09
70968	Trinity Rail Group LLC (Wkrs)	Cartersville, GA	06/04/09	05/19/09
70969	GrafTech International Holdings Inc. (USW)	Clarksburg, WV	06/04/09	06/04/09
70970	General Dynamics Itonix Corporation (Comp)	Spokane Valley, WA	06/04/09	05/18/09
70971	Sumitomo Electric Wiring Systems Inc (Comp)	Lebanon, OH	06/04/09	05/18/09
70972	Amphenol Backplane Systems (Comp)	Nashua, NH	06/04/09	06/01/09
70973	Manitowoc Tool and Machine LLC (State)	Manitowoc, WI	06/04/09	05/21/09
70974	Walry Industries Inc (State)	Sheboygan, WI	06/04/09	05/21/09
70975	B&C Corporation (JR Wheel) (Wkrs)	Norton, OH	06/04/09	06/02/09
70976	Job Works (Wkrs)	Kendallville, IN	06/04/09	06/02/09
70977	Top Notch, Inc. (State)	Fort Payne, AL	06/04/09	06/02/09
70978	Pace Industries LLC (Comp)	Auburn, AL	06/04/09	06/02/09
70979	Reed Business Information (Wkrs)	Greensboro, IL	06/04/09	05/30/09
70980	Sumitomo Electric Wiring Systems, Inc. (Comp)	Lebanon, OH	06/04/09	05/18/09
70981	Amphenol Printed Circuits, Inc (Comp)	Nashua, NH	06/04/09	06/01/09
70982	Rexam Beverage Can North America (Comp)	Chicago, IL	06/05/09	06/03/09
70983	Washington Mutual (State)	Jacksonville, FL	06/05/09	06/02/09
70984	Keihin IPT Manufacturing, Inc. (Comp)	Greenfield, IN	06/05/09	06/02/09
70985	Computer Aid, Inc. (Wkrs)	Alltentown, PA	06/05/09	05/09/09
70986	Bally Sportswear Inc. (Wkrs)	New York, NY	06/05/09	06/02/09
70987	Quad City Die Casting Inc (Comp)	Moline, IL	06/05/09	06/02/09
70988	Delphi (Flint East) (Wkrs)	Flint, MI	06/05/09	06/04/09
70989	Klaussner Furniture Industries, Inc. (Other)	Asheboro, NC	06/05/09	06/02/09
70990	Veritude Fidelity (Wkrs)	West Lake, TX	06/05/09	05/28/09
70991	Accutherm, Inc. (Comp)	Monroe City, MO	06/05/09	06/03/09
70992	United Machine Works, Inc (Comp)	Greenville, NC	06/05/09	05/26/09
70993	Diebold (IUECWA)	Hebron, OH	06/05/09	06/04/09
70994	Hach (Wkrs)	Grants Pass, OR	06/05/09	06/04/09
70995	The Northwest Company (International), Inc. (Comp)	Anchorage, AK	06/05/09	06/03/09
70996	Voith Paper Fabrics (State)	Neenah, WI	06/05/09	05/27/09
70997	Ross Mould, inc (Union)	Washington, PA	06/05/09	05/29/09
70998	Kelhin IPT Manufacturing, Inc. (Comp)	Greenfield, IN	06/05/09	06/02/09
70999	Moody's Analytics (Wkrs)	South Bend, IN	06/05/09	06/04/09
71000	Sypris Technologies (Comp)	Marion, OH	06/05/09	06/04/09

APPENDIX—Continued

[TAA petitions instituted between 6/1/09 and 6/5/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
71001	Kelhin IPT Management, Inc. (Comp)	Greenfield, IN	06/05/09	06/02/09
71002	VF Services, Inc. (Wkrs)	Greensboro, NC	06/05/09	06/04/09
71003	Endless Summer, Inc. (Wkrs)	Springfield, MO	06/05/09	05/20/09
71004	Radisys Corporation (97124)	Hillsboro, OR	06/05/09	06/01/09
71005	Vision Plastics (Comp)	San Diego, CA	06/05/09	06/03/09
71006	Endless Summer, Inc. (Wkrs)	Springfield, MO	06/05/09	05/20/09
71007	Federal Marine Terminals, Inc. (Comp)	Eastport, ME	06/05/09	06/02/09
71008	API Dalevan (UAW)	East Aurora, NY	06/05/09	06/04/09
71009	Experian (State)	Lincoln, NE	06/05/09	06/03/09
71010	CWR Manufacturing Corporation (Comp)	East Syracuse, NY	06/05/09	06/04/09
71011	Cadon Acquisitions, LLC (Comp)	Wyandotte, MI	06/05/09	06/03/09
71012	Vanity Fair Brands Dye Finish Facility (Comp)	Monroeville, AL	06/05/09	06/04/09
71013	Mincom, Inc. (Wkrs)	Greenwood Village, CO	06/05/09	06/01/09
71014	Jeld-Wen-Hawkins Window Division (Wkrs)	Hawkins, WI	06/05/09	05/21/09
71015	United Auto Workers Union (Comp)	Fenton, MO	06/05/09	06/03/09
71016	Principal Manufacturing Corporation (Comp)	Broadview, IL	06/05/09	06/03/09
71017	Diversified Textile Machinery Corporation (Comp)	Kings Mountain, NC	06/05/09	06/04/09
71018	The Nielsen Company (Wkrs)	Green Bay, WI	06/05/09	05/21/09
71019	Mincom. Inc. (Wkrs)	Greenwood Village, CO	06/05/09	06/01/09
71020	Vishay Sprague, Inc. (Comp)	Grafton, WI	06/05/09	05/18/09
71021	Martinrea Industries, Inc. (Comp)	Reed City, MI	06/05/09	06/04/09
71022	Sanyo Manufacturing Corporation (State)	Forrest City, AR	06/05/09	06/04/09
71023	ArcelorMittal Cleveland, Inc. (Wkrs)	Cleveland, OH	06/05/09	06/04/09
71024	Idaho Ethanol Processing, LLC (Comp)	Caldwell, ID	06/05/09	06/02/09
71025	Canon USA, Inc. (Wkrs)	Boise, ID	06/05/09	06/02/09
71026	Edscha Roof Systems (Comp)	Pontiac, MI	06/05/09	06/03/09
71027	Progress Tank (State)	Arthur, IL	06/05/09	06/02/09
71028	Blount, Inc. (Comp)	Milwaukie, OR	06/05/09	06/04/09
71029	Richline Group, Inc. (Wkrs)	Mount Vernon, NY	06/05/09	06/04/09
71030	Kenco Logistic Services, LLC (Comp)	Lyndhurst, VA	06/05/09	06/04/09

[FR Doc. E9–20446 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,341]

Chart Energy and Chemical, Inc., La Crosse, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on June 19, 2009, by the International Association of Machinists (IAMAW) Local 2191, on behalf of workers of Chart Energy and Chemical, Inc., La Crosse, Wisconsin.

The petition is a duplicate of petition number TA–W–71,324, filed on June 19, 2009, that is subject of an ongoing investigation. Therefore, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 7th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20460 Filed 8–24–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,953]

ABB, Inc.; Muskegon, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 4, 2009 in response to a worker petition filed by a company official on behalf of workers of ABB, Inc., Muskegon, Michigan.

The petitioning group of workers is covered by an active certification, TA–W–71,202 which expires on July 22, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20457 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,304]

Hitachi Cable Indiana-Kentucky Plant; Russell Springs, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 19, 2009 in response to a worker-filed petition filed on behalf of workers and former workers at Hitachi Cable Indiana-Kentucky Plant, Russell Springs, Kentucky.

The petition for Trade Adjustment Assistance (TAA) indicates that the subject worker group consists of workers producing ''automotive fluid movement components and assemblies (brake and power steering assemblies''

at ''223 Progress Drive, Russell Springs, Kentucky.''

The worker group is covered by a current TAA certification, TA–W–70,753 (issued June 30, 2009). Consequently, this investigation has been terminated.

Signed in Washington, DC, this 27th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20459 Filed 8–24–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,833]

E.I. Dupont, Circleville, OH; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 28, 2009 by a one-stop operator/partner on behalf of workers of E.I. Dupont, Circleville, Ohio.

The petition is a duplicate of petition number TA–W–71,750, filed on July 17, 2009 that is subject of an ongoing investigation. Therefore, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 13th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20445 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,980]

Sumitomo Electric Wiring Systems, Inc., Lebanon, OH; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on June 4, 2009, by a company official on behalf of workers of Sumitomo Electric Wiring Systems, Inc., Lebanon, Ohio.

The petitioning group of workers is covered by an active certification, (TA–W–70,971) which expires on July 10, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of July 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20458 Filed 8–24–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,895]

North American Refractories Company, White Cloud Plant, White Cloud, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 3, 2009 in response to a worker petition filed by a company official on behalf of workers of North American Refractories Company, White Cloud Plant, White Cloud, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20456 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,878]

Wachovia, Charlotte, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on June 2, 2009, by a company official on behalf of workers of Wachovia, Charlotte, North Carolina.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC, this 5th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20455 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,862]

Toshiba America Business Solutions, Inc, Electronics Imaging Division, Irvine, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 2, 2009, in response to a petition filed by a California State Trade Adjustment Assistance Specialist on behalf of workers of Toshiba America Business Solutions, Inc., Electronics Imaging Division, Irvine, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20454 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,853]

Parkdale Mills, Inc., Gastonia, NC; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed by a company official on June 2, 2009 on behalf of workers of Parkdale Mills, Inc., Gastonia, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20453 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,584]

T.B.C Timber, Inc., Libby, MT; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 26, 2009 in response to a petition filed by a company official on behalf of workers of T.B.C. Timber, Inc., Libby, Montana.

The petitioning group of workers is covered by an active certification (TA–W–70,686) which expires on August 5, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 12th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20450 Filed 8–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,801]

Tolleson Lumber Co., Inc., Preston, GA; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 28, 2009 in response to a petition filed by a company official on behalf of workers of Tolleson Lumber Co., Inc., Preston, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 27th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20451 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,818]

Classic Moving and Storage, Inc. and Boyles Distinctive Furniture, Inc., Wholly-Owned Subsidiaries of Hendricks Furniture Group, LLC, Conover, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 1, 2009, in response to a petition filed by a former company official on behalf of workers of Classic Moving and Storage, Inc., and Boyles Distinctive Furniture, Inc., wholly-owned subsidiaries of Hendricks Furniture Group, LLC, Conover, North Carolina.

The petitioning groups of workers are covered by an active certification, (TA–W–64,289) which expires on January 9, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20452 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,793]

Cyber Optics Corporation, Minneapolis, MN; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed by a state official on May 18, 2009 on behalf of workers of Cyber Optics Corporation, Minneapolis, Minnesota.

The petitioning group of workers is covered by an active certification, (TA–W–70,120) which expires on July 29, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 30th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20475 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,741]

JP Morgan Chase & Co., New York, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 21, 2009, by a One-Stop Operator/Partner on behalf of workers of JP Morgan Chase & Co., New York, New York.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC, this 5th day of August 2009.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20474 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,735]

International Business Machines, Chicago, IL; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 20, 2009 by three workers on behalf of workers of International Business Machines, Chicago, Illinois.

The petitioning group of workers is covered by an earlier petition (TA–W–71,550) filed on July 1, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition (TA–W–71,735) has been terminated.

Signed at Washington, DC this 6th day of August 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20473 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,724]

Contech US, LLC, Steel Products Group, Albemarle, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 17, 2009 in response to a petition filed by a company official on behalf of workers of Contech US, LLC, Steel Products Group, Albemarle, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of July 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20472 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,687]

Atmel Corporation, Test Department, Colorado Springs, CO; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 15, 2009 by three workers on behalf of workers of Atmel Corporation, Test Department, Colorado Springs, Colorado.

The petitioning group of workers is covered by an active certification, (TA–W–64,701) which expires on January 13, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 4th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20471 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,436]

Fortis Plastics, LLC, Boonville, MS; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a worker petition filed on June 26, 2009 on behalf of workers of Fortis Plastics, LLC, Boonville, Mississippi.

The petition regarding the investigation has been deemed invalid because it was filed by only one worker, not three as required by the statute. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20462 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,669]

Delphi Corporation, Electronic and Safety Division, Auburn Hills, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 14, 2009 on behalf of workers of Delphi Corporation, Electronics and Safety Division, Auburn Hills, Michigan.

The petition has been deemed invalid because the date of the petition precedes the filing date by more than 30 days. The petition is dated June 12, 2009 and was filed on July 14, 2009. In accordance with Federal Regulations at 29 CFR 90.2, the ''date of the petition'' means the date thereon, but which in no event shall be more than 30 days before the date of the filing. ''Date of filing'' means the date on which petitions and other documents are received by the Office of Trade Adjustment Assistance * * *'' Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of August 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20470 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,654]

Delong Sportswear, Pella, IA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 14, 2009 by an Iowa State Workforce Official on behalf of workers of DeLong Sportswear, Pella, Iowa.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC, this 12th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20469 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,582]

Eastman Kodak Company, Rochester, NY; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a worker petition filed on July 8, 2009 on behalf of workers of Eastman Kodak Company, Rochester, New York.

The petitioning group of workers is covered by an earlier petition (TA–W–71,479) filed on June 30, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20468 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,574]

Win On, Inc., Brooklyn, NY; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 30, 2009 in response to a worker petition filed by on behalf of workers of Win On, Inc., Brooklyn, New York.

Petitions filed by a group of adversely affected workers must be filed by at least three workers within one year of worker separations. The investigation revealed that two of the petitioners were separated more than one year prior to the date of petition. Consequently, the petition has been deemed invalid, and the investigation has been terminated.

Signed at Washington, DC, this 30th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20467 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,560]

Newton Transportation Company, Inc., Hudson, NC; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 7, 2009 by two company officials on behalf of workers of Newton Transportation Company, Inc., Hudson, North Carolina.

The petitioning group of workers is covered by an earlier petition (TA–W–71,531) filed on July 2, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20465 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,521]

Qimonda North America, Williston, VT; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on July 2, 2009 in response to a worker petition filed by a company official on behalf of workers of Qimonda North America, Williston, Vermont.

The petitioning group of workers is covered by an earlier petition TA–W–65,808C filed on April 15, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20464 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,489]

Manpower Employed On-Site at SGL Carbon LLC, St. Marys, PA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 30, 2009 in response to a petition filed by on behalf of workers of Manpower, leased workers employed on-site at SGL Carbon LLC, St. Marys, Pennsylvania.

The petitioning group of workers is covered by an active certification (TA–W–65,576, as amended) which expires on April 21, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 30th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20463 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,349]

Kroeschell Operations Inc., Pendergrass, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on June 23, 2009, by three workers of Kroeschell Operations Inc., Pendergrass, Georgia.

The petitioning group of workers is covered by an active petition (TA–W–71,185) filed on June 12, 2009, that is subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 7th of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20461 Filed 8–25–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Centennial Challenges

AGENCY: National Aeronautics and Space Administration (NASA).

Notice: (09–075).

ACTION: Notice of Centennial Challenges: 2009 Regolith Excavation Challenge.

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2459f–1(d). The 2009 Regolith Excavation Challenge is now scheduled and teams that wish to compete may now register. The NASA Centennial Challenges is a program of prize contests to stimulate innovation and competition in technologies of interest and value to NASA and the nation. The Regolith Excavation Challenge promotes the development of new methods and technologies to excavate lunar regolith (lunar dirt). Excavation is a necessary step towards lunar resource utilization. The unique physical properties of lunar regolith make excavation an extremely difficult technical challenge. To qualify to win a prize, teams competing in the 2009 Regolith Excavation Challenge must build tele-robotic and/or autonomously operating systems that will excavate simulated lunar regolith and deliver it to a collector.

The 2009 Regolith Excavation Challenge is being administered by the California Space Education & Workforce Institute (CSEWI) for NASA. The $750,000USD prize purse is funded by NASA. This event will be conducted in a format which brings all competitors to a single location for a ''head to head'' competition.

DATES: The 2009 Regolith Excavation Challenge is scheduled for October 17–18, 2009.

Location: The 2009 Regolith Excavation Challenge will be held at the NASA Research Park in Moffett Field, California. For more information, see: *http://researchpark.arc.nasa.gov*.

FURTHER INFORMATION: To register for and get additional information regarding the 2009 Regolith Excavation Challenge including Rules, Team Agreement, eligibility, and prize criteria, visit the Web site: *http://regolith.csewi.org* or contact Mr. Error! Reference source not found. at CSEWI, 3201 Airpark Drive Suite 204, Santa Maria, CA 93455. Phone: 805–349–2633 or e-mail: *matt.everingham@californiaspace authority.org*.

If you have questions or comments regarding the NASA Centennial Challenges Program visit the Web site: *http://www.ipp.nasa.gov/cc* or contact Mr. Andrew Petro, Innovative Partnerships Program Office, NASA Headquarters, 300 E Street, SW., Washington, DC 20546–0001. E-mail: *andrew.j.petro@nasa.gov*.

SUPPLEMENTARY INFORMATION: The 2009 Regolith Excavation Challenge total purse of $750,000 will go to the winning teams excavating the most regolith, in excess of 150 kilograms, within a 30-minute duration. The First, Second and Third prizes are $500,000, $150,000 and $100,000, respectively.

In case of individuals, prizes can only be awarded to US Citizens or permanent residents. In the case of corporations or other entities, prizes can only be awarded to those that are incorporated in and maintain a primary place of business in the United States.

Dated: August 18, 2009.

Douglas A. Comstock,

Director, Innovative Partnerships Program Office.

[FR Doc. E9–20402 Filed 8–25–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978 Notice of Waste Permit Application Received

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act and request for comments.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for the United States Antarctic Program (USAP), submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before September 25, 2009. The permit application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or at (703) 292–7420.

SUPPLEMENTARY INFORMATION: Antarctic Waste Regulations in 45 CFR part 671 require U.S. citizens, corporations, or other entities to obtain a permit for the use or release of designated pollutants in Antarctica and for the release of any waste in the Antarctic. NSF has received a permit application under this regulation for USAP activities in Antarctica. The permit applicant is: Raytheon Polar Services Company, 7400 South Tucson Way, Centennial, CO 80112.

The permit application applies to USAP activities conducted by all supporting organizations at all USAP facilities and operations in Antarctica. The proposed duration of the permit is from October 1, 2009 through September 30, 2014.

Raytheon Polar Services Company (RPSC) and other supporting organizations provide broad-based logistical support, technical support, and transportation services to the USAP. This includes the transport of both hazardous and non-hazardous waste from Antarctica to the United States.

RPSC operations include procuring, transporting to Antarctica, and tracking materials containing designated pollutants that are required for USAP operations, and for NSF and NSF grantees. RPSC is also responsible for fuel operations including fuel storage, distribution, and resupply; and record-keeping of fuel use. RPSC collects, stores, and ships both hazardous and non-hazardous waste materials and is responsible for the final disposition of these materials once they are returned to the United States. RPSC also provides training and technical guidance to enhance the safety and effectiveness of U.S. waste management practices in Antarctica.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E9–20564 Filed 8–25–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364; NRC–2009–0375]

Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.5, ''Specific exemptions,'' from 10 CFR Part 73, ''Physical protection of plants and materials,'' for Facility Operating License Nos. NPF–2 and NPF–8, issued to Southern Nuclear Operating Company, Inc. (SNC, the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2 (FNP), located in Houston County, Alabama. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the FNP from the required implementation date of March 31, 2010, for several new requirements of 10 CFR part 73. Specifically, FNP would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. Instead, SNC has proposed an alternate full compliance implementation date of December 15, 2010, approximately eight and a half months beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the FNP site.

The proposed action is in accordance with the licensee's application dated

June 9, 2009, as supplemented by letter dated July 31, 2009.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time to perform the required upgrades to the FNP security system due to resource and logistical impacts of the spring 2010 Unit 2 and fall 2010 Unit 1 refueling outages and other factors.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. The proposed action would not result in an increased radiological hazard beyond those previously analyzed. There will be no change to radioactive effluents that effect radiation exposures to plant workers and members of the public. The proposed action does not involve a change to plant buildings or land areas on the FNP site. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

With its request to extend the implementation deadline, the licensee has proposed compensatory measures to be taken in lieu of full compliance with the new requirements specified in 10 CFR part 73. The licensee currently maintains a security system acceptable to the NRC and the proposed compensatory measures will continue to provide acceptable physical protection of the FNP in lieu of the new requirements in 10 CFR part 73. Therefore, the extension of the implementation date of the new requirements of 10 CFR part 73 to December 15, 2010, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed actions (*i.e.,* the ''no-action'' alternative). Denial of the exemption request would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and technical specification change and the ''no action'' alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the FNP, as supplemented through the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Joseph M. Farley Nuclear Plant, Units 1 and 2—Final Report (NUREG—1437, Supplement 18).''

Agencies and Persons Consulted

In accordance with its stated policy, on August 13, 2009, the NRC staff consulted with the Alabama State official, Mr. Kirk Whatley of the Alabama Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated June 9 and July 31, 2009. The June 9, 2009, letter and certain parts of the July 31, 2009, submittal contain proprietary and safeguards information and, accordingly, are not available to the public. Other parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of August 2009.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Sr. Project Manager, Plant Licensing Branch II, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–20586 Filed 8–25–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Materials, Metallurgy, and Reactor Fuels Subcommittee; Notice of Meeting

The ACRS Subcommittee on the Materials, Metallurgy and Reactor Fuels will hold a meeting on September 23, 2009, 11555 Rockville Pike, Commissioner's Conference Room O1F16, One White Flint North, Rockville, Maryland.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, September 23, 2009—8:30 a.m.–5 p.m.

The Subcommittee will discuss the ''three-dimensional'' finite element analysis of the Oyster Creek drywell shell. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Peter Wen, telephone: 301–415–2832, e-mail: *Peter.Wen@nrc.gov,* five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be

provided to the Designated Federal Official 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official 1 day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 5:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: August 19, 2009.

Antonio F. Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–20588 Filed 8–25–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17f–6, SEC File No. 270–392, OMB Control No. 3235–0447.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–6 (17 CFR 270.17f-6) under the Investment Company Act of 1940 (15 U.S.C. 80a) permits registered investment companies (''funds'') to maintain assets (*i.e.,* margin) with futures commission merchants (''FCMs'') in connection with commodity transactions effected on both domestic and foreign exchanges.[1] Prior to the rule's adoption, funds generally were required to maintain these assets in special accounts with a custodian bank.

The rule requires a written contract that contains certain provisions designed to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. To protect fund assets, the contract must require that FCMs comply with the segregation or secured amount requirements of the Commodity Exchange Act (''CEA'') and the rules under that statute. The contract also must contain a requirement that FCMs obtain an acknowledgment from any clearing organization that the fund's assets are held on behalf of the FCM's customers according to CEA provisions. Finally, FCMs are required to furnish to the Commission or its staff on request information concerning the fund's assets in order to facilitate Commission inspections.

The Commission estimates that approximately 2270 funds effect commodities transactions and could deposit margin with FCMs under Rule 17f-6 in connection with those transactions. Commission staff estimates that each fund uses and deposits margin with two different FCMs in connection with its commodity transactions.[2]

The Commission estimates that each of the 2270 funds spends an average of 1 hour annually complying with the contract requirements of the rule (*i.e.,* executing contracts that contain the requisite provisions with additional FCMs), for a total of 2270 annual burden hours. The estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered ''collections of information,'' the burden hours for compliance are already included in other PRA submissions or are de minimis.[3] The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. If an FCM furnishes records pertaining to a fund's assets at the request of the Commission or its staff, the records will be kept confidential to the extent permitted by relevant statutory or regulatory provisions. The rule does not require these records be retained for any specific period of time. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days after this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: August 19, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20527 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor

[1] Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

[2] This estimate is based on information conversations with representatives of the fund industry.

[3] The rule requires a contract with the FCM to contain three provisions. Two of the provisions require the FCM to comply with existing requirements under the CEA and rules adopted under that Act. Thus, to the extent these provisions could be considered collections of information, the hours required for compliance would be included in the collection of information burden hours submitted by the Commodity Futures Trading Commission for its rules. The third contract provision requires that the FCM produce records or other information requested by the Commission or its staff. Commission staff has requested this type of information from an FCM so infrequently in the past that the annual burden hours are de minimis.

Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 35d–1, SEC File No. 270–491, OMB Control No. 3235–0548.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Act''), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 35d–1 (17 CFR 270.35d–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) generally requires that investment companies with certain names invest at least 80% of their assets according to what their names suggests. The rule provides that an affected investment company must either adopt this 80% requirement as a fundamental policy or adopt a policy to provide notice to shareholders at least 60 days prior to any change in its 80% investment policy. This preparation and delivery of the notice to existing shareholders is a collection of information within the meaning of the Act.

The Commission estimates that there are 8,681 open-end and closed-end management investment companies and series that have descriptive names that are governed by the rule. The Commission estimates that of these 8,681 investment companies, approximately 29 provide prior notice to their shareholders of a change in their investment policies per year. The Commission estimates that the annual burden associated with the notice requirement of the rule is 20 hours per response. The total burden hours for Rule 35d–1 is 580 per year in the aggregate (29 responses × 20 hours per response). Estimates of average burden hours are made solely for the purposes of the Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under Rule 35d–1 is mandatory. The information provided under Rule 35d–1 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: August 18, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20528 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 12b–1, SEC File No. 270–188, OMB Control No. 3235–0212.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 12b–1 (17 CFR 270.12b–1) permits a registered open-end investment company (''mutual fund'') to distribute its own shares and pay the expenses of distribution out of the mutual fund's assets provided, among other things, that the mutual fund adopts a written plan (''Rule 12b–1 plan'') and has in writing any agreements relating to the implementation of the Rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a Rule 12b–1 plan be approved by the mutual fund's directors and shareholders; (ii) the board review quarterly reports of amounts spent under the Rule 12b–1 plan; and (iii) the board consider continuation of the Rule 12b–1 plan at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the Rule 12b–1 plan, related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a Rule 12b–1 plan.

The board and shareholder approval requirements of Rule 12b–1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a 12b–1 plan. The requirement of quarterly reporting to the board is designed to ensure that the 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule.

Based on information filed with the Commission by funds, Commission staff estimates that there are approximately 6,871 mutual fund portfolios that have at least one share class subject to a rule 12b–1 plan.[1] However, many of these portfolios are part of an affiliated group of funds known as a ''mutual fund family'' that is overseen by a common board of directors. Although the board must review and approve the 12b–1 plan for each fund separately, we have allocated the costs and hourly burden related to rule 12b–1 based on the number of fund families that have at least one fund that charges 12b–1 fees, rather than on the total number of mutual fund portfolios that individually have a 12b–1 plan.[2] Based on information filed with the Commission, the staff estimates that there are approximately 371 fund families with common boards of directors that have at least one fund with a 12b–1 plan.

Based on conversations with fund representatives, Commission staff estimates that for each of the 371 mutual fund families with a portfolio that has a rule 12b–1 plan, the average annual burden of complying with the rule is 425 hours. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of whether to continue the plan.[3] We therefore estimate that the

[1] This estimate is based on information from the Commission's NSAR database.

[2] This allocation is based on conversations with fund representatives on how fund boards comply with the requirements of rule 12b–1. Despite this allocation of hourly burdens and costs, the number of annual responses each year will continue to depend on the number of fund portfolios with 12b–1 plans rather than the number of fund families with 12b–1 plans. The staff estimates that the number of annual responses per fund portfolio will be four per year (quarterly, with the annual reviews taking place at one of the quarterly intervals). Thus, we estimate that funds will make 27,484 responses (6871 fund portfolios × 4 responses per fund portfolio = 27,484 responses) each year.

[3] We do not estimate any costs or time burden related to the recordkeeping requirement, as funds are already required to maintain these records

total hourly burden per year for all funds to comply with current information collection requirements under rule 12b–1, is 157,675 hours (371 fund families × 425 hours per fund family = 157,675 hours) over the three year period for which we are requesting approval of the information collection burden).

If a currently operating fund seeks to (i) adopt a new Rule 12b–1 plan or (ii) materially increase the amount it spends for distribution under its Rule 12b–1 plan, Rule 12b–1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy. Based on conversations with fund industry representatives, Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a Rule 12b–1 plan. The staff further estimates that the cost of each fund's proxy is $30,000. Thus the total annual cost burden of Rule 12b–1 to the fund industry is $90,000 (3 funds requiring a proxy × $30,000 per proxy).

The collections of information required by Rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

pursuant to other rules, and would keep these records in any case as a matter of business practice.

Dated: August 19, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20529 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60531; File No. 4–443]

Joint Industry Plan; Order Approving Amendment No. 3 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options

August 19, 2009.

I. Introduction

On June 30, 2009, June 16, 2009, June 12, 2009, June 22, 2009, June 18, 2009, June 23, 2009, July 8, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), NASDAQ Stock Market LLC (''NASDAQ''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX (''Phlx''), NYSE Amex LLC (''NYSE Amex''), NYSE Arca Inc. (''NYSE Arca''), and The Options Clearing Corporation (''OCC''), respectively, filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] Amendment No. 3 to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (''Plan'' or ''OLPP'').[3] Amendment No. 3 would apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Plan Sponsor exchanges.

The proposed Amendment was published for comment in the **Federal Register** on July 28, 2009.[4] The Commission received no comment letters in response to the Notice. This order approves Amendment No. 3 to the OLPP.

II. Description of the Proposed Amendment

Amendment No. 3 would apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Plan Sponsor exchanges as a quote mitigation strategy. Specifically, the proposal applies certain ''range limitations'' to the addition of new series strike prices for options classes overlying equity securities, Exchange Traded Fund Shares, or Trust Issued Receipts. As proposed, if the price of the underlying security is less than or equal to $20, the Series Selecting Exchange would not list new option series with an exercise price more than 100 percent above or below the price of the underlying security.[5] If the price of the underlying security is greater than $20, the Series Selecting Exchange would not list new option series with an exercise price more than 50 percent above or below the price of the underlying security.

The proposed Amendment provides for an objective basis upon which the underlying prices for the price range limitations described above would be determined, specifically, in regards to intra-day add-on series and next-day series additions, new expiration months and for option series to be added as a result of pre-market trading. Furthermore, 8 a.m. Chicago time is proposed as the earliest permissible time at which a Series Selecting Exchange may notify the OCC, and each other exchange also trading the same options class, that it has commenced trading new series as a result of pre-market trading. This earliest permissible time is established to ensure that outlier prices for the underlying security which occur at 6 a.m. Chicago time, for example (*i.e.,* well in advance of the opening of the standard trading session), are not relied upon for purposes of the exercise price range limitations.

The proposal also allows each Plan Sponsor exchange to designate up to five underlying securities to except from the aforementioned 50 percent restriction and instead apply the 100 percent restriction. These designations would be made on an annual basis and could not be removed during the calendar year unless the option class was delisted by the designating exchange, in which case the designating exchange could designate another class to replace the delisted class. If a

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] On July 6, 2001, the Commission approved the OLPP, which was originally proposed by the American Stock Exchange LLC (k/n/a NYSE Amex), CBOE, ISE, OCC, Philadelphia Stock Exchange, Inc. (k/n/a Phlx), and Pacific Exchange, Inc. (k/n/a NYSE Arca). *See* Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). On February 5, 2004, the Boston Stock Exchange, Inc. (k/n/a BX) was added as a sponsor to the OLPP. *See* Securities Exchange Act Release No. 49199, 69 FR 7030 (February 12, 2004). On March 21, 2008, NASDAQ was added as a sponsor to the OLPP. *See* Securities Exchange Act Release No. 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008).

[4] *See* Securities Exchange Act Release No. 60365 (July 22, 2009), 74 FR 37266 (''Notice'').

[5] This restriction would not prohibit the listing of at least three options series per expiration month in an option class.

designated class is delisted by the designating exchange but continues to trade on at least one other exchange, any additional series for the class which are added from that point forward would again be subject to the proposed exercise price range limitations, unless the class is subsequently designated by another exchange. The proposal also provides an exchange with a procedure to request, if conditions warrant, additional case-by-case exceptions even when it has already so designated five underlying securities.

In addition, a procedure is created for a Series Listing Exchange to request an exemption, on a case-by-case basis, from the 100 percent range limitation, whereby, if unanimously agreed upon by all exchanges that list the particular options class, the Series Listing Exchange may list options series with strike prices that are more than 100 percent above or below the price of the underlying security.[6]

The proposal would not allow for the listing of options series that would otherwise be prohibited by the rules of a Series Selecting Exchange or the Plan, nor does it restrict the ability of an exchange to list options series that have been properly listed by another exchange. The proposal also expressly eliminates the applicability of the strike price range limitations with regard to: (1) The listing of $1 strike prices in option classes participating in the $1 Strike Program, where instead, the Series Selecting Exchange would be permitted to list $1 strike prices to the fullest extent as permitted under its rules for the $1 Strike Program; and (2) the listing of series of Flexible Exchange Options.

III. Discussion

After careful review, the Commission finds that Amendment No. 3 is consistent with the requirements of the Act and the rules and regulations thereunder.[7] Specifically, the Commission finds that Amendment No. 3 to the OLPP is consistent with section 11A of the Act[8] and Rule 608 thereunder[9] in that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The Commission notes that according to one study cited by the Plan Sponsor exchanges, the options industry would expect an approximate four percent reduction in the number of series traded, with only a nominal reduction in trading volume, upon implementation of the changes proposed in this Amendment.[10] Therefore, the Commission believes that adopting uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Plan Sponsor exchanges should reduce the number of option series available for trading, and thus should reduce increases in the options quote message traffic because market participants will not be submitting quotes in those series. Accordingly, the Commission believes that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to approve Amendment No. 3 to the OLPP.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[11] and Rule 608 thereunder,[12] that proposed Amendment No. 3 to the OLPP be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20538 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60514; File No. SR–NASDAQ–2009–075]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing Standards for Selected Equity-Linked Debt Securities

August 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 6, 2009, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Nasdaq Rule 5715, the Exchange's listing standards for selected equity-linked debt securities (''SEEDS''). The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Nasdaq Rule 5715, the Exchange's listing standards for SEEDS, to provide for greater flexibility in the listing criteria for such securities, as set forth below. The proposed substantive rule changes herein are based upon the rules of NYSE Arca, Inc. (''NYSEArca'')[3] and the American Stock Exchange LLC (''Amex'').[4] Similar proposed rule changes by other national securities

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[6] Application of any of the aforementioned exceptions and/or exemptions to the strike price range limitations for an underlying security would be available to all exchanges listing options on such security.

[7] In approving this proposed Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

[10] *See* Notice, *supra* note 4.

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.608.

[13] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57219 (Jan. 29, 2008), 73 FR 6542 (Feb. 4, 2008) (SR–NYSEArca–2008–13).

[4] *See* Securities Exchange Act Release No. 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR–Amex–2007–34) (the ''May 2007 Amex Order'') and Securities Exchange Act Release No. 56629 (October 9, 2007), 72 FR 58689 (October 16, 2007) (SR–Amex–2007–87) (the ''October 2007 Amex Order''). These two orders approved changes to Section 107A of the Amex Company Guide.

exchanges have been approved recently by the Commission.[5]

Nasdaq Rule 5715 currently provides that an issue of SEEDS must have a minimum public distribution of 1,000,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations, then no minimum number of holders. The Exchange proposes to expand the exception to provide that, if the notes are traded in thousand dollar denominations, then there is also no minimum public distribution requirement.[6] The Exchange notes that, without the exception to the 1,000,000 publicly distributed notes requirement, the Exchange would be unable to list issues in thousand dollar denominations having a market value of less than $1 billion. The Exchange believes that the proposed exception is a reasonable accommodation for those issuances in $1,000 denominations.

The Exchange proposes to further amend Nasdaq Rule 5715 to provide that there are no minimum public distribution and holders requirements if the notes are redeemable at the option of the holders thereof on at least a weekly basis (regardless of whether the notes are traded in thousand dollar denominations).[7] The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of the notes and the performance of the underlying index, as holders will be unlikely to sell their notes for less than their redemption value if they have a weekly right to redeem such notes for their full value. In addition, in the case of certain notes with a weekly redemption feature the issuer may have the ability to issue new notes from time to time at market prices prevailing at the time of sale, at prices related to market prices, or at negotiated prices. This provides a ready supply of new notes, thereby lessening the possibility that the market price of such notes will be affected by a scarcity of available notes for sale. The Exchange believes that the weekly redemption right also assists in maintaining a strong correlation between the market price and the indicative value of the notes, as investors will be unlikely to pay more than the indicative value in the open market if they can acquire notes from the issuer at that price.

The Exchange believes that the ability to list SEEDS with these characteristics without any minimum public distribution or holders requirements is important to the successful listing of such notes. Issuers issuing these types of notes generally do not intend to do so by way of an underwritten offering. Rather, the distribution arrangement is analogous to that of an exchange traded fund issuance, in that the issue is launched without any significant distribution event and the float increases over time as investors purchase additional securities from the issuer at the then indicative value. Investors will generally seek to purchase the notes at a point when the underlying index is at a level that they perceive as providing an attractive growth opportunity. In the context of such a distribution arrangement, it is difficult for an issuer to guarantee its ability to sell a specific number of units on the listing date. However, the Exchange believes that this difficulty in ensuring the sale of 1,000,000 notes and 400 public holders on the listing date is not indicative of a likely long-term lack of liquidity in the notes or, for the reasons set forth in the prior paragraph, of a difficulty in establishing a pricing equilibrium in the notes or a successful two-sided market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change is consistent with that requirement in that conforming the listing standard for SEEDS enables continued multiple listing and trading of SEEDS across multiple venues within the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–075. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All

[5] *See* Securities Exchange Act Release No. 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR–NYSEArca–2007–98) (amending Rule 5.2(j)(2) (''Equity-Linked Notes'')); Securities Exchange Act Release No. 56906 (December 5, 2007), 72 FR 70636 (December 12, 2007) (SR–NYSEArca–2007–103) (amending Rule 5.2(j)(1) (''Other Securities'')); and Securities Exchange Act Release No. 56593 (October 1, 2007), 72 FR 57362 (October 9, 2007) (SR–NYSEArca–2007–96) (amending Rule 5.2(j)(6) (''Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities'')).

[6] *See* the May 2007 Amex Order, Note 4, *supra*.

[7] *See* the May 2007 Amex Order (approving no minimum holders requirement if there is a weekly redemption right) and the October 2007 Amex Order (approving no minimum public distribution requirement if there is a weekly redemption right), Note 4, *supra*.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2009–075 and should be submitted on or before September 16, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] The Commission believes that the proposal is consistent with Section 6(b)(5)[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should enhance competition among issuers, to the benefit of the market, by expanding the listing and trading of SEEDS.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal seeks to conform the Exchange's rules for SEEDS to the rules of other exchanges that have previously been approved by the Commission.[13] Therefore, the Commission does not believe that the Exchange's proposal raises any novel regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for these products.

[10] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] *See* Securities Exchange Act Release No. 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR–Amex–2007–34); Securities Exchange Act Release No. 56629 (October 9, 2007), 72 FR 58689 (October 16, 2007) (SR–Amex–2007–87); and Securities Exchange Act Release No. 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR–NYSEArca–2007–98) (amending Rule 5.2(j)(2) (''Equity-Linked Notes'')).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASDAQ–2009–075) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20531 Filed 8–25–09; 8:45 am]

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[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60520; File No. SR–NYSEAmex–2009–45]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of a Proposed Rule Change Amending Rule 476A—Imposition of Fines for Minor Violations of Rules

August 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 476A—Imposition of Fines for Minor Violations of Rules. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE Amex Minor Rule Plan (''MRP'') fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by Amex Options Trading Permit (''ATP'') Holders and associated persons. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of ATP Holders and associated persons that have engaged in inadvertent or otherwise minor violations of the Exchange's rules. By promptly imposing a meaningful financial penalty for such violations, the MRP focuses on correcting conduct before it gives rise to more serious enforcement action.

The Exchange is now proposing to incorporate additional violations into the MRP, these violations include (i) trading in restricted classes, (ii) failure to report position and account information and (iii) failure to complete mandatory annual training. The Exchange is also proposing to increase fine levels for certain violations presently included in the MRP. The increases fine levels will be applicable for violations of due diligence, priority rules and order exposure rules. A brief description of each proposed changes is shown below.

Proposed Rules 476A Part 1C(i)(37) and 476A Part 1C(iii)(i)(37)

NYSE Amex Rules 916 and 916C provide, in part, that the Exchange may prohibit any opening purchase transactions in a series of options to the extent it deems such action necessary or appropriate. Accordingly, ATP Holders effecting opening transactions in restricted series, inconsistent with the terms of any such restriction, will be considered to be in violation of Rule 916 or 916C. The Exchange is proposing to incorporate violations related to trading in restricted series into the MRP under Rules 476A Part 1C(i)(37).

The Exchange is proposing to implement a fine of $1,000 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

$2,500 fine and a third violation would be allocated a $5,000 fine. The schedule of fines will be included under Rules 476A Part 1C(iii)(i)(37). Any subsequent violations within a rolling twenty-four month period would be subject to formal disciplinary proceedings by the Exchange. NYSE Amex believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct.

NYSE Amex believes that in most cases these violations may be handled efficiently through the MRP, however, as with other violations, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.

Proposed Rules 476A Part 1C(i)(38) and 476A Part 1C(iii)(i)(38)

Among other things, Rule 906(a) and Rule 906C(a) requires each ATP Holder to report to the Exchange the account and position information of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. ATP Holders report this information on the Large Option Position Report (''LOPR'').

NYSE Amex is proposing to incorporate violations for failing to accurately report position and account information in accordance with Rules 906(a) and 906C(a) into the MRP. The Exchange believes most of these violations are inadvertent and technical in nature. Not having reporting violations necessarily subject to formal discpenary [sic] proceedings will allow the Exchange to more expeditiously process routine violations under the MRP Plan.

In addition, NYSE Amex, as a member of the Intermarket Surveillance Group (''ISG''), as well as certain other self-regulatory organizations, have entered into agreement [sic] pursuant to Section 17(d) of the Securities Exchange Act of 1934 (as amended) (''17d–2 Agreement''), which incorporates the surveillance and sanctions of LOPR reporting violations. As such, the SROs have agreed that their respective rules concerning the reporting of large option positions are common rules. As a result, adding LOPR reporting violations to the MRP will further result in the consistency of rules among SROs who are parties to the 17d–2 Agreement with respect to LOPR reporting surveillance.

The Exchange is proposing to implement a fine of $1,000 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a $2,500 fine and a third violation would be allocated a $5,000 fine. The schedule of fines will be included under Rules 476A Part 1C(iii)(i)(38). Any subsequent violations within a rolling twenty-four month period would be subject to formal disciplinary proceedings by the Exchange. NYSE Amex believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct.

NYSE Amex believes that in most cases reporting violations may be handled efficiently through the MRP, however, as with other violations, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.

Proposed Rules 476A Part 1C(i)(39) and 476A Part 1C(iii)(i)(39)

NYSE Amex Rule 50—Training and Examination Requirements, Commentary .03–.04 requires all ATP Holders (f/n/a 86 Trinity Permit Holders [3]) and clerks active in the business of the Exchange trading floor to participate in one or more Exchange sponsored mandatory annual regulatory training programs, including participation in any Exchange testing programs in connection with such programs. The Rule goes on to say that any individual who fails to satisfactorily complete a mandatory regulatory training program will be subject to disciplinary action under the Exchange's Minor Rule Violation Fine System.

The Exchange now proposes to establish Rule 476A Part 1C(i)(39), in order to include violations of Rule 50, Commentary .03–.04 in the MRP.

The Exchange is proposing to implement a fine of $1,000 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a $2,500 fine and a third violation would be allocated a $5,000 fine. The schedule of fines will be included under Rules 476A Part 1C(iii)(i)(39). Any subsequent violations within a rolling twenty-four month period would be subject to formal disciplinary proceedings by the Exchange. NYSE Amex believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct.

Changes to Rule 476A Part 1C(iii)(i)1., Rule 476A Part 1C(iii)(i)23. and Rule 476A Part 1C(iii)(i)29.

NYSE Amex Rule 933NY(a) requires that a Floor Broker handling an order is to use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules of the Exchange. Violators of Rule 933NY(a) are subject to a sanction pursuant to the MRP, specifically, Rule 476A Part 1C(iii)(i)1. Suggested fines for violations of Rule 933NY(a) are presently $1,000 for the first violation in a rolling twenty-four month period, $2,500 for a second violation within the same period fine and a third violation is subject to a $3,500 fine.

NYSE Amex Rule 935NY is designed to ensure that orders are properly exposed on the NYSE Amex electronic trading system prior to interaction by the initiating firm. The rule states that users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This rule prevents a user from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book. Violators of Rule 935NY are subject to a sanction pursuant to the MRP, specifically, Rule 476A Part 1C(iii)(i)23. Suggested fines for violations of Rule 935NY are presently $500 for the first violation in a rolling twenty-four month period, $1,000 for a second violation within the same period fine and a third violation is subject to a $2,500 fine.

NYSE Amex Rule 963NY governs the priority of bids and offers in open outcry trading. In general, Rule 963NY states that the highest bid/lowest offer shall have priority over all other orders. In the event there are two or more bids/offers for the same option contract representing the best price and one such bid/offer is displayed in the Consolidated Book, such bid shall have priority over any other bid at the post. In addition, if two or more bids/offers represent the best price and a bid/offer displayed in the Consolidated Book is not involved, priority shall be afforded

[3] *See* NYSE Amex Rule 900.2NY(5). The term ''ATP Holder'' shall refer to a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP, and references to ''member,'' ''member organization'' and ''86 Trinity Permit Holder'' as those terms are used in the Rules of NYSE Amex LLC should be deemed to be references to ATP Holders.

to such bids in the sequence in which they are made. Rule 963NY also contains certain provisions for related to split-price priority and priority of complex orders. Violators of any part of Rule 6.63NY are subject to a sanction pursuant to the MRP, specifically Rule 476A Part 1C(iii)(i)29. Suggested fines for violations of Rule 963NY are presently $500 for the first violation in a rolling twenty-four month period, $1,000 for a second violation within the same period fine and a third violation is subject to a $2,000 fine.

At this time the Exchange believes the current monetary fine levels contained in the MRP, for the three above mentioned violations, are inadequate, given the serious nature of these rules. In order to act as an effective deterrent against future violations, while also serving as a just penalty for those who commit these violations, the Exchange feels an increase in the fine levels for these three violations is warranted. NYSE Amex now proposes fine levels of $1,000 for the first violation in a rolling twenty-four month period, $2,500 for a second violation within the same period fine and $5,000 for a third violation within the same period fine. These fine levels will apply to all three types of violations mentioned above.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposal is also consistent with Section 6(b)(6)[6] and 6(b)(7),[7] which requires that members and persons associated with members are appropriately disciplined for violations of Exchange rules and are provided a fair procedure for disciplinary procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–45 and should be submitted on or before September 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20533 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(6).

[7] 15 U.S.C. 78f(b)(7).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60527; File No. SR–NYSEArca–2009–45]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan

August 18, 2009.

I. Introduction

On May 20, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan. The proposed rule change was published for comment in the **Federal Register** on June 12, 2009.[3] On July 12, 2009, the Exchange filed Amendment No. 1 to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60054 (June 5, 2009), 74 FR 28078 (''Notice'').

proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend and adopt new NYSE Arca rules to implement the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[5] Specifically, the Exchange proposes to amend and/or replace NYSE Arca Rules 6.92 through 6.96 with new rules implementing the Plan, amend other Exchange rules to reflect the Plan, and delete rules rendered unnecessary by the Plan.

The Old Plan

Each of the Participating Options Exchanges are signatories to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Old Plan'').[6] In pertinent part, the Old Plan generally requires its participants to avoid trading at a price inferior to the national best bid or offer (''trade-through''), although it provides for a number of exceptions to trade-through liability.[7] The Participating Options Exchanges comply with this requirement of the Old Plan by utilizing a stand alone system (''Linkage Hub'') to send and receive specific order types,[8] namely Principal Acting as Agent Orders (''P/A Orders''), Principal Orders, and Satisfaction Orders.[9] The Old Plan also provided that dissemination of ''locked'' or ''crossed'' markets should be avoided, and remedial actions that should be taken to unlock or uncross such market.[10] Each of the Participating Options Exchanges, including the Exchange, has submitted an amendment to the Old Plan to withdraw from such Plan.[11] The withdrawals will be effective upon approval by the Commission of such amendments pursuant to Rule 608 of Regulation NMS under the Act (''Regulation NMS'').[12]

The Plan

The Plan does not require a central linkage mechanism akin to the Old Plan's Linkage Hub. Instead, the Plan includes the framework for routing orders via private linkages that exist for NMS stocks under Regulation NMS.[13] The Plan requires the Participating Options Exchanges to adopt rules ''reasonably designed to prevent Trade-Throughs.''[14] Participating Options Exchanges are also required to conduct surveillance of their respective markets on a regular basis to ascertain the effectiveness of the policies and procedures to prevent Trade-Throughs and to take prompt action to remedy deficiencies in such policies and procedures.[15] As further described below, the Plan incorporates a number of exceptions to trade-through liability.[16] Some of these exceptions are carried over from the Old Plan, including exceptions for trading rotations, non-firm quotes, and complex trades.[17] Others are substantially similar to exceptions available for NMS stocks under Regulation NMS, such as exceptions for systems issues, crossed markets, quote flickering, customer stopped orders, benchmark trades and, notably, intermarket sweep orders (''ISOs'').[18] In addition, the Plan contains a new exception for stopped orders and price improvement.[19]

The Plan also requires each Participant to establish, maintain, and enforce written rules that: require its members reasonably to avoid displaying locked and crossed markets; assure the reconciliation of locked and crossed markets; and prohibit its members from engaging in a pattern or practice of displaying locked and crossed markets; subject to exceptions as may be contained in the rules of the Participant, as approved by the Commission.[20]

The Exchange's Proposal

To implement the Plan, the Exchange proposes to replace its current rules relating to the Old Plan with new rules relating to the Plan, and makes amendments to other rules as necessary to conform to the requirements of the Plan.[21] As such, the Exchange proposes to adopt all applicable definitions from the Plan into the Exchange's rules.[22]

In addition, the Exchange proposes to prohibit its members from effecting Trade-Throughs, unless an exception applies.[23] Consistent with the Plan, the Exchange also proposes exceptions to the prohibition on trade throughs relating to: System issues; trading

[4] Amendment No. 1 clarified that this proposed rule change will become effective upon the Exchange's withdrawal from the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage and the effectiveness of the Options Order Protection and Locked/Crossed Market Plan. In addition, Amendment No. 1 revised Proposed NYSE Arca Rule 6.95(b) to delete the last sentence which stated, in reference to the proposed locked/crossed market exception for non-customer quotes, that the ''exemption is operative as long as the Exchange identifies the presence of Customer orders in its disseminated bid or offer'' because the sentence was not included in similar rules of other exchanges. Because the amendment provided clarification and revised the Exchange's proposed locked and crossed market rule in a non-substantive manner to conform with similar proposed rules of other exchanges, the amendment did not require notice and comment.

[5] The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4–546) (''Plan Notice'') and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (''Plan Approval''). The seven options exchanges are: Chicago Board Options Exchange, Incorporated (''CBOE''); International Securities Exchange, LLC (''ISE''); The NASDAQ Stock Market LLC (''Nasdaq''); NASDAQ OMX BX, Inc. (''BOX''); NASDAQ OMX PHLX, Inc. (''Phlx''); NYSE Amex LLC (''NYSE Amex''); and NYSE Arca (each exchange individually a ''Participant'' and, together, the ''Participating Options Exchanges'').

[6] On July 28, 2000, the Commission approved the Old Plan as a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (n/k/a NYSE Amex), CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc. (n/k/a Phlx), Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc. (n/k/a BOX), and Nasdaq joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

[7] Section 8(c) of the Old Plan.

[8] The Linkage Hub is a centralized data communications network that electronically links the Participating Options Exchanges to one another. The Options Clearing Corporation (''OCC'') operates the Linkage Hub.

[9] Section 2(16) of the Old Plan.

[10] Section 7(a)(i)(C) of the Old Plan.

[11] *See* Securities Exchange Act Release No. 60360 (July 21, 2009) 74 FR 37265 (July 28, 2009) (File No. 4–429).

[12] 17 CFR 242.608.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04); 17 CFR 242.600 *et seq*. For discussions of the similarities between the provisions of Regulation NMS and the provisions in the Plan, *see* the Plan Notice and Plan Approval, *supra* note 5.

[14] Under the Plan, a ''Trade-Through'' is generally defined as a transaction in an option series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer.'' *See* Section 2(21) of the Plan. A ''Protected Bid'' and ''Protected Offer'' generally means a bid or offer in an option series, respectively, that is displayed by a Participant, is disseminated pursuant to the Options Price Reporting Authority (''OPRA'') Plan, and is the Best Bid or Best Offer. *See* Section 2(17) of the Plan. A ''Best Bid'' or ''Best Offer'' means the highest bid price and the lowest offer price. Section (2)(1) of the Plan. ''Protected Bid'' and ''Protected Offer,'' together are referred to herein as ''Protected Quotation.'' *See* Section 2(18) of the Plan.

[15] Section 5(a)(ii) of the Plan.

[16] Section 5(b) of the Plan.

[17] Subparagraphs (ii), (vii), and (viii), respectively, of Section 5(b) of the Plan.

[18] Subparagraphs (i), (iii), (vi), (ix), (xi), and (iv)–(v), respectively, of Section 5(b) of the Plan.

[19] Subparagraph (x) of Section 5(b) of the Plan.

[20] Section 6 of the Plan. The Plan also contains provisions relating to the operation of the Plan including, for example, provisions relating to the entry of new parties to the Plan; withdrawal from the Plan; and amendments to the Plan.

[21] A more detailed description of the Exchange's proposed rule change may be found in the Notice, *supra*, note 3.

[22] Proposed NYSE Arca Rule 6.92.

[23] Proposed NYSE Arca Rule 6.94(a).

rotations; crossed markets; intermarket sweep orders; quote flickering; non-firm quotes; complex trades; customer stopped orders; stopped orders and price improvement; and benchmark trades.[24]

The Exchange also proposes a rule to address locked and crossed markets, as required by the Plan.[25] Specifically, the Exchange proposes that, except for quotations that fall within a stated exception, members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quote.[26]

The Exchange proposes four exceptions to the prohibition against locked and crossed markets: When the Exchange is experiencing a failure, material delay, or malfunction of its systems or equipment; when the locking or crossing quotation was displayed at a time where there is a crossed market; when an Exchange member simultaneously routes an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; and, with respect to a locking quotation, when the order entered on the Exchange that will lock a Protected Bid or Protected Offer, is (i) not a customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order; or (ii) a customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order, and, on a case-by-case basis, the customer specifically authorizes the member to lock such Protected Bid or Protected Offer.[27] The Exchange believes that, in most cases, locked market maker quotes are good for the investing public, but recognizes that the benefits of a locked market become more complicated when one or both of the locking quotations represent a customer order. Where there is market interest willing to trade with a customer, the Exchange believes that the customer order should be filled. Thus, the Exchange proposes that it would not exempt from the locked market prohibition situations involving customer orders unless the customer entering the locking order specifically authorizes the lock on a case-by-case basis.[28] As a result, its members would not be permitted to lock another Participant's quotation unless the Exchange can establish that the quotation on the other Participant's market is not for the account of a customer.

The Exchange also proposes rules to permit it to continue to accept P/A Orders and Principal Orders from Participating Options Exchanges that are not able to send ISOs in order to avoid Trade-Throughs.[29] The Exchange noted that, even upon the approvals of the Plan and the implementing rules of the various Participating Options Exchanges, it is possible that not all the Participants will be functionally able to operate pursuant to the Plan. Thus, the Exchange has proposed to retain certain rules governing the receipt of P/A Orders and Principal Orders until such time that all Participating Options Exchanges are operating pursuant to the Plan.

The Exchange also proposes to delete certain provisions of NYSE Arca rules to reflect the Exchange's withdrawal from the Old Plan.[30] Finally, the Exchange proposes to amend NYSE Arca Rule 10.12, the Exchange's Minor Rule Plan, to replace references to the Old Plan with references to the Plan.

II. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[32] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Rule 608(c) of Regulation NMS under the Act, which requires that each exchange comply with the terms of any effective national market system plan of which it is a participant.[33] Finally, the Commission finds that the proposed rule change is consistent with the requirements of the Plan.[34]

Proposed NYSE Arca Rule 6.92 would define applicable terms in a manner that are substantively identical to the defined terms of the Plan. As such, the Commission finds that proposed amendments to NYSE Arca Rule 6.92 are consistent with the Act and the Plan.

Proposed NYSE Arca Rule 6.94(a) would prohibit members from effecting Trade-Throughs unless an exception applies. Proposed NYSE Arca Rule 6.94(b) would provide for ten exceptions to the general Trade-Through prohibition, relating to systems issues, trading rotations, crossed markets, ISOs, quote flickering, non-firm quotes, complex trades, customer stopped orders, stopped orders and price improvement, and benchmark trades.[35] Aside from the proposed exception relating to systems issues, each proposed exception would be substantively identical to the parallel exception under Section 5(b) of the Plan.

The systems issues exception under proposed NYSE Arca Rule 6.94(b)(1) would implement the parallel exception available under Section 5(b)(i) of the Plan and would permit the Exchange to bypass the Protected Quotation of another Participant if such other Participant repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations. The Exchange's rule would require the Exchange to notify such non-responding Participant immediately after (or at the same time as) electing self-help, and assess whether the cause of the problem lies with the Exchange's own systems and, if so, take immediate steps to resolve the problem. Finally, the Exchange would be required to promptly document its reasons supporting any such determination to bypass a Protected Quotation. The Commission believes that this exception should provide the Exchange with the

[24] Proposed NYSE Arca Rule 6.94(b)(1)–(10). In addition, the Exchange proposes to add ISOs as a new type of order under proposed NYSE Arca Rule 6.62(z).

[25] A ''locked market'' is defined as a quoted market in which a Protected Bid is equal to a Protected Offer. Proposed NYSE Arca Rule 6.92(a)(9). A ''crossed market'' is defined as a quoted market in which a Protected Bid is higher than a Protected Offer. Proposed NYSE Arca Rule 6.92(a)(5).

[26] Proposed NYSE Arca Rule 6.95(a).

[27] Proposed NYSE Arca Rule 6.95(b)(1)–(4).

[28] NYSE Arca noted that it can envision a customer authorizing a lock when the fees associating with trading against the locked market make the execution price uneconomical to the customer. *See* Notice, *supra* note 3 at 28080.

[29] Proposed NYSE Arca Temporary Rule 6.96.

[30] *See* Notice, *supra* note 3 at 28080–81, discussing proposed changes to NYSE Arca Rule 6.33, Commentaries .02–.04 to NYSE Arca Rule 6.35, and NYSE Arca Rule 6.76A.

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] 17 CFR 242.608(c). Section 1 of the Plan provides in pertinent part that, ''The Participants will submit to the [Commission] for approval their respective rules that will implement the framework of the Plan.''

[34] *See supra* note 5.

[35] Proposed NYSE Arca Rule 6.94(b)(1)–(10).

necessary flexibility for dealing with problems that occur on an away market during the trading day. At the same time, the exception's requirements to immediately notify such away market of its determination and also assess its own system should help prevent the use of this exception when there in fact is a problem with the Exchange's own systems, rather than those of an away market.

The Commission notes that included among the exception in proposed NYSE Arca Rule 6.94(b) would be an exception for certain transactions involving ISOs.[36] An order identified as an ISO would be immediately executable by the Exchange (or any other Plan Participant that received such an order) based on the premise that the market participant sending the ISO has already attempted to access all better-priced Protected Quotations up to their displayed size. The Commission believes that this exception should help ensure more efficient and faster executions in the options markets.

The Commission notes that, in addition to these rules regarding Trade-Throughs, the Plan requires that each Participant establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an applicable exception and, if relying on such exception, that are reasonably designed to assure compliance with the terms of the exception. In addition, the Commission notes that the Plan requires each Participant to conduct surveillance of its market on a regular basis to ascertain the effectiveness of such policies and procedures and to take prompt action to remedy any deficiencies in such policies and procedures.

Accordingly, the Commission finds that proposed NYSE Arca Rule 6.94 is consistent with Section 5 of the Plan and Section 6(b)(5) of the Act[37] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Proposed NYSE Arca Rule 6.95(a) would require Exchange members to reasonably avoid displaying, and not engage in a pattern or practice of displaying, any quotation that locks or crosses a Protected Quotation, subject to certain exceptions delineated in proposed NYSE Arca Rule 6.95(b). The Commission recognizes that locked and crossed markets may occur accidentally and cannot always be avoided. However, the Commission believes that giving priority to the first-displayed Protected Bid or Protected Offer, particularly when it includes a public customer's order, will encourage price discovery and contribute to fair and orderly markets. Therefore, the Commission believes that the proposed rule, which corresponds to the Plan's language, to require members to *reasonably* avoid displaying, and not engaging in a *pattern or practice* of, locks and crosses is appropriate.

Proposed NYSE Arca Rule 6.95(b) would permit four exceptions to the Exchange's general rule relating to locked and crossed markets.[38] The first three would be similar to analogous certain trade-through exceptions under proposed NYSE Arca Rule 6.94(b), and relate to when the Exchange is experiencing systems issues, when there is exists a crossed market, and when a member simultaneously routes ISOs against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

The fourth exception would permit an order entered onto the Exchange to lock a Protected Bid or Protected Offer when such order is: (1) not a customer order, and the Exchange can determine that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order; or (2) a customer order, and the Exchange can determine that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order and, on a case-by-case basis, the customer specifically authorizes the Exchange's member to lock such Protected Bid or Protected Offer. This exception would not protect a market maker quote or broker-dealer order from being locked.

The Commission believes that the Exchange's proposed rules relating to locked and crossed markets are consistent with the Plan and the Act and should help ensure that the display of locked or crossed markets will be limited and that any such display will be promptly reconciled. The Commission also believes that each of the proposed exceptions to locked and crossed markets relate to circumstances when it is appropriate to permit a limited, narrow exception to the general locked and crossed market rule.

In particular, the Commission believes that the fourth exception is appropriate because it would protect customer orders that are Protected Bids or Protected Offers from being locked, and would only permit a customer order entered on to the Exchange to lock a Protected Bid or Protected Offer when a customer specifically authorizes an Exchange member, and only when such Protected Bid or Protected Offer itself does not represent, in whole or in part, a customer order. Because of the rapidity with which options quotes are often updated today, particularly in response to changes in the underlying, there is an increasing likelihood that market maker quotations will lock each other. The proposed exception accounts for this dynamic by not prohibiting such locking instances. Importantly, the proposed exception in the Exchange's rules that the Commission is approving would allow non-customer orders to lock an away market's Protected Quotation only if the Exchange is able to affirmatively determine that the Protected Quotation on the away market is not, in whole or in part, for the account of a customer. If any portion of such away market's Protected Quotation is for the account of a customer, such Protected Quotation may not be locked. In addition, the Commission notes that the rule requires that such determination be made via identification available pursuant to the OPRA Plan, which is working with the participating options exchanges on a method to so identify customer quotations through OPRA. The Exchange has represented that, absent the ability to identify a customer quote as part of an exchange's BBO, the Exchange would assume that the quote represents, in whole or in part, a customer order. As such, the Exchange has represented that it would not permit its members to avail themselves of this exemption unless the away market has informed the Exchange that it would designate all customer orders as such in OPRA and such exchange's quotation does not contain such designation. Finally, the Exchange has represented that if an exchange chooses not to identify its customer quotations, the Exchange would treat all of such exchange's quotations as customer orders and, absent application of another exception, would not permit locks of such quotations.

Therefore, the Commission finds that Exchange's rule regarding locked and crossed markets appropriately implements Section 6 of the Plan, and is consistent with Section 6(b)(5) of the

[36] Proposed NYSE Arca Rule 6.94(b)(4).

[37] 15 U.S.C. 78f(b)(5).

[38] Section 6 of the Plan permits exceptions to the Plan's locked and crossed market rules as may be contained in the rules of a Participant approved by the Commission.

Act [39] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that proposed NYSE Arca Temporary Rule 6.96, which facilitates the participation of certain Participating Options Exchanges who may require the use of P/A Orders and Principal Orders after implementation of the Plan, is consistent with the Act. Although the Commission has already approved the Plan,[40] the Commission also recognizes that there may be one or more Participating Options Exchanges that may require a temporary transition period during which they may want to continue to utilize these order types that exist currently under the Old Plan.[41] The Exchange and each of the other Participating Options Exchanges have proposed substantially identical temporary provisions to accommodate this possibility.[42] Thus, the Commission finds that the proposed rule relating to the Exchange's receipt and handling of P/A Orders and Principal Orders, and imposing certain obligations on the Exchange with respect to such orders that are similar to those that exist under the Old Plan, is appropriate and consistent with Section 6(b)(5) of the Act [43] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Finally, the Commission finds that NYSE Arca's other proposed changes, including the proposed modifications to NYSE Arca Rule 6.33, Commentary .02–.04 to NYSE Arca Rule 6.35, NYSE Arca Rule 6.76.A, and NYSE Arca Rule 10.12 are appropriate and consistent with the Act.

[39] 15 U.S.C. 78f(b)(5).

[40] *See* Plan Approval, *supra*, note 5.

[41] The Commission notes that any Participating Options Exchange that wishes to utilize such order types in a manner that would result in a Trade-Through would need to separately request an exemption from the Plan for such use.

[42] The Commission notes that the rules contained in NYSE Arca Temporary Rule 6.96 are not required by the Plan, but rather are rules proposed by the Exchange in order to facilitate the participation in the Plan of certain exchanges during an initial transition period.

[43] 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–NYSEArca–2009–45), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20537 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60535; File No. SR–NYSEAmex–2009–55]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Amending Section 107(H) of the NYSE Amex Company Guide

August 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 107(H) of the NYSE Amex Company Guide in order to add the CBOE Volatility Index® (VIX®) Futures (''VIX Futures'') to the definition of Futures Reference Asset. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 19b–4(e) [3] under the Securities Exchange Act of 1934 (''Act'') [4] provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to section (c)(1) of Rule 19b–4,[5] if the Commission has approved, pursuant to Section 19(b) of the Act,[6] the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product,[7] and the SRO has a surveillance program for the product class.[8] This proposal is substantially similar to the previously approved NYSE Arca Equities Rule 5.2(j)(6)(v).[9]

The Commission has approved the listing pursuant to Section 107(H) of the Amex Company Guide, including listing pursuant to Rule 19b–4(e), of Futures-Linked Securities.[10]

The Exchange is proposing to amend its generic listing standards under Section 107(H) of the NYSE Amex Company Guide [11] for Futures-Linked Securities pursuant to which it will be able to trade securities linked to VIX Futures without Commission approval of each individual product pursuant to

[3] 17 CFR 240.19b–4(e).

[4] 17 U.S.C. 78a.

[5] 17 CFR 240.19b–4(c)(1).

[6] 15 U.S.C. 78s(b).

[7] E-mail from Timothy Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated August 11, 2009 (''Exchange Confirmation'').

[8] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) [sic].

[9] *See* Securities Exchange Act Release No. 34–58968 (November 17, 2008), 73 FR 64647 [sic] (SR–NYSEArca–2008–111).

[10] *See* Securities Exchange Act Release No. 34–57739 (April 30, 2008), 73 FR 25061 [sic] (SR–Amex–2008–17).

[11] *See* Exchange Confirmation, *supra* note 7.

Section 19(b)(2) of the Act.[12] Specifically, the Exchange proposes to amend Section 107(H) of the NYSE Amex Company Guide to add the VIX Futures as an underlying financial instrument of Futures-Linked Securities and include VIX Futures within the definition of a Futures Reference Asset.[13] The Exchange represents that any securities it lists and/or trades pursuant to Section 107(H) of the NYSE Amex Company Guide will satisfy the standards set forth therein, and all applicable Exchange and federal securities rules. The Exchange states that within five business days after commencement of trading of a Futures-Linked Security in reliance on Section 107(H) of the NYSE Amex Company Guide, the Exchange will file a Form 19b–4(e).[14]

The Commission has previously approved the listing and trading of options on the VIX.[15]

a. The VIX

The information in this filing relating to the VIX was taken from the Web site of the Chicago Board Options Exchange (the ''CBOE'').

The VIX was originally developed by the CBOE in 1993 and was calculated using S&P 100® Index options. The current methodology for the VIX was introduced by the CBOE in September 2003 and it is now an index that uses the quotes of certain S&P 500® Index (''SPX'') option series to derive a measure of the volatility of the U.S. equity market. The VIX measures market expectations of near term volatility conveyed by the prices of options on the SPX. It provides investors with up-to-the-minute market estimates of expected stock market volatility over the next 30 calendar days by extracting implied volatilities from real-time index option bid/ask quotes.

b. VIX Futures

Information regarding VIX Futures can be found on the Web site of the CBOE Futures Exchange (the ''CFE'').

The CFE began listing and trading VIX Futures since March 26, 2004 under the ticker symbol VX. VIX Futures trade between the hours of 8:30 a.m.–3:15 p.m. Central Time (Chicago Time). The CFE is a member of the Intermarket Surveillance Group (''ISG'').[16]

The Exchange believes that the proposed criteria to add VIX Futures as an underlying Futures Reference asset will facilitate the listing and trading of additional Futures-Linked Security that will enhance competition among market participants, to the benefit of investors and the marketplace.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[17] of the Act in general, and furthers the objectives of Section 6(b)(5)[18] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional Futures-Linked Security that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–55 and should be submitted on or before September 16, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act[20] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing,

[12] 15 U.S.C. 78s(b)(2).

[13] *See* Exchange Confirmation, *supra* note 7.

[14] 17 CFR 240.19b–4(e)(2)(ii); 17 CFR 249.820.

[15] *See* Securities Exchange Release No. 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003) (SR–CBOE–2003–40).

[16] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.org*.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The Commission notes that it has previously approved a proposal submitted by another exchange to similarly include VIX Futures as a Futures Reference Asset underlying Futures-Linked Securities.[21]

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that the Exchange's proposal to add VIX Futures in the definition of Futures Reference Asset under Section 107(H) of the NYSE Amex Company Guide does not present any novel or significant regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Futures-Linked Securities based on VIX Futures.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NYSEAmex–2009–55) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20539 Filed 8–25–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60546; File No. SR–NASDAQ–2009–058]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Modify Port Fees

August 20, 2009.

On June 24, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify fees charged to members and non-members for ports used to enter orders into NASDAQ systems. The proposed rule change was published for comment in the **Federal Register** on July 16, 2009.[3] The Commission received no comments regarding the proposal.

NASDAQ proposes to increase the monthly fee that it charges for ports used to enter orders in NASDAQ trading systems such as the NASDAQ Market Center and the NASDAQ Options Market. The change, which would increase the charge from $400 to $500 per month, would apply to ports using FIX, RASH, and OUCH and would not affect ports used to receive market data, to enter quotes, or to enter trade reports into the FINRA/NASDAQ Trade Reporting Facility. The change would apply to both members that obtain ports for direct access and non-member service bureaus that act as a conduit for orders entered by NASDAQ members that are their customers.

NASDAQ also proposes to modify the language of Rule 7015 to make it clear that access service fees apply to access provided to all NASDAQ-operated systems, to replace references to NASD with references to FINRA, and remove obsolete language regarding a trial discount that ended in 2007. In addition, NASDAQ proposes to remove language regarding the applicability of the rule to members and non-members. NASDAQ believes that such language is unnecessary and potentially confusing to the reader.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6(b) of the Act[5] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to increase the fee that it charges for ports used to enter orders in NASDAQ trading systems is consistent with Section 6(b)(4) of the Act,[6] which requires the equitable allocation of reasonable dues, fees, and other charges among NASDAQ members and other persons using NASDAQ's facilities.[7] The Commission believes that the proposed increase in port fees is equitably allocated among members and non-members, as it is based on the number of access ports that they use to submit orders to the market. The Commission also believes that, if NASDAQ's proposed port fees are set too high, given the competitive nature of the market for execution and routing services, market participants could simply opt to connect with market centers other than NASDAQ to access liquidity available on NASDAQ by directing order flow to the other market centers that are required to route to NASDAQ if it has posted the best available price. As such, the Commission believes that NASDAQ's proposed increase in port fees is both equitably allocated and reasonable.

In addition, the Commission believes that the clarifying changes to Rule 7015 are consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that NASDAQ's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that updating and removing certain outdated or unnecessary references in Rule 7015 would provide additional clarity to the rule text, for the benefit of market participants accessing NASDAQ's facilities and the marketplace as a whole.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASDAQ–2009–058) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20594 Filed 8–25–09; 8:45 am]

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[21] *See supra* note 9. *See also* NYSE Arca Equities Rule 5.2(j)(6)(v).

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 60265 (July 8, 2009), 74 FR 34613 (''Notice'').

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] The Commission notes that NASDAQ will implement the increased port fees September 1, 2009. *See* Notice, *supra* note 3.

[8] 17 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60526; File No. SR–NYSEAmex–2009–19]

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan

August 18, 2009.

I. Introduction

On May 11, 2009, NYSE Amex LLC (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan. The proposed rule change was published for comment in the **Federal Register** on June 9, 2009.[3] On July 12, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend and adopt new NYSE Amex rules to implement the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[5] Specifically, the Exchange proposes to replace current NYSE Amex Rules 990NY through 993NY with new rules implementing the Plan, amend other Exchange rules to reflect the Plan, and delete rules rendered unnecessary by the Plan.

The Old Plan

Each of the Participating Options Exchanges are signatories to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Old Plan'').[6] In pertinent part, the Old Plan generally requires its participants to avoid trading at a price inferior to the national best bid or offer (''trade-through''), although it provides for a number of exceptions to trade-through liability.[7] The Participating Options Exchanges comply with this requirement of the Old Plan by utilizing a stand alone system (''Linkage Hub'') to send and receive specific order types,[8] namely Principal Acting as Agent Orders (''P/A Orders''), Principal Orders, and Satisfaction Orders.[9] The Old Plan also provided that dissemination of ''locked'' or ''crossed'' markets should be avoided, and remedial actions that should be taken to unlock or uncross such market.[10] Each of the Participating Options Exchanges, including the Exchange, has submitted an amendment to the Old Plan to withdraw from such Plan.[11] The withdrawals will be effective upon approval by the Commission of such amendments pursuant to Rule 608 of Regulation NMS under the Act (''Regulation NMS'').[12]

The Plan

The Plan does not require a central linkage mechanism akin to the Old Plan's Linkage Hub. Instead, the Plan includes the framework for routing orders via private linkages that exist for NMS stocks under Regulation NMS.[13] The Plan requires the Participating Options Exchanges to adopt rules ''reasonably designed to prevent Trade-Throughs.'' [14] Participating Options Exchanges are also required to conduct surveillance of their respective markets on a regular basis to ascertain the effectiveness of the policies and procedures to prevent Trade-Throughs and to take prompt action to remedy deficiencies in such policies and procedures.[15] As further described below, the Plan incorporates a number of exceptions to trade-through liability.[16] Some of these exceptions are carried over from the Old Plan, including exceptions for trading rotations, non-firm quotes, and complex trades.[17] Others are substantially similar to exceptions available for NMS stocks under Regulation NMS, such as exceptions for systems issues, crossed markets, quote flickering, customer stopped orders, benchmark trades and, notably, intermarket sweep orders (''ISOs'').[18] In addition, the Plan contains a new exception for stopped orders and price improvement.[19]

The Plan also requires each Participant to establish, maintain, and enforce written rules that: Require its members reasonably to avoid displaying locked and crossed markets; assure the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60015 (June 1, 2009), 74 FR 27375 (''Notice'').

[4] Amendment No. 1 clarified that this proposed rule change will become effective upon the Exchange's withdrawal from the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage and the effectiveness of the Options Order Protection and Locked/Crossed Market Plan. In addition, Amendment No. 1 revised Proposed NYSE Amex Rule 992NY(b) to delete the last sentence which stated, in reference to the proposed locked/crossed market exception for non-customer quotes, that the ''exemption is operative as long as the Exchange identifies the presence of Customer orders in its disseminated bid or offer'' because the sentence was not included in similar rules of other exchanges. Because the amendment provided clarification and revised the Exchange's proposed locked and crossed market rule in a non-substantive manner to conform with similar proposed rules of other exchanges, the amendment did not require notice and comment.

[5] The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4–546) (''Plan Notice'') and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (''Plan Approval''). The seven options exchanges are: Chicago Board Options Exchange, Incorporated (''CBOE''); International Securities Exchange, LLC (''ISE''); The NASDAQ Stock Market LLC (''Nasdaq''); NASDAQ OMX BX, Inc. (''BOX''); NASDAQ OMX PHLX, Inc. (''Phlx''); NYSE Arca, Inc. (''NYSE Arca''); and NYSE Amex (each exchange individually a ''Participant'' and, together, the ''Participating Options Exchanges'').

[6] On July 28, 2000, the Commission approved the Old Plan as a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (n/k/a NYSE Amex), CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc. (n/k/a Phlx), Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc. (n/k/a BOX), and Nasdaq joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

[7] Section 8(c) of the Old Plan.

[8] The Linkage Hub is a centralized data communications network that electronically links the Participating Options Exchanges to one another. The Options Clearing Corporation (''OCC'') operates the Linkage Hub.

[9] Section 2(16) of the Old Plan.

[10] Section 7(a)(i)(C) of the Old Plan.

[11] *See* Securities Exchange Act Release No. 60360 (July 21, 2009) 74 FR 37265 (July 28, 2009) (File No. 4–429).

[12] 17 CFR 242.608.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04); 17 CFR 242.600 *et seq.* For discussions of the similarities between the provisions of Regulation NMS and the provisions in the Plan, *see* Plan Notice and Plan Approval, *supra* note 5.

[14] Under the Plan, a ''Trade-Through'' is generally defined as a transaction in an option series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer.'' *See* Section 2(21) of the Plan. A ''Protected Bid'' and ''Protected Offer'' generally means a bid or offer in an option series, respectively, that is displayed by a Participant, is disseminated pursuant to the Options Price Reporting Authority (''OPRA'') Plan, and is the Best Bid or Best Offer. *See* Section 2(17) of the Plan. A ''Best Bid'' or ''Best Offer'' means the highest bid price and the lowest offer price. Section (2)(1) of the Plan. ''Protected Bid'' and ''Protected Offer,'' together are referred to herein as ''Protected Quotation.'' *See* Section 2(18) of the Plan.

[15] Section 5(a)(ii) of the Plan.

[16] Section 5(b) of the Plan.

[17] Subparagraphs (ii), (vii), and (viii), respectively, of Section 5(b) of the Plan.

[18] Subparagraphs (i), (iii), (vi), (ix), (xi), and (iv)–(v), respectively, of Section 5(b) of the Plan.

[19] Subparagraph (x) of Section 5(b) of the Plan.

reconciliation of locked and crossed markets; and prohibit its members from engaging in a pattern or practice of displaying locked and crossed markets; subject to exceptions as may be contained in the rules of the Participant, as approved by the Commission.[20]

The Exchange's Proposal

To implement the Plan, the Exchange proposes to replace its current rules relating to the Old Plan with new rules relating to the Plan, and makes amendments to other rules as necessary to conform to the requirements of the Plan.[21] As such, the Exchange proposes to adopt all applicable definitions from the Plan into the Exchange's rules.[22]

In addition, the Exchange proposes to prohibit its members from effecting Trade-Throughs, unless an exception applies.[23] Consistent with the Plan, the Exchange also proposes exceptions to the prohibition on trade throughs relating to: System issues; trading rotations; crossed markets; intermarket sweep orders; quote flickering; non-firm quotes; complex trades; customer stopped orders; stopped orders and price improvement; and benchmark trades.[24]

The Exchange also proposes a rule to address locked and crossed markets, as required by the Plan.[25] Specifically, the Exchange proposes that, except for quotations that fall within a stated exception, members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quote.[26]

The Exchange proposes four exceptions to the prohibition against locked and crossed markets: When the Exchange is experiencing a failure, material delay, or malfunction of its systems or equipment; when the locking or crossing quotation was displayed at a time where there is a crossed market; when an Exchange member simultaneously routes an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; and, with respect to a locking quotation, when the order entered on the Exchange that will lock a Protected Bid or Protected Offer, is (i) not a customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order; or (ii) a customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order, and, on a case-by-case basis, the customer specifically authorizes the member to lock such Protected Bid or Protected Offer.[27] The Exchange believes that, in most cases, locked market maker quotes are good for the investing public, but recognizes that the benefits of a locked market become more complicated when one or both of the locking quotations represent a customer order. Where there is market interest willing to trade with a customer, the Exchange believes that the customer order should be filled. Thus, the Exchange proposes that it would not exempt from the locked market prohibition situations involving customer orders unless the customer entering the locking order specifically authorizes the lock on a case-by-case basis.[28] As a result, its members would not be permitted to lock another Participant's quotation unless the Exchange can establish that the quotation on the other Participant's market is not for the account of a customer.

The Exchange also proposes rules to permit it to continue to accept P/A Orders and Principal Orders from Participating Options Exchanges that are not able to send ISOs in order to avoid Trade-Throughs.[29] The Exchange noted that, even upon the approvals of the Plan and the implementing rules of the various Participating Options Exchanges, it is possible that not all the Participants will be functionally able to operate pursuant to the Plan. Thus, the Exchange has proposed to retain certain rules governing the receipt of P/A Orders and Principal Orders until such time that all Participating Options Exchanges are operating pursuant to the Plan.

The Exchange also proposes to delete certain provisions of NYSE Amex Rules to reflect the Exchange's withdrawal from the Old Plan.[30] Finally, the Exchange proposes to amend NYSE Amex 476A, the Exchange's Minor Rule Plan, to replace references to the Old Plan with references to the Plan.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[32] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Rule 608(c) of Regulation NMS under the Act, which requires that each exchange comply with the terms of any effective national market system plan of which it is a participant.[33] Finally, the Commission finds that the proposed rule change is consistent with the requirements of the Plan.[34]

Proposed NYSE Amex Rule 990NY would define applicable terms in a manner that are substantively identical to the defined terms of the Plan. As such, the Commission finds that proposed NYSE Amex 990NY are consistent with the Act and the Plan.

Proposed NYSE Amex Rule 991NY(a) would prohibit members from effecting Trade-Throughs unless an exception applies. Proposed NYSE Amex Rule 991NY(b) would provide for ten exceptions to the general Trade-Through prohibition, relating to systems issues,

[20] Section 6 of the Plan. The Plan also contains provisions relating to the operation of the Plan including, for example, provisions relating to the entry of new parties to the Plan; withdrawal from the Plan; and amendments to the Plan.

[21] A more detailed description of the Exchange's proposed rule change may be found in the Notice, *supra,* note 3.

[22] Proposed NYSE Amex Rule 990NY.

[23] Proposed NYSE Amex Rule 991NY(a).

[24] Proposed NYSE Amex Rule 991NY(b)(1)–(10). In addition, the Exchange proposes to add ISOs as a new type of order under proposed NYSE Amex Rule 900.3NY(t).

[25] A ''locked market'' is defined as a quoted market in which a Protected Bid is equal to a Protected Offer. Proposed NYSE Amex Rule 990NY(9). A ''crossed market'' is defined as a quoted market in which a Protected Bid is higher than a Protected Offer. Proposed NYSE Amex Rule 990NY(5).

[26] Proposed NYSE Amex Rule 992NY(a).

[27] Proposed NYSE Amex Rule 992NY(b)(1)–(4).

[28] NYSE Amex noted that it can envision a customer authorizing a lock when the fees associating with trading against the locked market make the execution price uneconomical to the customer. *See* Notice, *supra* note 3 at 27378.

[29] Proposed NYSE Amex Temporary Rule 993NY.

[30] *See* Notice, *supra* note 3 at 27378, discussing proposed changes to NYSE Amex Rule 921NY, Commentaries .01–.03 to NYSE Amex Rule 923NY, NYSE Amex Rule 964NY, and NYSE Amex Rule 476A.

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] 17 CFR 242.608(c). Section 1 of the Plan provides in pertinent part that, ''The Participants will submit to the [Commission] for approval their respective rules that will implement the framework of the Plan.''

[34] *See supra* note 5.

trading rotations, crossed markets, ISOs, quote flickering, non-firm quotes, complex trades, customer stopped orders, stopped orders and price improvement, and benchmark trades.[35] Aside from the proposed exception relating to systems issues, each proposed exception would be substantively identical to the parallel exception under Section 5(b) of the Plan.

The systems issues exception under proposed NYSE Amex Rule 991NY(b)(1) would implement the parallel exception available under Section 5(b)(i) of the Plan and would permit the Exchange to bypass the Protected Quotation of another Participant if such other Participant repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations. The Exchange's rule would require the Exchange to notify such non-responding Participant immediately after (or at the same time as) electing self-help, and assess whether the cause of the problem lies with the Exchange's own systems and, if so, take immediate steps to resolve the problem. Finally, the Exchange would be required to promptly document its reasons supporting any such determination to bypass a Protected Quotation. The Commission believes that this exception should provide the Exchange with the necessary flexibility for dealing with problems that occur on an away market during the trading day. At the same time, the exception's requirements to immediately notify such away market of its determination and also assess its own system should help prevent the use of this exception when there in fact is a problem with the Exchange's own systems, rather than those of an away market.

The Commission notes that included among the exception in proposed NYSE Amex Rule 991NY(b) would be an exception for certain transactions involving ISOs.[36] An order identified as an ISO would be immediately executable by the Exchange (or any other Plan Participant that received such an order) based on the premise that the market participant sending the ISO has already attempted to access all better-priced Protected Quotations up to their displayed size. The Commission believes that this exception should help ensure more efficient and faster executions in the options markets.

The Commission notes that, in addition to these rules regarding Trade-Throughs, the Plan requires that each Participant establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an applicable exception and, if relying on such exception, that are reasonably designed to assure compliance with the terms of the exception. In addition, the Commission notes that the Plan requires each Participant to conduct surveillance of its market on a regular basis to ascertain the effectiveness of such policies and procedures and to take prompt action to remedy any deficiencies in such policies and procedures.

Accordingly, the Commission finds that proposed NYSE Amex Rule 991NY is consistent with Section 5 of the Plan and Section 6(b)(5) of the Act[37] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Proposed NYSE Amex Rule 992NY(a) would require Exchange members to reasonably avoid displaying, and not engage in a pattern or practice of displaying, any quotation that locks or crosses a Protected Quotation, subject to certain exceptions delineated in proposed NYSE Amex Rule 992NY(b). The Commission recognizes that locked and crossed markets may occur accidentally and cannot always be avoided. However, the Commission believes that giving priority to the first-displayed Protected Bid or Protected Offer, particularly when it includes a public customer's order, will encourage price discovery and contribute to fair and orderly markets. Therefore, the Commission believes that the proposed rule, which corresponds to the Plan's language, to require members to *reasonably* avoid displaying, and not engaging in a *pattern or practice* of, locks and crosses is appropriate.

Proposed NYSE Amex Rule 992NY(b) would permit four exceptions to the Exchange's general rule relating to locked and crossed markets.[38] The first three would be similar to analogous certain trade-through exceptions under proposed NYSE Amex Rule 991NY(b), and relate to when the Exchange is experiencing systems issues, when there is exists a crossed market, and when a member simultaneously routes ISOs against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

The fourth exception would permit an order entered onto the Exchange to lock a Protected Bid or Protected Offer when such order is: (1) Not a customer order, and the Exchange can determine that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order; or (2) a customer order, and the Exchange can determine that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order and, on a case-by-case basis, the customer specifically authorizes the Exchange's member to lock such Protected Bid or Protected Offer. This exception would not protect a market maker quote or broker-dealer order from being locked.

The Commission believes that the Exchange's proposed rules relating to locked and crossed markets are consistent with the Plan and the Act and should help ensure that the display of locked or crossed markets will be limited and that any such display will be promptly reconciled. The Commission also believes that each of the proposed exceptions to locked and crossed markets relate to circumstances when it is appropriate to permit a limited, narrow exception to the general locked and crossed market rule.

In particular, the Commission believes that the fourth exception is appropriate because it would protect customer orders that are Protected Bids or Protected Offers from being locked, and would only permit a customer order entered on to the Exchange to lock a Protected Bid or Protected Offer when a customer specifically authorizes an Exchange member, and only when such Protected Bid or Protected Offer itself does not represent, in whole or in part, a customer order. Because of the rapidity with which options quotes are often updated today, particularly in response to changes in the underlying, there is an increasing likelihood that market maker quotations will lock each other. The proposed exception accounts for this dynamic by not prohibiting such locking instances. Importantly, the proposed exception in the Exchange's rules that the Commission is approving would allow non-customer orders to lock an away market's Protected Quotation only if the Exchange is able to affirmatively determine that the Protected Quotation on the away market is not, in whole or in part, for the account of a customer. If any portion of such away market's Protected Quotation is for the account of a customer, such Protected Quotation may not be locked.

[35] Proposed NYSE Amex Rule 991NY(b)(1)–(10).

[36] Proposed NYSE Amex Rule 991NY(b)(4).

[37] 15 U.S.C. 78f(b)(5).

[38] Section 6 of the Plan permits exceptions to the Plan's locked and crossed market rules as may be contained in the rules of a Participant approved by the Commission.

In addition, the Commission notes that the rule requires that such determination be made via identification available pursuant to the OPRA Plan, which is working with the participating options exchanges on a method to so identify customer quotations through OPRA. The Exchange has represented that, absent the ability to identify a customer quote as part of an exchange's BBO, the Exchange would assume that the quote represents, in whole or in part, a customer order. As such, the Exchange has represented that it would not permit its members to avail themselves of this exemption unless the away market has informed the Exchange that it would designate all customer orders as such in OPRA and such exchange's quotation does not contain such designation. Finally, the Exchange has represented that if an exchange chooses not to identify its customer quotations, the Exchange would treat all of such exchange's quotations as customer orders and, absent application of another exception, would not permit locks of such quotations.

Therefore, the Commission finds that Exchange's rule regarding locked and crossed markets appropriately implements Section 6 of the Plan, and is consistent with Section 6(b)(5) of the Act[39] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that proposed NYSE Amex Temporary Rule 993NY, which facilitates the participation of certain Participating Options Exchanges who may require the use of P/A Orders and Principal Orders after implementation of the Plan, is consistent with the Act. Although the Commission has already approved the Plan,[40] the Commission also recognizes that there may be one or more Participating Options Exchanges that may require a temporary transition period during which they may want to continue to utilize these order types that exist currently under the Old Plan.[41] The Exchange and each of the other Participating Options Exchanges have proposed substantially identical temporary provisions to accommodate this possibility.[42] Thus, the Commission finds that the proposed rule relating to the Exchange's receipt and handling of P/A Orders and Principal Orders, and imposing certain obligations on the Exchange with respect to such orders that are similar to those that exist under the Old Plan, is appropriate and consistent with Section 6(b)(5) of the Act[43] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Finally, the Commission finds that NYSE Amex's other proposed changes, including the proposed modifications to NYSE Amex Rule 921NY, Commentaries .01–.03 to NYSE Amex Rule 923NY, NYSE Amex Rule 964NY, and NYSE Amex Rule 476A are appropriate and consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–NYSEAmex–2009–19), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20536 Filed 8–25–09; 8:45 am]

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[39] 15 U.S.C. 78f(b)(5).

[40] *See* Plan Approval, *supra,* note 5.

[41] The Commission notes that any Participating Options Exchange that wishes to utilize such order types in a manner that would result in a Trade-Through would need to separately request an exemption from the Plan for such use.

[42] The Commission notes that the rules contained in NYSE Amex Temporary Rule 993NY are not required by the Plan, but rather are rules proposed by the Exchange in order to facilitate the participation in the Plan of certain exchanges during an initial transition period.

[43] 15 U.S.C. 78f(b)(5).

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60525; File No. SR–NASDAQ–2009–056]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan

August 18, 2009.

I. Introduction

On June 23, 2009, The NASDAQ Stock Market LLC (''Nasdasq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan. The proposed rule change was published for comment in the **Federal Register** on July 8, 2009.[3] On August 14, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend and adopt new Nasdaq rules to implement the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[5] Specifically, the Exchange proposes to replace current Chapter XII of its rules with new rules implementing the Plan, amend other Exchange rules to reflect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60186 (June 29, 2009), 74 FR 32657 (''Notice'').

[4] Amendment No. 1 made technical corrections to the rule text proposed by Nasdaq. Because the amendment did not affect the substance of the rule filing, the amendment did not require notice and comment.

[5] The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4–546) (''Plan Notice'') and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (''Plan Approval''). The seven options exchanges are: Chicago Board Options Exchange, Incorporated (''CBOE''); International Securities Exchange LLC (''ISE''); NASDAQ OMX BX, Inc. (''BOX''); NASDAQ OMX PHLX, Inc. (''Phlx''); NYSE Amex LLC (''NYSE Amex''); NYSE Arca, Inc. (''NYSE Arca''); and Nasdaq (each exchange individually a ''Participant'' and, together, the ''Participating Options Exchanges'').

the Plan, and delete rules rendered unnecessary by the Plan.

The Old Plan

Each of the Participating Options Exchanges are signatories to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Old Plan'').[6] In pertinent part, the Old Plan generally requires its participants to avoid trading at a price inferior to the national best bid or offer (''trade-through''), although it provides for a number of exceptions to trade-through liability.[7] The Participating Options Exchanges comply with this requirement of the Old Plan by utilizing a stand alone system (''Linkage Hub'') to send and receive specific order types,[8] namely Principal Acting as Agent Orders (''P/A Orders''), Principal Orders, and Satisfaction Orders.[9] The Old Plan also provided that dissemination of ''locked'' or ''crossed'' markets should be avoided, and remedial actions that should be taken to unlock or uncross such market.[10] Each of the Participating Options Exchanges, including the Exchange, has submitted an amendment to the Old Plan to withdraw from such Plan.[11] The withdrawals will be effective upon approval by the Commission of such amendments pursuant to Rule 608 of Regulation NMS under the Act (''Regulation NMS'').[12]

The Plan

The Plan does not require a central linkage mechanism akin to the Old Plan's Linkage Hub. Instead, the Plan includes the framework for routing orders via private linkages that exist for NMS stocks under Regulation NMS.[13] The Plan requires the Participating Options Exchanges to adopt rules ''reasonably designed to prevent Trade-Throughs.'' [14] Participating Options Exchanges are also required to conduct surveillance of their respective markets on a regular basis to ascertain the effectiveness of the policies and procedures to prevent Trade-Throughs and to take prompt action to remedy deficiencies in such policies and procedures.[15] As further described below, the Plan incorporates a number of exceptions to trade-through liability.[16] Some of these exceptions are carried over from the Old Plan, including exceptions for trading rotations, non-firm quotes, and complex trades.[17] Others are substantially similar to exceptions available for NMS stocks under Regulation NMS, such as exceptions for systems issues, crossed markets, quote flickering, customer stopped orders, benchmark trades and, notably, intermarket sweep orders (''ISOs'').[18] In addition, the Plan contains a new exception for stopped orders and price improvement.[19]

The Plan also requires each Participant to establish, maintain, and enforce written rules that: require its members reasonably to avoid displaying locked and crossed markets; assure the reconciliation of locked and crossed markets; and prohibit its members from engaging in a pattern or practice of displaying locked and crossed markets; subject to exceptions as may be contained in the rules of the Participant, as approved by the Commission.[20]

The Exchange's Proposal

To implement the Plan, the Exchange proposes to replace its current rules relating to the Old Plan with new rules relating to the Plan, and makes amendments to other rules as necessary to conform to the requirements of the Plan.[21] As such, the Exchange proposes to adopt all applicable definitions from the Plan into the Exchange's rules.[22]

In addition, the Exchange proposes to prohibit its members from effecting Trade-Throughs, unless an exception applies.[23] Consistent with the Plan, the Exchange also proposes exceptions to the prohibition on trade throughs relating to: System issues; trading rotations; crossed markets; intermarket sweep orders; quote flickering; non-firm quotes; complex trades; customer stopped orders; stopped orders and price improvement; and benchmark trades.[24]

The Exchange also proposes a rule to address locked and crossed markets, as required by the Plan.[25] Specifically, the Exchange proposes that, except for quotations that fall within a stated exception, members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quote.[26]

The Exchange proposes three exceptions to the prohibition against locked and crossed markets: when the Exchange is experiencing a failure, material delay, or malfunction of its systems or equipment; when the locking or crossing quotation was displayed at a time where there is a crossed market; and when an Exchange member simultaneously routes an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.[27]

The Exchange also proposes rules to permit it to continue to accept P/A Orders and Principal Orders from Participating Options Exchanges that are

[6] On July 28, 2000, the Commission approved the Old Plan as a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (n/k/a NYSE Amex), CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc. (n/k/a Phlx), Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc. (n/k/a BOX), and Nasdaq joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

[7] Section 8(c) of the Old Plan.

[8] The Linkage Hub is a centralized data communications network that electronically links the Participating Options Exchanges to one another. The Options Clearing Corporation (''OCC'') operates the Linkage Hub.

[9] Section 2(16) of the Old Plan.

[10] Section 7(a)(i)(C) of the Old Plan.

[11] *See* Securities Exchange Act Release No. 60360 (July 21, 2009) 74 FR 37265 (July 28, 2009) (File No. 4–429).

[12] 17 CFR 242.608.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04); 17 CFR 242.600 *et seq.* For discussions of the similarities between the provisions of Regulation NMS and the provisions in the Plan, *see* the Plan Notice and Plan Approval, *supra* note 5.

[14] Under the Plan, a ''Trade-Through'' is generally defined as a transaction in an option series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer.'' *See* Section 2(21) of the Plan. A ''Protected Bid'' and ''Protected Offer'' generally means a bid or offer in an option series, respectively, that is displayed by a Participant, is disseminated pursuant to the Options Price Reporting Authority (''OPRA'') Plan, and is the Best Bid or Best Offer. *See* Section 2(17) of the Plan. A ''Best Bid'' or ''Best Offer'' means the highest bid price and the lowest offer price. Section (2)(1) of the Plan. ''Protected Bid'' and ''Protected Offer,'' together are referred to herein as ''Protected Quotation.'' *See* Section 2(18) of the Plan.

[15] Section 5(a)(ii) of the Plan.

[16] Section 5(b) of the Plan.

[17] Subparagraphs (ii), (vii), and (viii), respectively, of Section 5(b) of the Plan.

[18] Subparagraphs (i), (iii), (vi), (ix), (xi), and (iv)–(v), respectively, of Section 5(b) of the Plan.

[19] Subparagraph (x) of Section 5(b) of the Plan.

[20] Section 6 of the Plan. The Plan also contains provisions relating to the operation of the Plan including, for example, provisions relating to the entry of new parties to the Plan; withdrawal from the Plan; and amendments to the Plan.

[21] A more detailed description of the Exchange's proposed rule change may be found in the Notice, *supra,* note 3.

[22] Proposed Nasdaq Chapter XII, Section 1.

[23] Proposed Nasdaq Chapter XII, Section 2(a).

[24] Proposed Nasdaq Chapter XII, Section 2(b)(1)–(11). In addition, the Exchange proposes to add ISOs as a new type of order under proposed Nasdaq Chapter VI, Section 1(e)(8).

[25] A ''locked market'' is defined as a quoted market in which a Protected Bid is equal to a Protected Offer. Proposed Nasdaq Chapter XII, Section 1(10). A ''crossed market'' is defined as a quoted market in which a Protected Bid is higher than a Protected Offer. Proposed Nasdaq Chapter XII, Section 1(5).

[26] Proposed Nasdaq Chapter XII, Section 3(a).

[27] Proposed Nasdaq Chapter XII, Section 3(b).

not able to send ISOs in order to avoid Trade-Throughs.[28]

The Exchange proposes to amend certain other rules to reflect the Plan and delete terms related to the Old Plan. In particular, the Exchange proposes to amend Nasdaq Chapter IV, Section 5(b) and (c) and Nasdaq Chapter VII, Section 5(a)(viii) to modify language that is no longer applicable under the Plan and eliminate the ''Removal of Unreliable Quotes'' provision of Nasdaq Chapter 12, Section 3(e).[29]

NASDAQ proposes to implement this proposed rule change upon withdrawal from the current Linkage Plan and effectiveness of the new Plan.

II. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[30] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act 9 [31] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Rule 608(c) of Regulation NMS under the Act, which requires that each exchange comply with the terms of any effective national market system plan of which it is a participant.[32] Finally, the Commission finds that the proposed rule change is consistent with the requirements of the Plan.[33]

Proposed Nasdaq Chapter XII, Section 1 would define applicable terms in a manner that are substantively identical to the defined terms of the Plan.[34] As such, the Commission finds that proposed Nasdaq Chapter XII, Section 1 is consistent with the Act and the Plan.

Proposed Nasdaq Chapter XII, Section 2(a) would prohibit members from effecting Trade-Throughs unless an exception applies. Proposed Nasdaq Chapter XII, Section 2(b) would provide for 11 exceptions to the general Trade-Through prohibition, relating to systems issues, trading rotations, crossed markets, ISOs, quote flickering, non-firm quotes, complex trades, customer stopped orders, stopped orders and price improvement, and benchmark trades.[35] Aside from the proposed exception relating to systems issues, each proposed exception would be substantively identical to the parallel exception under Section 5(b) of the Plan.

The systems issues exception under proposed Nasdaq Chapter XII, Section 2(b)(1) would implement the parallel exception available under Section 5(b)(i) of the Plan and would permit the Exchange to bypass the Protected Quotation of another Participant if such other Participant repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations. The Exchange's rule would require the Exchange to notify such non-responding Participant immediately after (or at the same time as) electing self-help, and assess whether the cause of the problem lies with the Exchange's own systems and, if so, take immediate steps to resolve the problem. Finally, the Exchange would be required to promptly document its reasons supporting any such determination to bypass a Protected Quotation. The Commission believes that this exception should provide the Exchange with the necessary flexibility for dealing with problems that occur on an away market during the trading day. At the same time, the exception's requirements to immediately notify such away market of its determination and also assess its own system should help prevent the use of this exception when there in fact is a problem with the Exchange's own systems, rather than those of an away market.

The Commission notes that included among the exceptions in proposed Nasdaq Chapter XII, Section 2(b) would be exceptions for certain transactions involving ISOs.[36] An order identified as an ISO would be immediately executable by the Exchange (or any other Plan Participant that received such an order) based on the premise that the market participant sending the ISO has already attempted to access all better-priced Protected Quotations up to their displayed size. The Commission believes that this exception should help ensure more efficient and faster executions in the options markets.

The Commission notes that, in addition to these rules regarding Trade-Throughs, the Plan requires that each Participant establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an applicable exception and, if relying on such exception, that are reasonably designed to assure compliance with the terms of the exception. In addition, the Commission notes that the Plan requires each Participant to conduct surveillance of its market on a regular basis to ascertain the effectiveness of such policies and procedures and to take prompt action to remedy any deficiencies in such policies and procedures.

Accordingly, the Commission finds that proposed Nasdaq Chapter XII, Section 2 is consistent with Section 5 of the Plan and Section 6(b)(5) of the Act [37] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Proposed Nasdaq Chapter XII, Section 3(a) would require Exchange members to reasonably avoid displaying, and not engage in a pattern or practice of displaying, any quotation that locks or crosses a Protected Quotation, subject to certain exceptions delineated in proposed Nasdaq Chapter XII, Section 3(b). The Commission recognizes that locked and crossed markets may occur accidentally and cannot always be avoided. However, the Commission believes that giving priority to the first-displayed Protected Bid or Protected Offer, particularly when it includes a public customer's order, will encourage price discovery and contribute to fair and orderly markets. Therefore, the Commission believes that the proposed rule, which corresponds to the Plan's language, to require members to *reasonably* avoid displaying, and not engaging in a *pattern or practice* of, locks and crosses is appropriate.

Proposed Nasdaq Chapter XII, Section 3(b) would permit three exceptions to

[28] Proposed Nasdaq Chapter XII, Section 4.

[29] In addition, the Exchange proposes to rely upon the order routing arrangements already in place on its market.

[30] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(5).

[32] 17 CFR 242.608(c). Section 1 of the Plan provides in pertinent part that, ''The Participants will submit to the [Commission] for approval their respective rules that will implement the framework of the Plan.''

[33] *See supra* note 5.

[34] The Commission notes that the Exchange's proposed definition of ''Complex Trade'' under proposed Nasdaq Chapter XII, Section 1(4) is identical to the definition of ''Complex Trade'' under old Nasdaq Chapter XII, Section 1(c), which is being deleted.

[35] Proposed Nasdaq Chapter XII, Section 2(b)(1)–(11).

[36] Proposed Nasdaq Chapter XII, Sections 2(b)(4) and (5).

[37] 15 U.S.C. 78f(b)(5).

the Exchange's general rule relating to locked and crossed markets.[38] These exceptions would be similar to analogous certain trade-through exceptions under proposed Nasdaq Chapter XII, Section 2(b), and relate to when the Exchange is experiencing systems issues, when there exists a crossed market, and when a member simultaneously routes ISOs against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

The Commission believes that the Exchange's proposed rules relating to locked and crossed markets are consistent with the Plan and the Act and should help ensure that the display of locked or crossed markets will be limited and that any such display will be promptly reconciled. The Commission also believes that each of the proposed exceptions to locked and crossed markets relate to circumstances when it is appropriate to permit a limited, narrow exception to the general locked and crossed market rule.

Therefore, the Commission finds that Exchange's rule regarding locked and crossed markets appropriately implements Section 6 of the Plan, and is consistent with Section 6(b)(5) of the Act[39] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that proposed Nasdaq Chapter XII, Section 4, which facilitates the participation of certain Participating Options Exchanges who may require the use of P/A Orders and Principal Orders after implementation of the Plan, is consistent with the Act. Although the Commission has already approved the Plan,[40] the Commission also recognizes that there may be one or more Participating Options Exchanges that may require a temporary transition period during which they may want to continue to utilize these order types that exist currently under the Old Plan.[41] The Exchange and each of the other Participating Options Exchanges have proposed substantially identical temporary provisions to accommodate this possibility.[42] Thus, the Commission finds that the proposed rule relating to the Exchange's receipt and handling of P/A Orders and Principal Orders, and imposing certain obligations on the Exchange with respect to such orders that are similar to those that exist under the Old Plan, is appropriate and consistent with Section 6(b)(5) of the Act[43] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Finally, the Commission finds that Nasdaq's proposed amendments to certain other Nasdaq rules to modify and/or delete language that is no longer necessary under the Plan are appropriate and consistent with the Act and the Plan.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–NASDAQ–2009–056), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Florence E. Harmon,

Deputy Secretary.

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[38] Section 6 of the Plan permits exceptions to the Plan's locked and crossed market rules as may be contained in the rules of a Participant approved by the Commission.

[39] 15 U.S.C. 78f(b)(5).

[40] *See* Plan Approval, *supra,* note 5.

[41] The Commission notes that any Participating Options Exchange that wishes to utilize such order types in a manner that would result in a Trade-Through would need to separately request an exemption from the Plan for such use.

[42] The Commission notes that the rules contained in Proposed Nasdaq Chapter XII, Section 4 are not required by the Plan, but rather are rules proposed by the Exchange in order to facilitate the participation in the Plan of certain exchanges during an initial transition period.

[43] 15 U.S.C. 78f(b)(5).

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60548; File No. SR–NYSEAMEX–2009–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE AMEX LLC Amending the Permissible Expiration Dates for Flexible Exchange Options

August 20, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 7, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to its rules regarding permissible expiration dates for Flexible Exchange Options (''FLEX Options'').[4] The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to modify the permissible expiration dates for FLEX Options. These options are governed by Trading of Option Contracts, Section 15 (Flexible

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. FLEX Index Options Series may be approved and open for trading on any index that has been approved for Non-FLEX Options trading on the Exchange. FLEX Equity Options may be on underlying securities that have been approved by the Exchange in accordance with NYSE Amex Rule 915, which includes but is not limited to stock options and exchange-traded fund options. Both FLEX Index Options and FLEX Equity Options are subject to the FLEX rules in Section 15.

Exchange Options) pursuant to the Rules of NYSE Amex LLC. Under current NYSE Amex Rule 903G, FLEX options may not expire on any business day that fall on, or within two business days of, a third Friday-of-the-month expiration day for any Non-FLEX Options (an ''Expiration Friday'').[5] However, subject to aggregation requirements[6] for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options (''QIX'') expire.

The Exchange is now proposing to eliminate the expiration date restriction so that FLEX Options may expire on any given business day. Although the expiration date restrictions would be eliminated, the Exchange notes that position and exercise limits under applicable NYSE Amex rules will continue to apply. FLEX Index Options remain subject to position limits under Rules 904 and 904C, as applicable. Additionally, all FLEX Options remain subject to the position reporting requirements of NYSE Amex Rule 906. Moreover, the Exchange has the authority, pursuant to Rule 461, to impose additional margin requirements as deemed advisable.

Beyond the above described position limit and reporting requirements for FLEX Options that expire on Expiration Friday, the proposed rule change includes an aggregation requirement under NYSE Amex Rule 906G for position limit purposes. Specifically, for as long as the options positions remain open, positions in FLEX Options that expire on Expiration Friday shall be aggregated with positions in Non-FLEX options on the same underlying (e.g., the same underlying security in the case of a FLEX Equity Option and the same underlying index in the case of a FLEX Index Option) (referred to as ''Comparable Non-FLEX options''). Such FLEX Options and comparable Non-FLEX options would be subject to the position and exercise limits that are applicable to the Non-FLEX Options.[7] The aggregation requirement would apply to both cash and physically settled options.

In addition, in the case of FLEX Index Options only, the proposed rule change provides that FLEX Index Options expiring on or within two business days of an Expiration Friday may not have an exercise settlement value on the expiration date determined by reference to the closing price of the index or specified averages. Therefore, the exercise settlement value on such expiration dates may only be determined by a.m. settlement values. These limitations on exercise settlement value calculations are intended to serve as a safeguard against potential adverse effects that might be associated with triple witching.[8]

In conjunction with the elimination of the expiration date restriction, the proposed rule change also states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options will be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index. The proposed rule change also provides that FLEX options will be permitted before (but not after) the options are listed for trading as Non-FLEX Options. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX Trading procedures shall be fully fungible with transactions in the respective Non-FLEX Options series, and (ii) any further trading in the series would be as Non-FLEX options subject to the Non-FLEX trading procedures and rules, as governed by Section 900NY.

For example, a FLEX trader could establish a FLEX Options position in a European-style, a.m. settled Mini-Nasdaq 100 Index (''MNX'') 210 Call Option Series with an expiration of August 19, 2011 (which will be an Expiration Friday). In such instance, once and if the Non-FLEX, European-style, a.m.-settled MNX 210 Call Option Series that expires on August 19, 2011 is listed for trading, the established FLEX Option position would be fully fungible with transactions in the Non-FLEX Option series. Any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures.

The Exchange will report any undue effects or unanticipated consequences that may occur due to the elimination of the blackout period.

NYSE Amex believes that expanding the eligible dates for FLEX expirations is important and necessary to the Exchange's efforts to create a product and market that provides ATP Holders and investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX options but are not subject to the same restrictions (such as the three business day expiration restriction or the p.m. settlement restriction).[9] By expanding the eligible expiration dates for FLEX Options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. NYSE Amex believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness because of the role of The Options Clearing Corporation (''OCC'') as issuer and guarantor of FLEX Options.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[10] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[11] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will

[5] For example, under the current rule, a FLEX Option could expire on the Tuesday before Expiration Friday, but could not expire on the Wednesday or Thursday before Expiration Friday. Similarly, a FLEX Option could expire on the Wednesday after Expiration Friday, but could not expire on the Monday or Tuesday after Expiration Friday. This restriction is hereinafter referred to as the ''three business day'' expiration restriction.

[6] *See* NYSE Amex Rule 906G(a)(ii).

[7] Position Limits for Non-FLEX equity options are governed by Rule 904; Exercise Limits for Non-FLEX equity options are governed by Rule 905. Position Limits for Non FLEX index options are governed by Rule 904 and 904C; Exercise Limits for Non Flex index options are governed by Rule 905 and 905C.

[8] The expiration of the contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as ''triple witching''). The Exchange's proposed limitations on p.m. exercise settlement values and exercise settlement values based on a specified average would apply during triple witching expirations, as well as on all other Expiration Fridays.

[9] Through a Regulatory Services Agreement (''RSA'') between NYSE Regulation, Inc. (''NYSE Regulation'') and NYSE Amex, staff of NYSE Regulation conducts, among other things, surveillances of the NYSE Amex options trading platform for purposes of monitoring compliance with the relevant trading rules by NYSE Amex participants. NYSE Amex represents that, through this RSA, there are appropriate surveillances in place to monitor transactions in FLEX options.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

provide ATP Holders [12] and investors with additional opportunities to trade customized options in an exchange environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[15] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

Under Rule 19b–4(f)(6) of the Act,[18] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative date. The Exchange believes that waiver of the 30-day operative date will: (i) Permit the Exchange to offer investors additional opportunities to trade customized options in response to recent member requests; and (ii) level the current competitive landscape by permitting the Exchange to implement changes similar to those recently implemented by another self-regulatory organization. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal as operative upon filing.[19] The Commission notes that the Exchange's proposal is based on a similar proposed rule change adopted by the Chicago Board Options Exchange.[20] That proposal was subject to full notice and comment and no comments were received. Based on this, the Commission believes that it is appropriate to designate the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2009–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMEX–2009–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMEX–2009–44 and should be submitted on or before September 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20545 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

[12] See NYSE Amex Rule 900.2NY(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] The Exchange has fulfilled this five day requirement.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] *Id.*

[19] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[20] Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR–CBOE–2008–115).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60542; File No. SR–NYSE–2009–60]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change in Connection With the Proposal of NYSE Euronext To Require That at Least Three-Fourths of Its Directors Satisfy Independence Requirements

August 19, 2009.

I. Introduction

On June 23, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant

to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend the Bylaws of its ultimate parent, NYSE Euronext (''Corporation''),[4] and the Corporation's Director Independence Policy to require that at least three-fourths of the members of the Corporation's Board of Directors (''Board'') satisfy independence requirements. The proposed rule change was published for comment in the **Federal Register** on July 16, 2009.[5] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Section 10.10(C) of the Corporation's Bylaws provides, among other things, that for so long as the Corporation shall control, directly or indirectly, any U.S. Regulated Subsidiaries,[6] before any amendment or repeal of any provision of the Bylaws shall be effective, such amendment or repeal shall be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder. Consistent with this requirement, NYSE filed this proposed rule change. Currently, the Corporation's Bylaws and Director Independence Policy require that all members of the Board, other than the Chief Executive Officer and the Deputy Chief Executive Officer, must satisfy the independence requirements for directors of the Corporation.[7] The proposed rule change would permit the Corporation to amend its Bylaws and Director Independence Policy to require that at least three-fourths of the members of the Board satisfy the independence requirements for directors of the Corporation.

The Exchange stated that the proposed amendment to the Bylaws and Director Independence Policy would not alter or amend the standards by which the Corporation determines whether an individual director is independent; would not affect the independence requirements of the Exchange with respect to its directors or the director independence requirements of any of the other self-regulatory organizations for which the Corporation is the ultimate parent or of NYSE Group, Inc., the intermediate holding company, including in each case the number of required independent directors; and would not affect other director qualification requirements set forth in the Bylaws of the Corporation.[8]

The Exchange further stated that the current board independence requirement eliminates from consideration as potential directors of the Corporation a substantial number of individuals who could contribute significantly to the deliberations of the Corporation's Board by virtue of their knowledge, ability, and experience. The Exchange believes that the proposed rule change would continue to protect the independent judgment of the Board, while permitting the Corporation to consider a broader range of experienced and knowledgeable individuals as directors.[9]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[10] which requires, among other things, that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.[12]

The Bylaws currently require that 16 of the 18 directors of the Corporation's Board (all the directors except the Chief Executive Officer and the Deputy Chief Executive Officer) must satisfy the Corporation's independence requirements. The Commission notes that the proposed rule change, which would require that at least three-fourths of the Board to be independent, would still require a minimum of 14 directors to satisfy the Corporation's independence requirements. The Commission also notes that the proposal would not alter the Corporation's standards for determining director independence. The Commission believes that the proposal strikes a reasonable balance between the goals of retaining highly qualified and experienced directors for Board service and protecting the exercise of independent judgment by the Corporation's Board.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–2009–60) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20544 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The NYSE, a New York limited liability company, is an indirect wholly-owned subsidiary of NYSE Euronext.

[5] *See* Securities Exchange Act Release No. 60261 (July 8, 2009), 74 FR 34609 (''Notice'').

[6] Section 7.3(G) of the Corporation's Bylaws defines ''U.S. Regulated Subsidiaries'' as New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc. and NYSE Alternext US LLC or their successors, in each case to the extent that such entities continue to be controlled, directly or indirectly, by the Corporation.

[7] *See* Section 3.4 of the Amended and Restated Bylaws of NYSE Euronext (''Bylaws'').

[8] *See e.g.,* Section 3.2 of the Bylaws (Certain Qualifications for the Board of Directors).

[9] There are currently 18 directors on the Board, including the Chief Executive Officer and the Deputy Chief Executive Officer. The Bylaws currently require 16 of the directors (*i.e.,* all but the two aforementioned employees) to be independent. The proposed amendment to the Bylaws would require a minimum of 14 of the directors to be independent.

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78(f)(b)(5).

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60537; File No. SR–ISE–2009–63]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

August 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on a narrow based index. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*—The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the Morgan Stanley Retail Index (''MVR'').[3] The Exchange is proposing to adopt an execution fee for all transactions in options on MVR.[4] There will be no execution fee for Public Customer Orders [5] in MVR. All Firm Proprietary orders will be charged $0.20 per contract. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[6] Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be $0.45 per contract.[7]

Additionally, the Exchange has entered into a license agreement with Morgan Stanley & Co., Inc. in connection with the listing and trading of options on MVR. As with certain other licensed options, to defray the licensing costs, the Exchange is adopting a surcharge fee of fifteen (15) cents per contract for trading in options on MVR. The Exchange believes charging the participants that trade this instrument is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (e.g., ISE Market Maker, non-ISE Market Maker & Firm Proprietary orders) and Linkage Orders. The Exchange believes the proposed rule change will further ISE's goal of introducing new products to the marketplace at a competitive price.

2. *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace at a competitive priced.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[3] The Exchange represents that MVR is eligible for options trading because it meets the standards of ISE Rule 2002(d), which allows the ISE to begin trading this product by filing Form 19b–4(e) at least [sic] five business days after commencement of trading pursuant to Rule 19b–4(e) of the Act.

[4] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2010, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.27 per contract side and $0.18 per contract side, respectively. *See* Securities Exchange Act Release No. 60175 (June 25, 2009), 74 FR 32026 (July 6, 2009) (SR–ISE–2009–36).

[5] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

[6] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[7] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.19 [sic] per contract.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A). [sic]

[11] 17 CFR 240.19b–4(f)(2).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–63 and should be submitted on or before September 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20543 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60551; File No. SR–CBOE–2009–040]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change To Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan

August 20, 2009.

I. Introduction

On June 24, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan. The proposed rule change was published for comment in the **Federal Register** on July 8, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend and adopt new CBOE rules to implement the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[4] Specifically, the Exchange proposes to completely replace its current Intermarket Linkage Rules (Rules 6.80—6.85) with new rules implementing the Plan, amend other Exchange rules to reflect the Plan, and delete rules rendered unnecessary by the Plan.

The Old Plan

Each of the Participating Options Exchanges are signatories to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Old Plan'').[5] In pertinent part, the Old Plan generally requires its participants to avoid trading at a price inferior to the national best bid or offer (''trade-through''), although it provides for a number of exceptions to trade-through liability.[6] The Participating Options Exchanges comply with this requirement of the Old Plan by utilizing a stand alone system (''Linkage Hub'') to send and receive specific order types,[7] namely Principal Acting as Agent Orders (''P/A Orders''), Principal Orders, and Satisfaction Orders.[8] The Old Plan also provided that dissemination of ''locked'' or ''crossed'' markets should be avoided, and remedial actions that should be taken to unlock or uncross such market.[9] Each of the Participating Options Exchanges, including the Exchange, has submitted an amendment to the Old Plan to withdraw from such Plan.[10] The withdrawals will be effective upon approval by the Commission of such amendments pursuant to Rule 608 of Regulation NMS under the Act (''Regulation NMS'').[11]

The Plan

The Plan does not require a central linkage mechanism akin to the Old Plan's Linkage Hub. Instead, the Plan includes the framework for routing orders via private linkages that exist for NMS stocks under Regulation NMS.[12] The Plan requires the Participating Options Exchanges to adopt rules ''reasonably designed to prevent Trade-Throughs.''[13] Participating Options Exchanges are also required to conduct surveillance of their respective markets on a regular basis to ascertain the effectiveness of the policies and procedures to prevent Trade-Throughs and to take prompt action to remedy deficiencies in such policies and procedures.[14] As further described below, the Plan incorporates a number of exceptions to trade-through liability.[15] Some of these exceptions are carried over from the Old Plan, including exceptions for trading rotations, non-firm quotes, and complex trades.[16] Others are substantially similar to exceptions available for NMS stocks

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60187 (June 29, 2009), 74 FR 32664 (''Notice'').

[4] The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4–546) (''Plan Notice'') and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (''Plan Approval''). The seven options exchanges are: International Securities Exchange LLC (''ISE''); The NASDAQ Stock Market LLC (''NASDAQ''); NASDAQ OMX BX, Inc. (''BOX''); NASDAQ OMX PHLX, Inc. (''Phlx''); NYSE Amex LLC (''NYSE Amex''); NYSE Arca, Inc. (''NYSE Arca''); and CBOE (each exchange individually a ''Participant'' and, together, the ''Participating Options Exchanges'').

[5] On July 28, 2000, the Commission approved the Old Plan as a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (n/k/a NYSE Amex), CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc. (n/k/a Phlx), Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc. (n/k/a BOX), and Nasdaq joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

[6] Section 8(c) of the Old Plan.

[7] The Linkage Hub is a centralized data communications network that electronically links the Participating Options Exchanges to one another. The Options Clearing Corporation (''OCC'') operates the Linkage Hub.

[8] Section 2(16) of the Old Plan.

[9] Section 7(a)(i)(C) of the Old Plan.

[10] *See* Securities Exchange Act Release No. 60360 (July 21, 2009) 74 FR 37265 (July 28, 2009) (File No. 4–429).

[11] 17 CFR 242.608.

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04); 17 CFR 242.600 *et seq.* For discussions of the similarities between the provisions of Regulation NMS and the provisions in the Plan, *see* the Plan Notice and Plan Approval, *supra* note 4.

[13] Under the Plan, a ''Trade-Through'' is generally defined as a transaction in an option series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer.'' *See* Section 2(21) of the Plan. A ''Protected Bid'' and ''Protected Offer'' generally means a bid or offer in an option series, respectively, that is displayed by a Participant, is disseminated pursuant to the Options Price Reporting Authority (''OPRA'') Plan, and is the Best Bid or Best Offer. *See* Section 2(17) of the Plan. A ''Best Bid'' or ''Best Offer'' means the highest bid price and the lowest offer price. Section (2)(1) of the Plan. ''Protected Bid'' and ''Protected Offer,'' together are referred to herein as ''Protected Quotation.'' *See* Section 2(18) of the Plan.

[14] Section 5(a)(ii) of the Plan.

[15] Section 5(b) of the Plan.

[16] Subparagraphs (ii), (vii), and (viii), respectively, of Section 5(b) of the Plan.

under Regulation NMS, such as exceptions for systems issues, crossed markets, quote flickering, customer stopped orders, benchmark trades and, notably, intermarket sweep orders (''ISOs'').[17] In addition, the Plan contains a new exception for stopped orders and price improvement.[18]

The Plan also requires each Participant to establish, maintain, and enforce written rules that: require its members reasonably to avoid displaying locked and crossed markets; assure the reconciliation of locked and crossed markets; and prohibit its members from engaging in a pattern or practice of displaying locked and crossed markets; subject to exceptions as may be contained in the rules of the Participant, as approved by the Commission.[19]

The Exchange's Proposal

To implement the Plan, the Exchange proposes to replace its current rules relating to the Old Plan with new rules relating to the Plan, and makes amendments to other rules as necessary to conform to the requirements of the Plan.[20] As such, the Exchange proposes to adopt all applicable definitions from the Plan into the Exchange's rules.[21]

In addition, the Exchange proposes to prohibit its members from effecting Trade-Throughs, unless an exception applies.[22] Consistent with the Plan, the Exchange also proposes exceptions to the prohibition on trade throughs relating to: System issues; trading rotations; crossed markets; intermarket sweep orders; quote flickering; non-firm quotes; complex trades; customer stopped orders; stopped orders and price improvement; and benchmark trades.[23]

The Exchange also proposes a rule to address locked and crossed markets, as required by the Plan.[24] Specifically, the Exchange proposes that, except for quotations that fall within a stated exception, members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quote.[25]

The Exchange proposes four exceptions to the prohibition against locked and crossed markets: when the Exchange is experiencing a failure, material delay, or malfunction of its systems or equipment; when the locking or crossing quotation was displayed at a time where there is a crossed market; when an Exchange member simultaneously routes an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; and, when the locking quotation is otherwise permissible pursuant to Rules CBOE 6.45A(d) and 6.45B(d).

The Exchange also proposes rules that would permit it to continue to send and accept P/A Orders and Principal Orders from Participating Options Exchanges.[26] The Exchange noted that, during the transition to operation under the Plan, it will continue to receive and execute P/A and Principal Orders if the Exchange is the NBBO. Thus, the Exchange has proposed to retain certain rules governing the receipt of P/A Orders and Principal Orders until such time that all Participating Options Exchanges are operating pursuant to the Plan. Further, the Exchange intends to access other Participants using P/A Orders and Principal Orders on a temporary basis and proposes to retain rules governing the transmission of P/A Orders and Principal Orders.[27]

The Exchange has also proposed to amend to its rules relating to its Hybrid Agency Liaison System and Price Check Parameters.[28] First, the Exchange proposes to adopt rules governing a new Hybrid Agency Liaison System (''HAL2''). Under these proposed rules, the Exchange would determine the eligible order size, eligible order type, eligible order origin code (*i.e.,* public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders), and classes for HAL2. When the Exchange receives a qualifying order that is marketable against the NBBO and/or the Exchange's BBO,[29] HAL2 would expose the order at the NBBO price to allow CBOE Market-Makers appointed in that class as well as all members acting as agent for orders at the top of the Exchange's book in the relevant series to step-up to the NBBO price.[30] The duration of the exposure period would not exceed one second. The first responder to indicate an interest to trade at the NBBO price would trade against the exposed order up to the size of the response (the exposure period would continue for any unexecuted balance). Responders would also be allowed to respond at prices worse than the NBBO but equal to or better than the Exchange's BBO. At the end of the response period (if no responders have matched the NBBO price or if there is a remainder on the exposed order) the HAL2 system would ascertain the best available price(s) between all pending responses and the best disseminated prices on other exchanges, and then execute the exposed order at the best price(s) by trading it against exposed responses first and transmitting ISOs to other exchanges second. All resulting executions would be in compliance with the prohibition against trade-throughs.

If any portion of an order that is routed away returns unfilled, the Exchange would deem it a ''new'' order for processing purposes and trade it against the best bid or offer on the Exchange unless another exchange is quoting a better price in which case the Exchange would attempt to access such better price with a new ISO order. Any executions at the Exchange's best bid or offer would be handled in two batches: first against all interest resting at that price at the time the exposed order was received; and second against any interest that joined at that price after the exposure process commenced (in both cases the matching algorithm in effect for that class will be used). Order senders could bypass HAL2 processing by submitting Immediate or Cancel Orders.

Paragraph (d) of proposed Rule 6.14A lists the circumstances in which an exposure period would terminate early. Those are: (1) If the Exchange receives an unrelated order on the same side of the market as the exposed order that is priced equal to or better than the exposed order; (2) if, in the case of an exposed order that is marketable against the Exchange's BBO, Market-Maker interest at the BBO decrements to a size that would be equal to or smaller than the size of the exposed order; and (3) if an unrelated order or quote on the

[17] Subparagraphs (i), (iii), (vi), (ix), (xi), and (iv)–(v), respectively, of Section 5(b) of the Plan.

[18] Subparagraph (x) of Section 5(b) of the Plan.

[19] Section 6 of the Plan. The Plan also contains provisions relating to the operation of the Plan including, for example, provisions relating to the entry of new parties to the Plan; withdrawal from the Plan; and amendments to the Plan.

[20] A more detailed description of the Exchange's proposed rule change may be found in the Notice, *supra,* note 3.

[21] Proposed CBOE Rule 6.80.

[22] Proposed CBOE Rule 6.81(a).

[23] Proposed CBOE Rule 6.81(b)(1)–(10). In addition, the Exchange proposes to add ISOs as a new type of order under proposed CBOE Rule 6.53(p).

[24] A ''locked market'' is defined as a quoted market in which a Protected Bid is equal to a Protected Offer. Proposed CBOE Rule 6.80(9). A ''crossed market'' is defined as a quoted market in which a Protected Bid is higher than a Protected Offer. Proposed CBOE Rule 6.80(5).

[25] Proposed CBOE Rule 6.82(a).

[26] Proposed CBOE Temporary Rule 6.83.

[27] The Exchange has stated that it intends to request exemptive relief from the Plan for a temporary period to accommodate the use of P/A Orders and P Orders until the Exchange's roll-out of its ISO functionality is complete.

[28] *See* CBOE Rules 6.14A and 6.13.

[29] Unless the Exchange's quotation contains resting orders and does not contain sufficient Market-Maker quotation interest to satisfy the entire order.

[30] The qualifying order may also be exposed to other members, if permitted by the Exchange.

opposite side of the market from the exposed order is received that could trade against the exposed order at the prevailing NBBO or better in which case the orders would trade at the NBBO unless the unrelated order is a customer order, in which case the orders would trade at the midpoint of the unrelated order's limit price and the NBBO.[31] Lastly, Interpretation and Policy .01 to CBOE Rule 6.14A provides that the Exchange would limit redistribution of exposed order messages to third parties.

The Exchange has also proposed a new price check parameter in connection with the new HAL2 process.[32] For classes in which HAL2 is activated, the Exchange would not automatically execute orders that are marketable if the NBBO width is not within an acceptable price range established by the Exchange (''APR''), or if an execution would follow an initial partial execution and occur at a price that is not within an acceptable tick distance from the initial execution as established by the Exchange (''ATD''). If an execution is suspended because of the APR, the order would route to PAR for handling. If an execution is suspended because of the ATD, the order would be exposed pursuant to the HAL2 process using the ATD as the exposure price. If a quantity remains after the HAL2 process, the balance would route to PAR.[33] Users could bypass this processing by submitting orders with an immediate or cancel designation.

The Exchange has also proposed to adopt new CBOE Rule 6.14B which would govern the Exchange's process for routing sweep orders to other markets. The Exchange has represented that it intends to contract with one or more routing brokers that are not affiliated with the Exchange to route sweep orders to other exchanges. Any such contract would restrict the use of any confidential and proprietary information that the routing broker receives to legitimate business purposes necessary for routing orders at the direction of the Exchange. Routing services would be available to members only and are optional. Members that do not want orders routed could use the Immediate or Cancel designation to avoid routing.

The proposed rule also provides that: (1) The Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker, and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services; (2) the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority; (3) the Exchange will provide its routing services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; (4) the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges; (5) the routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order; and (6) any bid or offer entered on the Exchange routed to another exchange via a routing broker that results in an execution shall be binding on the member that entered such bid/offer.

The Exchange has also proposed to adopt several new order types that would be added to CBOE Rule 6.53 in addition to the ISO. The first is the AIM sweep order (''AIM ISO''). The AIM ISO would require the transmission of two orders for crossing pursuant to CBOE Rule 6.74A without regard for better priced Protected Bids or Protected Offers because the member transmitting the AIM ISO to the Exchange has, simultaneously with the routing of the AIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid/Offer that is superior to the starting AIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price (with any execution(s) resulting from such sweeps shall accrue to the AIM Agency Order). The second proposed order type is the Sweep and AIM Order. A sweep and AIM order would require the transmission of two orders for crossing pursuant to CBOE Rule 6.74A with an auction starting price that does not need to be within the Exchange's best bid and offer and where the Exchange will ''sweep'' all Protected Bids and Protected Offers by routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting AIM auction price, as well as sweep all interest in the Exchange's book priced better than the proposed auction starting price concurrent with the commencement of the AIM auction with any execution(s) resulting from such sweeps accruing to the AIM Agency Order. The final proposed order type is the CBOE-Only Order. A CBOE-only order would be an order to buy or sell that is to be executed in whole or in part on the Exchange without routing the order to another market center. A CBOE-only order would be cancelled if routing would be required under the Exchange's rules.

Finally, the Exchange proposes to amend certain other rules to reflect the Plan and changes to other Exchange rules as described above. In particular, the Exchange proposes to add a reference to HAL2 to CBOE Rule 6.2B, eliminate the ''Removal of Unreliable Quotes'' provision of CBOE Rule 6.13, eliminate references in the Exchange's crossing mechanisms to the block trade exemption of the Old Plan,[34] and delete CBOE Rule 8.52 relating to the now defunct Pilot Program for Away Market Maker Access.

The Exchange also represented that the proposed rules would not become operative until the Exchange has withdrawn from the Old Plan.

II. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[35] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[36] which requires, among other things, that the rules of a national securities exchange be

[31] *E.g.,* the NBBO/exposure price for a buy order is 1.15, during the exposure period a customer limit order to sell at 1.13 is received, the orders would be matched to the greatest extent possible at 1.14 providing price improvement to both orders. If the unrelated order was smaller than the exposed order, then the exposure period would continue for the unexecuted balance of the exposed order.

[32] Proposed CBOE Rule 6.13(b)(vi).

[33] In this regard, the HAL2 processing for these orders would be different that normal HAL2 processing.

[34] Exchange Rules 6.74A and 6.74B.

[35] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Rule 608(c) of Regulation NMS under the Act, which requires that each exchange comply with the terms of any effective national market system plan of which it is a participant.[37] Finally, the Commission finds that the proposed rule change is consistent with the requirements of the Plan.[38]

Proposed CBOE Rule 6.80 would define applicable terms in a manner that are substantively identical to the defined terms of the Plan. As such, the Commission finds that proposed CBOE Rule 6.80 is consistent with the Act and the Plan.

Proposed CBOE Rule 6.81(a) would prohibit members from effecting Trade-Throughs unless an exception applies. Proposed CBOE Rule 6.81(b) would provide for ten exceptions to the general Trade-Through prohibition, relating to systems issues, trading rotations, crossed markets, ISOs, quote flickering, non-firm quotes, complex trades, customer stopped orders, stopped orders and price improvement, and benchmark trades.[39] Aside from the proposed exception relating to systems issues, each proposed exception would be substantively identical to the parallel exception under Section 5(b) of the Plan.

The systems issues exception under proposed CBOE Rule 6.81(b)(1) would implement the parallel exception available under Section 5(b)(i) of the Plan and would permit the Exchange to bypass the Protected Quotation of another Participant if such other Participant repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations. The Exchange's rule would require the Exchange to notify such non-responding Participant immediately after (or at the same time as) electing self-help, and assess whether the cause of the problem lies with the Exchange's own systems and, if so, take immediate steps to resolve the problem. Finally, the Exchange would be required to promptly document its reasons supporting any such determination to bypass a Protected Quotation. The Commission believes that this exception should provide the Exchange with the necessary flexibility for dealing with problems that occur on an away market during the trading day. At the same time, the exception's requirements to immediately notify such away market of its determination and also assess its own system should help prevent the use of this exception when there in fact is a problem with the Exchange's own systems, rather than those of an away market.

The Commission notes that included among the exception in proposed CBOE Rule 1901(b) would be an exception for certain transactions involving ISOs.[40] An order identified as an ISO would be immediately executable by the Exchange (or any other Plan Participant that received such an order) based on the premise that the market participant sending the ISO has already attempted to access all better-priced Protected Quotations up to their displayed size. The Commission believes that this exception should help ensure more efficient and faster executions in the options markets.

The Commission notes that, in addition to these rules regarding Trade-Throughs, the Plan requires that each Participant establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an applicable exception and, if relying on such exception, that are reasonably designed to assure compliance with the terms of the exception. In addition, the Commission notes that the Plan requires each Participant to conduct surveillance of its market on a regular basis to ascertain the effectiveness of such policies and procedures and to take prompt action to remedy any deficiencies in such policies and procedures.

Accordingly, the Commission finds that proposed CBOE Rule 6.81 is consistent with Section 5 of the Plan and Section 6(b)(5) of the Act[41] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Proposed CBOE Rule 6.82(a) would require Exchange members to reasonably avoid displaying, and not engage in a pattern or practice of displaying, any quotation that locks or crosses a Protected Quotation, subject to certain exceptions delineated in proposed CBOE Rule 6.82(b). The Commission recognizes that locked and crossed markets may occur accidentally and cannot always be avoided. However, the Commission believes that giving priority to the first-displayed Protected Bid or Protected Offer, particularly when it includes a public customer's order, will encourage price discovery and contribute to fair and orderly markets. Therefore, the Commission believes that the proposed rule, which corresponds to the Plan's language, to require members to *reasonably* avoid displaying, and not engaging in a *pattern or practice* of, locks and crosses is appropriate.

Proposed CBOE Rule 6.82(b) would permit four exceptions to the Exchange's general rule relating to locked and crossed markets.[42] The first three would be similar to analogous trade-through exceptions under proposed CBOE Rule 6.81(b), and relate to when the Exchange is experiencing systems issues, when there is a crossed market, and when a member simultaneously routes ISOs against the full displayed size of any locked or crossed Protected Bid or Protected Offer. The fourth exception would permit a locking quotation if it is otherwise permissible pursuant to CBOE Rules 6.45A(d) and 6.45B(d).

The Commission believes that the Exchange's proposed rules relating to locked and crossed markets are consistent with the Plan and the Act and should help ensure that the display of locked or crossed markets will be limited and that any such display will be promptly reconciled. The Commission also believes that each of the proposed exceptions to locked and crossed markets relate to circumstances when it is appropriate to permit a limited, narrow exception to the general locked and crossed market rule.

Therefore, the Commission finds that Exchange's rule regarding locked and crossed markets appropriately implements Section 6 of the Plan, and is consistent with Section 6(b)(5) of the Act[43] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

[37] 17 CFR 242.608(c). Section 1 of the Plan provides in pertinent part that, ''The Participants will submit to the [Commission] for approval their respective rules that will implement the framework of the Plan.''

[38] *See supra* note 5.

[39] Proposed CBOE Rule 6.81(b)(1)–(10).

[40] Proposed CBOE Rule 6.81(b)(4).

[41] 15 U.S.C. 78f(b)(5).

[42] Section 6 of the Plan permits exceptions to the Plan's locked and crossed market rules as may be contained in the rules of a Participant approved by the Commission.

[43] 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Commission also finds that proposed CBOE Temporary Rule 6.83, which facilitates the participation of certain Participating Options Exchanges, including CBOE, who may require the use of P/A Orders and Principal Orders after implementation of the Plan, and would permit CBOE to transmit P/A Orders and Principal Orders, is consistent with the Act. Although the Commission has already approved the Plan,[44] the Commission also recognizes that the Exchange and other Plan Participants may require a temporary transition period during which they may want to utilize these order types that exist currently under the Old Plan.[45] The Exchange and each of the other Participating Options Exchanges have proposed substantially identical temporary provisions to accommodate this.[46] Further, because the Exchange intends also to send P/A Orders and Principal Orders for a temporary period, the Exchange has proposed temporary rules to permit this.[47] The Commission finds that the proposed rule relating to the Exchange's receipt and handling, and transmission of P/A Orders and Principal Orders, and imposing certain obligations on the Exchange with respect to such orders that are similar to those that exist under the Old Plan, is appropriate and consistent with Section 6(b)(5) of the Act[48] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission further finds that CBOE's proposed rule governing routing of sweep orders is consistent with the Act. As described above, the Exchange would enter into agreements that govern the routing of orders to away markets. Further, the routing of sweep orders would be optional;[49] and the Exchange would be responsible for routing decisions and would retain control of the routing logic. Neither the Exchange, nor any affiliate of the Exchange, may be the designated examining authority for the routing service provider.[50] The Commission also notes that the rule contemplates procedures and internal controls designed to protect confidential and proprietary information, which should help ensure that the routing service provider does not misuse routing information obtained from the Exchange. In addition, the Exchange would provide its routing services in compliance with the Act and the rules thereunder, including but not limited to, the requirements in Sections 6(b)(4) and (5) of the Act[51] that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using the Exchange's facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[52]

Proposed CBOE Rule 6.53 proposes four new order types: ISO, AIM ISO, Sweep and AIM Order, and CBOE-only Order. The Commission believes that the design of each of these order types should ensure that Protected Bids and Protected Orders are not traded-through in violation of the Plan while also providing market participants with flexibility in executing transactions that meet the specific requirements of the order type. Therefore, the Commission finds that Exchange's rule permitting these new order types is consistent with Section 6(b)(5) of the Act[53] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange is also proposing to introduce an updated HAL process (*i.e.,* HAL2) and revise its rule governing automatic executions.[54] The Commission finds that such changes are appropriate and consistent with the Act and the Plan.

Finally, the Commission finds that CBOE's proposed amendments to certain other CBOE rules to reflect the provisions of the Plan, and to delete provisions of CBOE's rules rendered unnecessary due to the Plan, are appropriate and consistent with the Act and the Plan.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[55] that the proposed rule change (SR–CBOE–2009–040), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Florence E. Harmon,

Deputy Secretary.

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[44] *See* Plan Approval, *supra,* note 5.

[45] The Commission notes that any Participating Options Exchange that wishes to utilize such order types in a manner that would result in a Trade-Through would need to separately request an exemption from the Plan for such use. *See, supra,* note 27.

[46] The Commission notes that the rules contained in CBOE Temporary Rule 6.83 are not required by the Plan, but rather are rules proposed by the Exchange in order to facilitate the participation in the Plan of certain exchanges, including CBOE, during an initial transition period.

[47] *See also, supra,* note 27.

[48] 15 U.S.C. 78f(b)(5).

[49] Members may choose to avoid routing by using the Immediate or Cancel designation. *See* Notice.

[50] *See* proposed CBOE Rule 6.14B(c).

[51] 15 U.S.C. 78f(b)(4) and (5).

[52] *See* proposed CBOE Rule 6.14B(c).

[53] 15 U.S.C. 78f(b)(5).

[54] *See* notes 28–32, *infra,* and accompanying text.

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60530; File No. SR–BX–2009–028]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Granting Approval of a Proposed Rule Change To Adopt Rules To Implement the Options Order Protection and Locked/Crossed Market Plan

August 18, 2009.

I. Introduction

On June 16, 2009, the NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan. The proposed rule change was published for comment in the **Federal Register** on June 29, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend and adopt new rules of the Boston Options Exchange Group, LLC (''BOX'') to implement the Options Order Protection and Locked/Crossed Market

Plan (''Plan'').[4] Specifically, the Exchange proposes to replace current

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60158 (June 22, 2009), 74 FR 31081 (''Notice'').

[4] The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4–546) (''Plan

Chapter XII of the BOX Rules with new rules implementing the Plan, amend other Exchange rules to reflect the Plan, and delete rules rendered unnecessary by the Plan.

The Old Plan

Each of the Participating Options Exchanges are signatories to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Old Plan'').[5] In pertinent part, the Old Plan generally requires its participants to avoid trading at a price inferior to the national best bid or offer (''trade-through''), although it provides for a number of exceptions to trade-through liability.[6] The Participating Options Exchanges comply with this requirement of the Old Plan by utilizing a stand alone system (''Linkage Hub'') to send and receive specific order types,[7] namely Principal Acting as Agent Orders (''P/A Orders''), Principal Orders, and Satisfaction Orders.[8] The Old Plan also provided that dissemination of ''locked'' or ''crossed'' markets should be avoided, and remedial actions that should be taken to unlock or uncross such market.[9] Each of the Participating Options Exchanges, including the Exchange, has submitted an amendment to the Old Plan to withdraw from such Plan.[10] The withdrawals will be effective upon approval by the Commission of such amendments pursuant to Rule 608 of Regulation NMS under the Act (''Regulation NMS'').[11]

The Plan

The Plan does not require a central linkage mechanism akin to the Old Plan's Linkage Hub. Instead, the Plan includes the framework for routing orders via private linkages that exist for NMS stocks under Regulation NMS.[12] The Plan requires the Participating Options Exchanges to adopt rules ''reasonably designed to prevent Trade-Throughs.'' [13] Participating Options Exchanges are also required to conduct surveillance of their respective markets on a regular basis to ascertain the effectiveness of the policies and procedures to prevent Trade-Throughs and to take prompt action to remedy deficiencies in such policies and procedures.[14] As further described below, the Plan incorporates a number of exceptions to trade-through liability.[15] Some of these exceptions are carried over from the Old Plan, including exceptions for trading rotations, non-firm quotes, and complex trades.[16] Others are substantially similar to exceptions available for NMS stocks under Regulation NMS, such as exceptions for systems issues, crossed markets, quote flickering, customer stopped orders, benchmark trades and, notably, intermarket sweep orders (''ISOs'').[17] In addition, the Plan contains a new exception for stopped orders and price improvement.[18]

The Plan also requires each Participant to establish, maintain, and enforce written rules that: Require its members reasonably to avoid displaying locked and crossed markets; assure the reconciliation of locked and crossed markets; and prohibit its members from engaging in a pattern or practice of displaying locked and crossed markets; subject to exceptions as may be contained in the rules of the Participant, as approved by the Commission.[19]

The Exchange's Proposal

To implement the Plan, the Exchange proposes to replace its current rules relating to the Old Plan with new rules relating to the Plan, and makes amendments to other rules as necessary to conform to the requirements of the Plan.[20] As such, the Exchange proposes to adopt all applicable definitions from the Plan into the Exchange's rules.[21]

In addition, the Exchange proposes to prohibit its members from effecting Trade-Throughs, unless an exception applies.[22] Consistent with the Plan, the Exchange also proposes exceptions to the prohibition on trade throughs relating to: System issues; trading rotations; crossed markets; intermarket sweep orders; quote flickering; non-firm quotes; complex trades; customer stopped orders; stopped orders and price improvement; and benchmark trades.[23]

The Exchange also proposes a rule to address locked and crossed markets, as required by the Plan.[24] Specifically, the Exchange proposes that, except for quotations that fall within a stated exception, members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quote.[25]

The Exchange proposes four exceptions to the prohibition against locked and crossed markets: When the Exchange is experiencing a failure, material delay, or malfunction of its systems or equipment; when the locking or crossing quotation was displayed at

Notice'') and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (''Plan Approval''). The seven options exchanges are: Chicago Board Options Exchange, Incorporated (''CBOE''); International Securities Exchange, LLC (''ISE''); The NASDAQ Stock Market LLC (''Nasdaq''); NASDAQ OMX PHLX, Inc. (''Phlx''); NYSE Amex LLC (''NYSE Amex''); NYSE Arca, Inc. (''NYSE Arca''); and BOX (each exchange individually a ''Participant'' and, together, the ''Participating Options Exchanges'').

[5] On July 28, 2000, the Commission approved the Old Plan as a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (n/k/a NYSE Amex), CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc. (n/k/a Phlx), Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc. (n/k/a BOX), and Nasdaq joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

[6] Section 8(c) of the Old Plan.

[7] The Linkage Hub is a centralized data communications network that electronically links the Participating Options Exchanges to one another. The Options Clearing Corporation (''OCC'') operates the Linkage Hub.

[8] Section 2(16) of the Old Plan.

[9] Section 7(a)(i)(C) of the Old Plan.

[10] *See* Securities Exchange Act Release No. 60360 (July 21, 2009) 74 FR 37265 (July 28, 2009) (File No. 4–429).

[11] 17 CFR 242.608.

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04); 17 CFR 242.600 *et seq.* For discussions of the similarities between the provisions of Regulation NMS and the provisions in the Plan, *see* Plan Notice and Plan Approval, *supra* note 5.

[13] Under the Plan, a ''Trade-Through'' is generally defined as a transaction in an option series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer.'' *See* Section 2(21) of the Plan. A ''Protected Bid'' and ''Protected Offer'' generally means a bid or offer in an option series, respectively, that is displayed by a Participant, is disseminated pursuant to the Options Price Reporting Authority (''OPRA'') Plan, and is the Best Bid or Best Offer. *See* Section 2(17) of the Plan. A ''Best Bid'' or ''Best Offer'' means the highest bid price and the lowest offer price. Section (2)(1) of the Plan. ''Protected Bid'' and ''Protected Offer,'' together are referred to herein as ''Protected Quotation.'' *See* Section 2(18) of the Plan.

[14] Section 5(a)(ii) of the Plan.

[15] Section 5(b) of the Plan.

[16] Subparagraphs (ii), (vii), and (viii), respectively, of Section 5(b) of the Plan.

[17] Subparagraphs (i), (iii), (vi), (ix), (xi), and (iv)–(v), respectively, of Section 5(b) of the Plan.

[18] Subparagraph (x) of Section 5(b) of the Plan.

[19] Section 6 of the Plan. The Plan also contains provisions relating to the operation of the Plan including, for example, provisions relating to the entry of new parties to the Plan; withdrawal from the Plan; and amendments to the Plan.

[20] A more detailed description of the Exchange's proposed rule change may be found in the Notice, *supra* note 3.

[21] Proposed BOX Chapter XII, Section 1.

[22] Proposed BOX Chapter XII, Section 2(a).

[23] Proposed BOX Chapter XII, Section 2(b)(1)–(10). In addition, the Exchange proposes to add ISOs as a new type of order under proposed BOX Chapter V, Section 14(c)(vi).

[24] A ''locked market'' is defined as a quoted market in which a Protected Bid is equal to a Protected Offer. Proposed BOX Chapter XII, Section 1(h). A ''crossed market'' is defined as a quoted market in which a Protected Bid is higher than a Protected Offer. Proposed BOX Chapter XII, Section 1(e).

[25] Proposed BOX Chapter XII, Section 3(a).

a time where there is a crossed market; when an Exchange member simultaneously routes an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; and, with respect to a locking quotation, when the order entered on the Exchange that will lock a Protected Bid or Protected Offer, is (i) not a customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order; or (ii) a customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order, and, on a case-by-case basis, the customer specifically authorizes the member to lock such Protected Bid or Protected Offer.[26]

The Exchange also proposes rules to permit it to continue to accept P/A Orders and Principal Orders from Participating Options Exchanges that are not able to send ISOs in order to avoid Trade-Throughs.[27] In addition, BOX has proposed to include provisions that would permit the Exchange to send Principal Orders and P/A Orders to away markets for a temporary period,[28] which BOX states would allow it and its Options Participants to seek the best available price for customers.[29]

The Exchange also proposes to delete and/or modify certain provisions of BOX rules to reflect the Exchange's withdrawal from the Old Plan, and to amend certain provisions of BOX rules to reflect the Plan.[30]

The Exchange has represented that this proposed rule change would become effective upon the Exchange's withdrawal from the Old Plan and the effectiveness of the Plan.

II. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[32] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Rule 608(c) of Regulation NMS under the Act, which requires that each exchange comply with the terms of any effective national market system plan of which it is a participant.[33] Finally, the Commission finds that the proposed rule change is consistent with the requirements of the Plan.[34]

Proposed BOX Chapter XII, Section 1 would define applicable terms in a manner that are substantively identical to the defined terms of the Plan. As such, the Commission finds that proposed BOX Chapter XII, Section 1 is consistent with the Act and the Plan.

Proposed BOX Chapter XII, Section 2(a) would prohibit members from effecting Trade-Throughs unless an exception applies. Proposed BOX Chapter XII, Section 2(b) would provide for ten exceptions to the general Trade-Through prohibition, relating to systems issues, trading rotations, crossed markets, ISOs, quote flickering, non-firm quotes, complex trades, customer stopped orders, stopped orders and price improvement, and benchmark trades.[35] Aside from the proposed exception relating to systems issues, each proposed exception would be substantively identical to the parallel exception under Section 5(b) of the Plan.

The systems issues exception under proposed BOX Chapter XII, Section 2(b)(1) would implement the parallel exception available under Section 5(b)(i) of the Plan and would permit the Exchange to bypass the Protected Quotation of another Participant if such other Participant repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations. The Exchange's rule would require the Exchange to notify such non-responding Participant immediately after (or at the same time as) electing self-help, and assess whether the cause of the problem lies with the Exchange's own systems and, if so, take immediate steps to resolve the problem. Finally, the Exchange would be required to promptly document its reasons supporting any such determination to bypass a Protected Quotation. The Commission believes that this exception should provide the Exchange with the necessary flexibility for dealing with problems that occur on an away market during the trading day. At the same time, the exception's requirements to immediately notify such away market of its determination and also assess its own system should help prevent the use of this exception when there in fact is a problem with the Exchange's own systems, rather than those of an away market.

The Commission notes that included among the exception in proposed BOX Chapter XII, Section 2(b) would be an exception for certain transactions involving ISOs.[36] An order identified as an ISO would be immediately executable by the Exchange (or any other Plan Participant that received such an order) based on the premise that the market participant sending the ISO has already attempted to access all better-priced Protected Quotations up to their displayed size. The Commission believes that this exception should help ensure more efficient and faster executions in the options markets.

The Commission notes that, in addition to these rules regarding Trade-Throughs, the Plan requires that each Participant establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an applicable exception and, if relying on such exception, that are reasonably designed to assure compliance with the terms of the exception. In addition, the Commission notes that the Plan requires each Participant to conduct surveillance of its market on a regular basis to ascertain the effectiveness of such policies and procedures and to take prompt action to remedy any deficiencies in such policies and procedures.

Accordingly, the Commission finds that proposed BOX Chapter XII, Section 2 is consistent with Section 5 of the Plan and Section 6(b)(5) of the Act[37]

[26] Proposed BOX Chapter XII, Section 3(b)(1)–(4).

[27] Proposed BOX Chapter XII, Temporary Section 4.

[28] The Exchange anticipates such temporary period to be between two to eight weeks past implementation of the Plan.

[29] The Exchange has stated that it intends to request exemptive relief from the Plan for a temporary period to accommodate this temporary use of Principal Orders and P/A Orders.

[30] *See* Notice, *supra* note 3, at 31084, discussing proposed changes to: BOX Chapter I, Section I; BOX Chapter V, Sections 14, 16, 20, and 29; BOX Chapter VI, Section 5; and BOX Chapter X, Section 2.

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] 17 CFR 242.608(c). Section 1 of the Plan provides in pertinent part that, ''The Participants will submit to the [Commission] for approval their respective rules that will implement the framework of the Plan.''

[34] *See, supra* note 4.

[35] Proposed BOX Chapter XII, Section 2(b)(1)–(10).

[36] Proposed BOX Chapter XII, Section 2(b)(4).

[37] 15 U.S.C. 78f(b)(5).

which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Proposed BOX Chapter XII, Section 3(a) would require Exchange members to reasonably avoid displaying, and not engage in a pattern or practice of displaying, any quotation that locks or crosses a Protected Quotation, subject to certain exceptions delineated in proposed BOX Chapter XII, Section 3(b). The Commission recognizes that locked and crossed markets may occur accidentally and cannot always be avoided. However, the Commission believes that giving priority to the first-displayed Protected Bid or Protected Offer, particularly when it includes a public customer's order, will encourage price discovery and contribute to fair and orderly markets. Therefore, the Commission believes that the proposed rule, which corresponds to the Plan's language, to require members to *reasonably* avoid displaying, and not engaging in a *pattern or practice* of, locks and crosses is appropriate.

Proposed BOX Chapter XII, Section 3(b) would permit four exceptions to the Exchange's general rule relating to locked and crossed markets.[38] The first three would be similar to analogous certain trade-through exceptions under proposed BOX Chapter XII, Section 2(b), and relate to when the Exchange is experiencing systems issues, when there is exists a crossed market, and when a member simultaneously routes ISOs against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

The fourth exception would permit an order entered onto the Exchange to lock a Protected Bid or Protected Offer when such order is: (1) Not a customer order, and the Exchange can determine that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order; or (2) a customer order, and the Exchange can determine that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order and, on a case-by-case basis, the customer specifically authorizes the Exchange's member to lock such Protected Bid or Protected Offer. This exception would not protect a market maker quote or broker-dealer order from being locked.

The Commission believes that the Exchange's proposed rules relating to locked and crossed markets are consistent with the Plan and the Act and should help ensure that the display of locked or crossed markets will be limited and that any such display will be promptly reconciled. The Commission also believes that each of the proposed exceptions to locked and crossed markets relate to circumstances when it is appropriate to permit a limited, narrow exception to the general locked and crossed market rule.

In particular, the Commission believes that the fourth exception is appropriate because it would protect customer orders that are Protected Bids or Protected Offers from being locked, and would only permit a customer order entered on to the Exchange to lock a Protected Bid or Protected Offer when a customer specifically authorizes an Exchange member, and only when such Protected Bid or Protected Offer itself does not represent, in whole or in part, a customer order. Because of the rapidity with which options quotes are often updated today, particularly in response to changes in the underlying, there is an increasing likelihood that market maker quotations will lock each other. The proposed exception accounts for this dynamic by not prohibiting such locking instances. Importantly, the proposed exception in the Exchange's rules that the Commission is approving would allow non-customer orders to lock an away market's Protected Quotation only if the Exchange is able to affirmatively determine that the Protected Quotation on the away market is not, in whole or in part, for the account of a customer. If any portion of such away market's Protected Quotation is for the account of a customer, such Protected Quotation may not be locked. In addition, the Commission notes that the rule requires that such determination be made via identification available pursuant to the OPRA Plan, which is working with the participating options exchanges on a method to so identify customer quotations through OPRA.

Therefore, the Commission finds that Exchange's rule regarding locked and crossed markets appropriately implements Section 6 of the Plan, and is consistent with Section 6(b)(5) of the Act[39] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that proposed BOX Chapter XII, Temporary Section 4, which facilitates the participation of certain Participating Options Exchanges, including BOX, who may require the use of P/A Orders and Principal Orders after implementation of the Plan, and would permit BOX to transmit P/A Orders and Principal Orders, is consistent with the Act. Although the Commission has already approved the Plan,[40] the Commission also recognizes that the Exchange and other Plan Participants may require a temporary transition period during which they may want to utilize these order types that exist currently under the Old Plan.[41] The Exchange and each of the other Participating Options Exchanges have proposed substantially identical temporary provisions to accommodate this.[42] Further, because the Exchange intends also to send P/A Orders and Principal Orders for a temporary period, the Exchange has proposed temporary rules to permit this.[43] The Commission finds that the proposed rule relating to the Exchange's receipt and handling, and transmission of P/A Orders and Principal Orders, and imposing certain obligations on the Exchange with respect to such orders that are similar to those that exist under the Old Plan, is appropriate and consistent with Section 6(b)(5) of the Act[44] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Finally, the Commission finds that that BOX's other proposed changes are appropriate and consistent with the Act.

[38] Section 6 of the Plan permits exceptions to the Plan's locked and crossed market rules as may be contained in the rules of a Participant approved by the Commission.

[39] 15 U.S.C. 78f(b)(5).

[40] *See* Plan Approval, *supra* note 4.

[41] The Commission notes that any Participating Options Exchange that wishes to utilize such order types in a manner that would result in a Trade-Through would need to separately request an exemption from the Plan for such use. *See, supra* note 29.

[42] The Commission notes that the rules contained in BOX Chapter XII, Temporary Rule 4 are not required by the Plan, but rather are rules proposed by the Exchange in order to facilitate the participation in the Plan of certain exchanges, including BOX, during an initial transition period.

[43] *See, supra* note 29.

[44] 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–BX–2009–028), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20541 Filed 8–25–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60536; File No. SR–ISE–2009–59]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes and an Incentive Plan for Three Foreign Currency Options

August 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to initiate an incentive plan for market makers in three newly listed foreign currency options (''FX Options'') and to establish fees for transactions in these FX Options. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to initiate an incentive plan for market makers on three newly listed FX Options, specifically, the New Zealand dollar (''NZD''), the Mexican peso (''PZO'') and the Swedish krona (''SKA'')[5] and to establish fees for transactions in these products. Options on NZD, PZO and SKA began trading on the Exchange on August 3, 2009. As such, this proposed fee change will be operative and effective on August 3, 2009.

In order to promote trading in these new FX Options, the Exchange proposes to initiate an incentive plan for market makers in NZD, PZO and SKA. Market makers will be able to enter into the incentive plan until October 5, 2009. Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers. Under the incentive plan, the Exchange will waive the applicable transaction fees for both the Early Adopter FXPMM[6] and all Early Adopter FXCMMs[7] that make a market in NZD, PZO and SKA for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange will pay the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in NZD, PZO and SKA and will pay up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in the incentive plan, i.e., market makers that begin to quote and trade in NZD, PZO and SKA after October 5, 2009, will be charged regular transaction fees for trades in these products.

The Exchange is proposing to adopt an execution fee of $0.40 per contract for all Public Customer transactions in options on NZD, PZO and SKA.[8] The amount of the execution fee for all Firm Proprietary transactions will be $0.20 per contract and the execution fee for all non-Early Adopter ISE Market Makers in NZD, PZO and SKA shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[9] Finally, the amount of the execution fee for all non-ISE Market Maker transactions in these products shall be $0.45 per contract.[10] The Exchange will not charge a Payment for Order Flow fee for these products.

The Exchange also [sic] proposes to waive transaction charges for all Early Adopter Market Makers in NZD, PZO and SKA in order to further encourage the trading of these FX Options. The Exchange believes that the revenue generated from customer, firm proprietary and non-ISE market maker transaction charges and increased order flow would offset the transaction fees that would otherwise be applied to market makers in NZD, PZO and SKA, thereby allowing the Exchange to recoup those fees while increasing order flow and generating increased revenues.

The Exchange believes the proposed rule change will further the Exchange's

[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission previously approved the trading of options on NZD, PZO and SKA. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (Order approving the listing and trading of FX Options).

[6] A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[7] A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[8] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2010, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.27 per contract side and $0.18 per contract side, respectively. *See* Securities Exchange Act Release No. 60175 (June 25, 2009), 74 FR 32026 (July 6, 2009) (SR–ISE–2009–36).

[9] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[10] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.20 per contract.

goal of introducing new products to the marketplace that are competitively priced.

2. Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposed incentive plan will generate additional order flow to the Exchange by creating incentives to trade these FX Options as well as defray operational costs for Early Adopter Market Makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [13] and Rule 19b–4(f)(2) [14] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–59 and should be submitted on or before September 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

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[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A). [sic]

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60528; File No. SR–MSRB–2009–13]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amendment to Rule A–14, on Annual Fee

August 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 13, 2009, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the MSRB. The MSRB has designated the proposed rule change as changing a fee applicable to brokers, dealers and municipal securities dealers pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing an amendment to Rule A–14, which provides for an annual fee paid by dealers to the MSRB. The MSRB is amending the rule to increase the annual fee paid by dealers from $300 to $500. The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/msrb1/sec.asp*, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to assess reasonable fees necessary to defray the costs and expenses of operating and administering the MSRB. The proposed rule change would partially accomplish this purpose by amending Rule A–14 to increase the annual fee assessed to dealers from $300 to $500 per dealer.

The MSRB currently levies three types of fees that are generally applicable to dealers. Rule A–12 provides for a $100 initial fee paid once by a dealer when it enters the municipal securities business. Rule A–13 provides for an underwriting fee of $.03 per $1000 par value of bonds and $.01 per $1000 par value of notes (with specified exceptions), and a transaction fee of $.005 per $1000 par value of sale transactions of specified securities. Rule A–14 provides for an annual fee of $300 from each dealer who conducts municipal securities activities. The annual fee imposed by Rule A–14 was last increased from $200 to $300 in 2003.

The underwriting and transaction fees in Rule A–13 assess fees that are generally proportionate to a dealer's activity within the industry. However, MSRB's regulatory activities affect all participants in the dealer community and a number of dealers do not participate in traditional municipal securities underwriting activities or are not actively involved in the trading of traditional municipal securities subject to a transaction fee.

The MSRB accordingly is raising the annual fee from $300 to $500, which will result in an increase of approximately $280,000 to the MSRB's revenues in fiscal year 2010. The proposed rule change will enhance the equitable distribution of fees among dealers in the municipal securities market and increase the MSRB's revenues, in order to partially offset a decrease in revenue and increased costs associated with operating market information services and regulating the municipal securities market.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the requirements of Section 15B(b)(2)(J) of the Act,[5] which requires, in pertinent part, that the MSRB's rules shall:

> Provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

The MSRB believes that the proposed rule change is consistent with this provision because the proposed rule change provides for reasonable fees, based on dealer involvement in the municipal securities market that are necessary to defray MSRB expenses.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2) thereunder,[7] in that the amendment to Rule A–14 changes a fee applicable to brokers, dealers and municipal securities dealers. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2009–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2009–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2009–13 and should be submitted on or before September 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20534 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78o–4(b)(2)(J).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60515; File No. SR–FINRA–2009–054]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Extend Certain Regulation NMS Protections to Quoting and Trading in the Market for OTC Equity Securities

August 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt new FINRA Rules 6434 (Minimum Pricing Increment for OTC Equity Securities), 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities), 6450 (Restrictions on Access Fees) and 6460 (Display of Customer Limit Orders).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing to adopt new rules to extend certain Regulation NMS protections to quoting and trading in over-the-counter equity securities (''OTC Equity Securities'').[3] Specifically, FINRA is proposing rules to: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders.[4]

A. Background

On June 9, 2005, the SEC adopted Regulation NMS.[5] Regulation NMS, in addition to re-designating the national market system rules previously adopted under Section 11A of the Act, also established new substantive rules to modernize and strengthen the regulatory structure of the U.S. equity markets.

Among other things, in adopting Regulation NMS, the SEC prohibited the imposition of access fees in excess of certain prescribed limitations; required SRO rules to address locked or crossed quotations; and prohibited the display of orders, quotations, and indications of interest in a pricing increment smaller than a penny (except where the security is priced at less than $1.00 per share in which case certain restrictions apply). Regulation NMS also includes a pre-existing customer limit order display requirement, which renumbered Exchange Act Rule 11Ac1–4 as Rule 604 under the Regulation.

These provisions of Regulation NMS apply only to trading in NMS stocks as defined in Rule 600(b)(47) of Regulation NMS and do not apply to trading in OTC Equity Securities. FINRA previously filed with the SEC rule changes to apply aspects of Regulation NMS to quoting and trading in OTC Equity Securities. In particular, FINRA filed with the SEC a proposed rule change to impose sub-penny quoting prohibitions on OTC Equity Securities and a separate proposed rule change to impose restrictions on access fees.[6]

In light of developments to date, FINRA has determined that extending certain NMS principles to the OTC equity market would be best if proposed together, rather than individually. Thus FINRA is now proposing to adopt rules to: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders. FINRA believes that these Regulation NMS principles, if applied to OTC Equity Securities, would enhance market quality and investor protections in this market.

B. Restrictions on Sub-penny Quoting

FINRA is proposing new FINRA Rule 6434 (Minimum Pricing Increment for OTC Equity Securities) to impose restrictions on the display of quotes and orders in sub-penny increments for OTC Equity Securities. Specifically, FINRA is proposing to prohibit members from displaying, ranking, or accepting from any person a bid or offer, order, or indication of interest in an OTC Equity Security in an increment smaller than $0.01 if the bid or offer, order, or indication of interest is priced $1.00 or greater per share, in an increment smaller than $0.0001 if the bid or offer, order, or indication of interest is priced below $1.00 and greater than $0.01 per share, and in an increment smaller than $0.000001 if the bid or offer, order or indication of interest is priced less than $0.01 per share.

Market participants currently quote in increments ranging from pennies to hundredths of pennies. As the SEC stated in the proposing release for Regulation NMS and in the Regulation NMS Adopting Release, potential harms associated with sub-penny quoting include an increase in the incidence of market participants stepping ahead of standing limit orders for an economically insignificant amount and added difficulty for broker-dealers to meet certain of their regulatory obligations by increasing the incidence of so-called ''flickering'' quotes.[7] FINRA believes that essentially the same potential problems exist with respect to sub-penny quoting in OTC Equity Securities. Accordingly, FINRA is

[3] ''OTC Equity Security'' means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting. *See* FINRA Rule 6420(d).

[4] The proposed rule also corrects certain cross-references to FINRA rules that have been adopted in the consolidated FINRA rulebook.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[6] *See* Securities Exchange Act Release No. 52280 (August 17, 2005), 70 FR 49959 (August 25, 2005) (Proposed rule change to impose restrictions on the display of quotes and orders in sub-penny increments for non-Nasdaq OTC equity securities; File No. SR–NASD–2005–095). *See* Securities Exchange Act Release No. 55717 (May 7, 2007), 72 FR 26856 (May 11, 2007) (Proposed amendment to exclude from the access fee display requirements any access fees below a specified level; File No. SR–NASD–2007–029).

[7] *See* Securities Exchange Act Release No. 49325 (Feb. 26, 2004), 69 FR 11126 (Mar. 9, 2004). *See also* Securities Exchange Act Release No. 50870 (December 16, 2004), 69 FR 77423 (December 27, 2004).

proposing a new rule that would adopt an approach to sub-penny quoting that is consistent with that implemented by the SEC in Regulation NMS.

FINRA believes that the proposed restrictions on sub-penny quoting will promote greater price transparency and consistency. As noted above, FINRA also believes that sub-penny restrictions limit the practice of ''stepping ahead'' of displayed limit orders by trivial amounts and, therefore, the proposed new rule should further encourage the display of limit orders and improve the depth and liquidity of the market.

C. Locked and Crossed Markets

FINRA rules do not currently prohibit locking or crossing quotations in OTC Equity Securities.[8] As the SEC noted in the Regulation NMS Adopting Release, locked and crossed markets can cause confusion among investors concerning trading interest in a stock and, therefore, FINRA believes that restricting the practice of submitting locking or crossing quotations will enhance the usefulness of quotation information for OTC Equity Securities.

Rule 610(d) of Regulation NMS (Access to Quotations) requires that each national securities exchange and national securities association establish, maintain, and enforce written rules restricting locking and crossing activities. In furtherance of this requirement, FINRA adopted Rule 6240 (Prohibition from Locking or Crossing Quotations in NMS Stocks), which generally requires members to avoid displaying, or engaging in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective NMS Plan.

Consistent with the principles of Regulation NMS's locking and crossing restrictions, FINRA is proposing to require that members implement policies and procedures that reasonably avoid the display of, or engaging in a pattern or practice of displaying, locking or crossing quotations in any OTC Equity Security within the same inter-dealer quotation system.[9] FINRA believes that the proposed policies and procedures approach is appropriate for addressing locked and crossed quotations in this market in light of the differences inherent in the quoting and trading of OTC Equity Securities as compared to NMS stocks.

As the SEC noted in the Regulation NMS Adopting Release with respect to the adoption of Rule 610(d), FINRA also recognizes that a member's quotations may, on occasion, accidentally lock or cross another member's quotations. Thus, similar to Rule 6240, FINRA would expect that members' policies and procedures would require the quoting participant to make ''reasonable efforts'' to first contact or route an order to execute against the full displayed size of any quotation before locking and crossing that quotation. For example, a member firm may also include so-called ''ship and post'' procedures that require such firm to attempt to execute against a relevant displayed quotation while posting a quotation that could lock or cross such a quotation. In addition, members' policies and procedures must be reasonably designed to enable the reconciliation of locked or crossed quotations, including requiring the member to take reasonable action to resolve the locked or crossed market when such member is responsible for displaying the locking or crossing quotation. FINRA believes that implementation of policies and procedures to avoid locking and crossing quotations, in conjunction with members' existing obligation to honor posted quotations pursuant to NASD Rule 3320 (Offers at Stated Prices) and NASD IM–3320 (Firmness of Quotations), will facilitate more fair and orderly markets and support market efficiency.

D. Access Fee Cap

FINRA is proposing a new rule to prohibit members from imposing non-subscriber access or post-transaction fees against published quotations in any OTC Equity Security that exceed or accumulate to more than specified amounts.

Currently, FINRA Rule 6540(c) requires that an ATS or ECN reflect non-subscriber access or post-transaction fees in the ATS's or ECN's posted quote in the OTC Bulletin Board montage. There are no restrictions on ATS or ECN access fees displayed in other inter-dealer quotation systems, such as the Pink Sheets. FINRA is proposing to eliminate the requirement that members reflect access fees in OTCBB posted quotations, and to replace that requirement with a uniform access fee cap, consistent with Rule 610(c) of Regulation NMS. The proposed fee cap, as set forth in proposed Rule 6450, would restrict access fees in all OTC Equity Securities that exceed or accumulate to more than the following limits:

a. If the price of the quotation is $1.00 or more, the fee or fees cannot exceed or accumulate to more than $0.003 per share; or

b. If the price of the quotation is less than $1.00, the fee or fees cannot exceed or accumulate to more than 0.3% of the quotation price per share.[10]

Also consistent with Regulation NMS, the proposal would codify that market makers, as well as ATSs, are permitted to charge access fees within the framework of the proposed access fee cap.

Consistent with the SEC's conclusions in adopting Regulation NMS, FINRA believes that capping access fees is the most effective approach of the available alternatives, as well as the least disruptive to current market practice (other alternatives include an access fee display requirement and an outright prohibition on access fees). As the SEC stated in the Regulation NMS Adopting Release, a single, uniform fee limitation of $0.003 per share is the fairest and most appropriate resolution of the access fee issue. First, it will not seriously interfere with current business practices because trading centers have very few fees on their books of more than $0.003 per share and do not earn substantial revenues from such fees. In addition, a uniform fee limitation promotes equal regulation of different types of trading centers, where previously some had been permitted to charge fees and some had not. The SEC also noted that if wide disparities in access fees were permitted, the prices of quotations would be less useful and accurate. Therefore, a limitation on the level of access fees addresses the potential distortions caused by substantial, disparate fees.

E. Limit Order Display

Rule 604 of Regulation NMS requires the immediate display of customer limit orders. Specifically, Regulation NMS requires the display of (1) the price and

[8] A ''locking quotation'' is the display of a bid (or offer) at a price that equals the displayed price of an offer (or bid) for a security in the same ''inter-dealer quotation system'' (as defined in proposed Rule 6437). A ''crossing quotation'' is the display of a bid (or offer) at a price that is higher than the displayed price of an offer (or bid) for a security in the same inter-dealer quotation system.

[9] Because there currently is not a mandated consolidated quotation dissemination mechanism for OTC Equity Securities as exists with NMS stocks, the proposed rule only restricts locking and crossing quotations within inter-dealer quotation systems, but not across inter-dealer quotations systems.

[10] These standards are substantially similar to the access fee restrictions in Regulation NMS. *See* Regulation NMS Adopting Release. Note, however, that the restrictions under Rule 610(c) of Regulation NMS are limited to ''protected quotations,'' for which there is no comparable designation in the OTC equity market. Instead, the proposal would apply the restrictions uniformly to all quotations displayed in the OTC equity market.

the full size of each customer limit order that is at a price that would improve the bid or offer of the specialist or OTC market maker in such security; and (2) the full size of each customer limit order held by the specialist or OTC market maker that: Is priced equal to the bid or offer of such specialist or OTC market maker for such security; is priced equal to the national best bid or national best offer; and represents more than a *de minimis* change in relation to the size associated with the specialist or OTC market maker's bid or offer.

FINRA is proposing to impose a similar requirement on customer limit orders in OTC Equity Securities, specifically, a market maker displaying a priced quote would be required to immediately [11] display customer limit orders that it receives that (1) improve the price of the bid or offer displayed by the market maker, or (2) improve the size of its bid or offer by more than a *de minimis* amount where it is the best bid or offer in the inter-dealer quotation system where the market maker is quoting.[12] Regulation NMS includes several exceptions from its limit order display requirements, which also would apply to the proposed limit order display rule for OTC Equity Securities. Thus the proposed rule would except any customer limit order:

a. That is executed upon receipt of the order.

b. That is placed by a customer who expressly requests that the order not be displayed.

c. That is an odd-lot order.[13]

d. That is a block size order, unless a customer placing such order requests that the order be displayed.[14]

e. That is delivered immediately upon receipt to a national securities exchange or an electronic communications network that widely disseminates such order and immediately provides to an inter-dealer quotation system the prices and sizes of the orders at the highest buy price and the lowest sell price for such security.[15]

f. That is delivered immediately upon receipt to another OTC market maker that complies with the proposed limit order display requirements with respect to that order.

g. That is an all-or-none order.

In adopting the limit order display requirements for NMS stocks, the SEC stated that the display of limit orders is designed, among other objectives, to publicize accurate market interest and increase quote competition. While the SEC recognized that the rule may lead to reduced spreads and a diminution in market maker profits per trade, the SEC also noted that narrower spreads could result in increased customer orders and volume over time and thus, ultimately improve liquidity. FINRA believes that extending limit order display requirements to OTC Equity Securities will improve transparency in the OTC equity market. In addition, as has been stated by the SEC, the display of customer limit orders advances the goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation.

Because the proposed new rules provide for significant regulatory changes, FINRA plans to implement the requirements in two phases to minimize the impact on firms. Phase one would implement sub-penny quoting restrictions, an access fee cap and restrictions on locked and crossed markets. Phase two would implement customer limit order display requirements. FINRA will announce the implementation dates for the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date of Phase one will be at least 120 days but no more than 365 days from the date of Commission approval and Phase two will be at least 90 days following the implementation of Phase one, but no more than 365 days from the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

FINRA further believes that the proposed rule change is consistent with the provisions of 15A(b)(11) of the Act,[17] which requires, among other things, that FINRA rules must govern the form and content of quotations relating to securities sold otherwise than on a national securities exchange and require that such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

FINRA is proposing to: (1) Restrict subpenny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders. FINRA believes that the proposed restrictions on sub-penny quoting will promote greater price transparency and consistency, reduce the potential harms associated with sub-penny quoting in OTC equity securities and improve the depth and liquidity of this market.

FINRA believes that locked and crossed markets can cause confusion among investors concerning trading interest in a stock and that restricting the practice of submitting locking or

[11] Under Rule 604 of Regulation NMS, the requirement to ''publish immediately'' a customer limit order requires the display (or execution or re-routing) of customer limit orders as soon as is practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt. *See* Securities Exchange Act Release No. 37619A, 61 FR 48290 (September 12, 1996). FINRA proposes to adopt this same interpretation with respect to the timing of display of customer limit orders in OTC Equity Securities.

[12] Under Rule 604 of Regulation NMS, a customer limit order should be considered *de minimis* if it is less than or equal to 10% of the displayed size associated with a specialist's or OTC market maker's bid or offer and FINRA proposes to adopt this same interpretation with respect to the proposed rule. *See* Exchange Act Release No. 37619A, 61 FR 48290 (September 12, 1996).

[13] As discussed in *Trade Reporting Notice* 3/18/08, with respect to OTC Equity Securities trading at $175 or more per share, FINRA has designated the ''unit of trade'' as one share rather than 100 shares for purposes of public dissemination. As such, trades in these securities for fewer than 100 shares are not considered ''odd-lot transactions'' and are disseminated by FINRA. However, for all other purposes, including the amendments proposed herein, transactions and orders of fewer than 100 shares are considered ''odd lots,'' unless otherwise specifically determined by FINRA.

[14] Under Regulation NMS, a ''block size'' with respect to an order means it is: (i) of at least 10,000 shares or (ii) for a quantity of stock having a market value of at least $200,000. Because of the lower average trade prices (and corresponding higher average total share amount) of orders in OTC Equity Securities, FINRA believes that a 10,000 share standard alone would exclude customer limit orders that should otherwise be displayed. Therefore, FINRA is proposing that the definition of ''block size'' under the rule for OTC Equity Securities be an order that is: (i) Of at least 10,000 shares and (ii) has a market value of at least $100,000. This is consistent with the large order size exception under IM–2110–2 (Trading Ahead of Customer Limit Order).

[15] FINRA also is proposing to exclude from Rule 2320(g)(2) those priced quotations that represent a customer limit order displayed on an electronic communications network in conformance with this proposed exception. Rule 2320(g)(2) requires that members display the same priced quotation in a non-exchange-listed security when quoting in two or more quotation mediums.

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78o–3(b)(11).

crossing quotations will enhance the usefulness of quotation information in the over-the-counter market, facilitate more fair and orderly markets and support market efficiency.

Where wide disparities in access fees are permitted, the prices of quotations are less useful and accurate. Therefore, FINRA believes that a cap on access fees would improve the usefulness and accuracy of quotations and address the potential distortions caused by substantial, disparate fees. Finally, FINRA believes that applying limit order display requirements to OTC Equity Securities would improve transparency in the OTC equity market and advance the goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation.

FINRA believes that the proposed extension of the specified Regulation NMS protections to quoting and trading in OTC Equity Securities will prevent fraudulent and manipulative acts and practices in this market, promote just and equitable principles of trade, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–054. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2009–054 and should be submitted on or before September 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20532 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60521; File No. SR–NASDAQ–2009–076]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Processing of Orders on the NASDAQ Options Market

August 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 13, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].[4]

* * * * *

Chapter VI Trading Systems

Sec. 1 Definitions

The following definitions apply to Chapter VI for the trading of options listed on NOM.

(a)–(d) No change.

(e) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(7) No Change.

[(8) ''Additional Exposure Orders'' are orders that are priced at the National Best Offer, for buys, and the National Best Bid, for sells. The order is exposed on the System Book Feed for a time determined by the Exchange, not to exceed one second. At the end of the exposure period, if still unexecuted, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com.*

order will be routed to the market(s) at the NBBO, cancelled back to the entering party, or posted on the book pursuant to Section 7 of Chapter VI.

Any update to the NBBO that improves the exposed order price will cause an immediate end to the exposure period. Any unexecuted portion of the order will be routed to the market(s) at the NBBO, cancelled back to the entering party or posted on the book pursuant to Section 7 of Chapter VI.

Any update to the NBBO that unlocks the exposed order price will cause an immediate end to the exposure period. Any unexecuted portion of the order will be executed against contra interest on the book, routed to the market(s) at the NBBO, cancelled back to the entering party or posted on the book pursuant to Section 7 of Chapter VI.]

* * * * *

Sec. 6 Acceptance of Quotes and Orders

All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(a) General—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(1) All System Orders shall indicate limit price and whether they are a call or put and buy or sell. Systems Orders can be designated as Immediate or Cancel (''IOC''), Good-till-Cancelled (''GTC''), Day (''DAY''), WAIT or Expire Time (''EXPR'').

(2) A System order may also be designated as a Reserve Order, a Limit Order, a Minimum Quantity Order, a Discretionary Order, a Market Order, a Price Improving Order, *or* an Exchange Direct Order[, or an Additional Exposure Order].

* * * * *

Sec. 11 Order Routing

(a) For System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close, and shall route orders as follows. Participants can designate orders as either available for routing or not available for routing. Orders designated as not available for routing shall follow the book processing rules set forth in Section 10 above. Orders designated as available for routing, will first check the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per entering firm's instructions. When checking the book, the System will seek to execute at the price at which it would send the order to a destination market center. [Orders designated as Additional Exposure Orders, as defined in Chapter VI, Section 1, will be exposed on the System Book Feed prior to routing to other markets.] If contracts remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has not yet implemented a recently approved rule change to the NOM rules, which would provide marketable orders an additional opportunity for execution on the NOM when NOM is not part of the NBBO.[5] Upon further review, Nasdaq proposes to eliminate this additional opportunity for execution on the NOM.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(5) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

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[5] *See* Securities Exchange Act Release No. 60335 (July 17, 2009), 74 FR 36790 (July 24, 2009) (SR–NASDAQ–2009–066).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–076 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–076. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2009–076 and should be submitted on or before September 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20530 Filed 8–25–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6738]

Notice of Issuance of a Presidential Permit for the Proposed Enbridge Energy Alberta Clipper Pipeline Project

August 26, 2009.

AGENCY: Department of State.

ACTION: Notice of Issuance of a Presidential Permit for the Proposed Enbridge Energy Alberta Clipper Pipeline Project.

SUMMARY: This notice announces that on August 20, 2009, the Department of State issued a Presidential Permit to Enbridge Energy, Limited Partnership (''Enbridge'') authorizing it to construct, connect, operate, and maintain facilities at the border of the United States and Canada for the transport of crude oil between the United States and Canada across the international boundary.

On May 15, 2007, Enbridge submitted an application to the U.S. Department of State (DOS) for construction, connection, operation, and maintenance of an oil pipeline and associated facilities at the U.S.-Canada border to enable Enbridge to import heavy crude oil from Canada (the Alberta Clipper Project).

Executive Order 13337 of April 30, 2004, as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities, including pipelines, for the exportation or importation of petroleum, petroleum products, coal, or other fuels at the border of the United States and to issue or deny such Presidential Permits upon a national interest determination. The functions assigned to the Secretary have been further delegated within the Department of State to, inter alia, the Deputy Secretary of State.

Consistent with the National Environmental Policy Act of 1969 (''NEPA''), 42 U.S.C. 4321–4370f, the Council of Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500–1508, and the Department's regulations for the implementation of NEPA, 22 CFR part 161, an Environmental Impact Statement (EIS) on potential issuance of a Presidential Permit for the construction, connection, operation, and maintenance of the pipeline was prepared by Entrix, Inc., a contractor selected by the Department of State.

The Department of State published in the **Federal Register** a Notification of Receipt of the Enbridge Application for a permit on May 25, 2007 (72 FR 29360). That notification solicited public comment on the application for a 30-day period. Thereafter, the Department published in the **Federal Register** a Notification of Intent to Prepare an Environmental Impact Statement on March 31, 2008 (73 FR 16920). The Department's Notice of Availability of the Draft EIS and request for public comment was published in the **Federal Register** on December 5, 2008 (73 FR 74221), seeking comments by January 30, 2009. The Department received 850 public comments in response to this notice and took them into account in making its determination on the Enbridge application.

As required by Executive Order 13337, the Enbridge pipeline application and a Draft Environmental Impact Statement were transmitted to Federal agencies for their review and comment on December 5, 2008. The Department of State received no objections from Federal agencies regarding the issuance of a permit. The Department published a notice of the availability of the Final Environmental Impact Statement in the **Federal Register** on June 8, 2009 (74 FR 27229).

Consistent with its authority under Executive Order 13337, the Department reviewed all of the available information and documentation, including comments submitted by Federal and State agencies and the public. On August 3, 2009, the Secretary's Delegate, Deputy Secretary James B. Steinberg, signed the Record of Decision and National Interest Determination, which states that issuance of the Presidential Permit for the Alberta Clipper Pipeline Project would serve the national interest.

Executive Order 13337 requires that Secretaries or Heads of certain agencies be notified of the Department's proposed determination concerning issuance of the Presidential Permit. Any agency required to be consulted under section 1(g) of the Order that disagrees with the proposed determination may notify the Secretary of State within 15 days of being notified that it disagrees with the determination and request that the Secretary refer the application to the President. On August 4, 2009, as required under section 1(g) of the Executive Order, the Department notified all agencies of its intent to issue the Permit. The Department received no objections from notified agencies.

On August 3, 2009, Deputy Secretary of State James B. Steinberg, signed the Presidential Permit, and on August 20, 2009, the Department issued the Permit to Enbridge.

FOR FURTHER INFORMATION CONTACT: The Presidential Permit, the Record of Decision and National Interest Determination, Enbridge's application for a Presidential Permit, including associated maps and drawings, the Final EIS and other project information is available for viewing and download at the project Web site: *http://www.albertaclipper.state.gov.* For information on the proposed project contact J. Brian Duggan, EEB/ESC Room 4843, U.S. Department of State, Washington, DC 20520, or by telephone (202) 647–1291, or by fax at (202) 647–8758.

Issued in Washington, DC on August 20, 2009.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Department of State.

[FR Doc. E9–20598 Filed 8–25–09; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA); Notice Regarding the 2009 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for petitions.

SUMMARY: This notice announces the 2009 Annual Review of the Andean Trade Preference Act (ATPA). Under this process, petitions may be filed calling for the limitation, withdrawal or suspension of ATPA or ATPDEA benefits by presenting evidence that the eligibility criteria of the program are not being met. USTR will publish in the **Federal Register** a list of petitions filed in response to this announcement and accepted for review.

DATES: The deadline for the submission of petitions for the 2009 Annual ATPA Review is September 22, 2009.

ADDRESSES: Petitions should be submitted electronically via the Internet at *http://www.regulations.gov.* For alternatives to on-line submissions please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Americas, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–9446 and the facsimile number is (202) 395–9675.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201–06), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210) and extended by the Andean Trade Preference Act, (Pub L. 110–436), provides for trade benefits for eligible Andean countries. The current beneficiaries of the ATPA are Colombia, Ecuador and Peru. Consistent with Section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of articles and countries for the benefits of the ATPA, as amended. The 2009 Annual ATPA Review is the sixth such review to be conducted pursuant to the ATPA review regulations. To qualify for the benefits of the ATPA and ATPDEA, each country must meet several eligibility criteria, as set forth in sections 203(c) and (d), and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3202(c), (d); 19 U.S.C. 3203(b)(6)(B)). Under section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)), the President may withdraw or suspend the designation of any country as an ATPA or ATPDEA beneficiary country, and may also withdraw, suspend, or limit preferential treatment for any product of any such beneficiary country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria.

The ATPA regulations provide the schedule of dates for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2009 Annual ATPA Review, all petitions to withdraw or suspend the designation of a country as an ATPA or ATPDEA beneficiary country, or to withdraw, suspend, or limit application of preferential treatment to any article of any ATPA beneficiary country under the ATPA, or to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), (4)) of the ATPA, must be received by the Andean Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. EDT on September 22, 2009. Petitioners should consult 15 CFR 2016.0 regarding the content of such petitions.

Requirements for Submissions: To ensure the most timely and expeditious receipt and consideration of petitions, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit petitions via *http://www.regulations.gov*, enter docket number USTR–2009–0024 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''General Comments'' field, or by attaching a document. Petitions should be submitted as attachments. When doing this it is sufficient to type ''See attached'' in the ''General Comments'' field.

Submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) are preferred. If you use an application other than those two, please identify the application in your submission.

Persons wishing to file comments containing business confidential information must submit a business confidential version and a public version. The file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Persons wishing to file comments containing business confidential information must also provide, in a separate submission, a public version of the comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. If you submit comments that contain no business confidential information, the file name should begin with the character ''P'', followed by the name of the person or entity submitting the comments. Electronic submissions should not attach separate cover letters; rather, information that might appear in a cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

We strongly urge submitters to use electronic filing. If an on-line submission is impossible, alternative arrangements must be made with Ms. Blue prior to delivery for the receipt of such submissions. Ms. Blue may be contacted at (202) 395–3475. General

information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E9–20519 Filed 8–25–09; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–996 (Sub-No. 2X)]

Reading Blue Mountain and Northern Railroad Company—Discontinuance of Service Exemption—in Berks County, PA

Reading Blue Mountain and Northern Railroad Company (RBMN) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 8.6-mile portion of the Pennsy Branch between milepost 67.8, at or near Shackamaxon Street, in Leesport, Berks County, PA, to the end of the line at milepost 76.4, at or near Grand Street, in Hamburg, Berks County, PA. The line traverses United States Postal Service Zip Codes 19526, 19533, and 19555.

RBMN has certified that: (1) No traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 25, 2009, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[2] must be filed by September 8, 2009.[3] Petitions to reopen must be filed by September 15, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to RBMN's representative: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 20, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20548 Filed 8–25–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Walnut Ridge Regional Airport, Walnut Ridge, AR

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Request To Release Airport Property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Walnut Ridge Regional Airport under the provisions of Title 49, U.S.C. Section 47153(c).

DATES: Comments must be received on or before September 25, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward N. Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Michelle Rogers, Mayor of Walnut Ridge, at the following address: City of Walnut Ridge, 300 West Main Street, Walnut Ridge, AR 72476.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Burns, Federal Aviation Administration, Airports Development Office, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Walnut Ridge Regional Airport.

On August 10, 2009, the FAA determined that the request to release property at Walnut Ridge Regional Airport submitted by the City of Walnut Ridge met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than September 25, 2009.

The following is a brief overview of the request: The City of Walnut Ridge requests the release of 17.6 acres of airport property. The land proposed for release will be used by Williams Baptist College to expand its existing college campus adjacent to the Walnut Ridge Regional Airport. The fair market value of this land is $53,000.00. In exchange for this 17.6 acres, the Airport will receive from Williams Baptist College a 20.0-acre tract valued at $40,000.00 plus a cash payment in the amount of $13,000.00. The City will use this $13,000.00 (together with $30,000.00 from another airport land release, resulting in a total of $43,000.00) on a 2010 capital improvement project to construct a Maintenance Hangar at Walnut Ridge Regional Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walnut Ridge Regional Airport.

Issued in Fort Worth, Texas, on August 14, 2009.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. E9–20317 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–13–M

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[1] The earliest this transaction may be consummated is September 25, 2009 (50 days after filing. 49 CFR 1152.50(d)). RBMN has indicated a consummation date of on or after September 24, 2009.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Walnut Ridge Regional Airport, Walnut Ridge, AR

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Request To Release Airport Property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Walnut Ridge Regional Airport under the provisions of Title 49, U.S.C. Section 47153(c).

DATES: Comments must be received on or before September 25, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward N. Agnew, Manager Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Michelle Rogers, Mayor of Walnut Ridge, at the following address: City of Walnut Ridge, 300 West Main Street, Walnut Ridge, AR 72476.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Burns, Federal Aviation Administration, Airports Development Office, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pocahontas Municipal Airport.

On August 10, 2009, the FAA determined that the request to release property at Walnut Ridge Regional Airport submitted by the City of Walnut Ridge met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than September 25, 2009.

The following is a brief overview of the request:

The City of Walnut Ridge requests the release of 10.1 acres of airport property. The fair market value of this land is $30,000.00. The land proposed for release will be used by Lauback Trucking, Inc. for a storage facility. In exchange for this 10.1 acres, the City will receive a cash payment in the amount of $30,000.00. The City will use this $30,000.00 (together with $13,000.00 from another airport land release, resulting in a total of $43,000.00) on a 2010 capital improvement project to construct a Maintenance Hangar at Walnut Ridge Regional Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walnut Ridge Regional Airport.

Issued in Fort Worth, Texas on August 14, 2009.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. E9–20320 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA will conduct a public meeting in preparation for the twenty-second meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) to be held October 5–16, 2009 in Montreal, Canada.

DATES: Tuesday, September 29, 2009, 1–3 p.m.

ADDRESSES: The meeting will be held at the DOT Headquarters, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Conference Call Capability/Live Meeting Information: Conference call-in and ''live meeting'' capability will be provided for this meeting. Specific information on call-in and live meeting access will be posted when available at *http://www.phmsa.dot.gov/hazmat/regs/international.*

FOR FURTHER INFORMATION CONTACT: Mr. Duane Pfund, Director, Office of International Standards, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this public meeting will be to discuss draft U.S. positions on the proposals that will be considered during the 22nd Meeting of the ICAO DGP. Agenda items include:

Agenda Item 1: Development of proposals, if necessary, for amendments to Annex 18—Safe Transport of Dangerous Goods by Air.

Agenda Item 2: Development of recommendations for amendments to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284) for incorporation in the 2011–2012 Edition.

Agenda Item 3: Development of recommendations for amendments to the Supplement to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284) for incorporation in the 2011–2012 Edition.

Agenda Item 4: Amendments to the Emergency Response Guidance for Aircraft Incidents involving Dangerous Goods (Doc 9481) for incorporation in the 2011–2012 Edition.

Agenda Item 5: Resolution, where possible, of the non-recurrent work items identified by the Air Navigation Commission or the panel.

5.1: Approvals.

5.2: Exemptions.

5.3: Review of provisions for dangerous goods relating to batteries:

(a) Lithium batteries.

(b) Battery-powered devices.

(c) Battery-powered mobility aids.

5.4: Reformatting of the packing instructions.

5.5: Carriage of dangerous goods on helicopters.

Agenda Item 6: Other business.

For more information on the ICAO DGP and to check for updates on information related to this public meeting visit PHMSA's International Standards Web site at *http://www.phmsa.dot.gov/hazmat/regs/international.* To download papers which will be considered by the Panel visit the DGP Web site at *http://www.icao.int/anb/FLS/DangerousGoods/flsdg.cfm.*

Robert A. Richard,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. E9–20344 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Opportunity for Public Comment on Surplus Property Release at Brunswick-Golden Isles Airport, Brunswick, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Glynn County Airport Commission to waive the requirement that a 1.5-acre parcel of surplus property, located on Glynn County airport owned and operated land adjacent to, but not contigous with, Brunswick-Golden Isles Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before September 25, 2009.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, *Attn:* Aimee A. McCormick, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Steve Brian, Airport Director of Brunswick—Golden Isles Airport at the following address: 295 Aviation Parkway, Ste. 205, Brunswick, GA 31525.

FOR FURTHER INFORMATION CONTACT: Aimee McCormick, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7143. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Glynn County Airport Commission to release 1.5 acres of surplus property at the Brunswick-Golden Isles Airport. The property will be purchased with intent to construct commercial development or possible residential development. The location of the the land relative to existing or anticipated aircraft noise contours greater than 65ldn are not an issue. The net proceeds from the sale of this property will be used for airport purposes.

The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Brunswick Golden Isles Airport.

Issued in Atlanta, Georgia, on August 10, 2009.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. E9–20319 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 138 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director Medical Programs, 202–366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds ''such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.'' The procedures for requesting an exemption are set out in 49 CFR part 381.

Accordingly, FMCSA evaluated 138 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denials.

The following 24 applicants lacked sufficient driving experience during the 3-year period prior to the date of their application: Henry P. Ashbacher, Edgar Berrios, Donald R. Bond, Kory J. Bortz, Joel S. Cadbury, Thomas J. Farrell, Robert M. Fleming, Larry F. Graves, Michael Hansen, Jackie L. Harris, David Hunt, Kelly Jasperson, Robert J. Korybski, Carl Kuhn, Ray S. Martin, Steven G. Mason, James M. McCormick, Anthony P. Mercer, Terry L. Mosel, Randy T. Richardson, Benjamin J. Schoenrock, Joseph M. Vlosich, Jr., William Walker, Harlan H. Zimmerman.

The following 9 applicants did not have any experience operating a CMV: Philip W. Arneson, Wayne Hoyne, Edward L. Knutson, Juan Moreno, Jammie A. Noblit, Stephen W. Petro, Jr., Daniel Salazar, Bruce Shepherd, Andrew C. Simpson.

The following 35 applicants did not have 3 years of experience driving a CMV on public highways with the vision deficiency: James W. Bittle, Jack A. Boyd, Charlene Brown, Steven W. Brown, John W. Caswell, Westcott Clarke, John Cooper, Thomas T. Currier, Ron L. Deering, Daniel DePaul, Wayne E. Easter, Brandy Jackson, Kelly L. Johnson, Max B. Kelso, James Koons, Craig C. Lowry, Ruben Lozano, Alan T. Lukosunas, Thomas M. Manz, Stephen G. McSpadden, Paul L. Medis, Bennis Monte, Greg A. Nichols, Edward J. Popow, Carrol R. Posey, Ricky A. Rahmlow, Dana L. Riggs, Johnny F. Rivera, Herdis Rumph, James S. Stevens, Kevin Sullivan, Earl L. Tanner, Andrew A. Thompson, David K. Walling, Jack Wood.

The following 9 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency: Carlos D. Castillo, Gerald E. Diedrich, Dale A. Kelso, Victor H. Lindsay, Michael E. Loudermilk, Larry Rapp, Ernest W. Roy, Richard M. Telliho, Douglas V. Williams.

The following 24 applicants did not have sufficient driving experience over the past 3 years under normal highway operating conditions: Patrick D. Blair, Jason W. Bowers, Kenneth Bryant, Clifford C. Commeau, Jr., William R. Cummings, Diane DuMonte-Slater,

Richard P. Frederiksen, Johnny Gibson, John Knapp, Matthew P. Littleton, Robert R. Martin, John J. Mattefs, Randy A. Miller, Scott R. Miner, Francisco Montero, Francis E. Paquin, Armando Pedroso, Matias P. Quintanilla, Jim Sampson, John P. Stoetzel, Donald Stone, Terry G. Theberge, Albert Villa, Jr., Jack L. Woolever.

One applicant, Gregory C. Simmons, had more than 2 commercial motor vehicle violations during the 3-year review period and/or application process. Each applicant is only allowed 2 moving citations.

One applicant, Thomas E. Sprague, Jr., did not have sufficient peripheral vision in his better eye to qualify for an exemption.

One applicant, Robert C. Hill, had other medical conditions making him unqualified under Federal Motor Carrier Safety Regulations. All applicants must meet all other physical qualifications standards in 49 CFR 391.41(b)(1–13).

The following 2 applicants had commercial driver's license suspensions during the 3-year review period in relation to a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period: Steven F. Albro, Carlos Diaz.

One applicant, David L. Napier, did not hold a license which allowed operation of vehicles over 10,000 pounds for all or part of the 3-year period.

One applicant, Elizel Martinez, did not have an Optometrist/Ophthalmologist willing to state that he is able to operate a commercial vehicle from a vision standpoint.

The following 9 applicants were denied for miscellaneous/multiple reasons: Walter Clark, James E. Cotton, Joseph E. Lochotzki, David C. Moran, Vincent R. Neville, Steven R. Parker, Enrique Perez, Justinie R. Phillips, Lee G. Smith.

The following 2 applicants never submitted the required documents: Bernard Sippin, Michael E. Williams.

Finally, the following 19 applicants met the current federal vision standards. Exemptions are not required for applicants that meet the current regulations for vision: Dennis Burdett, Brian J. Douglas, Clarence Elsea, Servando T. Escudero, Wayne Figroid, Shawn T. Girgen, Sandra L. Gravett, Daniel R. Hicks, Richard Hull, Eric L. Kinner, Luther B. Livingston, Thomas W. May, Spencer Melton, David M. Nelson, Tommy J. Shelton, Kent D. Tufvander, W. Hall Van Horn, Etienne D. Vincent, Ricky Wilkinson.

Issued on: August 20, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–20623 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID FMCSA–2009–0206]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 27 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before September 25, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0206 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 27 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Martin Anaya

Mr. Anaya, age 39, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/50. Following an examination in 2009, his optometrist noted, ''In my professional opinion, from a vision stand point, Mr. Anaya can safely drive a commercial vehicle.'' Mr. Anaya reported that he has driven straight trucks for 11 years,

accumulating 220,000 miles, and tractor-trailer combinations for 11 years, accumulating 110,000 miles. He holds a Class A Commercial Driver's License (CDL) from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gregory G. Barthell

Mr. Barthell, 48, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, ''In my medical opinion, the patient has sufficient vision to perform tasks required to operate a commercial vehicle. His vision deficiency is unlikely to change over time.'' Mr. Barthell reported that he has driven straight trucks for 3 years, accumulating 7,800 miles, and buses for 2 years, accumulating 52,000 miles. He holds a Class B CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald R. Beauchesne

Mr. Beauchesne, 56, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/100. Following an examination in 2009, his optometrist noted, ''I believe that Mr. Beauchesne has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Beauchesne reported that he has driven straight trucks for 11 years, accumulating 275,000 miles, and buses for 20 years, accumulating 1 million miles. He holds a Class B CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John E. Bell

Mr. Bell, 47, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in his left eye, hand motion vision. Following an examination in 2009, his optometrist noted, ''John has sufficient vision to perform the driving tasks required to operate a commercial vehicle on public roads in every state in the United States.'' Mr. Bell reported that he has driven straight trucks for 5 years, accumulating 500,000 miles, and tractor-trailer combinations for 10 years, accumulating 1 million miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard J. Decker

Mr. Decker, 54, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, ''Given Mr. Decker's current visual status, he has the proper visual skills to operate a commercial vehicle.'' Mr. Decker reported that he has driven straight trucks for 25 years, accumulating 250,000 miles, and tractor-trailer combinations for 25 years, accumulating 2.5 million miles. He holds a Class A CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James E. Fix

Mr. Fix, 46, had an enucleation of his left eye due to a traumatic injury sustained in 2000. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, ''I believe Mr. Fix has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Fix reported that he has driven straight trucks for 4 years, accumulating 120,000 miles, and tractor-trailer combinations for 8 years, accumulating 640,000 miles. He holds a Class D operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dean A. Gary

Mr. Gary, 44, has loss of vision in his left eye due to a retinal detachment that occurred 15 years ago. The best corrected visual acuity in his right eye is 20/15 and in his left eye, hand motion vision. Following an examination in 2009, his optometrist noted, ''In my opinion, this patient's vision is adequate for commercial driving.'' Mr. Gary reported that he has driven straight trucks for 25 years, accumulating 1.7 million miles, and tractor-trailer combinations for 25 years, accumulating 125,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James P. Greene

Mr. Greene, 44, has loss of vision in his left eye due to congenital toxoplasmosis. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2009, his optometrist noted, ''In my opinion, his vision is adequate to drive a commercial vehicle.'' Mr. Greene reported that he has driven straight trucks for 5 years, accumulating 59,520 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry L. Harris

Mr. Harris, 56, has loss of vision in his left eye due to a congenital retinal lesion. The best corrected visual acuity in his right eye is 20/20 and in his left eye, count-finger vision. Following an examination in 2009, his optometrist noted, ''In my medical opinion, Mr. Harris has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Harris reported that he has driven straight trucks for 7 years, accumulating 7,000 miles. He holds a Class B CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roger D. Kloss

Mr. Kloss, 46, has complete loss of vision in his left eye due to a congenital defect. The visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, ''I feel that Mr. Kloss is well adapted to his situation and has sufficient vision to perform the tasks necessary to operate a commercial vehicle.'' Mr. Kloss reported that he has driven tractor-trailer combinations for 23 years, accumulating 1.8 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven R. Lechtenberg

Mr. Lechtenberg, 42, has bullous keratopathy in his right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is count-finger vision and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, ''It is my medical opinion that Mr. Lechtenberg has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Lechtenberg reported that he has driven straight trucks for 5 years, accumulating 200,000 miles. He holds a Class O operator's license from Nebraska, which allows him to drive any non-commercial vehicle except motorcycles. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Oscar N. Lefferts

Mr. Lefferts, 50, has had amblyopia in his left eye since childhood. The best

corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''I feel that Mr. Lefferts vision is more than sufficient and he should have no restrictions on his commercial driver's license and the ability to operate a commercial vehicle is not compromised.'' Mr. Lefferts reported that he has driven buses for 9 years, accumulating 1.1 million miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David C. Lyles

Mr. Lyles, 54, has had age-related macular degeneration since 2004. The best corrected visual acuity in his right eye is 20/80 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, ''It is my opinion that Mr. Lyles has sufficient visual ability to perform the tasks necessary to operate a commercial vehicle.'' Mr. Lyles reported that he has driven tractor-trailer combinations for 3½ years, accumulating 350,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and one conviction for speeding in a CMV. He exceeded the speed limit by 12 mph.

Jesse R. McClary, Sr.

Mr. McClary, 48, has a prosthetic left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, ''I see no reason why Mr. McClary cannot safely operate a commercial vehicle and it is my understanding that he has been doing it for many years.'' Mr. McClary reported that he has driven straight trucks for 30 years, accumulating 6 million miles, tractor-trailer combinations for 4 years, accumulating 220,000 miles, and buses for 25 years, accumulating 500,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ignar L. Meyer

Mr. Meyer, 54, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, ''He has no visual condition that would impair his driving skill, there should be no restrictions other than glasses required on his driver's license, commercial or otherwise.'' Mr. Meyer reported that he has driven straight trucks for 3½ years, accumulating 56,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James C. Miller

Mr. Miller, 66, has retinal vein occlusion in his left eye since 2006. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''In my medical opinion, Mr. Miller has sufficient vision to perform the tasks required to operate a commercial vehicle.'' Mr. Miller reported that he has driven tractor-trailer combinations for 29 years, accumulating 324,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Norman V. Myers

Mr. Myers, 53, has complete loss of vision in his right eye due to a cataract and retinal detachment as a child. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2009, his ophthalmologist noted, ''In my professional opinion, Norman Myers has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Myers reported that he has driven straight trucks for 3½ years, accumulating 157,500 miles. He holds an operator's license from Washington. His driving record for the last 3 years shows one crash for which he was not cited, and no convictions for moving violations in a CMV.

Steven D. O'Donnell

Mr. O'Donnell, 35, has a prosthetic right eye due to a traumatic injury sustained as a child. The visual acuity in his left eye is 20/20. Following an examination in 2009, his optometrist noted, ''These tests during our examination show that Mr. O'Donnell has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. O'Donnell reported that he has driven straight trucks for 10 years, accumulating 500,000 miles, and tractor-trailer combinations for 8 years, accumulating 640,000 miles. He holds a Class D operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ben R. Sauder

Mr. Sauder, 48, has loss of vision in his left eye due to a macular scar. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''In my opinion, Mr. Sauder's vision is sufficient to perform the driving tasks required to operate a commercial vehicle''. Mr. Sauder reported that he has driven straight trucks for 32 years, accumulating 1.4 million miles, tractor trailers for 4 years, accumulating 16,800 miles, and buses for 16 years, accumulating 32,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark L. Simmons

Mr. Simmons, 45, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2009, his optometrist noted, ''I believe that Mr. Simmons has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Simmons reported that he has driven straight trucks for 22 years, accumulating 66,000 miles, and tractor-trailer combinations for 11 years, accumulating 38,500 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Don W. Smith

Mr. Smith, 59, has had a traumatic cataract in his right eye caused by an injury sustained in 1954. The best corrected visual acuity in his right eye is light perception and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, ''In my medical opinion, Mr. Don Smith has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 18 years, accumulating 324,000 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert E. Smith

Mr. Smith, 46, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, ''Mr. Smith has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Smith reported that he has driven

straight trucks for 23 years, accumulating 345,000 miles. He holds a Class B CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert E. Soto

Mr. Soto, 45, has had myopic degeneration in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, count-finger vision. Following an examination in 2009, his ophthalmologist noted, ''Vision sufficient for commercial driving.'' Mr. Soto reported that he has driven tractor-trailer combinations for 9 years, accumulating 1.1 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jerry W. Stanfill

Mr. Stanfill, 67, has complete loss of vision in his left eye due to optic nerve damage sustained in 1990. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, ''In my opinion, Jerry has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Stanfill reported that he has driven straight trucks for 25 years, accumulating 2.2 million miles, and tractor-trailer combinations for 17 years, accumulating 1.6 million miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles M. Thomas

Mr. Thomas, 61, has had diabetic retinopathy in both eyes since 1996. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/80. Following an examination in 2009, his ophthalmologist noted, ''As an Ophthalmologist, I certify that Mr. Thomas has sufficient vision and field of vision, to more than adequately perform the driving tasks that are required to operate a commercial vehicle.'' Mr. Thomas reported that he has driven tractor-trailer combinations for 32 years, accumulating 3.2 million miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV, failure to obey a traffic sign.

Roger L. Unser

Mr. Unser, 60, has a prosthetic left eye due to a traumatic injury sustained in 1957. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his ophthalmologist noted, ''In my medical opinion, Mr. Unser's vision is acceptable to drive a commercial vehicle.'' Mr. Unser reported that he has driven straight trucks for 8 years, accumulating 320,000 miles, tractor-trailer combinations for 8 years, accumulating 440,000 miles, and buses for 6 years, accumulating 105,000. He holds a Class B CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Virgil E. Walker

Mr. Walker, 61, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/100 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, ''The patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Walker reported that he has driven straight trucks for 36 years, accumulating 342,000 miles. He holds a Class B CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business September 25, 2009. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: August 20, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–20622 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 189 applications from individuals who requested an exemption from the Federal diabetes standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the diabetes requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director Medical Programs, 202–366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal diabetes standard for a renewable 2-year period if it finds ''such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.'' The procedures for requesting an exemption are set out in 49 CFR part 381.

Accordingly, FMCSA evaluated 189 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denials.

The following 24 applicants lacked sufficient driving experience during the 3-year period prior to the date of their application: Brian J. Carew, Michael R. Castle, Brandon W. Cazier, Gary C. Christensen, Stephen G. Corbett, Boyd A. Dorris, Rex C. Ewen, Frank L. Fernald, Gary J. Flynn, James F. Gaab, Timothy L. Goodman, Charles T. Hankel, Jr., Gerald P. Hansen, Kory L. Johansen, Franklin P. Kingston, Linda L. Koenig-Warren, William L. Leichner, Gregory A. Leisgang, Wayne Martens, Thomas J. Martin, David McClaflin, Tommie A. Monroe, Wayne Ruhmann, Jay W. Slepner.

The following 3 applicants had unacceptable driving performance during the 3-year review period: Drew R. Begin, Ken Greer, Charles E. Williams.

Section 4129 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A legacy for Users (SAFETEA–LU), which was signed into law on August 16, 2005, established several programmatic changes which included the elimination of the requirement for three years of experience operating CMVs. To address this, FMCSA immediately discontinued the use of the 3-year criterion for diabetic drivers and notified all applicants who had been denied because they did not meet this criterion and encouraged them to reapply.

The following 7 applicants had unacceptable diabetic conditions: Joseph G. Corsaro, Jeffrey S. Hanson, James L. Mays, Dean A. Sewell, Ruth P. Stanley, Joseph Thomas, Jr., Leonard D. Walters.

The following 17 applicants submitted false information and/or did not have an endocrinologist willing to state that they could operate a CMV from a diabetes standpoint: Tavis Boyd, George D. Buber, Richard E. Crum, Rhonda T. Dominick, Russell Forsman, Alfred Gjaltema, Nolan O. Good, Denis A. Hall, Randy A. Hicks, David G. Kagdis, Daniel E. Lindberg, George H. Morton, Jr., Ricky D. Pryor, Thomas E. Richards, William C. Sexton, Jr., George S. Thompson, Jr., James E. Yocum.

The following 36 applicants currently meet the diabetes requirements of 49 CFR 391.41(b)(3) as they were not taking insulin: Charles G. Barnes, Randy L. Bear, Charles A. Best, Jonathan M. Bona, Daniel G. Brinkman, Joseph K. Campbell, Philip Capozzo, Dennis J. Dallmann, Richard W. DeSollar, Anthony W. Dick, Andrew Floyd, Leroy Foster, Richard F. Griffith, Gervis E. Hentz, Kia C. Jackson, Eugene F. Jackson, Shirley A. Kemp, Larry D. Kuhuski, Franklin P. Laner, Sr., Alex Madrid, Clifford A. McPherson, Murl L. Moore, John C. Nickles, Donald A. Peterman, Baylis C. Pope, Roger N. Raley, Timothy J. Rockwell, Jerry L. Ruffin, Layman J. Sherman, Victor A. Sutter, Mark A. Tidwell, Ophelia Toledo, James R. Tschida, Edward A. Vasey, George P. Ward, Jr.

The following 19 applicants have either had more than one severe hypoglycemic episode which resulted in loss of consciousness, required hospitalization or the assistance of others, involved a period of impaired cognitive function that occurred without warning or have had one such episode but have not had 1 year of stability following the episode: Jerry L. Allen, Warren W. Braunschweig, Bobby A. Cole, Nancy Courtney, Timothy J. Crawshaw, Eddie D. Daugherty, Matthew J. Dombrowski, Richard Donald, Andrew J. Dreyer, Tony L. Gazaway, Glenn A. Kotzer, Stephen P. Larson, Lawrence E. Olson, Joseph W. Paolasini, Richard O. Price, Melvin J. Slone, Gary L. Sorensen, Graydon R. Stone, Stanley C. Tarvidas.

The following 55 applicants have other medical conditions making them otherwise unqualified under the Federal Motor Carrier Safety Regulations. All applicants must meet all other physical qualifications standards in 49 CFR 391.41(b)(1–13) or hold a valid exemption: David A. Arnett, Kristina M. Baker, Robert U. Ballard, William J. Bernhard, Herber A. Bertsche, Preston S. Brown, Daniel E. Bruggeman, Richard G. Callihan, Ronald Carter, Michael G. Deschenes, Gary L. Doman, Dennis C. Doyle, Henry L. Estrada, Sr., Harry W. Fersch, III, George F. Fry, Donald M. Gerber, Orlando Gonzalez, Robert F. Hansen, Leonard C. Jackson, Quency T. Johnson, Samuel E. Johnson, Jr., Ronald C. Jones, Stephen G. Kelly, Henrietta M. Ketcham, Leonard J. LaChance, Todd P. Larrow, Daryl C. Lenz, Gary F. Lucey, John E. Mawn, Harold G. McCusker, Willie McDaniel, Anthony R. Messina, Donald L. Miller, Richard E. Moore, Roland J. Mroz, Robert L. Mullinax, Karl F. Murhammer, Jr., Harry E. North, Michael W. Pelley, Richard E. Peterson, James C. Plumley, Albert L. Robinson, Gary M. Rooney, Temistocles E. Sanchez, Winston C. Saxon, Steven A. Shinall, Barry A. Shockey, Steven Simione, Rodney L. Stoltenberg, Rocky W. Tyler, Theodore L. Welson, Milton J. Williams, Leroy C. Williams, Anthony F. Wooten, Martin Wright, Jr.

The following 3 applicants were denied for miscellaneous/multiple reasons: Brian F. Beebe, Kevin A. Mitchell, Steve Morris.

The following 5 applicants were unable to or not willing to demonstrate proper management and monitoring of his/her diabetes whether by personal decision or medical inability: Ray G. Barker, Ronald J. Herd, Douglas A. Galanius, Francis T. Flood, Dana R. Ward.

One applicant, Fred A. Taylor, did not submit the required documents.

The following 2 applicants were Canadian applicants: Norman S. Peltzer, Kevin R. Durham.

Finally, the following 17 applicants did not meet the minimum age requirement of at least 21 years old: Matthew S. Buckner, Dustin G. Cook, Jordan S. Denley, John K. Funkhouser, Michael J. Guido, Cody H. Heckemeyer, Cameron D. Hubbard, Troy M. Keller, Timothy L. Koehn, Justin T. Mattice, Justine Oyler, Thomas J. Paulus, Russell L. Peters, James W. Smith, Suzanne J. Sublaban, Cory A. Thomas, Justin K. Zimmerschied.

Issued on: August 20, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–20624 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–2000–7363; FMCSA–2001–9561; FMCSA–2001–9258; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2005–20027; FMCSA–2005–21254; FMCSA–2007–27897]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 23 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 23, 2009. Comments must be received on or before September 25, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–2000–7363; FMCSA–2001–9561; FMCSA–2001–9258; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2005–20027; FMCSA–2005–21254; FMCSA–2007–27897, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 23 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 23 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Linda L. Billings, John A. Chizmar, Weldon R. Evans, Richard L. Gagnebin, Orasio Garcia, Leslie W. Good, Chester L. Gray, James P. Guth, Britt D. Hazelwood, William W. Hodgins, Gregory K. Lilly, Michael S. Maki, Larry T. Morrison, Kenneth A. Reddick, Leonard Rice, Jr., Juan M. Rosas, Francis L. Savell, James T. Sullivan, Steven C. Thomas, Edward A. Vanderhei, Larry J. Waldner, Karl A. Weinert, Kevin L. Wickard.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 23 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 44837; 70 FR 41811; 72 FR 62896; 68 FR 54775; 70–53412; 64 FR 27027; 64 FR 51568; 66 FR 48504; 65 FR 45817; 65 FR 77066; 66 FR 17743; 66 FR 33990; 68 FR 35772; 72 FR 52421; 66 FR 30502; 66 FR 41654; 68 FR 19598; 68 FR 33570; 68 FR 37197; 68 FR 48989; 70 FR 42615; 70 FR 2701; 70 FR 16887; 72 FR 27624; 70 FR 30999; 70 FR 46567; 72 FR 52422; 72 FR 39879; 72 FR 52419). Each of these 23 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 25, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed,

subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 23 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 19, 2009.

Larry W. Minor,

Associate Administrator, Policy and Program Development.

[FR Doc. E9–20621 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28695]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 27, 2009. Comments must be received on or before September 25, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2007–28695, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Dean N. Brown, Matthew R. Floyd, Christian L. Gremillion, Frank D. Konwinski, Jr., Christian E. Merseth, Kenneth D. Perkins, Terry W. Pope, Daniel T. Rhodes, Stephen E. Shields, Ricky J. Siebels, Don S. Williams, Robert L. Williams, Jr.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or

(3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (72 FR 46261; 72 FR 54972). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 25, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 19, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–20620 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0152]

Technical Report on the Long-Term Effect of ABS in Passenger Cars and LTVs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating the crash-reducing effectiveness of antilock braking technologies for passenger cars, pickup trucks, SUVs and vans. The report's title is: *The Long-Term Effect of ABS in Passenger Cars and LTVs*.

DATES: Comments must be received no later than December 24, 2009.

ADDRESSES: *Report:* The technical report is available on the Internet for viewing in PDF format at *http://www–nrd.nhtsa.dot.gov/Pubs/811182.PDF*. You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Charles J. Kahane (NVS–431), National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Comments: You may submit comments [identified by Docket Number NHTSA–2009–0152] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

You may call Docket Management at 202–366–9826.

Instructions: For detailed instructions on submitting comments, see the Procedural Matters section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, NVS–431, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–2560. E-mail: *chuck.kahane@dot.gov*.

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: You may see a list of published evaluation reports at *http://www–nrd.nhtsa.dot.gov/cats/listpublications.aspx?Id=226&ShowBy=Category* and if you click on any report you will be able to view it in PDF format.

SUPPLEMENTARY INFORMATION: Statistical analyses based on data for calendar years 1995 to 2007 from the Fatality Analysis Reporting System (FARS) and the General Estimates System (GES) of the National Automotive Sampling System (NASS) estimate the long-term effectiveness of antilock brake systems (ABS) for passenger cars and LTVs (light trucks and vans) subsequent to the 1995 launch of public information programs on how to use ABS correctly. ABS has close to a zero net effect on fatal crash involvements. Fatal run-off-road crashes of passenger cars increased by a statistically significant 9 percent (90% confidence bounds: 3% to 15% increase), offset by a significant 13-percent reduction in fatal collisions with pedestrians (confidence bounds: 5% to 20%) and a significant 12-percent reduction in collisions with other vehicles on wet roads (confidence bounds: 3% to 20%). ABS is quite

effective in nonfatal crashes, reducing the overall crash-involvement rate by 6 percent in passenger cars (confidence bounds: 4% to 8%) and by 8 percent in LTVs (confidence bounds: 3% to 11%). The combination of electronic stability control (ESC) and ABS will prevent a large proportion of fatal and nonfatal crashes. The report updates and supersedes an earlier evaluation of ABS (60 FR 7814).

Procedural Matters

How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of the technical report. NHTSA will submit to the Docket a response to the comments and, if appropriate, will supplement or revise the report.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2009–0152) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov*.

Please send two paper copies of your comments to Docket Management, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Charles J. Kahane, Chief, Evaluation Division, NVS–431, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue, SE., Washington, DC 20590 (or e-mail them to *chuck.kahane@dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit them via the Federal eRulemaking Portal.

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

James F. Simons,

Director, Office of Regulatory Analysis and Evaluation.

[FR Doc. E9–20522 Filed 8–25–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 18, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW. Washington, DC 20220.

Dates: Written comments should be received on or before September 25, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2002.

Type of Review: Extension.

Title: Notice 2006–25, Qualifying Gasification Project Program.

Description: This notice establishes the qualifying gasification project under Section 48B of the Internal Revenue Code. This notice provides the time and manner for a taxpayer to apply for an allocation of qualifying gasification project credits.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,700 hours.

OMB Number: 1545–1569.

Type of Review: Extension.

Form: 8861.

Title: Welfare-to-Work Credit.

Description: Section 51A of the Internal Revenue Code allows employers an income tax credit of 35% of the first $10,000 of first-year wages

and 50% of the first $10,000 of second-year wages paid to long-term family assistance recipients. The credit is part of the general business credit.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,593 hours.

OMB Number: 1545–1976.

Type of Review: Extension.

Form: Schedule F, Parts 2 and 3 (1040).

Title: Profit or Loss from Farming.

Description: Schedule F (Form 1040) is used by individuals to report their employment taxes. The data is used to verify that the items reported on the form is correct and also for general statistical use.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 49,356 hours.

OMB Number: 1545–1520.

Type of Review: Extension.

Title: Revenue Procedure 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6 (Determination Letters), and Revenue Procedure 2003–8 (User Fees).

Description: The information requested in Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6, and Revenue Procedure 2003–8 is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 177,986 hours.

OMB Number: 1545–1804.

Type of Review: Revision.

Form: 8874.

Title: New Markets Credit.

Description: Investors use Form 8874 to request a credit for equity investments in Community development entities.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 32,464 hours.

OMB Number: 1545–1998.

Type of Review: Revision.

Form: 8910.

Title: Alternative Motor Vehicle Credit.

Description: Taxpayers will file Form 8910 to claim the credit for certain alternative motor vehicles placed in service after 2005.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 115,900 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–20573 Filed 8–25–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual and four entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the one individual and four entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on August 20, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On August 20, 2009, OFAC designated one individual and four entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

The list of additional designees is as follows:

Individual:

1. Melo Perilla, Jose Cayetano, c/o Carillanca Colombia Y CIA S EN CS, Bogota, Colombia; c/o Carillanca S.A., San Jose, Costa Rica; c/o Carillanca C.A., Arismendi, Nueva Esparta, Venezuela; c/o Parqueadero De La 25–13, Bogota, Colombia; DOB 07 Nov 1957; POB Ibague, Tolima, Colombia; Citizen Colombia; Cedula No. 5882964 (Colombia); Passport 5882964 (Colombia); Residency Number 003–5506420–0100028 (Costa Rica); (INDIVIDUAL) [SDNTK]

Entities:

1. Carillanca Colombia Y CIA S EN CS (f.k.a. Agropecuaria San Cayetano S EN CS); Calle 100 No. 60–04, Ofc. 504, Bogota, Colombia; NIT # 800241061–5 (Colombia); (ENTITY) [SDNTK]

2. Carillanca S.A., De la Iglesia Catolica de Parasito de Moravia, 650 metros al Este, San Jose, Costa Rica; Registration ID CJ 3101104500 (Costa Rica); (ENTITY) [SDNTK]
3. Carillanca C.A., Arismendi, Nueva Esparta, Venezuela; Registration ID 80081030 (Venezuela); (ENTITY) [SDNTK]
4. Parqueadero De La 25–13, Bogota, Colombia; Matricula Mercantil No 1362098 (Colombia); Matricula Mercantil No 1362093 (Colombia); (ENTITY) [SDNTK]

Dated: August 20, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–20577 Filed 8–25–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property had been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the individual identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on August 20, 2009.

FOR FURTHER INFORMATION, CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site *(http://www.treas.gov/ofac)* via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On August 20, 2009, the Director of OFAC removed from the SDN List the individual listed below, whose property and interests in property were blocked pursuant to the Order: Castano Arango, Fernando, c/o Agropecuaria La Robleda S.A., Cali, Colombia; c/o Industria Avicola Palmaseca S.A., Cali, Colombia; Cedula No. 14953602 (Colombia)

Dated: August 20, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–20574 Filed 8–25–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (VR&E Survey)]

Agency Information Collection (Vocational Rehabilitation and Employment (VR&E) Service Employment of Individuals With Severe Injuries Study) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 25, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900—New (VR&E Survey)'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900—New (VR&E Survey).''

SUPPLEMENTARY INFORMATION:

Title: Vocational Rehabilitation and Employment (VR&E) Program National Outcome Follow-up with Employment Based Rehabilitated Veterans Survey.

OMB Control Number: 2900—New (VR&E Survey).

Type of Review: New collection.

Abstract: The mission of the VR&E program is to provide vocational rehabilitation services that will assist veterans to obtain and keep suitable employment consistent with their capabilities and interests or to achieve independence in their activities of daily

living. The study will be used to determine whether the VR&E program is meeting the needs of severely disabled veterans and whether rehabilitation services are effective as they can be by identifying the factors that hinder and assist achieving long-term career employment for severely disabled veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2009, at pages 21854–21855.

Affected Public: Individuals or Households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 200.

Dated: August 20, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–20496 Filed 8–25–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0525]

Proposed Information Collection (VA MATIC Change); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to start or change a claimant's VA MATIC deduction.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 26, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0525'' in any correspondence. During the comment period, comments may be viewed online through FDMS at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA MATIC Change, VA Form 29–0165.

OMB Control Number: 2900–0525.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 29–0165 to enroll in VA MATIC or change their financial institution from which VA currently deducts his/her Government Life Insurance premium.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: August 20, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–20497 Filed 8–25–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (21–0847)]

Agency Information Collection (Authorization To Substitute a Claim of a Deceased Claimant) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 25, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–New (21–0847)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–New (21–0847).''

SUPPLEMENTARY INFORMATION:

Title: Authorization to Substitute a Claim of a Deceased Claimant, VA Form 21–0847.

OMB Control Number: 2900—New (21–0847).

Type of Review: New collection.

Abstract: VA Form 21–0847 will be used to allow beneficiaries to request authorization to be substituted for a claimant, who passed away, while a claim or appeal for benefits is pending. The substituted beneficiary must file a claim no later than one year after the

claimant's date of the death to be eligible to receive accrued benefits due to the deceased claimant.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 12, 2009, at pages 28105–28106.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,667.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On time.

Estimated Number of Respondents: 20,000.

Dated: August 20, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–20498 Filed 8–25–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
August 26, 2009

Part II

Federal Reserve System

12 CFR Part 226
Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1366]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the staff commentary to the regulation, as part of a comprehensive review of TILA's rules for closed-end credit. This proposal would revise the rules for disclosures of closed-end credit secured by real property or a consumer's dwelling, except for rules regarding rescission and reverse mortgages, which the Board anticipates will be reviewed at a later date. Published elsewhere in today's Federal Register is the Board's proposal regarding rules for disclosures of open-end credit secured by a consumer's dwelling.

Disclosures provided at application would include a Board-published one-page ''*Key Questions to Ask About Your Mortgage''* document that explains potentially risky loan features, and a Board-published one-page ''*Fixed* vs. *Adjustable Rate Mortgages''* document. Transaction-specific disclosures required within three business days of application would summarize key loan terms. The calculation of the annual percentage rate and the finance charge would be revised to be more comprehensive, and their disclosures improved. Consumers would receive a ''final'' TILA disclosure at least three business days before consummation. Certain new post-consummation disclosures would be required. In addition, the proposed revisions would prohibit certain payments to mortgage brokers and loan officers that are based on the loan's terms or conditions, and prohibit steering consumers to transactions that are not in their interest to increase compensation received.

Rules regarding eligibility restrictions and disclosures for credit insurance and debt cancellation or debt suspension coverage would apply to all closed-end and open-end credit transactions.

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

ADDRESSES: You may submit comments, identified by Docket No. R–1366, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

FOR FURTHER INFORMATION CONTACT: Jamie Z. Goodson, Jelena McWilliams, Nikita M. Pastor, or Maureen C. Yap, Attorneys; Paul Mondor, Senior Attorney; or Kathleen C. Ryan, Senior Counsel. Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background on TILA and Regulation Z

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

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

II. Summary of Major Proposed Changes

The goal of the proposed amendments to Regulation Z is to improve the effectiveness of disclosures that creditors provide to consumers in connection with an application and throughout the life of a mortgage. The proposed changes are the result of the Board's review of the provisions that apply to closed-end mortgage transactions. The proposal would apply to all closed-end credit transactions secured by real property or a dwelling, and would not be limited to credit secured by the consumer's principal dwelling. The Board is proposing changes to the format, timing, and content of disclosures for the four main types of closed-end credit information governed by Regulation Z: (1) disclosures at application; (2) disclosures within three days after application; (3) disclosures three days before consummation; and (4) disclosures after consummation. In addition, the Board is proposing additional protections related to limits on loan originator compensation.

Disclosures at Application. The proposal contains new requirements and changes to the format and content of disclosures given at application, to make them more meaningful and easier for consumers to use. The proposed changes include:

- Providing a new one-page Board publication, entitled ''*Key Questions to Ask About Your Mortgage*,'' which would explain the potentially risky features of a loan.
- Providing a new one-page Board publication, entitled ''*Fixed* vs. *Adjustable Rate Mortgages*,'' which would explain the basic differences between such loans and would replace the lengthy Consumer Handbook on Adjustable-Rate Mortgages (CHARM booklet) currently required under Regulation Z.
- Revising the format and content of the current adjustable-rate mortgage (ARM) loan program disclosure, including: a requirement that the disclosure be in a tabular question and answer format, a streamlined plain-language disclosure of interest rate and payment information, and a new disclosure of potentially risky features, such as prepayment penalties.

Disclosures within Three Days after Application. The proposal also contains revisions to the TILA disclosures provided within three days after

application (the ''early TILA disclosure'') to make the information clearer and more conspicuous. The proposed changes include:

- Revising the calculation of the finance charge and annual percentage rate (APR) so that they capture most fees and costs paid by consumers in connection with the credit transaction.
- Providing a graph that would show consumers how their APR compares to the APRs for borrowers with excellent credit and for borrowers with impaired credit.
- Summarizing key loan features, such as the loan term, amount, and type, and disclosing total settlement charges, as is currently required for the good faith estimate of settlement costs (GFE) under the Real Estate Settlement Procedures Act (RESPA) and Regulation X.
- Requiring disclosure of potential changes to the interest rate and monthly payment.
- Adopting new format requirements, including rules regarding: type size and use of boldface for certain terms, placement of information, and highlighting certain information in a tabular format.

Disclosures Three Days before Consummation. The proposal would require creditors to provide a ''final'' TILA disclosure that the consumer must receive at least three business days before consummation. In addition, two proposed alternatives regarding redisclosure of the ''final'' TILA disclosure include:

- *Alternative 1:* If any terms change after the ''final'' TILA disclosures are provided, then another final TILA disclosure would need to be provided so that the consumer receives it at least three business days before consummation.
- *Alternative 2:* If the APR exceeds a certain tolerance or an adjustable-rate feature is added after the ''final'' TILA disclosures are provided, then another final TILA disclosure would need to be provided so that the consumer receives it at least three business days before consummation. All other changes could be disclosed at consummation.

Disclosures after Consummation. The proposal would change the timing, content and types of notices provided after consummation. The proposed changes include:

- For ARMs, increasing advance notice of a payment change from 25 to 60 days, and revising the format and content of the ARM adjustment notice.
- For payment option loans with negative amortization, requiring a monthly statement to provide information about payment options that include the costs and effects of negatively-amortizing payments.
- For creditor-placed property insurance, requiring notice of the cost and coverage at least 45 days before imposing a charge for such insurance.

Loan Originator Compensation. The proposal contains new limits on originator compensation for all closed-end mortgages. The proposed changes include:

- Prohibiting certain payments to a mortgage broker or a loan officer that are based on the loan's terms and conditions.
- Prohibiting a mortgage broker or loan officer from ''steering'' consumers to transactions that are not in their interest in order to increase the mortgage broker's or loan officer's compensation.

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

The Board has amended Regulation Z numerous times since TILA simplification in 1980. In 1987, the Board revised Regulation Z to require special disclosures for closed-end ARMs secured by the borrower's principal dwelling. 52 FR 48665; Dec. 24, 1987. In 1995, the Board revised Regulation Z to implement changes to TILA by the Home Ownership and Equity Protection Act (HOEPA). 60 FR 15463; Mar. 24, 1995. HOEPA requires special disclosures and substantive protections for home-equity loans and refinancings with APRs or points and fees above certain statutory thresholds. Numerous other amendments have been made over the years to address new mortgage products and other matters, such as abusive lending practices in the mortgage and home-equity markets.

The Board's current review of Regulation Z was initiated in December 2004 with an advance notice of proposed rulemaking.[1] 69 FR 70925; Dec. 8, 2004. At that time, the Board announced its intent to conduct its review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit card plans. In December 2008, the Board approved final rules for open-end credit that is not home-secured. 74 FR 5244; Jan. 29, 2009.

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

- *HOEPA.* In 2007, the Board proposed rules under HOEPA for higher-priced mortgage loans (2007 HOEPA Proposed Rule). The final rules, approved in July 2008 (2008 HOEPA Final Rule), prohibited certain unfair or deceptive lending and servicing practices in connection with closed-end mortgages. The Board also approved revisions to advertising rules for both closed-end and open-end home-secured loans to ensure that advertisements contain accurate and balanced information and do not contain misleading or deceptive representations. The final rules also required creditors to provide consumers with transaction-specific disclosures early enough to use while shopping for a mortgage. 73 FR 44522; July 30, 2008.
- *Timing of Disclosures for Closed-End Mortgages.* On May 7, 2009, the Board approved final rules implementing the Mortgage Disclosure Improvement Act of 2008 (the MDIA).[2] The MDIA adds to the requirements of the 2008 HOEPA Final Rule regarding transaction-specific disclosures. Among other things, the MDIA and the final rules require early, transaction-specific disclosures for mortgage loans secured by dwellings even when the dwelling is not the consumer's principal dwelling, and requires waiting periods between the time when disclosures are given and consummation of the transaction. 74 FR 23289; May 19, 2009.

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

A. Coordination With Disclosures Required Under the Real Estate Settlement Procedures Act

The Board anticipates working with the Department of Housing and Urban Development (HUD) to ensure that TILA and Real Estate Settlement Procedures Act of 1974 (RESPA) disclosures are compatible and complementary, including potentially developing a single disclosure form that creditors could use to combine the initial disclosures required under TILA and

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

[2] The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Public Law 110–289, enacted on July 30, 2008. The MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Public Law 110–343, enacted on October 3, 2008.

RESPA. The two statutes have different purposes but have considerable overlap. Harmonizing the two disclosure schemes would ensure that consumers receive consistent information under both laws. It may also help reduce information overload by eliminating some duplicative disclosures. Consumer testing would be used to ensure consumers could understand and use the combined disclosures. In the meantime, the Board is proposing a revised model TILA form so that commenters can see how the Board's proposed revisions to Regulation Z might be applied in practice.

RESPA, which is implemented by HUD's Regulation X, seeks to ensure that consumers are provided with timely information about the nature and costs of the settlement process and are protected from unnecessarily high real estate settlement charges. To this end, RESPA mandates that consumers receive information about the costs associated with a mortgage loan transaction, and prohibits certain business practices. Under RESPA, creditors must provide a GFE within three business days after a consumer submits a written application for a mortgage loan, which is the same time creditors must provide the early TILA disclosure. RESPA also requires a statement of the actual costs imposed at loan settlement (HUD–1 settlement statement). In November 2008, HUD published revised RESPA rules, including new GFE and HUD–1 settlement statement forms, which lenders, mortgage brokers, and settlement agents must use beginning on January 1, 2010. 73 FR 68204; Nov. 17, 2008. In addition to revised disclosures of settlement costs, the revised GFE now includes loan terms, some of which would also appear on the TILA disclosure, such as whether there is a prepayment penalty and the borrower's interest rate and monthly payment. The revised GFE form was developed through HUD's consumer testing.

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

The proposed revised TILA form and HUD's revised GFE would represent significant improvements, but overlap between the two forms could be eliminated to reduce information overload and consistency issues. There have been previous efforts to develop a combined TILA and RESPA disclosure form, which were fueled by the amount, complexity, and overlap of information in the disclosures. Under a 1996 congressional directive, the Board and HUD studied ways to simplify and improve the disclosures. In July 1998, the Board and HUD submitted a joint report to Congress that provided a broad outline intended to be a starting point for consideration of legislative reform of the mortgage disclosure requirements (the 1998 Joint Report).[3] The 1998 Joint Report included a recommendation for combining and simplifying the RESPA and TILA disclosure forms to satisfy the requirements of both laws. In addition, The 1998 Joint Report recommended that the timing of the TILA and RESPA disclosures be coordinated. Recent regulatory changes addressed the timing issues so that initial disclosures required under TILA and RESPA would be delivered at the same time.

B. The Bankruptcy Act's Amendment to TILA

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act) primarily amended the federal bankruptcy code, but also contained several provisions amending TILA. With respect to open-end and closed-end dwelling-secured credit, the Bankruptcy Act requires that the credit application disclosure contain a statement warning consumers that if the loan exceeds the fair market value of the dwelling, then the interest on that portion of the loan is not tax deductible, and the consumer should consult a tax advisor for further information on tax deductibility. This proposal would implement this Bankruptcy Act provision.

C. The MDIA's Amendments to TILA

On July 30, 2008, Congress enacted the MDIA.[4] The MDIA codified some of the requirements of the Board's 2008 HOEPA Final Rule, which required transaction-specific disclosures to be provided within three business days after an application is received and before the consumer has paid a fee, other than a fee for obtaining the consumer's credit history.[5] The MDIA also expanded coverage of the early disclosure requirement to include loans secured by a dwelling even when it is not the consumer's principal dwelling. In addition, the MDIA required creditors to mail or deliver early TILA disclosures at least seven business days before consummation and provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The Board implemented these MDIA requirements in final rules published May 19, 2009, and effective July 30, 2009. 74 FR 23289; May 19, 2009.

The MDIA also requires payment examples if the interest rate or payments can change. Such disclosures are to be formatted in accordance with the results of consumer testing conducted by the Board. Those provisions of the MDIA will not become effective until January 30, 2011, or any earlier compliance date established by the Board. This proposal would implement those MDIA provisions.

D. Consumer Testing

A principal goal for the Regulation Z review is to produce revised and improved mortgage disclosures that consumers will be more likely to understand and use in their decisions, while at the same time not creating undue burdens for creditors. Currently, Regulation Z requires creditors to provide at application an ARM loan program disclosure and the CHARM booklet. An early TILA disclosure is required within three business days of application and at least seven business days before consummation for closed-end mortgages.

In 2007, the Board retained a research and consulting firm (ICF Macro) that specializes in designing and testing documents to conduct consumer testing to help the Board's review of mortgage rules under Regulation Z. Working closely with the Board, ICF Macro conducted several tests in different cities throughout the United States. The testing consisted of four focus groups and eleven rounds of one-on-one cognitive interviews. The goals of these focus groups and interviews were to learn how consumers shop for

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

[4] As noted, Congress subsequently amended the MDIA with the Emergency Economic Stabilization Act of 2008.

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

mortgages and what information consumers read when they receive mortgage disclosures, and to assess their understanding of such disclosures.

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

Specifically, the Board worked with ICF Macro to develop and test several types of closed-end disclosures, including:

- Two Board publications to be provided at application, entitled ''*Key Questions To Ask About Your Mortgage''* and ''*Fixed* vs. *Adjustable Rate Mortgages'';*
- An ARM loan program disclosure to be provided at application;
- An early TILA disclosure to be provided within three business days of application, and again so that the consumer receives it at least three business days before consummation;
- An ARM adjustment notice to be provided after consummation; and
- A payment option monthly statement to be provided after consummation.

Exploratory focus groups. In February and March 2008 the Board worked with ICF Macro to conduct four focus groups with consumers who had obtained a mortgage in the previous two years. Two of the groups consisted of subprime borrowers and two consisted of prime borrowers, with creditworthiness determined by their answers to questions about prior financial hardship, difficulties encountered in shopping for credit, and the rate on their current mortgage. Each focus group consisted of between seven and nine people that discussed issues identified by the Board and raised by a moderator from ICF Macro. Through these focus groups, the Board gathered information on how consumers shop for mortgages, what information consumers currently use in making decisions about mortgages, and what perceptions consumers had of TILA disclosures currently provided in the shopping and application process.

Cognitive interviews on existing disclosures. In 2008, the Board worked with ICF Macro to conduct five rounds of cognitive interviews with mortgage customers (seven to eleven participants per round). These cognitive interviews consisted of one-on-one discussions with consumers, during which consumers described their recent mortgage shopping experience and reviewed existing sample mortgage disclosures. In addition to learning about shopping behavior, the goals of these interviews were: (1) To learn more about what information consumers read when they receive current mortgage disclosures; (2) to research how easily consumers can find various pieces of information in these disclosures; and (3) to test consumers' understanding of certain mortgage related words and phrases.

1. Initial design of disclosures for testing. In the fall of 2008, the Board worked with ICF Macro to develop sample mortgage disclosures to be used in later rounds of testing, taking into account information learned through the focus groups and the cognitive interviews.

2. Additional cognitive interviews and revisions to disclosures. In late 2008 and early 2009, the Board worked with ICF Macro to conduct six additional rounds of cognitive interviews (nine or ten participants per round), where consumers were asked to view new sample mortgage disclosures developed by the Board and ICF Macro. The rounds of interviews were conducted sequentially to allow for revisions to the testing materials based on what was learned from the testing during each previous round.

Results of testing. Several of the model forms were developed through the testing. A report summarizing the results of the testing is available on the Board's public Web site: *http://www.federalreserve.gov*.

Many consumer testing participants reported that they did not shop for a lender or a mortgage. Several stated that they were referred to a lender by a realtor, family member or friend, and that they relied on that lender to get them a loan. Participants who reported shopping for a mortgage relied on originators' oral quotes for interest rates, monthly payments, and closing costs. Most participants stated that once they had applied for a particular loan and received a TILA disclosure they ceased shopping. Some cited the time involved, and the amount of documentation required, as factors for limiting their shopping. These findings suggest that consumers need information early in the process and that information should not be limited to information about ARMs. Therefore, the proposal would require creditors to provide key information about evaluating loan terms at the time an application form is provided, as discussed below.

1. Disclosures provided to consumers before application. Currently, creditors must provide the CHARM booklet before a consumer applies or pays a nonrefundable fee, whichever is earlier. The booklet explains how ARMs generally work. Testing showed that participants found the CHARM booklet too lengthy to be useful, although some liked specific elements such as the glossary. In addition, creditors must provide an ARM loan program disclosure for each ARM loan program in which the consumer expresses an interest, before the consumer applies or has paid a nonrefundable fee. The ARM loan program disclosure currently must include either a 15-year historical example of rates and payments for a $10,000 loan, or the maximum interest rate and payment for a $10,000 loan originated at the interest rate in effect for the disclosure's identified month and year. Many testing participants found the narrative form of the current ARM loan program disclosure difficult to read and understand. Some participants mistook the historical examples to be their actual loan rate and payments. Participants also found the content of the disclosure too general to be useful to them when comparing between lenders or products, and noted the absence of key loan information, such as the interest rate.

Thus, the proposal would require creditors to provide, for all closed-end mortgages, a one-page document that explains the basic differences between fixed-rate mortgages and ARMs, and a one-page document that would explain potentially risky features of a mortgage in a plain-English question and answer format. In addition, the proposal would streamline the content of the ARM loan program disclosure to highlight in a table form information that participants found most useful, such as interest rate and payment adjustments, and to provide information about program-specific loan features that could pose greater risk, such as prepayment penalties. Consumer testing suggested that highlighting such information in a table form improved participants' ability to identify and understand the information provided about key loan features.

2. Disclosures provided to consumers after application. Currently, creditors

must provide an early TILA disclosure within three business days after application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining the consumer's credit history. If the APR on the early TILA disclosure exceeds a certain tolerance before consummation, the creditor must provide corrected disclosures that the consumer must receive at least three days before consummation. If any term other than the APR becomes inaccurate, the creditor must give the corrected disclosure no later than at consummation.

The early TILA disclosure—and any corrected disclosure—must provide certain information, such as the loan's annual percentage rate (APR), finance charge, amount financed, and total of payments. Participants in consumer testing indicated that much of the information in the current TILA disclosure was of secondary importance to them when considering a loan. Participants consistently looked for the contract rate of interest, monthly payment, and in some cases, closing costs. Most participants assumed that the APR was the contract rate of interest, and that the finance charge was the total of all interest they would pay if they kept the loan to maturity. Most identified the amount financed as the loan amount. When asked to compare two loan offers using redesigned model forms that contained these disclosures, few participants used the APR and finance charge to compare the loans. In addition, some participants had difficulty determining whether the loan tested had a variable or fixed rate and understanding the payment schedule's relationship to the changing interest rate. Many did not understand what circumstances would trigger a prepayment penalty.

Thus, the proposal contains a number of revisions to the format and content of TILA disclosures to make them clearer and more conspicuous. To enhance the effectiveness of the finance charge as a disclosure of the true cost of credit, the proposal would require a simpler, more inclusive approach. The disclosure of the APR would be enhanced to improve consumers' comprehension of the cost of credit. In addition, to help consumers determine whether the loan offered is affordable for them, creditors would be required to summarize key loan terms and highlight interest rate and payment information in a table. Consumer testing showed that using special formatting requirements, consistent terminology and a minimum 10-point font, would ensure that consumers are better able to identify and review key loan terms.

3. Disclosures required after consummation. Currently, creditors must provide advance notice to a consumer before the interest rate and monthly payment adjust on an ARM. The ARM adjustment notice must provide certain information, including current and prior interest rates, the index values upon which the current and prior interest rates are based, and the payment that would be required to amortize the loan fully at the new interest rate. The Board worked with ICF Macro to develop a revised ARM adjustment notice that would enhance consumers' ability to identify and understand changes being made to their loan terms. Consumer testing of the revised ARM adjustment notice indicated that consumers understood the content and were able correctly to identify the amount and due date of the new payment. Thus, under the proposal, creditors would be required to provide the ARM adjustment notice in a revised format that would highlight changes being made to the interest rate and the monthly payment, and provide other important information, such as the due date of the new payment and the loan balance.

Currently, creditors are not required to provide disclosures after consummation for negatively-amortizing loans. The Board worked with ICF Macro to develop a monthly statement that compares the amount and the impact on the loan balance of a fully-amortizing payment, interest-only payment, and minimum payment. Consumer testing of the proposed monthly statement indicated that consumers understood the content, easily recognized the payment options highlighted in the table, and understood that by making only the minimum payment they would be borrowing more money and increasing their loan balance. Thus, to improve consumer understanding of the risks associated with payment option loans, the Board proposes to require, not later than 15 days before a periodic payment is due, a monthly statement of payment options that explains the impact of payment choice on the loan balance.

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

E. Other Outreach and Research

The Board also solicited input from members of the Board's Consumer Advisory Council on various issues presented by the review of Regulation Z. During 2009, for example, the Council discussed ways to improve disclosures for home-secured credit. In addition, Board staff met or conducted conference calls with various industry and consumer group representatives throughout the review process leading to this proposal. Board staff also reviewed disclosures currently provided by creditors, the Federal Trade Commission's (FTC) report on consumer testing of mortgage disclosures,[6] HUD's report on consumer testing of the GFE,[7] and other information.

F. Reviewing Regulation Z in Stages

The Board is proceeding with a review of Regulation Z in stages. This proposal largely contains revisions to rules affecting closed-end credit transactions secured by real property or a dwelling. Published elsewhere in today's **Federal Register** is the Board's proposal regarding disclosures for open-end credit secured by a consumer's dwelling. Closed-end mortgages are distinct from other TILA-covered products, and conducting a review in stages allows for a manageable process. To minimize compliance burden for creditors offering other closed-end credit, as well as home-secured credit, the proposed rules that would apply only to closed-end home-secured credit are organized in sections separate from the general disclosure requirements for closed-end rules. Although this reorganization would increase the size of the regulation and commentary, the Board believes a clear delineation of rules for closed-end, home-secured loans pending the review of the remaining closed-end rules provides a clear compliance benefit to creditors.

[6] James M. Lacko and Janis K. Pappalardo, Fed. Trade Comm'n, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Protoype Disclosure Forms* (2007), (''*Improving Consumer Mortgage Disclosures*'') *available at http://www2.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf.*

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

G. Implementation Period

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

IV. The Board's Rulemaking Authority

TILA Section 105. TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also specifically authorizes the Board, among other things, to:

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

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

In the course of developing the proposal, the Board has considered the views of interested parties, its experience in implementing and enforcing Regulation Z, and the results obtained from testing various disclosure options in controlled consumer tests. For the reasons discussed in this notice, the Board believes this proposal is appropriate pursuant to the authority under TILA Section 105(a).

Also, as explained in this notice, the Board believes that the specific exemptions proposed are appropriate because the existing requirements do not provide a meaningful benefit to consumers in the form of useful information or protection. In reaching this conclusion with each proposed exemption, the Board considered (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection. The rationales for these proposed exemptions are explained in part VI below.

TILA Section 129(l)(2). TILA also authorizes the Board to prohibit acts or practices in connection with:

• Mortgage loans that the board finds to be unfair, deceptive, or designed to evade the provisions of HOEPA; and

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

The authority granted to the Board under TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2), is broad. It reaches mortgage loans with rates and fees that do not meet HOEPA's rate or fee trigger in TILA Section 103(aa), 15 U.S.C. 1602(aa), as well as mortgage loans not covered under that section, such as home purchase loans. Moreover, while HOEPA's statutory restrictions apply only to creditors and only to loan terms or lending practices, Section 129(l)(2) is not limited to acts or practices by creditors, nor is it limited to loan terms or lending practices. *See* 15 U.S.C. 1639(l)(2). It authorizes protections against unfair or deceptive practices ''in connection with mortgage loans,'' and it authorizes protections against abusive practices ''in connection with refinancing of mortgage loans.'' Thus, the Board's authority is not limited to regulating specific contractual terms of mortgage loan agreements; it extends to regulating loan-related practices generally, within the standards set forth in the statute.

HOEPA does not set forth a standard for what is unfair or deceptive, but the Conference Report for HOEPA indicates that, in determining whether a practice in connection with mortgage loans is unfair or deceptive, the Board should look to the standards employed for interpreting State unfair and deceptive trade practices statutes and the Federal Trade Commission Act (FTC Act), Section 5(a), 15 U.S.C. 45(a).[8]

Congress has codified standards developed by the Federal Trade Commission (FTC) for determining whether acts or practices are unfair under Section 5(a), 15 U.S.C. 45(a).[9] Under the FTC Act, an act or practice is unfair when it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In addition, in determining whether an act or practice is unfair, the FTC is permitted to consider established public policies, but public policy considerations may not serve as the primary basis for an unfairness determination.[10]

The FTC has interpreted these standards to mean that consumer injury is the central focus of any inquiry regarding unfairness.[11] Consumer injury may be substantial if it imposes a small harm on a large number of consumers, or if it raises a significant risk of concrete harm.[12] The FTC looks to whether an act or practice is injurious in its net effects.[13] The FTC has also observed that an unfair act or practice will almost always reflect a market failure or market imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs.[14] In evaluating unfairness, the FTC looks to whether consumers' free market decisions are unjustifiably hindered.[15]

The FTC has also adopted standards for determining whether an act or practice is deceptive (though these standards, unlike unfairness standards, have not been incorporated into the FTC Act).[16] First, there must be a representation, omission or practice that is likely to mislead the consumer. Second, the act or practice is examined from the perspective of a consumer acting reasonably in the circumstances. Third, the representation, omission, or practice must be material. That is, it must be likely to affect the consumer's conduct or decision with regard to a product or service.[17]

Many States also have adopted statutes prohibiting unfair or deceptive acts or practices, and these statutes employ a variety of standards, many of them different from the standards

[8] H.R. Rep. 103–652, at 162 (1994) (Conf. Rep.).

[9] *See* 15 U.S.C. 45(n); Letter from Commissioners of the FTC to the Hon. Wendell H. Ford, Chairman, and the Hon. John C. Danforth, Ranking Minority Member, Consumer Subcomm. of the H. Comm. on Commerce, Science, and Transp. (Dec. 17, 1980).

[10] 15 U.S.C. 45(n).

[11] Statement of Basis and Purpose and Regulatory Analysis, Credit Practices Rule, 42 FR 7740, 7743; Mar. 1, 1984 (*Credit Practices Rule*).

[12] Letter from Commissioners of the FTC to the Hon. Wendell H. Ford, Chairman, and the Hon. John C. Danforth, Ranking Minority Member, Consumer Subcomm. of the H. Comm. on Commerce, Science, and Transp., n.12 (Dec. 17, 1980).

[13] *Credit Practices Rule*, 42 FR at 7744.

[14] *Id.*

[15] *Id.*

[16] Letter from James C. Miller III, Chairman, FTC to the Hon. John D. Dingell, Chairman, H. Comm. on Energy and Commerce (Oct. 14, 1983) (*Dingell Letter*).

[17] *Dingell Letter* at 1–2.

currently applied to the FTC Act. A number of States follow an unfairness standard formerly used by the FTC. Under this standard, an act or practice is unfair where it offends public policy; or is immoral, unethical, oppressive, or unscrupulous; and causes substantial injury to consumers.[18]

In developing proposed rules under TILA Section 129(l)(2)(A), 15 U.S.C. 1639(l)(2)(A), the Board has considered the standards currently applied to the FTC Act's prohibition against unfair or deceptive acts or practices, as well as the standards applied to similar State statutes.

V. Discussion of Major Proposed Revisions

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

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

A. Disclosures at Application

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

''Key Questions to Ask about Your Mortgage'' publication. Since 1987, the number of loan products and product features has grown, providing consumers with more choices. However, the growth in loan features and products has also made the decision-making process more complex for consumers. The proposal would require creditors to provide to consumers a one-page Board publication entitled, *''Key Questions to Ask about Your Mortgage.''* Creditors would be required to provide this document for all closed-end loans secured by real property or a dwelling, not just variable-rate loans, before the consumer applies for a loan or pays a nonrefundable fee, whichever is earlier. The publication would inform consumers in a plain-English question and answer format about potentially risky features, such as interest-only, negative amortization, and prepayment penalties. To enable consumers to track the presence or absence of potentially risky features throughout the mortgage transaction process, the key questions and answers provided in this one-page document would also be included in the ARM loan program disclosure and the early and final TILA disclosures.

''Fixed vs. *Adjustable Rate Mortgages'' publication.* Instead of the CHARM booklet, the proposal would require creditors to provide a one-page Board publication entitled, *''Fixed* vs. *Adjustable Rate Mortgages''* for all closed-end loans secured by real property or a dwelling, not just variable-rate loans. The publication would contain an explanation of the basic differences between fixed-rate mortgages and ARMs. Although the requirement to provide a CHARM booklet would be eliminated, the Board would continue to publish the CHARM booklet as a consumer-education publication.

ARM loan program disclosure. Currently, for each variable-rate loan program in which a consumer expresses an interest, creditors must provide certain information, including the index and margin to be used to calculate interest rates and payments, and either a 15-year historical example of rates and payments for a $10,000 loan, or the maximum interest rate and payment for a $10,000 loan originated at the interest rate in effect for the disclosure's identified month and year. Based on consumer testing, the proposal would simplify the ARM loan program disclosure to focus on the interest rate and payment and the potential risks associated with ARMs. Information on how to calculate payments, and the effect of rising interest rates on monthly payments would be moved to the early TILA disclosure provided after application. Placing the information there will allow the creditor to customize the information to the consumer's potential loan, making the information more useful to consumers. The proposed ARM loan program disclosure would be provided in a tabular question and answer format to enable consumers to easily locate the most important information.

B. Disclosures Within Three Days After Application

TILA and Regulation Z currently require creditors to provide an early TILA disclosure within three business days after application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining the consumer's credit history. If the APR on the early TILA disclosure exceeds a certain tolerance before consummation, the creditor must provide corrected disclosures that the consumer must receive at least three days before consummation. If any term other than the APR becomes inaccurate, the creditor must give the corrected disclosure no later than at consummation.

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

Calculation of the finance charge. The proposal contains a number of revisions to the calculation of the finance charge and the disclosure of the finance charge and the APR to improve consumers'

[18] *See, e.g.*, *Kenai Chrysler Ctr., Inc.* v. *Denison*, 167 P.3d 1240, 1255 (Alaska 2007) (quoting *FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 244–45 n.5 (1972)); *State* v. *Moran*, 151 N.H. 450, 452, 861 A.2d 763, 755–56 (N.H. 2004) (concurrently applying the FTC's former test and a test under which an act or practice is unfair or deceptive if ''the objectionable conduct * * * attain[s] a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.'') (citation omitted); *Robinson* v. *Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417–418, 775 N.E.2d 951, 961–62 (2002) (quoting 405 U.S. at 244–45 n.5).

understanding of the cost of credit. Currently, TILA and Regulation Z permit creditors to exclude several fees or charges from the finance charge, including certain fees or charges imposed by third party closing agents; certain premiums for credit or property insurance or fees for debt cancellation or debt suspension coverage, if the creditor meets certain conditions; security interest charges; and real-estate related fees, such as title examination or document preparation fees.

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

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

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

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

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

Disclosure of other terms. In addition to the interest rate and monthly payment, consumer testing indicated that consumers benefit from the disclosure of other key terms in a clear format. Thus, the proposal would require creditors to provide in a tabular format information about the loan amount, the loan term, the loan type (such as fixed-rate), the total settlement charges, and the maximum amount of any prepayment penalty. In addition, creditors would be required to disclose in a tabular question and answer format the ''Key Questions about Risk,'' which would include information about potentially risky loan features such as prepayment penalties, interest-only payments, and negative amortization.

C. Disclosures Three Days Before Consummation

As noted above, the creditor is required to provide the early TILA disclosure to the consumer within three business days after receiving the consumer's written application and at least seven business days before consummation, and before the consumer has paid a fee other than a fee for obtaining the consumer's credit history. If the APR on the early TILA disclosure exceeds a certain tolerance before consummation, the creditor must provide corrected disclosures that the consumer must receive at least three days before consummation. If any term other than the APR becomes inaccurate, the creditor must give the corrected disclosure no later than at consummation. The consumer may waive the seven- and three-day waiting periods for a bona fide personal financial emergency.

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

were told that they could easily refinance with better terms in the near future.

For these reasons, the proposal would require the creditor to provide a final TILA disclosure that the consumer must receive at least three business days before consummation, even if no terms have changed since the early TILA disclosure was provided. In addition, the Board is proposing two alternative approaches to address changes to loan terms and settlement charges during the three-business-day waiting period. Under the first approach, if any terms change during the three-business-day waiting period, the creditor would be required to provide another final TILA disclosure and wait an additional three business days before consummation could occur. Under the second approach, creditors would be required to provide another final TILA disclosure, but would have to wait an additional three business days before consummation only if the APR exceeds a designated tolerance or the creditor adds an adjustable-rate feature. Otherwise, the creditor would be permitted to provide the new final TILA disclosure at consummation.

D. Disclosures After Consummation

Regulation Z requires certain notices to be provided after consummation. Currently, for variable-rate transactions, creditors are required to provide advance notice of an interest rate adjustment. There are no disclosure requirements for other post-consummation events.

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

Under the proposal, creditors would be required to provide the ARM adjustment notice at least 60 days before payment at a new level is due. This proposal seeks to address concerns that consumers need more than 25 days to seek out a refinancing in the event of a payment adjustment. This notice is particularly critical for subprime borrowers who may be more vulnerable to payment shock and may have a more difficult time refinancing a loan.

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

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

E. Prohibitions on Payments to Loan Originators and Steering

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

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

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

Based on analysis of comments received on the 2007 HOEPA Proposed Rule, the results of consumer testing, and other information, the Board withdrew the proposed provisions relating to broker compensation in the 2008 HOEPA Final Rule. In particular, the Board's consumer testing raised concerns that the proposed agreement and disclosures would confuse consumers and undermine their decisionmaking rather than improve it. Participants often concluded, not necessarily correctly, that brokers are more expensive than creditors. Many also believed that brokers would serve their best interests notwithstanding the conflict resulting from the relationship between interest rates and brokers' compensation.[19] The proposed disclosures presented a significant risk of misleading consumers regarding both the relative costs of brokers and lenders and the role of brokers in their

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

transactions. In withdrawing the broker compensation provisions of the HOEPA proposal, the Board stated it would continue to explore options to address potential unfairness associated with loan originator compensation arrangements.

To address the concerns related to loan originator compensation, the Board proposes to prohibit payments to loan originators that are based on the loan's terms and conditions. This prohibition would not apply to payments that consumers make directly to loan originators. The Board solicits comment on an alternative that would allow loan originators to receive payments that are based on the principal loan amount, which is a common practice today. If a consumer directly pays the loan originator, the proposal would prohibit the loan originator from also receiving compensation from any other party in connection with that transaction. These rules would be proposed under the Board's HOEPA authority to prohibit unfair or deceptive acts or practices in connection with mortgage loans.

Under the proposal, a ''loan originator'' would include both mortgage brokers and employees of creditors who perform loan origination functions. The 2007 HOEPA Proposed Rule covered only mortgage brokers. However, a creditor's loan officers frequently have the same discretion as mortgage brokers to modify loans' terms to increase their compensation, and there is evidence that creditors' loan officers engage in such practices.

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

F. Additional Protections

Credit insurance or debt cancellation or debt suspension coverage eligibility for all loan transactions. Currently, creditors may exclude from the finance charge a premium or charge for credit insurance or debt cancellation or debt suspension coverage if the creditor discloses the voluntary nature and cost of the product, and the consumer signs or initials an affirmative request for the product. Concerns have been raised about creditors who sometimes offer products that contain eligibility restrictions, specifically age or employment restrictions, but do not evaluate whether applicants for the products actually meet the eligibility restrictions at the time of enrollment. Subsequently, consumers' claims for benefits may be denied because they did not meet the eligibility restrictions at the time of enrollment. Consumers are presumably unaware that they are paying for a product for which they will derive no benefit. Under the proposal, creditors would be required to determine whether the consumer meets the age and/or employment eligibility criteria at the time of enrollment in the product and provide a disclosure that such a determination has been made. The proposal is not limited to mortgage transactions and would apply to all closed-end and open-end transactions.

VI. Section-by-Section Analysis

Section 226.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

1(b) Purpose

Section 226.1(b) would be revised to reflect the fact that § 226.35 prohibits certain acts or practices for transactions secured by the consumer's principal dwelling. In addition, § 226.1(b) would be revised to reflect the proposal to broaden the scope of § 226.36 (from transactions secured by the consumer's principal dwelling to all transactions secured by real property or a dwelling).

1(d) Organization

1(d)(5)

The Board proposes to revise § 226.1(d)(5) to reflect the scope of §§ 226.32, 226.34, and 226.35. The Board would also revise § 226.1(d)(5) to reflect the proposed change in the scope of § 226.36, and the addition of new §§ 226.37 and 226.38.

Section 226.2 Definitions and Rules

2(a) Definitions

2(a)(24) Residential Mortgage Transaction

Regulation Z, § 226.2(a)(24), defines a ''residential mortgage transaction'' as ''a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.'' Currently, comment 2(a)(24)–1 states that the term is important in five provisions in Regulation Z, including assumption under §§ 226.18(q) and 226.20(b). However, the proposed rule would expand coverage of the assumption rules to cover any closed-end credit transaction secured by real property or a dwelling. Thus, the Board proposes to revise comments 2(a)(24)–1, –2, and –5 to reflect this change.

Section 226.3 Exempt Transactions

3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling

TILA and Regulation Z cover all credit transactions that are secured by real property or a principal dwelling in which the amount financed exceeds $25,000. 15 U.S.C. 1603(3). Section 226.3(b), which implements TILA Section 104(3), provides that credit transactions over $25,000 *not* secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, are exempt from Regulation Z. 15 U.S.C. 1603(3).

As noted in the discussion under §§ 226.19 and 226.38, the Board proposes to require creditors to provide certain disclosures for all closed-end transactions secured by real property or a dwelling, not just principal dwellings. However, the Board recognizes that, if personal property that is a dwelling but not the borrower's principal dwelling secures a loan of over $25,000, it is not covered by TILA in the first instance. For example, Regulation Z does not apply to a $26,000 loan that is secured by a manufactured home that is not the consumer's second or vacation home. Notwithstanding this exemption, the Board solicits comment on whether consumers in these transactions receive adequate information regarding their loan terms and are afforded sufficient protections. The Board also seeks comment on the relative benefits and costs of applying Regulation Z to these transactions.

Section 226.4 Finance Charge

Background

Section 106(a) of TILA provides that the finance charge in a consumer credit transaction is ''the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit.'' 15 U.S.C. 1605(a). The finance charge does not include charges of a type payable in a comparable cash transaction. *Id.* The finance charge does not include fees or charges imposed by third party closing agents, such as settlement agents, attorneys, and title companies, if the creditor does not require the imposition

of those charges or the services provided, and the creditor does not retain the charges. *Id.* Examples of finance charges include, among other things, interest, points, service or carrying charges, credit report fees, and credit insurance premiums. *Id.*

The finance charge is significant for two reasons. First, it is meant to represent, in dollar terms, the ''cost of credit'' in whatever form imposed by the creditor or paid by the borrower. Second, the finance charge is used in calculating the annual percentage rate (APR) for the loan, 15 U.S.C. 1606, which represents the ''cost of credit, expressed as a yearly rate.'' § 226.22(a)(1). Together, these two interrelated terms are among the most important terms disclosed to consumers under TILA.

While the test for determining what is included in a finance charge is very broad, TILA Section 106 excludes from the definition of the finance charge various fees or charges. The statute excludes from the finance charge: Premiums for credit insurance if coverage is not required to obtain credit, certain disclosures are provided to the consumer, and the consumer affirmatively requests the insurance in writing; and premiums for property and liability insurance written in connection with a consumer credit transaction if the insurance may be obtained from a person of the consumer's choice and certain disclosures are provided to the consumer. 15 U.S.C. 1605(b) and (c). Statutory exclusions also apply to certain security interest charges, including: (1) Fees or charges required by law and paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying, any security related to the credit transaction; (2) premiums for insurance purchased instead of perfecting any security interest otherwise required by the creditor; and (3) taxes levied on security instruments or the documents evidencing indebtedness if payment of those taxes is required to record the instrument securing the evidence of indebtedness. 15 U.S.C. 1605(d). Finally, the statute excludes from the finance charge various fees in connection with loans secured by real property, such as title examination fees, title insurance premiums, fees for preparation of loan-related documents, escrows for future payment of taxes and insurance, notary fees, appraisal fees, pest and flood-hazard inspection fees, and credit report fees. 15 U.S.C. 1605(e).

Through the exclusions described above, the Congress has adopted a ''some fees in, some fees out'' approach to the finance charge with some fees automatically excluded from the finance charge and other fees excluded from the finance charge provided certain conditions are met. The regulation tracks this approach with a three-tiered approach to the classification of fees or charges: (1) Some fees or charges are finance charges; (2) some fees and charges are not finance charges; and (3) some fees and charges are not finance charges, but only if certain conditions are met. As a result, neither the finance charge nor the corresponding APR disclosed to the consumer reflect the consumer's total cost of credit.

Section 226.4(a) defines the finance charge as ''the cost of consumer credit as a dollar amount.'' Consistent with TILA Section 106(a), the finance charge includes ''any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit'' and does not include ''any charge of a type payable in a comparable cash transaction.'' § 226.4(a). The finance charge also includes fees and amounts charged by someone other than the creditor if the creditor requires the use of a third party as a condition of or incident to the extension of credit, even if the consumer can choose the third party, or if the creditor retains a portion of the third party charge (to the extent of the portion retained). § 226.4(a)(1).

The Board has adopted provisions in the regulation to give effect to each of the statutory exclusions and conditional exclusions from the finance charge. Closing agent charges are not included in the finance charge unless the creditor requires the particular services for which the consumer is charged, requires imposition of the charge, or retains a portion of the charge (to the extent of the portion retained). § 226.4(a)(2). Premiums for credit insurance may be excluded from the finance charge if insurance coverage is not required by the creditor, certain disclosures are provided to the consumer, and the consumer affirmatively requests the insurance coverage in a writing signed or initialed by the consumer. § 226.4(d)(1). Premiums for property and liability insurance may also be excluded from the finance charge if the insurance may be obtained from a person of the consumer's choice and certain disclosures are provided to the consumer. § 226.4(d)(2). Certain security interest charges enumerated in the statute, such as taxes and fees prescribed by law and paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying, a security interest, are excluded from the finance charge. § 226.4(e). The regulation also excludes from the finance charge the real estate related fees enumerated in Section 106(e) of TILA. § 226.4(c)(7).

Over time, the Board, by regulation, has contributed to the ''some fees in, some fees out'' approach to the finance charge by determining that certain other charges not specifically excluded by the statute are not finance charges. These regulatory exclusions often sought to bring logical consistency to the treatment of fees that are similar to fees the statute excludes or conditionally excludes from the finance charge. Charges excluded from the finance charge by regulation include: Charges for debt cancellation or debt suspension coverage if the coverage is not required by the creditor, certain disclosures are provided to the consumer, and the consumer affirmatively requests the coverage in a writing signed or initialed by the consumer; and fees for verifying the information in a credit report. *See* § 226.4(d)(3) and comment 4(c)(7)–1. The additional fees the Board has excluded from the finance charge generally are closely analogous or related to fees that the statute excludes or conditionally excludes from the finance charge. For example, premiums for voluntary debt cancellation coverage are closely analogous to premiums for voluntary credit insurance, which TILA excludes from the finance charge. Likewise, charges for verifying a credit report are related to the credit report itself.

Concerns With the Current Approach to Finance Charges

The ''some fees in, some fees out'' approach to the finance charge has been problematic both for consumers and for creditors since TILA's inception. Many of these problems were described in the 1998 Joint Report.[20]

One fundamental problem is that there are two views of what is meant by the ''cost of credit.'' From the creditor's perspective, the cost of credit means the interest and fee income that the creditor receives or requires in exchange for providing credit to the consumer. From the consumer's perspective, however, the cost of credit means what the consumer pays for the credit, regardless of the persons to whom such amounts are paid.[21] The statute uses both of these approaches in designating which fees are and are not included in the finance charge.

The influence of the creditor's perspective on the cost of credit is evident in how the ''some fees in, some

[20] The *1998 Joint Report* at 8–16.

[21] *See* The *1998 Joint Report* at 10.

fees out'' approach to the finance charge has evolved and been applied to loans secured by real property. Many services provided in connection with real estate loans are performed by third parties, such as appraisers, closing agents, inspectors, public officials, attorneys, and title companies. Some of these services are required by the creditor, while others are not. In either case, the fees for these services generally are remitted in whole or in part to the third party. In some cases, the creditor may have little control over the fees imposed by these third parties. From the creditor's perspective, the creditor generally does not receive and retain these charges in connection with providing credit to the consumer. From the consumer's perspective, however, these third-party charges are part of what the consumer pays to obtain credit.[22]

Another problem with the ''some fees in, some fees out'' approach is that it undermines the effectiveness of the APR as an accurate measure of the cost of credit expressed as a yearly rate. The APR is designed to be a benchmark for consumer shopping. In consumer testing conducted for the Board, however, the APR appeared not to be fulfilling that objective in connection with mortgage loans.

A single figure such as the APR is simple to use, particularly if consumers can use it to evaluate and compare competing products, rather than having to evaluate multiple figures.[23] This is especially true for a figure such as the APR, which has a forty-year history in consumer disclosures, and thus is familiar to consumers. Nevertheless, if that single figure is not understood by consumers or does not fully represent what it purports to represent, the usefulness of that figure is undermined. Consumer testing shows that most consumers do not understand the APR, and many believe that the APR is the interest rate.

Under the current ''some fees in, some fees out'' approach to the finance charge, mortgage lenders also have an incentive to unbundle the cost of credit and shift some of the costs from the interest rate into ancillary fees that are excluded from the finance charge and not considered when calculating the APR, resulting in a lower APR than otherwise would have been disclosed. This further undermines the usefulness of the APR and has resulted in the proliferation of ''junk fees,'' such as fees for preparing loan-related documents. Such unbundling of the cost of credit, and the resulting pricing complexity, can have a detrimental impact on consumers. For example, research undertaken by HUD suggests that borrowers experience great difficulty when deciding whether the tradeoff between paying higher up-front costs or paying a higher interest rate is in their best interest, and that borrowers who do not pay up-front loan origination fees generally pay less than borrowers who do pay such fees.[24] To the extent that the APR calculation includes most or all fees, the APR can reduce the incentive for lenders to include junk fees in credit agreements.[25]

Based on extensive outreach conducted by Board staff, there appears to be a broad consensus that the ''some fees in, some fees out'' approach to the finance charge and corresponding APR calculation and disclosure is seriously flawed. Many industry representatives consider the finance charge definition overly complex. For creditors, this complexity creates significant regulatory burden and litigation risk. While some industry representatives generally favor a more inclusive measure, they have not advocated a specific test for determining the finance charge.

Consumer advocates believe that the exclusions from the finance charge undermine the purpose of the finance charge and the APR, which is to measure the cost of credit. Some consumer advocates have recommended a ''but for'' test that would include in the finance charge all fees except those that the consumer would pay if he or she were not ''obtaining, accessing, or repaying the extension of credit,'' such as fees paid in comparable cash transactions.[26]

In the 1998 Joint Report, the Board and HUD recommended that the Congress adopt a more comprehensive definition of the finance charge.[27] The Board and HUD recommended adopting a ''required-cost of credit'' test that would include in the finance charge ''the costs the consumer is required to pay to get the credit.''[28] Under this approach, the finance charge would include (and the APR would reflect) costs required to be paid by the consumer to obtain the credit, including many fees currently excluded from the finance charge, such as application fees, appraisal fees, document preparation fees, fees for title services, and fees paid to public officials to record security interests.[29] Under the ''required-cost of credit'' test, fees for optional services, such as premiums for voluntary credit insurance, would be excluded from the finance charge.[30]

The Board's Proposal

A simpler, more inclusive test for determining the finance charge. The Board believes consumers would benefit from having a disclosure that includes fees or charges that better represent the full cost of credit undiluted by myriad exclusions, the basis for which consumers cannot be expected to understand. In addition, having a single benchmark figure—the APR—that is simple to use should allow consumers to evaluate competing mortgage products by reviewing one variable. The Board also believes that such a disclosure would reduce compliance burdens, regulatory uncertainty, and litigation risks for creditors who must provide accurate TILA disclosures.

Thus, the Board would retain the APR as a benchmark for closed-end transactions secured by real property or a dwelling but is proposing certain revisions designed to make the APR more useful to consumers. First, as discussed below, the Board is proposing to provide consumers with more helpful explanation of the APR and what it represents. Second, the Board is proposing to require disclosure of the APR together with a new disclosure of the interest rate, as discussed below. Third, the Board is proposing to replace the ''some fees in, some fees out'' approach for determining the finance charge with a simpler, more inclusive approach for determining the finance charge that is based on TILA Section 106(a), 15 U.S.C. 1605(a). This approach is designed to ensure that the finance charge and the corresponding APR disclosed to consumers fulfills the basic purpose of TILA by providing a more complete and useful measure of the cost of credit.

Pursuant to its authority under TILA Sections 105(a) and (f) of TILA, 15 U.S.C. 1604(a) and (f), the Board is proposing to amend § 226.4 to make most of the current exclusions from the finance charge inapplicable to closed-end credit transactions secured by real property or a dwelling. For such loans, the Board is proposing to replace the ''some fees in, some fees out'' approach with a simpler, more inclusive test based on the definition of finance

[22] *See* The *1998 Joint Report* at 11.

[23] *See* The *1998 Joint Report* at 9.

[24] U.S. Department of Housing and Urban Development, *A Study of Closing Costs for FHA Mortgages* at x–xi and 2–4 (May 2008).

[25] *See* The *1998 Joint Report* at 9.

[26] Renuart, Elizabeth and Diane E. Thomson, *The Truth, the Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending,* 25 Yale J. on Reg. 181, 230 (2008).

[27] The *1998 Joint Report* at 15–16.

[28] The *1998 Joint Report* at 13, 16.

[29] The *1998 Joint Report* at 13.

[30] The *1998 Joint Report* at 13.

charge in TILA Section 106(a), 15 U.S.C. 1605(a), for determining what fees or charges are included in the finance charge. The Board believes that the current patchwork of fee exclusions from the definition of the finance charge is not consistent with TILA's purpose of disclosing the cost of credit to the consumer. The Board believes that a more inclusive approach to determining the finance charge would be more consistent with TILA's purpose, enhance consumer understanding and use of the finance charge and APR disclosures, and reduce compliance costs. The Board also believes that the proposed revisions to the finance charge may enhance competition for third-party services since creditors would likely be more mindful of fees or charges that must be included in the finance charge and APR.

The proposed test for determining the finance charge tracks the language of current § 226.4 but excluding § 226.4(a)(2). Specifically, under this test, a fee or charge is included in the finance charge for closed-end credit transactions secured by real property or a dwelling if it is (1) ''payable directly or indirectly by the consumer'' to whom credit is extended, and (2) ''imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.'' The finance charge would continue to exclude fees or charges paid in comparable cash transactions. *See* § 226.4(a). The finance charge also includes charges by third parties if the creditor: (1) Requires use of a third party as a condition of or incident to the extension of credit, even if the consumer can choose the third party; or (2) retains a portion of the third-party charge, to the extent of the portion retained. *See* § 226.4(a)(1). Other exclusions from the finance charge for closed-end credit transactions secured by real property or a dwelling would be limited to late fees and similar default or delinquency charges, seller's points, and premiums for property and liability insurance.

As new services are added, and new fees are charged, in connection with closed-end credit transactions secured by real property or a dwelling, creditors would have to apply the basic test in making judgments about whether or not new fees must be included in the finance charge. The Board requests comment on whether further guidance is needed to assist creditors in making these determinations, and, if so, what specific guidance would be helpful.

Loans covered. Section 226.4 is part of Subpart A, General, as opposed to Subpart C, Closed-End Credit. Nevertheless, the proposed amendments to § 226.4 would apply only to closed-end credit transactions secured by real property or a dwelling, consistent with the general scope of this proposed rule. The Board seeks comment on whether the same amendments should be made applicable to other closed-end credit and may consider such amendments under a future review of Regulation Z. Contemporaneous with this proposal, the Board is publishing separately proposed rules regarding home equity lines of credit (HELOCs). Accordingly, the Board is not proposing to apply the changes to the finance charge determination to HELOCs in this rulemaking. As discussed in the HELOC proposal, the Board believes that changing the definition of finance charge for HELOC accounts would not have a material effect on the HELOC disclosures and accordingly is unnecessary.

Impact on coverage of other rules. One potential consequence of adopting a more inclusive test for determining the finance charge is that more loans may qualify as ''HOEPA loans,'' as described in TILA Section 103(aa), and therefore be subject to the additional disclosures and prohibitions applicable to such loans under TILA Section 129. Similarly, more loans may be subject to the Board's recently adopted protections for higher-priced mortgage loans under § 226.35, which become effective on October 1, 2009. 73 FR 44522; Jul. 30, 2008. Finally, more loans may qualify as covered loans under certain State anti-predatory lending laws that use the APR as a coverage test. The Board has conducted some analysis to quantify these impacts.

To estimate representative charges, the Board obtained information from a 2008 survey conducted by Bankrate.com on closing costs for each state, based on a $200,000 hypothetical mortgage loan.[31] Using these estimates, and scaling those that are calculated as a percentage of loan amount as necessary, the Board estimated the effect on the APRs of first-lien loans in two databases: HMDA records, which include most closed-end home loans, and data obtained from Lender Processing Services, Inc. (LPS), which include mostly prime and near-prime home loans serviced by several large mortgage servicers.

On the basis of this analysis, the Board estimates that proposed § 226.4 would increase the share of first-lien refinance and home improvement loans covered by HOEPA, under § 226.32, by about 0.6 percent. While this increase is small, the Board also notes that, because very few HOEPA loans are originated overall, the absolute number of loans covered would increase markedly—more than 350 percent. Because the HMDA data do not include APRs for loans below the rate spread reporting thresholds, *see* 12 CFR 203.4(a)(12), 2006 LPS data were used to estimate the impact on coverage of § 226.35. Based on this analysis, the Board estimates that about 3 percent of the first-lien loans in the loan amount range of the typical home purchase or refinance loan ($175,000 to $225,000) that were below the § 226.35 APR threshold would have been above the threshold if proposed § 226.4 had been in effect at the time.

The Board also examined HMDA data for the impact of the proposed, more inclusive finance charge definition on APRs in certain states. Specifically, the Board considered the APR tests for coverage of first-lien mortgages under the anti-predatory lending laws in the District of Columbia (DC), Illinois, and Maryland. These laws are the only three State anti-predatory lending laws with APR coverage thresholds that are lower than the federal HOEPA APR threshold, for first-lien loans, of 800 basis points over the U.S. Treasury yield on securities with comparable maturities. DC and Illinois use a threshold of 600 basis points, and Maryland uses a threshold of 700 basis points, over the comparable Treasury yield.[32] Freddie Mac and Fannie Mae have policies under which they will not purchase loans that exceed the Illinois thresholds,[33] but they have no such policies with regard to DC or Maryland. The Board estimates that proposed § 226.4 would convert the following percentages of first-lien loans that are under the applicable APR threshold into loans that exceed that threshold and thus would become covered by the applicable State anti-predatory lending law: DC, 2.5%; Illinois, 4.0%; Maryland, 0.0%.

[31] To supplement the Bankrate.com survey with estimated recording fees and taxes, which the survey did not include, the Board used the Martindale-Hubbell service's digest of State laws. As discussed below, the Board is not proposing to revise comment 4(a)–5, which provides principles for determining the treatment of taxes based on the party on whom the law imposes the tax. For the sake of simplicity, the Board did not attempt to distinguish such laws on this basis and, instead, included all recording taxes in the finance charge under the proposal. The analysis thus may have included some recording taxes in the finance charge under the proposal that could have been excluded under comment 4(a)–5.

[32] DC Code Ann. 26–1151.01(7)(A)(i); Ill. Comp. Stat. ch. 815, 137/10; Md. Code Ann. Com. Law 12–1029(a)(2).

[33] *http://www.freddiemac.com/learn/pdfs/uw/Pred_requirements.pdf; https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2003/03-12.pdf.*

The Board notes that the impact of the proposed finance charge definition on APRs varies among loans based on two significant factors. First, because many of the affected charges are fixed dollar amounts, the impact is significantly greater for smaller loans. Second, the impact likely would vary geographically because some charges, notably title insurance premiums and recording fees and taxes, vary considerably by state. The Board believes the proposal, on balance, would be in consumers' interests but seeks comment on these consequences of the proposal and the impact it may have on loans that could become subject to these various laws.

Legal authority. The Board is proposing to adopt the simpler, more inclusive test for determining the finance charge and corresponding APR pursuant to its general rulemaking, exception, and exemption authorities under TILA Section 105. Section 105(a) directs the Board to prescribe regulations to carry out the purposes of this title, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(a) generally authorizes the Board to make adjustments and exceptions to TILA to effectuate the statute's purposes, to prevent circumvention or evasion of the statute, or to facilitate compliance with the statute. 15 U.S.C. 1601(a), 1604(a).

The Board has considered the purposes for which it may exercise its authority under TILA Section 105(a) carefully and, based on that review, believes that the proposed adjustments and exceptions are appropriate. The proposal has the potential to effectuate the statute's purpose by better informing consumers of the total cost of credit and to prevent circumvention or evasion of the statute through the unbundling or shifting of the cost of credit from finance charges to fees or charges that are currently excluded from the finance charge. The Board believes that Congress did not anticipate how such unbundling would undermine the purposes of TILA, when it enacted the exceptions. For example, fees for preparation of loan-related documents are excluded from the finance charge by TILA Section 106(e), 15 U.S.C. 1605(e); in practice, document preparation fees have become a common vehicle used by creditors to enhance their revenue without having any impact on the finance charge or APR. A simpler, more inclusive approach to determining the finance charge also would facilitate compliance with the statute.

TILA Section 105(f) generally authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). The Board is proposing to exempt closed-end transactions secured by real property or a dwelling from the complex exclusions in TILA Section 106(b) through (e), 15 U.S.C. 1605(b) through (e). TILA Section 105(f) directs the Board to make the determination of whether coverage of such transactions under those exclusions provides a meaningful benefit to consumers in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully and, based on that review, believes that the proposed exemptions are appropriate. Mortgage loans generally are the largest credit obligation that most consumers assume. Most of these loans are secured by the consumer's principal residence. For many consumers, their mortgage loan is the most important credit obligation that they have. Consumer testing suggests that consumers find the finance charge and APR disclosures confusing and unhelpful when shopping for a mortgage. Along with other changes, replacing the patchwork ''some fees in, some fees out'' approach to determining the finance charge with a more inclusive approach that reflects the consumer's total cost of credit has the potential to further the goals of consumer protection and promote the informed use of credit for mortgage loans. Adoption of a more inclusive finance charge also would simplify compliance, reduce regulatory burden, and reduce litigation risk for creditors.

The Board's exception and exemption authority under Sections 105(a) and (f) does not apply in the case of a mortgage referred to in Section 103(aa), which are high-cost mortgages generally referred to as ''HOEPA loans.'' The Board does not believe that this limitation restricts its ability to apply the revised provisions regarding finance charges to all mortgage loans, including HOEPA loans. This limitation on the Board's general exception and exemption authority is a necessary corollary to the decision of the Congress, as reflected in TILA Section 129(*l*)(1), to grant the Board more limited authority to exempt HOEPA loans from the prohibitions applicable only to HOEPA loans in Section 129(c) through (i) of TILA. *See* 15 U.S.C. 1639(*l*)(1). Here, the Board is not proposing any exemptions from the HOEPA prohibitions. This limitation does raise a question as to whether the Board could use its exception and exemption authority under Sections 105(a) and (f) to except or exempt HOEPA loans, but not other types of mortgage loans, from other, generally applicable TILA provisions. That question, however, is not implicated by this proposal.

Here, the Board is proposing to apply its general exception and exemption authority to enhance the finance charge disclosure for all loans secured by real property or a dwelling, including both HOEPA and non-HOEPA loans, in order to fulfill the statute's purpose of having the finance charge and APR disclosures reflect the total cost of credit. It would not be consistent with the statute or with Congressional intent to interpret the Board's authority under Sections 105(a) and (f) in such a way that the proposed revisions could apply only to mortgage loans that are not subject to HOEPA. Reading the statute in a way that would deprive HOEPA borrowers of improved finance charge and APR disclosures is not a reasonable construction of the statute and contravenes the Congress's goal of ensuring ''that enhanced protections are provided to consumers who are most vulnerable to abuse.'' [34]

The Board solicits comment on all aspects of this proposal, including the cost, burden, and benefits to consumers and to industry regarding the proposed revisions to the determination of the finance charge. The Board also requests comment on any alternatives to the proposal that would further the purposes of TILA and provide consumers with more useful disclosures.

4(a) Definition

Comment 4(a)–5 contains guidance for determining whether taxes should be treated as finance charges. Generally, a tax imposed on the creditor is a finance

[34] H.R. Conf. Rept. 103–652 at 159 (Aug. 2, 1994).

charge if the creditor passes it through to the consumer. If applicable law imposes a tax solely on the consumer, on the creditor and consumer jointly, on the credit transaction itself without specifying a liable party, or on the creditor with direction or authorization to pass it through to the consumer, the tax is not a finance charge. Consequently, an examination of the law imposing each tax that is paid by the consumer is required to determine whether such taxes are finance charges. This examination of laws creates burden for creditors and may result in inconsistent treatment of similar taxes. The resulting disclosures likely are not as useful to consumers as they might be if all taxes were treated consistently. The Board seeks comment on whether the rules for determining the finance charge treatment of taxes imposed by State and local governments should be simplified and, if so, how. The Board also seeks comment on whether any such simplification should be for purposes of closed-end transactions secured by real property or a dwelling only or should have more general applicability.

Proposed new comment 4(a)–6 would clarify that there is no comparable cash transaction in a transaction where there is no seller, such as a refinancing, and thus the comparable cash transaction exclusion from the finance charge does not apply to such transactions.

4(a)(2) Special Rule; Closing Agent Charges

The Board is proposing to amend § 226.4(a)(2), which set out special rules for closing agent charges, in light of the proposed new § 226.4(g), discussed below. As a result, this provision would no longer apply to closed-end credit transactions secured by real property or a dwelling because the fees excluded by § 226.4(a)(2) meet the general definition of the finance charge in TILA Section 106(a). The Board also proposes certain conforming amendments to the staff commentary under this provision.

Under the general definition of ''finance charge'' in TILA Section 106(a), a charge is a finance charge if it is (1) ''payable directly or indirectly by the person to whom the credit is extended,'' and (2) ''imposed directly or indirectly by the creditor as an incident to the extension of credit.'' 15 U.S.C. 1605(a). Application of the basic statutory definition as the test for determining which charges are finance charges would result in many third-party charges being treated as finance charges because such third-party charges often are payable directly or indirectly by the consumer and imposed indirectly by the creditor. For instance, because real estate settlements are complex financial and legal transactions, creditors generally require a licensed closing agent (often an attorney) to conduct closings to ensure that the transaction is handled with professional skill and care. These closing agents typically impose fees on the consumer in the course of ensuring that the loan is consummated appropriately. In some cases, the creditor clearly requires the particular third-party service for which a fee is charged, such as where the creditor instructs the closing agent to send documents by overnight courier. In other cases, however, whether the creditor requires the particular service is not clear.

A rule that requires case-by-case factual determinations as to whether a particular third-party fee must be included in the finance charge results in complexity and inconsistent treatment of such fees. Such inconsistent treatment in turn undermines the utility of the finance charge and APR as comparison shopping tools and introduces uncertainty and litigation risk for creditors. For these reasons, the Board believes that fees charged by closing agents, both their own and those of other third parties they hire to perform particular services, should be treated uniformly as finance charges. The Board seeks comment on whether any such third-party charges do not fall within the basic test for determining the finance charge and could be excluded from the finance charge without requiring factual determination in each case.

Requiring third-party charges to be included in the finance charge creates some risk that a creditor may understate the finance charge if the creditor does not know that a particular charge was imposed by a third party. This risk is mitigated to some extent by TILA Section 106(f), which provides that a disclosed finance charge is treated as accurate if it does not vary from the actual finance charge by more than $100 or is greater than the amount required to be disclosed. 15 U.S.C. 1605(f). This tolerance has been incorporated into Regulation Z. *See* § 226.18(d)(1). The Board requests comment on whether it should increase the finance charge tolerance, for example to $200, in light of its proposal to require more third-party charges to be included in the finance charge. The Board also requests comment on whether the existing or any increased tolerance should be linked to an inflation index, such as the Consumer Price Index.

Excluding fees from the finance charge because they are voluntary or optional also is not consistent with the statutory purpose of disclosing the ''cost of credit,'' which includes charges imposed ''as an incident to the extension of credit.'' [35] 15 U.S.C. 1605(a). One basis for the current exclusions for voluntary or optional charges is an implicit assumption that they are not ''imposed directly or indirectly by the creditor'' on the consumer. However, charges may be imposed by a creditor even if the services for which the fee is imposed are not specifically required by the creditor. Moreover, a test that depends upon whether a service is ''voluntary'' inherently requires a factual determination. In the current provisions addressing credit insurance, the Board has identified certain objective criteria for determining when the consumer's purchase of such insurance is deemed to be voluntary. However, as discussed below, this approach has many problems and has not proven satisfactory. The Board believes that drawing a bright-line to include in the finance charge both voluntary and required charges that are imposed by the creditor would eliminate the difficulties posed by this type of fact-based analysis and provide a more consistent measure of the cost of credit.

Another basis for the current exclusions for voluntary or optional charges in connection with the credit transaction is an assumption that creditors cannot know the amounts of such charges at the time the disclosure must be provided to the consumer. The Board presumes that creditors know the amounts of their own voluntary charges, if any. The Board believes that creditors generally know or can readily determine voluntary third-party charges when providing TILA disclosures three business days before consummation, as proposed § 226.19(a)(2)(ii) would require. As a practical matter, the primary voluntary third-party charge in connection with a mortgage transaction of which the Board is aware (and that is not otherwise excluded from the finance charge) is the premium for voluntary credit insurance, and creditors generally solicit consumers for such insurance. In fact, under existing § 226.4(d)(1)(ii), creditors historically

[35] The Board has consistently interpreted the definition of finance charge as not dependent on whether a charge is voluntary or required. As a practical matter, most voluntary fees are excluded because they coincidentally are payable in a comparable cash transaction, not specifically because they are voluntary. *See, e.g.,* 61 FR 49237, 49239; Sept. 19, 1996 (charges for voluntary debt cancellation agreements).

have had to disclose the premium for voluntary credit insurance to exclude it from the finance charge. The Board nevertheless solicits comment on whether there are voluntary third-party charges the amounts of which cannot be determined three business days before consummation.

The Board recognizes that creditors may not know what voluntary or optional charges the consumer will incur when providing early TILA disclosures. When providing early TILA disclosures, creditors may rely on reasonable assumptions regarding voluntary or optional charges and label those amounts as estimates. The Board invites comment on whether further guidance is required regarding reasonable assumptions that may be made regarding voluntary or optional charges in early TILA disclosures.

4(b) Examples of Finance Charges

The Board is proposing technical amendments to comment 4(b)–1 to reflect the fact that the exclusions from the finance charge under § 226.4(c) through (e), other than §§ 226.4(c)(2), 226.4(c)(5) and 226.4(d)(2), would not apply to closed-end credit transactions secured by real property or a dwelling.

4(c) Charges Excluded From the Finance Charge

The Board proposes to amend § 226.4(c), which lists miscellaneous exclusions from the finance charge, to provide that § 226.4(c) is limited by proposed new § 226.4(g). Thus, except for late fees and similar default or delinquency charges and seller's points, the exclusions in § 226.4(c) would not apply to closed-end credit transactions secured by real property or a dwelling. The Board also proposes certain conforming amendments to the staff commentary under those provisions.

4(c)(2)

The exclusion of fees for actual unanticipated late payment, exceeding a credit limit, or for delinquency, default, or a similar occurrence in § 226.4(c)(2) would be retained for closed-end credit transactions secured by real property or a dwelling. The Board believes these charges should be excluded because they necessarily occur only after the finance charge is disclosed to consumers. At the time the TILA disclosures must be provided to consumers, a creditor cannot know whether it will impose such charges or their amounts.

4(c)(5)

The exclusion of seller's points from the finance charge in § 226.4(c)(5) would be retained for closed-end credit transactions secured by real property or a dwelling. Seller's points are not payable by the consumer. Comment 226.4(c)(5)–1 notes that seller's points may be passed on to the buyer in the form of a higher sales price for the property or dwelling. Even then, seller's points are excluded from the finance charge. A different rule would require a fact-specific determination in every transaction involving seller's points regarding whether and to what extent the seller shifted those costs to the borrower. The Board does not believe that such a rule is feasible. The Board seeks comment on the retention of the seller's points exclusion.

4(c)(7) Real-Estate Related Fees

The Board is proposing to amend § 226.4(c)(7), which currently excludes from the finance charge a number of fees charged in transactions secured by real property or in residential mortgage transactions if those fees are bona fide and reasonable. Under the proposal, the following fees currently excluded would be included in the finance charge for closed-end credit transactions secured by real property or a dwelling: fees for title examination, abstract of title, title insurance, property survey, and similar purposes; fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents; notary and credit-report fees; property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations; and amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge. The commentary provisions under § 226.4(c)(7) would also be amended accordingly.

As amended, § 226.4(c)(7) and the commentary provisions under § 226.4(c)(7) would apply only to open-end credit plans secured by real property and open-end residential mortgage transactions. Thus, for HELOCs, the fees specified in § 226.4(c)(7) would continue to be excluded from the finance charge. The Board requests comment on whether it should retain § 226.4(c)(7), as proposed to be amended, or delete § 226.4(c)(7) altogether, in light of the proposed changes to the Regulation Z HELOC rules, published today in a separate Federal Register notice. *See* the discussion under § 226.4 in that notice.

4(d) Insurance and Debt Cancellation and Debt Suspension Coverage

The Board is proposing technical amendments to comment 4(d)–12 to reflect the fact that the exclusions from the finance charge under § 226.4(e) would not apply to closed-end transactions secured by real property or a dwelling.

4(d)(1) and (3) Voluntary Credit Insurance Premiums; Voluntary Debt Cancellation and Debt Suspension Fees

The Board is proposing to amend §§ 226.4(d)(1), exclusion for voluntary credit insurance premiums, and 226.4(d)(3), exclusion for voluntary debt cancellation and debt suspension fees, to limit their application consistently with proposed § 226.4(g). Thus, these exclusions would not apply to closed-end transactions secured by real property or a dwelling.

Age or employment eligibility criteria. Under TILA Section 106(a)(5), 15 U.S.C. 1605(a)(5), a premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss is a finance charge. Under §§ 226.4(b)(7) and 226.4(b)(10), a premium or charge for credit life, accident, health, or loss-of-income insurance, or debt cancellation or debt suspension coverage is a finance charge if the insurance or coverage is written in connection with a credit transaction. TILA Section 106(b), 15 U.S.C. 1605(b), allows the creditor to exclude from the finance charge any charge or premium for credit life, accident, or health insurance written in connection with any consumer credit transaction if (1) the coverage is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer; and (2) in order to obtain the insurance, the consumer specifically requests the insurance after getting the disclosures. Under §§ 226.4(d)(1) and 226.4(d)(3), the creditor may exclude from the finance charge any premium for credit life, accident, health or loss-of-income insurance; any charge or premium paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation; or any charge or premium for debt cancellation or debt suspension coverage in the event of loss of life, health, or income or in case of accident, whether or not the coverage is insurance, if (1) the insurance or coverage is not required by the creditor and the creditor discloses this fact in writing; (2) the creditor discloses the premium or charge for the initial term of the insurance or coverage,

(3) the creditor discloses the term of insurance or coverage, if the term is less than the term of the credit transaction, and (4) the consumer signs or initials an affirmative written request for the insurance or coverage after receiving the required disclosures. In addition, under § 226.4(d)(3)(iii), the creditor must disclose for debt suspension coverage the fact that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.[36] Under proposed § 226.4(g), these provisions would not apply to closed-end credit transactions secured by real property or a dwelling.

Some creditors offer credit insurance or debt cancellation or debt suspension products with eligibility restrictions, but may not evaluate whether applicants for the products actually meet the eligibility criteria at the time the applicants request the product.[37] For instance, a consumer who is 70 at the time of enrollment could never receive the benefits of a product with a 65-year-old age limit.[38] Similarly, a consumer who is self-employed at the time of enrollment would not receive benefits if the product requires the consumer to be employed as a W–2 wage employee.[39]

Although age and employment eligibility criteria may be set forth in the product marketing materials and/or enrollment forms, the Board believes few consumers notice this information when they obtain credit and choose to purchase the voluntary credit insurance or debt cancellation or debt suspension coverage. Because the product is sold in connection with a credit transaction that is underwritten by the creditor, the consumer may reasonably believe that the creditor has determined that the consumer is eligible for the product. This may be especially true for age restrictions because that information is typically requested by the creditor on the credit application form. As a result, many consumers may not discover until they file a claim that they were paying for a product for which they were not eligible when they initially purchased it. Consumers that do not submit claims may never discover that they are paying for products that hold no value for them.

To address this problem, the Board proposes to add §§ 226.4(d)(1)(iv) and 226.4(d)(3)(v) to permit creditors to exclude a premium or charge from the finance charge only if the creditor determines at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for the credit insurance or the debt suspension or debt cancellation coverage. These provisions would apply to open-end as well as closed-end (non-real property) credit transactions. Proposed comment 4(d)–14 would state that a premium or charge for credit life, accident, health, or loss-of-income insurance, or debt cancellation or debt suspension coverage is voluntary and can be excluded from the finance charge only if the consumer meets the product's age or employment eligibility criteria at the time of enrollment. The proposed comment would further clarify that to exclude such a premium or charge from the finance charge, the creditor would have to determine at the time of enrollment that the consumer is eligible for the product under the product's age or employment eligibility restrictions.

Proposed comment 4(d)–14 would provide that the creditor could use reasonably reliable evidence of the consumer's age or employment status to satisfy the condition. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include the consumer's information on a credit application, Internal Revenue Service Form W–2, tax returns, payroll receipts, or other evidence such as a letter or e-mail from the consumer or the consumer's employer. A determination of age or employment eligibility at the time of enrollment should not be unduly burdensome because in most cases the creditor would already have information about the consumer's age and employment status as part of the credit underwriting process. The Board seeks comment on whether other examples of reasonably reliable evidence of the consumer's age or employment status should be included.

Proposed comment 4(d)–14 would clarify that, if the consumer does not meet the product's age or employment eligibility criteria, then the premium or charge is not voluntary and must be included in the finance charge. If the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer does not meet the age and/or employment eligibility criteria for all of the bundled products, the proposed commentary would clarify that the creditor must either: (1) treat the entire premium or charge for the bundled product as a finance charge, or (2) offer the consumer the option of selecting only the products for which the consumer is eligible and exclude the premium or charge from the finance charge if the consumer chooses an optional product for which the consumer meets the age and/or employment eligibility criteria at the time of enrollment.

The Board proposes this rule and commentary to address concerns about the voluntary nature of this product. TILA Section 106(b), 15 U.S.C. 1605(b), states that ''[c]harges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charge unless (1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and (2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.'' Historically, § 226.4(d) has implemented this provision as a ''voluntariness'' standard. For example, in 1981, comment 4(d)–5 was adopted as part of the TILA simplification process. The comment stated that the credit insurance ''must be *voluntary* in order for the premium to be excluded from the finance charge.'' 46 FR 50288, 50301; Oct. 9, 1981 (emphasis added). In 1996, the Board amended Regulation Z to apply the rules for credit insurance to debt cancellation coverage. In adopting this provision, the Board

[36] The provisions regarding debt suspension coverage were in the December 2008 Open-End Final Rule. *See* 74 FR 5244, 5400; Jan. 29, 2009. These provisions will take effect on July 1, 2010.

[37] *See, e.g., Parker et al.* v. *Protective Life Ins. Co. of Ohio et al.,* Nos. 2004–T–0127 and 2004–T–0128, 2006 Ohio App. LEXIS 3983, at *28 (Ohio Ct. App. Aug. 4, 2006) (reversing summary judgment for defendants automobile dealership and insurer because the automobile dealership employee did not evaluate whether the plaintiffs were eligible for credit disability insurance and the plaintiffs were later denied benefits based on eligibility restrictions); *Stewart v. Gulf Guaranty Life Ins. Co.,* No. 2000–CA–01511–SCT, 2002 Miss. LEXIS 254, at *4 (Miss. Aug. 15, 2002) (affirming the jury award where the insurer did not require the bank employee to have the consumer fill out a credit life and disability insurance application regarding pre-existing conditions and the insurer later denied coverage based on a pre-existing condition).

[38] *See, e.g., Fed. Trade Comm'n* v. *Stewart Finance Holdings, Inc. et al.,* Civ. Action No. 103CV–2648, Final Judgment and Order at 13 (N.D. Ga. Nov. 9, 2005) (alleging that the finance company sold accidental death and dismemberment insurance to borrowers who were not eligible for the product due to age restrictions).

[39] *See, e.g., In the Matter of Providian Nat'l Bank,* OCC Docket No. 2000–53, Consent Order (June 28, 2000) (alleging that the bank marketed an involuntary unemployment credit protection program but failed to adequately disclose that such protection was unavailable to consumers who were self-employed).

stated: ''The new rule allows creditors to exclude fees for *voluntary* debt cancellation coverage from the finance charge when specified disclosures are made.'' 61 FR 49237, 49240; Sept. 19, 1996 (emphasis added). In the December 2008 Open-End Final Rule, the Board applied the rules for credit insurance and debt cancellation coverage to debt suspension coverage. In adopting this provision, the Board referred to the May 2007 Open-End Proposed Rule, which stated that the Board ''proposed to revise § 226.4(d)(3) to expressly permit creditors to exclude charges for *voluntary* debt suspension coverage from the finance charge when, after receiving certain disclosures, the consumer affirmatively requests such as product.'' 74 FR 5244, 5266; Jan. 29, 2009 (emphasis in original). Finally, the model forms currently contain the following statement emphasizing the voluntary nature of the product: ''Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.'' *See* Appendix H–1 (Credit Sale Model Form) and Appendix H–2 (Loan Model Form). The Board believes that if the consumer was ineligible for the benefits of credit insurance or debt cancellation or debt suspension coverage at the time of enrollment, then the purchase cannot be voluntary because a reasonable consumer would not knowingly purchase a policy for which he or she can derive no benefit. For these reasons, the Board believes that the requirements of proposed §§ 226.4(d)(1)(iv) and 226.4(d)(3)(v) would help ensure that the purchase of credit insurance or debt cancellation or debt suspension coverage would, in fact, be voluntary.

The Board notes that although the proposed rule would require creditors to determine the consumer's age and/or employment eligibility for the product at the time of enrollment, the proposed rule would not affect the creditor's ability to deny coverage if the consumer misrepresented his or her age or employment status at the time of enrollment. Finally, the proposed rule does not require a creditor to determine if a consumer ceases to meet the age or employment eligibility criteria after enrollment. For example, the creditor has complied with the proposal if the consumer becomes ineligible for the policy or coverage after enrollment. State or other law may address these issues. However, the Board solicits comment on whether creditors should be required to determine whether the consumer meets the product's age or employment eligibility criteria after the product is sold (*e.g.,* before renewing an annual premium), or whether creditors should be required to provide notice when the consumer exceeds the age limit of the product after enrollment.

Revised disclosures. As discussed above, TILA Section 106(b), 15 U.S.C. 1605(b), and §§ 226.4(d)(1) and 226.4(d)(3) allow a creditor to exclude from the finance charge a credit insurance premium or debt cancellation or debt suspension fee if the creditor provides disclosures that inform the consumer of the voluntary nature and cost of the product. Currently, Regulation Z does not specifically mandate the format of these disclosures, but provides sample language in the model forms. For example, Appendix H–2 (Loan Model Form) contains the following language: ''Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.'' The model form also shows the type of product (*e.g.,* credit life or credit disability); the cost of the premium; and a signature line. The signature area is accompanied by the following language: ''I want credit life insurance.''

Concerns have been raised about whether the current disclosures sufficiently inform consumers of the voluntary nature and costs of the product. To address these concerns, a disclosure was tested that included a charge for credit life insurance and listed the product under the title ''Optional Features.'' Only about half of the participants understood that accepting credit insurance was voluntary and that they could decline the product. Subsequently, a disclosure was tested that stated, ''STOP. You do *not* have to buy this insurance to get this loan.'' After reading this disclosure, all participants understood the voluntary nature of the product.

In addition, concerns have been raised about the product's cost. The product may be more costly than, for example, traditional life insurance, but may not provide additional benefits. To address this concern, the Board tested the following language: ''If you have insurance already, this policy may not provide you with any additional benefits. Other types of insurance can give you similar benefits and are often less expensive.'' Participant comprehension of the costs and benefits of the product was significantly increased by these plain-language disclosures.

Concerns have also been raised about eligibility restrictions. Consumers might not be aware that they may incur a cost for a product that provides no benefit to them if the eligibility criteria are not met at the time of enrollment. Accordingly, the Board tested the following language: ''Even if you pay for this insurance, you may not qualify to receive any benefits in the future.'' Participants were greatly surprised to learn that they might purchase the insurance only to later discover that they were not eligible for benefits. A few participants indicated that they did not understand how they could pay for the coverage and then receive no benefits. To address this issue and to conform to the requirements of proposed §§ 226.4(d)(1)(iv) and 226.4(d)(3)(v), the following statement was added to the disclosure: ''Based on our review of your age and/or employment status at this time, you would be eligible to receive benefits.'' However, if there are other eligibility restrictions, such as pre-existing health conditions, the creditor would be required to disclose the following statements: ''Based on our review of your age and/or employment status at this time, you may be eligible to receive benefits. However, you may not qualify to receive any benefits because of other eligibility restrictions.''

Finally, a sentence was added to the disclosure to refer consumers to the Board's Web site to learn more about the product, and the cost disclosure was streamlined to display more clearly the exact cost of the product. Most consumer testing participants indicated they would visit the Board's Web site to learn more about a credit insurance or debt cancellation or debt suspension product.

Based on this consumer testing, the Board proposes to add model clauses and samples that provide clearer information to consumers about the voluntary nature and costs of credit insurance or debt cancellation or debt suspension coverage. These model clauses and samples would apply in open-end or closed-end (not secured by real property) transactions, if the product is voluntary and the consumer qualifies for benefits based on age or employment. For closed-end transactions secured by real property or a dwelling, the model clause or sample would be required whether or not the product is voluntary. Model Clauses and Samples are proposed at Appendix G–16(C) and G–16(D) and H–17(C) and H–17(D). These Model Clauses and Samples would be in addition to the Debt Suspension Model Clauses and Samples found at Appendix G–16(A) and G–16(B) and H–17(A) and H–17(B).

Timing of disclosures. Currently, comment 4(d)–2 states that ''[i]f disclosures are given early, for example

under § 226.17(f) or § 226.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge.'' The Board proposes to delete the reference to § 226.19(a) to conform to the new timing and redisclosure requirements under proposed § 226.19(a).

4(d)(2) Property Insurance Premiums

The proposal would retain the exclusion from the finance charge of premiums for insurance against loss or damage to property or against liability arising out of the ownership or use of property under TILA Section 106(c) and § 226.4(d)(2). Consumers typically purchase property and liability insurance to protect against a variety of risks, including loss of or damage to the property, such as damage caused by fire, loss of or damage to personal property kept on the property, such as furniture, and owner liability for injuries incurred by visitors to the property. Although creditors generally require such insurance as a condition of extending closed-end credit secured by real property or a dwelling in order to protect the value of the collateral that is securing the loan, consumers who do not have mortgages regularly purchase this type of insurance to protect themselves from the risks described above. This type of insurance is best viewed as a hybrid product that protects not only the value of the creditor's collateral, but also protects the consumer from loss or impairment of the consumer's equity in the property, loss or impairment of the consumer's personal property, and personal liability if anyone is injured on the property. Consequently, it is impossible to segregate that portion of the insurance (and that portion of the premium) which protects the creditor from that portion which protects only the consumer.

In addition, the Board has not identified significant abuses in connection with the sale or marketing of insurance against loss or damage to property or against liability arising out of the ownership or use of property. The market for these products appears to be competitive. Consumers can purchase this type of insurance from many insurance companies, including companies not associated with mortgage lenders. In addition, policies generally are tailored to the particular risks faced by the consumer. Thus, consumers have choices with regard to how much insurance to purchase to cover various risks and, as a result, have some control over the premiums they pay.

The Board requests comment on the appropriateness of retaining the current exclusion from the finance charge of premiums for insurance against loss or damage to property or against liability arising out of the ownership or use of property. The Board notes that, under current § 226.4(d)(2), the category of property and liability insurance has been interpreted to include coverage against flood risks; the Board seeks comment on whether the reasons for retaining the exclusion discussed above are applicable to flood insurance specifically and, if not, whether it should be subject to separate treatment under Regulation Z. In addition, the Board requests comment on whether including such premiums in the finance charge could have adverse or unintended consequences for consumers and for creditors.

TILA Section 106(c) states that charges or premiums for property insurance must be included in the finance charge unless ''a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained *from or through the creditor,* and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.'' 15 U.S.C. 1605(c) (emphasis added). Section 226.4(d)(2) permits property insurance premiums to be excluded from the finance charge under the following conditions, among others: ''If the coverage is obtained *from or through the creditor,* the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed.'' (Emphasis added). Comment 4(d)–8 states, in relevant part, that ''[t]he premium or charge must be disclosed only if the consumer elects to purchase the insurance *from the creditor;* in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.'' (Emphasis added.) Currently, the comment does not use the statutory language ''from or through the creditor'' and does not define the phrase. To conform to the statutory and regulatory language, the Board proposes to amend comment 4(d)–8 to clarify that the premium or charge and term (if less than the term of the obligation) must be disclosed if the consumer elects to purchase the insurance ''from or through the creditor.'' In addition, the proposed comment would clarify that insurance is available ''from or through a creditor'' if it is available from the creditor's ''affiliate,'' as that term is defined under the Bank Holding Company Act, 12 U.S.C. 1841(k). The Bank Holding Company Act defines an ''affiliate'' as ''any company that controls, is controlled by, or is under common control with another company.'' Thus, if the consumer elects to purchase property insurance from a company that controls, is controlled by, or is under common control with the creditor, then the creditor would be required to disclose the cost of the insurance, and the term, if it is less than the term of the obligation. The Board believes that this proposed rule would clarify for creditors the meaning of ''through the creditor'' and provide consumers with a clearer disclosure of the cost of property insurance.

4(d)(4) Telephone Purchases

Under §§ 226.4(d)(1) and 226.4(d)(3), creditors may exclude from the finance charge premiums for credit insurance or fees for debt cancellation or debt suspension coverage, if the creditor provides certain disclosures in writing and the consumer signs or initials an affirmative written request for the insurance or coverage. Over the years, the Board has received industry requests to permit creditors to provide the disclosures and obtain the affirmative consumer request orally in order to facilitate telephone purchases of these products. In addition, the OCC has issued telephone sales guidelines for national banks that sell debt cancellation and debt suspension coverage. 12 CFR 37.6(c)(3), 37.7(b).

In the December 2008 Open-End Final Rule, the Board created an exception to the requirement to provide prior written disclosures and obtain written signatures or initials for telephone purchases of credit insurance and debt cancellation or debt suspension coverage in connection with open-end (not home-secured) plans. 74 FR 5244, 5267; Jan. 29, 2009. This rule will take effect on July 1, 2010. Under new § 226.4(d)(4), for telephone purchases a creditor may make the disclosures orally and the consumer may affirmatively request the insurance or coverage orally, provided that the creditor (1) maintains evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage, and (2) mails the required disclosures within three business days after the telephone purchase. New comment 226.4(d)(4)–1 provides that a creditor does not satisfy

the requirement to obtain a consumer's affirmative request if the ''request'' was a response to a leading question or negative consent. The comment also provides an example of an acceptable enrollment question (''Do you want to enroll in this optional debt cancellation plan?'').

The Board promulgated this rule pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). In addition, the Board considered the exemption factors set forth in TILA Section 105(f)(2), 15 U.S.C. 1604(f)(2), and determined that an exemption for telephone purchases for open-end (not home-secured) plans was appropriate because the rule contained adequate safeguards to ensure that oral purchases are voluntary. 74 FR 5268. The Board emphasized that consumers in open-end (not home-secured) plans receive monthly statements that clearly disclose fees, including credit insurance and debt cancellation or debt suspension coverage charges. *Id.* Consumers who are billed for insurance or coverage they did not request can dispute the charge as a billing error. *Id.* The Board stated that as part of the closed-end review, it would consider whether to expand the telephone purchase rule to this type of credit. 74 FR 5267.

The Board believes that a telephone purchase rule for closed-end credit is not appropriate. Monthly statements are not required for closed-end credit, and it would be difficult for consumers who do not receive monthly statements to detect charges for unwanted coverage. Moreover, there is no billing error resolution process for closed-end loans.

Finally, the Board noted in the December 2008 Open-End Final Rule that an exception or exemption for the telephone purchase of credit insurance or debt cancellation or debt suspension coverage in connection with closed-end loans may be ''less necessary.'' 74 FR 5267. For open-end (not home-secured) credit, new comments 4(b)(7) and (8)–2 and 4(b)(10)–2 in the December 2008 Open-End Final Rule clarify that credit insurance and debt cancellation or debt suspension coverage is ''written in connection with a credit transaction'' if the consumer purchases it after the opening of an open-end (not home-secured) plan because the consumer retains the ability to obtain advances of funds. 74 FR 5265. Therefore, in such a transaction, the creditor must comply with the disclosure and consumer request requirements even if the credit insurance and debt cancellation or debt suspension coverage is sold after the opening of the plan. A creditor in an open-end (not home-secured) transaction may be more likely to market the product by telephone after the opening of the plan, and new § 226.4(d)(4) facilitates the telephone purchase. By contrast, a creditor in a closed-end transaction is more likely to have the opportunity to meet the consumer face-to-face at or before consummation to market the product, provide the disclosure, and obtain the consumer request. For these reasons, this proposal does not contain a telephone purchase rule for credit insurance or debt cancellation or debt suspension coverage sold in connection with a closed-end credit transaction. The Board seeks comment on this issue. For a discussion of the application of the telephone purchase rule to HELOCs, see the Board's proposal for such transactions published simultaneously with this proposal.

4(e) Certain Security Interest Charges

The Board proposes to amend § 226.4(e), which provides exclusions from the finance charge for certain government recording and related charges and insurance premiums incurred in lieu of such charges, as limited by proposed § 226.4(g). Thus, the exclusions listed in § 226.4(e) would not apply to closed-end credit transactions secured by real property or a dwelling. The Board also proposes certain conforming amendments to the staff commentary under this provision.

4(g) Special Rule; Closed-End Mortgage Transactions

The Board is proposing to add a new § 226.4(g) as a special rule for closed-end credit transactions secured by real property or a dwelling. Proposed § 226.4(g) would provide that the exclusions from the finance charge enumerated in §§ 226.4(a)(2) (closing agent charges), (c) (miscellaneous charges), (d) (premiums for certain insurance and debt cancellation coverage), and (e) (certain security-interest charges) do not apply to closed-end credit transactions secured by real property or a dwelling, except that the exclusions in § 226.4(c)(2) for late, over-limit, delinquency, default, and similar fees, § 226.4(c)(5) for seller's points, and § 226.4(d)(2) for property and liability insurance would continue to apply to such transactions. As noted above, a cross-reference to the special rule in § 226.4(g) would be added to each of the enumerated sections. With these changes, the following fees that currently are excluded from the finance charge would be included in the finance charge for closed-end mortgage transactions (unless otherwise excluded): Closing agent charges, application fees charged to all applicants for credit (whether or not credit is extended), voluntary credit insurance premiums, voluntary debt-cancellation charges or premiums, taxes or fees required by law and paid to public officials relating to security interests, premiums for insurance obtained in lieu of perfecting a security interest, taxes imposed as a condition of recording the instruments securing the evidence of indebtedness, and various real-estate related fees.

Proposed commentary to § 226.4(g) is included to clarify the rule for mortgage transactions. Proposed comment 4(g)–1 clarifies that the commentary for the exclusions identified above no longer applies to closed-end credit transactions secured by real property or a dwelling. Proposed comment 4(g)–2 clarifies that third-party charges that meet the definition under § 226.4(a) and are not otherwise excluded generally are finance charges, whether or not the creditor requires the services for which they are imposed. Proposed comment 4(g)–3 clarifies that charges payable in a comparable cash transaction, such as property taxes and fees or taxes imposed to record the deed evidencing transfer of title to the property from the seller to the buyer, are not finance charges because they would have to be paid even if no credit were extended to finance the purchase.

Request for Comment

The Board solicits comment on the benefits and costs of the proposed changes for determining the finance charge for closed-end credit transactions secured by real property or a dwelling. The Board requests comment specifically on whether this approach adequately or appropriately addresses the concerns raised by the ''some fees in, some fees out'' approach in light of the statute's purposes, the need for consumer protection and meaningful disclosures, and industry concerns regarding complexity and burden. The Board also seeks comment on the benefits and costs of the rules for insurance and related products under the proposed amendments to § 226.4(d).

Section 226.17 General Disclosure Requirements

The Board is proposing new rules governing format and content of disclosures for transactions secured by real property or a dwelling under new

§§ 226.37 and 226.38. Accordingly, the Board proposes conforming and technical amendments to current §§ 226.17 and 226.18, as discussed more fully below. In addition, in reviewing the rules for closed-end credit, regulatory text and associated commentary have been redesignated, and footnotes moved to the text of the regulation or commentary, as appropriate, to facilitate compliance with the regulation.

17(a) Form of Disclosures

17(a)(1)

The Board proposes special rules in new § 226.37 and associated commentary to govern the format of disclosures required under proposed §§ 226.38 and 226.20(d), and existing §§ 226.19(b) and 226.20(c). These new format rules would be in addition to the rules contained in current § 226.17(a)(1). Current § 226.17(a)(1) requires that closed-end credit disclosures be grouped together, segregated from everything else, and not contain any information not directly related to the disclosures. The Board proposes to revise § 226.17(a)(1) to clarify that the general disclosure standards continue to apply to transactions secured by real property or a dwelling, but under the proposal, creditors would also be required to meet the higher standards under proposed § 226.37. In addition, § 226.17(a)(1) would be revised to reflect the requirement of electronic disclosures in certain circumstances, as discussed under § 226.19(d). Under the proposal, the substance of footnotes 37 and 38 would be moved to the regulatory text of § 226.17(a)(1).

Footnotes 37 and 38 currently provide exceptions to the grouped and segregated requirement under § 226.17(a)(1). Footnote 37 allows creditors to include certain information not directly related to the required disclosures, such as the consumer's name, address, and account number. Footnote 38, which implements TILA Section 128(b)(1) in part, allows creditors to exclude certain required disclosures from the grouped and segregated requirement, such as the creditor's identity under § 226.18(a). 15 U.S.C. 1638(b)(1). The Board proposes to revise the substance of footnote 38 to require that the creditor's identity under § 226.18(a) be subject to the grouped together and segregated requirement for all closed-end credit disclosures. (See proposed § 226.37(a)(2), which parallels this approach for transactions secured by real property or a dwelling). The Board proposes to make this adjustment pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms, and avoiding the uninformed use of credit. 15 U.S.C. 1601(a).

The Board believes requiring the creditor's identity to be grouped together with required disclosures could assist consumers. The Board believes it is important for the disclosures to bear the creditor's identity so that consumers can more easily identify the appropriate entity. As a result, the Board believes the proposal would help serve TILA's purpose to provide meaningful disclosure of terms.

Commentary to § 226.17(a)(1) provides guidance to creditors regarding the general disclosures standards contained in § 226.17(a)(1). The Board proposes to clarify the applicability of comments 17(a)(1)–2, –5, –6, and –7 to transactions secured by real property or a dwelling.

Current comment 17(a)(1)–2 provides an exception to the grouped and segregated requirement for disclosures on variable rate transactions required under existing §§ 226.19(b) and 226.20(c). For the reasons discussed under proposed § 226.37(a)(2), the Board proposes to require that ARM loan program disclosures under proposed § 226.19(b), and ARMs adjustment notices under proposed § 226.20(c), be subject to the grouped and segregated requirement. As a result, the reference made to §§ 226.19(b) and 226.20(c) would be removed from comment 17(a)(1)–2.

Current comment 17(a)(1)–5, which addresses information considered directly related to the segregated disclosures, would be revised to clarify that it does not apply to transactions secured by real property or a dwelling, and to cross-reference proposed § 226.37(a)(2). Under the proposal, cross-references in comments 17(a)(1)–5(viii), (xi), (xii), and (xvi) would be updated; no substantive change is intended. In addition, as noted below, proposed revisions to § 226.18(f) regarding variable rate transactions, and proposed § 226.38(j)(6) regarding assumption disclosure for transactions secured by real property or a dwelling, render comments 17(a)(1)–5(xiii) and (xiv) unnecessary and therefore those comments would be deleted. Finally, comment 17(a)(1)–5(xvi) would be revised to update cross-references.

As discussed under proposed §§ 226.37(a)(2) and 226.38, the Board proposes to require that creditors make disclosures for transactions secured by real property or a dwelling only as applicable. Current comment 17(a)(1)–6, which permits creditors to design multi-purpose forms for closed-end credit disclosures as long as they are clear and conspicuous, would be revised to clarify that it does not apply to transactions secured by real property or a dwelling, as discussed more fully below under proposed § 226.37(a)(2).

Finally, the Board proposes to clarify in current comment 17(a)(1)–7 that transactions secured by real property or a dwelling and that have balloon payment financing with leasing characteristics are treated as closed-end credit under TILA and subject to its disclosure requirements.

17(a)(2)

Section 226.17(a)(2), which implements TILA Section 122(a), requires the terms finance charge and annual percentage rate, together with a corresponding amount or percentage rate, to be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a). The Board proposes new disclosure requirements under proposed § 226.38(e)(5)(ii) for the finance charge (renamed ''interest and settlement charges''), and under proposed §§ 226.37(a)(2) and 226.38(b) for the APR. As a result, the Board would revise § 226.17(a)(2) to be inapplicable to transactions secured by real property or a dwelling.

17(b) Time of Disclosures

Section 227.17(b) and comment 17(b)–1 require creditors to make closed-end credit disclosures before consummation of the transaction; special timing requirements apply to dwelling-secured transactions and variable-rate transactions. As discussed more fully under § 226.19, the Board is proposing to require creditors to make pre-consummation disclosures for transactions secured by real property or a dwelling in accordance with special timing requirements. As a result, the Board proposes to revise § 226.17(b) and comment 17(b)–1 to clarify that more specific timing rules would apply to transactions secured by real property or a dwelling. Current comment 17(b)–2, which addresses disclosure requirements for transactions converted from open-end to closed-end, would be revised to clarify that the special timing requirements under § 226.19(b) would apply for adjustable rate transactions secured by real property or a dwelling.

17(c) Basis of Disclosures and Use of Estimates

17(c)(1) Legal Obligation

Section 226.17(c)(1) requires that disclosures under subpart C reflect the terms of the legal obligation between the parties. Commentary to § 226.17(c)(1) provides guidance regarding disclosure of specific transaction types and loan features. The Board proposes to add new provisions in § 226.17(c)(1)(i) through (vi) to move certain content from commentary to the regulation, as discussed below. In addition, the Board would revise certain commentary to § 226.17(c)(1) to reflect the new disclosure regime for mortgages, and redesignate comments as appropriate. Each of these proposed subsections, and accompanying commentary, is discussed below.

Comments 17(c)(1)–1 and 17(c)(1)–2 generally address disclosure of the legal obligation and modification of such obligation. Comment 17(c)(1)–1 would be revised to include the general principle that the consumer is presumed to abide by the terms of the legal obligation. For example, proposed comment 17(c)(1)–1 states that creditors should assume that a consumer will make payments on time and in full. This proposed revision is consistent with existing comment 17(c)(2)(i)–3, which states that creditors may base all disclosures on the assumption that payments will be made on time, disregarding any possible inaccuracies resulting from consumers' payment patterns. Comment 17(c)(2)(i)–3 specifically addresses disclosures for simple-interest transactions that potentially may be affected by late payments. The proposed revisions to comment 17(c)(1)–1 would clarify that disclosures for all transactions subject to § 226.17 should be based on the assumption that the consumer will adhere to the terms of the legal obligation.

Comment 17(c)(1)–2 would be revised to clarify that transactions secured by real property or a dwelling are subject to the special disclosure rules under proposed § 226.38(a)(3) and (c). Under the proposal, preferred-rate loans with a fixed interest rate would not be considered ARMs, and therefore, comment 17(c)(1)–2 also would be revised to remove the cross-reference to § 226.19(b). Comment 17(c)(1)–2 would be redesignated as 17(c)(1)–2(i) through (iii). Comment 17(c)(1)–16, which addresses disclosure for credit extensions that may be treated as multiple transactions, would be moved and redesignated as comment 17(c)(1)–3; no substantive change is intended.

Comment 17(c)(1)–15 states that where a deposit account is created for the sole purpose of accumulating payments that are applied to satisfy the consumer's credit obligation—a practice used in Morris Plan transactions—payments to that account are treated the same as loan payments. Under the proposal, comment 17(c)(1)–15 would be removed. As discussed below, Morris Plan transactions are rare. In addition, the Board believes that such deposits clearly constitute loan payments and therefore comment 17(c)(1)–15 is unnecessary.

The remaining commentary to § 226.17(c)(1) would be revised and redesignated as discussed below under proposed subsections 17(c)(1)(i) through (vi).

17(c)(1)(i) Buydowns

Comments 17(c)(1)–3 through 17(c)(1)–5 address third-party buydowns, consumer buydowns, and split buydowns, respectively. The proposed rule would add a new provision in § 226.17(c)(1)(i) that reflects that existing commentary about buydowns. Proposed § 226.17(c)(1)(i) requires creditors to disclose an APR that is a composite rate, based on the rate in effect during the initial period and the rate in effect for the remainder of the loan's term, if the consumer's interest rate or payments are reduced for all or part of the loan term. Proposed § 226.17(c)(1)(i) applies to seller or third-party buydowns if they are reflected in the legal obligation, and to all consumer buydowns.

Comments 17(c)(1)–3 through 17(c)(1)–5 would be redesignated as comments 17(c)(1)(i)–1 through –4 and revised to reflect changes in the terminology used under the proposed rule to describe the finance charge, for transactions secured by real property or a dwelling.

17(c)(1)(ii) Wrap-Around Financing

Comment 17(c)(1)–6 provides guidance on disclosures for transactions that involve wrap-around financing; comment 17(c)(1)–7 provides guidance on disclosures for wrap-around transactions that include a balloon payment. Both comments state that, in transactions that involve wrap-around financing, the amount financed equals the sum of the new funds advanced by the wrap creditor and the remaining principal owed to the original creditor on the pre-existing loan. The proposed rule would incorporate this guidance into proposed § 226.17(c)(1)(ii). Comments 17(c)(1)–6 and 17(c)(1)–7 would be redesignated as comments 17(c)(1)(ii)–1 and 17(c)(1)(ii)–2, respectively; no substantive change is intended.

17(c)(1)(iii) Variable- or Adjustable-Rate Transactions

Comment 17(c)(1)–8 currently provides that creditors should base disclosures for variable- or adjustable-rate transactions on the full term of the transaction and the terms in effect at the time of consummation and should not assume that the rate will increase. The proposed rule would incorporate that guidance into proposed § 226.17(c)(1)(iii). Proposed § 226.17(c)(1)(iii) would require creditors to base disclosures for variable- or adjustable-rate transactions on the full loan term, and on the terms in effect at the time of consummation, except as otherwise provided under proposed §§ 226.17(c)(1)(iii) or 226.38(a)(3) and (c) for transactions secured by real property or a dwelling.

As discussed below under proposed § 226.38(c), creditors would be required to disclose specified rate and payment adjustments for adjustable-rate loans secured by real property or a dwelling. As a result, comment 17(c)(1)–8 would be revised to clarify that creditors must disclose specified rate and payment adjustments for adjustable-rate loans secured by real property or a dwelling in accordance with the requirements under proposed § 226.38(c). Current comment 17(c)(1)–8 would be redesignated as comment 17(c)(1)(iii)–1.

Current comment 17(c)(1)–9, which states that a variable-rate feature does not, by itself, make the disclosures estimates, would be redesignated as comment 17(c)(1)(iii)–2. No substantive change is intended.

17(c)(1)(iii)(A) and (B) Discounted and Premium Rates

Comment 17(c)(1)–10 provides that if the initial interest for a variable-rate transaction is not determined by the index or formula used to make later interest-rate adjustments, disclosures should reflect a composite APR based on the initial interest rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The proposed rule would incorporate that commentary into proposed § 226.17(c)(1)(iii)(B).

Proposed § 226.17(c)(1)(iii) contains two separate disclosure rules; which disclosure rule applies depends on whether or not the initial rate is determined using the same index or formula used to make subsequent rate adjustments. If the initial rate is determined using the same index or

formula used for subsequent rate adjustments, then the general rule that disclosures must reflect the terms in effect at the time of consummation applies under proposed § 226.17(c)(1)(iii)(A). If the initial rate is set using a different index or formula, however, disclosures must reflect a composite APR under proposed § 226.17(c)(1)(iii)(B). The composite APR would be based on the initial rate for as long as it is charged and, for the remainder of the loan term, the rate that would have applied if such index or formula had been used at the time of consummation. Comments 17(c)(1)–10(i) through (vi) would be revised to reflect that, under the proposed rule, for transactions secured by real property or a dwelling, new terminology would be used for specified disclosures (for example, the term ''interest and settlement charges'' would be used in place of ''finance charge''), as discussed below. Comments 17(c)(1)–10(i) through (vi) also would be redesignated as comments 17(c)(1)(iii)–3(i) through (vi); no substantive change is intended. Finally, a cross-reference in comment 24(c)–4 would be updated to reflect the redesignation of comment 17(c)(1)–10.

Comment 17(c)(1)–11 provides that variable rate transactions include the following transaction types, even if initially they feature a fixed interest rate: balloon-payment loans where the creditor is unconditionally obligated to renew, but can increase the interest rate at the time of renewal; preferred-rate loans where the interest rate may increase upon some future event; and price-level adjusted mortgages that provide for periodic payment and loan balance adjustments. (But see the discussion under proposed § 226.19(b) on comment 19(b)–5, which clarifies that creditors need not provide the disclosures required by § 226.19(b) for specified balloon-payment, preferred-rate, and price-level adjusted mortgages.) As discussed below, proposed § 226.38(a)(3), which address disclosure of loan type for transactions secured by real property or a dwelling, would treat each of these transaction types as fixed-rate loans. As a result, comment 17(c)(1)–11 would be revised to clarify that balloon-payment, preferred-rate, and price-level adjusted mortgages secured by real property or a dwelling are considered fixed-rate transactions for the purposes of the loan type disclosure required under proposed § 226.38(a)(3). (See also the discussion under proposed § 226.38(c), which clarifies that the loan type attributed to transactions under proposed § 226.38(a)(3) applies for purposes of interest rate and payment summary disclosures under proposed § 226.38(c).)

Further, certain shared-equity or shared-appreciation mortgages are considered variable-rate transactions under comment 17(c)(1)–11. However, under the proposal, if a mortgage is secured by real property or a dwelling, the mortgage would not be considered an adjustable-rate loan solely because of a shared-equity or shared-appreciation feature. As discussed under proposed §§ 226.19(b)(2)(ii)(F) and 226.38(d)(2)(vi), the Board would require creditors to disclose shared-equity or shared-appreciation as a loan feature for transactions secured by real property or a dwelling. As a result, guidance in comment 17(c)(1)–11 relating to shared-equity and shared-appreciation mortgages would be deleted.

Comment 17(c)(1)–11 would be redesignated as comment 17(c)(1)(iii)–4(i) through (iii), except that guidance under current comment 17(c)(1)–11 regarding graduated payment mortgages and step-rate transactions without a variable-rate feature would be redesignated as comment 17(c)(1)(iii)–5. A cross-reference to comment 17(c)(1)–11 in comment 30–1 would be updated accordingly. Comment 17(c)(1)–12, which addresses graduated-payment ARMs, would be redesignated as comment 17(c)(1)(iii)–6(i) through (iii); no substantive change is intended.

Current comment 17(c)(1)–13 states that creditors may base disclosures for growth-equity mortgages (also referred to as ''payment-escalated mortgages'') on estimated payment increases, using the best information reasonably available, or may disclose by analogy to the variable-rate disclosures in § 226.18(f)(1). As discussed below, current § 226.18(f) contains disclosure requirements for variable-rate transactions that differ based on a loan's security interest and term. Under the proposed rule, § 226.18(f) would be revised so that a loan's security interest, not its term, would determine whether the creditor would provide variable- or adjustable-rate disclosures. Accordingly, under the proposal, the reference made in comment 17(c)(1)–13 to providing disclosures analogous to those under current § 226.18(f)(1) would be deleted, and comment 17(c)(1)–13 would be revised to require creditors to base disclosures for growth-equity mortgages using estimated payment increases. The reference to graduated-payment mortgages would be removed for clarity. Comment 17(c)(1)–13 would be redesignated as comment 17(c)(1)(iii)–7.

17(c)(1)(iv) Reverse Mortgages

Comment 17(c)(1)–14 provides that if a reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that repayment will occur when disbursements end. The proposed rule would incorporate this commentary into the regulation as proposed § 226.17(c)(1)(vi). Comment 17(c)(1)–14 would be revised to clarify that the disclosure requirements for reverse mortgage under § 226.33 apply only if the consumer's death is one of the conditions of repayment, as provided under § 226.33(a). Comment 17(c)(1)–14 also would be revised by removing the discussion of shared-equity and shared-appreciation features because under the proposed rule transactions with such features would not be deemed adjustable-rate loans solely because of such features, as discussed above. Further, comment 17(c)(1)–14 would be revised to state that, if a reverse mortgage has an adjustable interest rate and is secured by real property or a dwelling, the creditor must disclose the shared-equity or shared-appreciation feature as required under §§ 226.19(b)(2)(ii)(F) and 226.38(d)(2)(vi). Finally, under the proposed rule comment 17(c)(1)–14 would be redesignated as comment 17(c)(1)(iv)–1(i) through (iii).

17(c)(1)(v) Tax Refund-Anticipation Loans

Comment 17(c)(1)–17 clarifies that if a consumer is required to repay a tax refund-anticipation loan when the consumer receives a tax refund, disclosures are to be based on the creditor's estimate of the time the refund will be delivered. Comment 17(c)(1)–17 further clarifies that the finance charge includes any repayment amount that exceeds the loan amount that is not excluded from the finance charge under § 226.4. The proposed rule would incorporate this guidance into the regulation as proposed § 226.17(c)(1)(v). Comment 17(c)(1)–17 which would be redesignated as comments 17(c)(1)(v)–1(i) and –1(ii) under the proposed rule. No substantive change is intended.

17(c)(1)(vi) Pawn Transactions

For pawn transactions, proposed § 226.17(c)(1)(vi) would require creditors to: (1) Disclose the initial sum provided to the consumer as the amount financed; (2) include the difference between the initial sum provided to the consumer and the price at which the

item is pledged or sold in the finance charge; and (3) determine the APR using the redemption date as the end of the loan term. Proposed § 226.17(c)(1)(vi) is consistent with comment 17(c)(1)–18, which would be redesignated as comment 17(c)(1)(vi)–1. No substantive change is intended.

17(c)(2) Estimates

Under the proposal, § 226.17(c)(2) would be revised to clarify that proposed § 226.19(a) would limit creditors' ability to provide estimated disclosures for transactions secured by real property or a dwelling. As discussed below, proposed § 226.19(a) requires creditors to provide disclosures that consumers must receive no later than three business days before consummation and which may not be estimated disclosures. Comments 17(c)(2)(i)–1 and 17(c)(2)(i)–2, which address the basis and labeling of estimates, respectively, also would be revised to reflect this limitation. In addition, comment 17(c)(2)(i)–3, which states that creditors may base all disclosures on the assumption that consumers will make timely payments, would be revised to clarify that creditors may also assume that consumers would make payments in the amounts required by the terms of the legal obligation. In technical revisions, a heading would be added to § 226.17(c)(2) for clarity; no substantive change is intended.

17(c)(3) Disregarded Effects

In technical revisions, a heading would be added to § 226.17(c)(3) for clarity, and guidance under current comment 17(c)(3)–1 would be redesignated as 17(c)(3)–1(i) and (ii). No substantive change is intended.

17(c)(4) Disregarded Irregularities

Under the proposal, § 226.17(c)(4) would be revised to clarify that creditors may disregard period irregularities when disclosing the payment summary table, as required under proposed § 226.38(c), for transactions secured by real property or a dwelling. No substantive change to the treatment of period irregularities is intended.

In technical revisions, a heading would be added to § 226.17(c)(4) for clarity. Also, comment 17(c)(4)–1 would be redesignated as comment 17(c)(4)–1(i) and (ii), and comment 17(c)(4)–2 would be redesignated as comment 17(c)(4)–2(i) through (iii). No substantive change is intended.

17(c)(5) Demand Obligations

Under the proposal, comment 17(c)(5)–1, which addresses demand obligation disclosures, would be revised to reflect that proposed §§ 226.19(b)(2)(ii)(D) and 226.38(d)(2)(iv) contain requirements for disclosing a demand feature in transactions secured by real property or a dwelling. Comment 17(c)(5)–2, which addresses future events such as the maturity date, would be revised to clarify that certain disclosures for transactions not secured by real property or a dwelling may not contain estimated disclosures, as discussed below under proposed § 226.19(a)(2). Comment 17(c)(5)–3, which addresses demand after a stated period, would be revised to delete obsolete references to specific loan programs and update cross-references. Comment 17(c)(5)–4, which addresses balloon payment mortgages, would be revised to reflect that creditors must disclose a payment summary table for transactions secured by real property or a dwelling under proposed § 226.38(c) (rather than a payment schedule, as required for transactions not secured by real property or a dwelling under § 226.18(g)) and to update a cross-reference. In technical revisions, a heading would be added to § 226.17(c)(5) for clarity; no substantive change is intended.

17(c)(6) Multiple Advance Loans

In technical revisions, a heading would be added to § 226.17(c)(6) for clarity; no substantive change is intended.

17(d) Multiple Creditors; Multiple Consumers

Section 226.17(d) addresses transactions that involve multiple creditors and consumers. The Board does not propose any changes to these provisions, except that the guidance contained in current comment 17(d)–1 would be redesignated as comment 17(d)–1(i) through (iii); no substantive change is intended.

17(e) Effect of Subsequent Events

Section 226.17(e) addresses whether a subsequent event makes a disclosure inaccurate or requires a new disclosure. Under proposed § 226.20(e), if a creditor obtains insurance on behalf of the consumer subsequent to consummation, the creditor would be required to provide notice before charging for such insurance. The Board proposes to revise comment 17(e)–1 to reflect this new requirement.

17(f) Early Disclosures

Under the proposal, in addition to providing early disclosures, creditors would be required to provide additional disclosures that a consumer must receive no later than three business days before consummation for transactions secured by real property or a dwelling. Accordingly, comments 17(f)–1 through –4 would be revised to clarify that the special disclosure timing requirements under § 226.19(a)(2) would apply to transactions secured by real property or a dwelling. In technical revisions, guidance in current comment 17(f)–1 would be renumbered and headings revised to clarify that some of the current guidance would not apply to transactions secured by real property or a dwelling under the proposed rule.

17(g) Mail or Telephone Orders—Delay in Disclosures

Section 226.17(g) and comment 17(g)–1 permit creditors to delay disclosures for transactions involving mail or telephone orders until the first payment is due if certain information, such as the APR or finance charge, is provided to the consumer in advance of any request. As discussed under § 226.19(a) and 226.20(c), the Board proposes special timing requirements for disclosures for transactions secured by real property or a dwelling and for adjustable rate transactions. As a result, the Board proposes to revise § 226.17(g) and comment 17(g)–1 to clarify that they do not apply to transactions secured by real property or a dwelling.

17(h) and 17(i) Series of Sales—Delay in Disclosures; Interim Student Credit Extensions

Sections 226.17(h) and (i) address delay in disclosures in transactions involving a series of sales and interim student credit extensions. The Board does not propose any substantive changes to these provisions. In technical revisions, a cross-reference is corrected.

Section 226.18 Content of Disclosures

As noted, the Board proposes to require creditors to provide new disclosures for transactions secured by real property or a dwelling under proposed § 226.38. Accordingly, the Board would clarify under § 226.18 that creditors must provide the new disclosures under § 226.38 for transactions secured by real property or a dwelling. In addition, the Board proposes conforming amendments to § 226.18 and associated commentary to reflect the new disclosure regime for mortgages, and would redesignate comments as appropriate.

18(a) Creditor

Currently, § 226.18(a), which implements TILA Section 128(a)(1), requires disclosure of the identity of the creditor making the disclosures. 15

U.S.C. 1638(a)(1). Comment 18(a)–1 states, in part, that this disclosure may, at the creditor's option, appear apart from the other required disclosures. As discussed above, currently, § 226.17(a)(1) footnote 38, which implements TILA Section 128(b)(1), allows creditors to exclude from the grouped and segregated requirement certain required disclosures, such as the creditor's identity. 15 U.S.C. 1638(b)(1). However, the Board proposes to revise the substance of footnote 38 to require the creditor's identity under § 226.18(a) to be subject to the grouped together and segregated requirement for all closed-end credit disclosures. Thus, the Board proposes to revise comment 18(a)–1 to reflect this change.

18(b) Amount Financed

Section 226.18(b) addresses the disclosure and calculation of the amount financed. The Board proposes to revise comment 18(b)–2, which provides guidance regarding treatment of rebates and loan premiums for the amount financed calculation required under § 226.18(b). Comment 18(b)–2 primarily addresses credit sales, such as automobile financing, and provides that creditors may choose whether to reflect creditor-paid premiums and seller- or manufacturer-paid rebates in the disclosures required under § 226.18. The Board believes that creditor-paid premiums and seller- or manufacturer-paid rebates are analogous to buydowns. Like buydowns, such premiums and rebates may or may not be funded by the creditor and reduce costs that otherwise would be borne by the consumer. Accordingly, their impact on the amount financed, like that of buydowns, properly depends on whether they are part of the legal obligation. *See* comments 17(c)(1)–1 through –5. The Board is proposing to revise comment 18(b)–2 to clarify that the disclosures, including the amount financed, must reflect loan premiums and rebates regardless of their source, but only if they are part of the terms of the legal obligation between the creditor and the consumer. As discussed below, proposed comment 38(e)(5)(iii)–2 would parallel this approach for transactions secured by real property or a dwelling.

In addition, the Board proposes to revise comment 18(b)(2)–1, which addresses amounts included in the amount financed calculation that are not otherwise included in the finance charge, to remove reference to real estate settlement charges for the reasons discussed more fully under § 226.4.

18(c) Itemization of Amount Financed

Section 226.18(c) requires a separate disclosure of the itemization of amount financed and provides guidance on the amounts that must be included in such itemization. As discussed below, the Board proposes new § 226.38(e)(5)(iii) to address the calculation and disclosure requirements of the amount financed for transactions secured by real property or a dwelling. Under the proposal, the substance of footnote 40, which permits creditors to substitute good faith estimates required under RESPA for the itemization of the amount financed for dwelling-secured transactions, would be moved to new § 226.38(j)(1)(iii).

Comment 18(c)–2 affords creditors flexibility in the information that may be included in the itemization of amount financed. Under the proposal, the Board would revise comment 18(c)–2(i) to remove references made to escrow items and to the commentary under § 226.18(g) because the proposal renders them unnecessary, and 18(c)–2(vi) to reflect a technical revision with no intended change in substance or meaning. The Board also proposes to move comment 18(c)–4 regarding the exemption afforded to RESPA transactions, and 18(c)(1)(iv)–2 regarding prepaid mortgage insurance premiums to proposed comments 38(j)(1)(iii)–1 and 38(j)(1)(i)(D)–2, respectively, because they apply only to dwelling-secured transactions.

18(d) Finance Charge

Section 226.18(d) requires disclosure of the finance charge for closed-end credit. As discussed below, the Board proposes new § 226.38(e)(5)(ii) to address disclosure of the finance charge (renamed ''interest and settlement charges'') for transactions secured by real property or a dwelling. As a result, reference to the finance charge tolerances for mortgage loans would be moved from § 226.18(d) to proposed § 226.38(e)(5)(ii); no substantive change is intended. Technical amendments to comment 18(d)(2) would reflect this revision.

18(e) Annual Percentage Rate

Section 226.18(e) requires disclosure of the annual percentage rate, using that term. The substance of footnote 42 would be moved to the regulatory text of § 226.18(e). Technical amendments to comment 18(e)–2 would reflect this revision; no substantive change is intended.

18(f) Variable Rate

Section 226.18(f)(1) contains disclosure requirements for variable-rate transactions not secured by a consumer's principal dwelling and variable-rate transactions secured by a consumer's principal dwelling if the loan term is one year or less. Section 226.18(f)(1) requires creditors to make the following disclosures within three business days after receiving the consumer's application: (1) Circumstances under which the APR may increase; (2) any limitations on the increase; (3) the effect of an increase; and (4) an example of the payment terms that would result from an increase. Section 226.18(f)(2) applies to variable-rate transactions secured by a consumer's principal dwelling with a loan term greater than one year, and requires creditors to disclose that the loan has a variable-rate feature together with a statement that variable-rate program disclosures (required by current § 226.19(b)) have been provided earlier.

The Board adopted § 226.18(f)(2) in 1987, at the same time that it adopted § 226.19(b) (disclosures for variable-rate mortgages with terms greater than one year). The Board adopted those provisions based on recommendations by the Federal Financial Institutions Examination Council (FFIEC). 52 FR 48665; Dec. 24, 1987. However, the Board applied the requirements of those provisions only to loans secured by a principal dwelling with a term greater than one year. Loans secured by a principal dwelling with a term of one year or less, and loans not secured by a principal dwelling remained subject to rules in § 226.18(f)(1). The Board did not apply the new variable-rate loan disclosure requirements to such loans because public comments expressed concern about potential compliance problems for creditors making short-term loans. 52 FR at 48666.

Proposed §§ 226.19(b) and 226.38(c) contain disclosure requirements for closed-end adjustable-rate loans secured by real property or a dwelling, and would apply the same rules to loans with a term of one year or less as for loans with a term greater than one year. Disclosures required by those provisions are discussed below. As a result, § 226.18(f)(2) and comment 18(f)(2)–1, which address requirements and guidance for closed-end adjustable-rate loans secured by real property or a dwelling, are unnecessary and would be deleted. The substance of footnote 43, which permits creditors to substitute information required under § 226.18(f)(2) and 226.19(b) for the disclosures required by § 226.18(f)(1), would also be deleted. Section 226.18(f)(1)(i) through (iv) would be redesignated as § 226.18(f)(1) through

(4), and references in comment 18(f)–1 would be updated.

As discussed below, proposed §§ 226.19(b)(3)(iii) and 226.38(d)(2)(iii) regarding disclosure of shared-equity or shared-appreciation loan features would render guidance about shared-equity or shared-appreciation mortgages in comment 18(f)–1 unnecessary, and therefore that comment would be deleted. Comment 18(f)(1)–1 regarding terms used in disclosures, and comment 18(f)(1)(i)–2 regarding conversion features would be redesignated as comments 18(f)–2 and –3, respectively. Finally, comments 18(f)(1)(i)–1, 18(f)(1)(ii)–1, 18(f)(1)(iii)–1, and 18(f)(1)(iv)–1 would be redesignated as comments 18(f)(1)–1, 18(f)(2)–1, 18(f)(3)–1, and 18(f)(4)–1, respectively.

18(g) Payment Schedule

Section 226.18(g) and associated commentary address the disclosure of the payment schedule for all closed-end credit. As discussed under proposed § 226.38(c), the Board would require creditors to provide disclosures regarding interest rates and monthly payments in a tabular format for transactions secured by real property or a dwelling. As a result, creditors would not need to comply with the disclosure requirements of § 226.18(g) for such transactions. However, as discussed under proposed § 226.38(e)(5)(i), creditors would be required to disclose the number and total amount of payments that the consumer would make over the full term of the loan for transactions secured by real property or a dwelling. Proposed comment 18(e)(5)(i)–1 would require creditors to calculate the total payments following the rules under § 226.18(g) and associated commentary. As a result, the Board proposes to revise comment 18(g)–3 to require creditors to disclose the total number of payments for all payment levels as a single figure for transactions secured by real property or a dwelling, and to cross-reference proposed § 226.38(e)(5)(i).

18(h) Total of Payments

In a technical revision, the substance of footnote 44 would be moved to the regulation text of § 226.18(e); technical amendments to comment 18(h)–3 would reflect this revision.

18(i) Demand Feature

Section 226.18(i) and associated commentary address the following for all closed-end credit: disclosure of a demand feature; the type of demand features covered; and the relationship to payment schedule disclosures. The Board does not propose any change to this provision, except that comments 18(i)–2 and –3 would be updated to cross-reference proposed §§ 226.38(d)(2)(iv) and 226.38(c), which address the disclosure requirements for a demand feature and payment schedule, respectively, for transactions secured by real property or a dwelling. No substantive change is intended.

18(k) Prepayment

Section 226.18(k)(1) provides that, when an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, the creditor must disclose a statement that indicates whether or not a penalty may be imposed if the obligation is prepaid in full. Comment 18(k)(1)–1 provides examples of charges considered penalties under § 226.18(k)(1). One such example is ''interest charges for any period after prepayment in full is made.'' When the loan is prepaid in full, there is no balance to which the creditor may apply the interest rate. Accordingly, the proposed rule would revise this example for clarity; no substantive change is intended. Proposed § 226.38(a)(5) contains requirements for disclosing prepayment penalties for transactions secured by real property or a dwelling. As discussed below, commentary on proposed § 226.38(a)(5) is consistent with the commentary on § 226.18(k), as proposed to be revised.

18(j) Through 18(m) Total Sale Price; Prepayment; Late Payment; Security Interest

Sections 226.18(j), (k), (l), and (m) address, respectively, disclosures regarding: total sale price; prepayment; late payment; and security interest. The Board does not propose any changes to these provisions, except for a minor technical amendment to comment 18(k)(1)–1, as discussed above. However, as noted below, the Board proposes new disclosure requirements under §§ 226.38(a)(5) and 226.38(d)(1)(iii) regarding prepayment penalties, § 226.38(j)(3) regarding late payment, and § 226.38(f)(2) regarding security interest, for transactions secured by real property or a dwelling.

18(n) Insurance and Debt Cancellation

Section 226.18(n) requires disclosure of insurance and debt cancellation in accordance with the requirements under § 226.4(d) to exclude such fees from the finance charge. For the reasons discussed under § 226.4(d), the Board proposes to revise § 226.18(n) and comment 18(n)–2 to clarify that this disclosure requirement also applies to debt suspension policies.

18(o) and 18(p) Certain Security-Interest Charges; Contract Reference

Sections 226.18(o) and (p) address, respectively, disclosures regarding certain security-interest charges and contract reference. The Board does not propose any changes to these provisions. However, as noted below, the Board would require creditors to provide parallel contract references for transactions secured by real property or a dwelling under proposed § 226.38(j)(5). No parallel disclosure for security-interest charges is proposed for transactions secured by real property or a dwelling because such disclosures would not apply to those transactions under the Board's proposed revisions to § 226.4, discussed above.

18(q) Assumption Policy

Section 226.18(q) and associated commentary require disclosure of assumption policies for residential mortgage transactions. Under the proposal, the Board proposes to move § 226.18(q) and comments 18(q)–1 and –2 to proposed § 226.38(j)(6) and comments 38(j)(6)–1 and –2, respectively, because assumption policies apply only to transactions secured by real property or a dwelling. No substantive change is intended.

18(r) Required Deposit

Section 226.18(r) addresses disclosure requirements when creditors require consumers to maintain deposits as a condition to the specific transaction. Footnote 45 provides additional guidance on such required deposits and includes a reference to payments made under Morris Plans. Although at least one Morris Plan bank remains active, Morris Plans essentially are obsolete today. Accordingly, the Board proposes to move the substance of footnote 45 to the regulation text but delete the reference to Morris Plans. Comments 18(r)–1, –3, and –5 would also be similarly revised. In addition, under the proposal, comment 18(r)–2 on pledged-account mortgages would be moved to comment 38(i)–2 because it applies only to transactions secured by real property. (See also comment 17(c)(1)–15 on Morris Plans, which the Board proposes to delete as unnecessary.) Comment 18(r)–6 would be redesignated as comment 18(r)–6(i) through (vii).

Section 226.19 Early Disclosures and Adjustable-Rate Disclosures for Transactions Secured by Real Property or a Dwelling

Section 226.19(a) currently contains timing requirements for providing disclosures for closed-end transactions secured by a dwelling and subject to RESPA. Section 226.19(b) contains disclosure timing and content requirements for variable-rate loans secured by a consumer's principal dwelling. The Board proposes to revise § 226.19(a) and (b) to apply the disclosures to any closed-end transaction secured by real property or a dwelling, for reasons discussed below. Section 226.19(a) also would be revised to require creditors to provide new disclosures that a consumer must receive at least three business days before consummation, in addition to the existing requirement to provide early disclosures within three business days of application. The Board also proposes to revise the content of disclosures for ARMs required under § 226.19(b), require new disclosures about risky loan features in proposed § 226.19(c), and to include existing rules about disclosures provided through an intermediary agent or broker, or by telephone or electronic communication, in proposed § 226.19(d).

19(a) Good Faith Estimates of Mortgage Transaction Terms and New Disclosures

TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), requires creditors to mail or deliver to consumers good faith estimates of disclosures required by TILA Section 128(a), 15 U.S.C. 1638(a) (early disclosures), for a transaction secured by a dwelling and subject to RESPA. As amended by the MDIA, TILA Section 128(b)(2) requires creditors to deliver or mail the early disclosures at least seven business days before consummation. Further, TILA Section 128(b)(2), as amended by the MDIA, requires that the creditor provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The Board implemented these MDIA requirements in § 226.19(a) through a final rule effective July 30, 2009 (MDIA Final Rule). 74 FR 23289; May 19, 2009.

The Board proposes to expand the coverage of § 226.19(a) so that the timing provisions would apply to closed-end mortgage transactions secured by real property or a dwelling, and would not be limited to RESPA-covered transactions. Thus, proposed § 226.19(a) would apply to transactions secured by real property that does not include a dwelling, such as vacant land, and transactions that are not subject to RESPA, such as construction loans.

The Board also proposes to revise § 226.19(a) so that, in addition to the early disclosures, the creditor must provide final disclosures that the consumer must receive no later than three business days before consummation. Under existing § 226.19(a), by contrast, a consumer must receive new disclosures at least three business days before consummation only if changes to the previously disclosed APR exceed a specified tolerance. The Board is proposing two alternative provisions to address circumstances where terms change after the consumer has received the final disclosures.

19(a)(1)(i) Time of Good Faith Estimates of Disclosures

TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), as amended by the MDIA, requires creditors to provide early disclosures if a transaction is secured by a dwelling and subject to RESPA. However, TILA's early disclosure requirements do not apply to mortgage transactions for personal, family, or household purposes if they are secured by real property that is not a dwelling, for example a consumer's business property. Creditors need not provide early disclosures for transactions secured by property of 25 acres or more, temporary financing (such as a construction loan), or transactions secured by vacant land because RESPA does not apply to such transactions. 24 CFR 3500.5(b)(1), (3), and (4).

The Board proposes to expand § 226.19(a) to cover transactions secured by real property, even if the property is not a dwelling and even if the transaction is not subject to RESPA. (Transactions secured by a consumer's interest in a timeshare plan would be treated differently, as discussed under § 226.19(a)(5) below.) Under TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), if the transaction is not secured by a dwelling, or is not covered by RESPA, the creditor is only required to provide disclosures before consummation. The Board proposes to require creditors to provide early disclosures under TILA for all closed-end transactions secured by real property or a dwelling to facilitate compliance.

Section 226.18 currently contains requirements for the content of transaction-specific disclosures secured by real property or a dwelling, whether or not creditors are required to provide that content in early disclosures. Although under the proposed rule § 226.38 rather than § 226.18 would contain requirements for disclosure content for transactions secured by real property or a dwelling, the content required in early disclosures is the same as the content of disclosures provided in cases where early disclosures are not required. Applying the requirement to provide early disclosures to all transactions secured by real property or a dwelling would simplify creditors' determination of the time by which creditors must make the disclosures required by § 226.38. The Board requests comment about operational or other issues involved in providing early disclosures for temporary loans, however. The Board also solicits comment on whether there are other types of loans exempt from RESPA to which it is not appropriate to apply proposed § 226.19(a).

Proposed new comment 19–1 states that proposed § 226.19 applies to transactions secured by real property or a dwelling even if such transactions are not subject to RESPA. The proposed comment clarifies that TILA does not apply to transactions that are primarily for business, commercial, or agricultural purposes, however. (Proposed comment 19–1 addresses the introductory text to proposed § 226.19, which provides that all of § 226.19, not only § 226.19(a), applies to closed-end transactions secured by real property or a dwelling.)

Comment 19(a)(1)(i)–1, which discusses the coverage of § 226.19(a), would be removed because proposed comment 19–1 would discuss the coverage of all of proposed § 226.19. Comment 19(a)(1)(i)–2 would be revised to clarify that under the proposed rule disclosures required by proposed § 226.19(a)(2) may not contain estimated disclosures, with limited exceptions. The comment also would be revised to reflect that proposed § 226.37 contains requirements for disclosure of estimates and contingencies, as discussed below. Comment 19(a)(1)(i)–3 would be revised to reflect that creditors may rely on RESPA and Regulation X to determine when an application is received, even for transactions not subject to RESPA. Comment 19(a)(1)(i)–5 would be revised to refer to the itemization of the amount financed disclosures in proposed § 226.38(j) rather than in § 226.18(c), as currently referenced. Finally, comments 19(a)(1)(i)–2 through –5 would be redesignated as comments 19(a)(1)(i)–1 through –4.

19(a)(1)(ii) Imposition of Fees

On July 30, 2008, the Board published the 2008 HOEPA Final Rule amending Regulation Z, which implements TILA

and HOEPA. The July 2008 final rule requires creditors to give transaction-specific cost disclosures no later than three business days after receiving a consumer's application, for closed-end mortgage transactions secured by a consumer's principal dwelling, under § 226.19(a)(1)(i). Further, the 2008 HOEPA Final Rule prohibits creditors and other persons from imposing a fee on the consumer, other than a fee for obtaining the consumer's credit history, before the consumer receives the early disclosures, under § 226.19(a)(1)(ii) and (iii). Section 226.19(a)(1)(ii) provides that if the early disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed. 73 FR 44522, 44600–44601.

The proposed rule would revise § 226.19(a)(1)(ii) to conform to the presumption of receipt provision the Board subsequently adopted in the MDIA Final Rule in § 226.19(a)(2)(ii).[40] Under the proposed rule § 226.19(a)(1)(ii) would be revised to provide that if the early disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered. This is consistent with comment 19(a)(1)(ii)–1, which provides that creditors may impose a fee any time after midnight following the third business day after the creditor delivers or mails the early disclosures in all cases, regardless of the method the creditor uses to provide the early disclosures. The Board does not intend to make substantive changes by conforming the presumption of receipt provisions under §§ 226.19(a)(1)(ii) and 226.19(a)(2)(ii).

The Board also proposes to revise comment 19(a)(1)(ii)–1 to clarify that the three-business-day presumption of receipt applies in all cases, including where a creditor uses electronic mail or a courier to provide the early disclosures. Proposed comment 19(a)(1)(ii)–1 provides that creditors that use electronic mail or a courier other than the postal service may use the three-business-day presumption of receipt. This comment is consistent with existing comment 19(a)(2)(ii)–3 adopted through the MDIA Final Rule. (Comment 19(a)(2)(ii)–3 would be redesignated as comment 19(a)(2)(v)–1 and conforming edits would be made in connection with the proposed requirement that creditors provide final disclosures that the consumer must receive no later than three business days before consummation, as discussed below.)

An additional change would be made to comment 19(a)(1)(ii)–1 under the proposed rule. Currently, comment 19(a)(1)(ii)–1 provides that if the creditor places the early disclosures in the mail, the creditor may impose a fee in all cases ''after midnight on the third business day following mailing of the disclosures.'' The Board recognizes that the phrase ''after midnight on the third business day'' may be construed to mean *either* that the creditor may impose a fee at the beginning of the third business day after the creditor receives the consumer's application, *or* at the beginning of the fourth business day after the creditor receives the consumer's application. Thus, the Board proposes to revise comment 19(a)(1)(ii)–1 to provide that the creditor may impose a fee after the consumer receives the early disclosures or, in all cases, after midnight following the third business day after mailing the early disclosures. For example, proposed comment 19(a)(1)(ii)–1 provides that (assuming that there are no intervening legal public holidays) a creditor that receives the consumer's written application on Monday and mails the early mortgage loan disclosure on Tuesday may impose a fee on the consumer on Saturday.

19(a)(2)(ii) Three-Business-Day Waiting Period

Under § 226.19(a), as revised by the MDIA Final Rule, if changes to the APR disclosed for a closed-end transaction secured by a dwelling and subject to RESPA exceed a specified tolerance, creditors must provide corrected disclosures. The consumer must receive the corrected disclosures no later than three business days before consummation. The tolerance specified for closed-end ''regular transactions'' (those that do not involve multiple advances, irregular payment periods, or irregular payment amounts) is ⅛ of 1 percentage point and for closed-end ''irregular transactions'' (those that involve multiple advances, irregular payment periods, or irregular payment amounts, such as an ARM with a discounted initial interest rate) is ¼ of 1 percentage point. *See* § 226.22(a) and footnote 46; comment 17(c)(1)–10(iv).

Currently, if an APR stated in early disclosures for a closed-end transaction not subject to § 226.19(a) remains accurate but other terms that were not labeled as estimates change, the creditor must disclose those changed terms before consummation under § 226.17(f). Creditors also must provide corrected disclosures if a variable-rate feature is added to a closed-end transaction under § 226.17(f), whether or not the transaction is subject to § 226.19(a). *See* comment 17(f)–2. In practice, most creditors provide ''final'' disclosures to a consumer on the day of consummation, whether or not the loan terms stated in the early disclosures have changed.

Under the proposed rule, after providing early disclosures for a closed-end transaction secured by real property or a dwelling, creditors would provide a second set of disclosures in all cases, under § 226.19(a)(2)(ii). The consumer would have to receive these final disclosures no later than three business days before consummation. Proposed § 226.19(a)(2)(ii) is designed to address long-standing concerns that consumers may find out about different loan terms or increased settlement costs only at consummation. Members of the Board's Consumer Advisory Council and commenters on prior Board rulemakings have expressed concern about consumers not learning of changes to credit terms until consummation. Further, several participants in the Board's consumer testing stated that they had been surprised at closing by important changes in loan terms. For example, some participants said that they had been told at closing that a loan would have an adjustable rate even though previously they had been told they would receive a fixed-rate loan. Participants said that they closed despite unfavorable changes in loan terms because they lacked alternatives, especially in the case of a loan financing a home purchase. Some participants stated that they accepted changed terms because the loan originator advised them that they could easily obtain a refinance loan with better terms in the near future.

Terms or costs may change after early disclosures are given for a variety of reasons, including that the consumer did not lock the interest rate at application or an appraisal report developed after early disclosures are provided shows a different property value than the creditor assumed when providing the early disclosure. Regardless of the reason for the changed terms, a consumer who receives notice

[40] On the same day the July 2008 final rule was published, the Congress passed the MDIA. Under the MDIA, if the APR stated in the early disclosures changes in excess of a specified tolerance, the creditor must provide corrected disclosures that the consumer must receive no later than three business days before consummation. The MDIA provides that if the creditor mails the corrected disclosures, the consumer is considered to have received them three business days after they are mailed. These early disclosure rules are contained in TILA Section 128(b)(2)(E) (to be codified at 15 U.S.C. 1638(b)(2)(E)). Section 226.19(a)(2)(ii) implements these rules.

of changed loan terms at consummation that differ from those originally disclosed does not have a meaningful opportunity to make an informed credit decision.

To address concerns about changes to loan terms, proposed § 226.19(a)(2)(ii) requires creditors to provide final disclosures that a consumer would have to receive no later than the third business day before consummation. Under proposed § 226.38(a)(4), the early disclosures and final disclosures would contain total estimated settlement costs disclosed under RESPA and HUD's Regulation X, which implements RESPA. Regulation X permits final settlement charges to be disclosed at consummation; the consumer may request that final settlement charges be disclosed twenty-four hours in advance, however. 24 CFR 3500.10(a) and (b). Thus, under RESPA, creditors, settlement agents, and settlement service providers have until the day of consummation to determine the amounts of the various settlement costs. Effective January 1, 2010, Regulation X provides that the sum of most lender-required third party settlement costs may vary no more than 10 percent from the same costs disclosed on the good faith estimate (GFE) delivered earlier. Certain other changes, such as the lender's origination fee, cannot vary, unless the consumer did not lock the interest rate.

The Board believes that proposed § 226.19(a)(2) would not conflict with tolerance and timing rules under Regulation X—that is, creditors could comply with both Regulation Z and Regulation X. However, the Board's proposal would require creditors to finalize settlement costs earlier than RESPA does: At least three business days before consummation, and as much as a week before consummation if the creditor mails the disclosures to the consumer.[41] The Board recognizes that requiring that loan terms and costs be finalized several days before consummation would require significant changes to current settlement practices. These changes would generate costs that creditors and third-party service providers would pass on to consumers. The Board solicits comment on the operational and other practical effects of requiring that consumers receive final TILA disclosures for closed-end loans secured by real property or a dwelling no later than three business days before consummation.

Proposed comment 19(a)(2)(ii)–1 provides that creditors must provide final disclosures even if the terms disclosed have not changed since the creditor provided the early disclosures. Proposed comment 19(a)(2)(ii)–2 provides that disclosures made under § 226.19(a)(2)(ii) must contain each of the applicable disclosures required by § 226.38.

If escrows for taxes and insurance will be required, creditors may disclose periodic payments of taxes and insurance as estimates under § 226.38(c). If the creditor includes escrowed amounts when calculating the total of payments under § 226.38(e)(5)(i), then the total of payments also would be disclosed as estimated disclosures, as discussed in comment 38(e)(5)–1. Periodic payment disclosures that include escrowed amounts must be estimated disclosures because the creditor cannot know with certainty the amounts for property taxes and insurance after the first year of the loan. Proposed comment 19(a)(2)(ii)–3 clarifies that other disclosures may not be estimated under proposed § 226.19(a)(2)(ii). Finally, comment 19(a)(2)(ii)–4 provides an example that illustrates when consummation may occur after the consumer receives the final disclosures.

19(a)(2)(iii) Additional Three-Business-Day Waiting Period

The Board is proposing two alternative requirements for creditors to provide corrected disclosures after making the final disclosures required by § 226.19(a)(2)(ii), to be designated as § 226.19(a)(2)(iii). Consumers would have to receive the corrected disclosures required by proposed § 226.19(a)(2)(iii) no later than the third business day before consummation. Under both Alternative 1 and Alternative 2, comment 19(a)(2)–2 would be revised to reflect that there is more than one three-business-day waiting period under § 226.19(a).

Alternative 1. The first alternative would require that a creditor provide corrected disclosures if any terms stated in the final disclosures required by proposed § 226.19(a)(2)(ii) change. This would ensure that consumers are aware of the final loan terms and costs at least three business days before consummation. The consumer would have to receive the corrected disclosures no later than the third business day before consummation.

Under Alternative 1, proposed comment 19(a)(2)(iii)–1 clarifies that a disclosed APR is accurate for purposes of § 226.19(a)(2)(iii) if the disclosure is accurate under proposed § 226.19(a)(2)(iv). (Under proposed § 226.19(a)(2)(iv), an APR disclosed under proposed § 226.19(a)(2)(ii) or (iii) is considered accurate as provided by § 226.22, except that in certain circumstances the APR is considered accurate if the APR decreases from the APR disclosed previously, as discussed below.) Proposed comment 19(a)(2)(iii)–2 states that disclosures made under § 226.19(a)(2)(ii) must contain each of the disclosures required by § 226.38. Proposed comment 19(a)(2)(iii)–3 clarifies that creditors may rely on proposed comment 19(a)(2)(ii)–3 in determining which of the disclosures required by § 226.19(a)(2)(iii) may be estimated disclosures. Proposed comment 19(a)(2)(iii)–4 provides an example that shows when consummation may occur after the consumer receives corrected disclosures. Existing comments 19(a)(2)(ii)–1 through –4 would be removed under Alternative 1.

Alternative 2. It is not clear that it is always in a consumer's interest to delay consummation until three business days after the consumer receives corrected disclosures if any terms or costs change. Thus, the Board proposes an alternative § 226.19(a)(2)(iii) that incorporates the existing tolerance for APR changes under § 226.22 and incorporates an additional tolerance discussed under § 226.19(a)(iv). If the APR changes beyond the specified tolerances, creditors would be required to provide corrected disclosures that the consumer must receive no later than three business days before consummation.

Under the second alternative, after the creditor provides the final disclosures, only APR changes beyond the specified tolerances or the addition of a variable-rate feature to the loan would trigger a requirement that consumers receive corrected disclosures no later than three business days before consummation. In other cases, the creditor would have to disclose changed terms no later than the day of consummation, under existing § 226.17(f). Under this alternative, a consumer would be alerted to significant increases in loan costs and would have three business days to investigate the reason for the change or to consider other options. Smaller APR increases or other changes to loan terms would not trigger a three-day delay in consummation, however. This alternative is designed to prevent

[41] Under existing and proposed § 226.19(a)(2), a consumer is deemed to receive corrected disclosures three business days after a creditor mails them. Under existing and proposed § 226.19(a)(2), creditors may but need not rely on the presumption of receipt to determine when the three-business-day waiting period begins, whether creditors mail TILA disclosures using the postal service, use a courier other than the postal service, or provide disclosures electronically. Alternatively, creditors may rely on evidence of receipt. 74 FR at 23293; 73 FR 44522, 44593; July 30, 2008.

relatively minor changes in loan terms from repeatedly delaying consummation.

Under Alternative 2, comment 19(a)(2)(ii)–1 would be redesignated as comment 19(a)(2)(iii)–1 and revised to clarify that creditors must provide corrected disclosures if the APR disclosed pursuant to § 226.19(a)(ii) becomes inaccurate under proposed § 226.19(a)(2)(iv), which incorporates existing tolerances under § 226.22, or an adjustable-rate feature is added. Comment 19(a)(2)(ii)–2 would be redesignated as comment 19(a)(2)(iii)–2 and revised to: (1) Reflect that corrected disclosures must comply with the format requirements of proposed § 226.37 as well as those of § 226.17(a); (2) reflect that a different APR will almost always result in changes in ''interest and settlement charges'' and the ''payment summary'' (currently designated as the finance charge and payment schedule, respectively); (3) clarify that the addition of an adjustable-rate feature triggers the requirement to provide corrected disclosures, by moving a cross-reference to comment 17(f)–2; and (4) remove guidance on the timing and conditions of new disclosures from guidance on disclosure content, for clarity. Proposed comment 19(a)(2)(iii)–3 clarifies that creditors may rely on proposed comment 19(a)(2)(ii)–3 in determining which of the disclosures required by § 226.19(a)(2)(iii) creditors may estimate. Under the proposed rule, comment 19(a)(2)(iii)–4 would be revised to update a cross-reference consistent with the proposed rule and reflect that consumers must receive disclosures under § 226.19(a)(2)(ii) whether or not the disclosures correct the early disclosures.

The Board solicits comment on whether, under Alternative 2, changes other than APR changes in excess of the specified tolerance or the addition of an adjustable-rate feature after the creditor makes the new disclosures should trigger an additional three-business-day waiting period. For example, should the addition of a prepayment penalty, negative amortization, interest-only, or balloon payment feature trigger a waiting period requirement?

Proposed § 226.19(a)(2)(iii) (under Alternative 2) would require corrected disclosures and a new three-business-day waiting period if the previously disclosed APR has become inaccurate. Under current rules, a disclosed APR is considered accurate and does not trigger corrected disclosures if it results from a disclosed finance charge that is greater than the finance charge required to be disclosed (*i.e.,* the finance charge is ''overstated''). *See* §§ 226.22(a)(4) and 226.18(d)(1)(ii). In some transactions, the finance charge at consummation might be lower than the amount previously disclosed, for example, if the parties agree to a smaller principal loan amount after early disclosures were made. In the same transaction, the APR might increase because of an increase in the interest rate after the early disclosures were made. In this transaction, at consummation the previously disclosed finance charge would be overstated and the previously disclosed APR understated. In such a case, the question has been raised as to whether the previously disclosed APR, which was derived from the overstated finance charge, should be deemed accurate even though it is understated at consummation. The Board believes the APR in this case is not accurate. The Board believes an APR ''results from'' an overstated finance charge only if the APR also is overstated. The Board solicits comment on whether, should Alternative 2 be adopted, the Board also should adopt commentary under § 226.22(a)(4) to clarify this interpretation.

Proposed § 226.19(a)(2)(iv) contains APR tolerances, and proposed § 226.38(e)(5)(ii) contains tolerances for interest and settlement charges (as the finance charge would be referred to under the proposed rule), for transactions secured by real property or a dwelling. The Board solicits comment on whether, under § 226.38(e)(5)(ii), tolerances would be appropriate for numerical disclosures other than the APR and interest and settlement charges. For example, would dollar tolerances for overstatements of periodic payment disclosures required by § 226.38(c) be appropriate? What standards should be used to prevent overstated disclosures from undermining the integrity of the early disclosures and their usefulness as a shopping tool?

19(a)(2)(iv) Annual Percentage Rate Accuracy

Under proposed § 226.19(a)(2)(iv), an APR disclosed under proposed § 226.19(a)(2)(ii) or (iii) is considered accurate as provided by § 226.22, except that the APR also is considered accurate if the APR decreases due to a discount (1) the creditor gives the consumer to induce periodic payments by automated debit from a consumer's deposit account or (2) the title insurer gives the consumer on owner's title insurance. Thus, such APR changes would not trigger a new three-business-day waiting period. Comment 19(a)(2)(iv)–1 clarifies that if a change occurs that does not render the APR inaccurate under § 226.19(a)(iv), the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). The Board solicits comment on whether a disclosed APR that is higher than the actual APR at consummation should be considered accurate in other circumstances.

19(a)(2)(v) Timing of Receipt

As adopted by the MDIA Final Rule, § 226.19(a)(2)(ii) provides that consumers must receive corrected disclosures, if required, no later than three business days before consummation. Further, § 226.19(a)(2)(ii) provides that if the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the disclosures three business days after they are mailed or delivered. The proposed rule applies this presumption for purposes of both the waiting period under proposed § 226.19(a)(2)(ii) and the waiting period under proposed § 226.19(a)(2)(iii). The presumption would be moved to § 226.19(a)(2)(v) under the proposed rule.

Proposed comment 19(a)(2)(v)–1 states that whether the creditor provides disclosures by delivery, postal service, electronic mail, or courier other than the postal service, consumers are deemed to receive the disclosures three business days after the creditor so provides them, for purposes of determining when a three-business-day waiting period required by § 226.19(a)(2)(ii) or (iii) begins. Further, proposed comment 19(a)(2)(v)–1 clarifies that creditors may rely on evidence of earlier receipt, regardless of how the creditor provides disclosures to the consumer. This commentary is consistent with the Board's discussion of delivery and mailing under the MDIA Final Rule and the 2008 HOEPA Final Rule. *See* 74 FR at 23292–23293; 73 FR at 44593.

19(a)(3) Consumer's Waiver of Waiting Period

Section 226.19(a)(3) and comment 19(a)(3)–1 would be revised to reflect that under the proposed rule the disclosures required for transactions secured by real property or a dwelling are contained in § 226.38 rather than in § 226.18. Section 226.19(a)(3) also would be revised to reflect that there is more than one three-business-day waiting period under proposed § 226.19(a)(2); comment 19(a)(3)–1 would be revised to clarify that a separate waiver is required for each waiting period to be waived.

Section 226.19(a)(2)(ii) currently requires creditors to provide corrected disclosures to a consumer if changes to the disclosed APR exceed the specified tolerance (APR correction disclosures). The consumer must receive APR correction disclosures no later than three business days before consummation. Comment 19(a)(3)–2 provides examples that show whether or not the three-business-day waiting period would need to be waived to allow consummation to occur during the seven-business-day waiting period required by § 226.19(a)(2)(i), in the event of a *bona fide* personal financial emergency. This example would be removed because proposed § 226.19(a)(2)(ii) provides that, after the creditor provides the early disclosures, consumers must receive final disclosures no later than three business days before consummation in all cases. Comment 19(a)(3)–3 provides examples illustrating whether or not, after the seven-business-day waiting period required by § 226.19(a)(2)(i), the three-business-day waiting period triggered by APR correction disclosures would need to be waived to allow consummation to occur, in the event of a *bona fide* personal financial emergency. Comment 19(a)(3)–3 would be revised to reflect that in all cases consumers would have to receive final disclosures after the creditor provides the early disclosures under the proposed rule and that under proposed § 226.19(a)(2)(iv) a disclosed APR that is overstated is considered accurate in specified circumstances. Comment 19(a)(3)–3 would be redesignated as comment 19(a)(3)–2 under the proposed rule.

19(a)(4) Notice

Section 226.19(a)(4) currently requires creditors to disclose that a consumer need not enter into a loan agreement because the consumer has received disclosures or signed a loan application. This requirement would be moved to § 226.38(f)(1) under the proposed rule. Proposed § 226.38 contains all content requirements for disclosures for transactions secured by real property or a dwelling.

19(a)(5) Timeshare Transactions

Section 226.19(a)(5) excludes transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)) (timeshare transactions) from § 226.19(a)(1) through (a)(4), which address the following: (1) The period within which the creditor must provide the early disclosures and the fact that creditors and other persons cannot collect fees from the consumer before the consumer receives the early disclosures; (2) waiting periods after the creditor provides the early disclosures and after the consumer receives corrected disclosures (if any) and before consummation; (3) waiver of waiting periods; and (4) the requirement to disclose a statement that the consumer is not required to consummate a transaction merely because the consumer has received disclosures or signed a loan application.

Section 226.19(a)(5)(ii) contains timing requirements for early disclosures, and § 226.19(a)(5)(iii) contains timing requirements for corrected disclosures, for timeshare transactions. Waiting periods are not required for timeshare transactions, so § 226.19(a)(5) does not contain requirements similar to the requirements in § 226.19(a)(3) for waiving waiting periods for non-timeshare transactions. Section 226.19(a)(5) also does not contain a requirement similar to that in § 226.19(a)(4) that disclosures contain a statement that a consumer need not consummate a transaction simply because the consumer receives disclosures or signs a loan application. Section 226.19(a)(4) would be removed under the proposed rule, and a substantially similar requirement would apply under proposed § 226.38(f)(1). Proposed § 226.38(f)(1) requires creditors to disclose a statement that a consumer is not obligated to consummate a loan and that the consumer's signature only confirms receipt of a disclosure statement.

Proposed § 226.38(f)(1) applies to timeshare transactions. The MDIA exempts timeshare transactions from the requirements of TILA Section 128(b)(2)(C), which existing § 226.19(a)(4) implements. However, the Board does not believe that the Congress intended to exempt timeshare transactions from any requirement to disclose to a consumer that the consumer is not obligated to consummate a loan. Thus, the proposed rule does not exempt timeshare transactions from § 226.38(f)(1).

Section 226.19(a)(5) would be redesignated as § 226.19(a)(4) and cross-references adjusted accordingly under the proposed rule because § 226.19(a)(4) would be removed, as discussed above. Comment 19(a)(5)(ii)–1 would be revised to reflect that the coverage of § 226.19 has been expanded to include transactions not subject to RESPA, as discussed above. Comment 19(a)(5)(iii)–1 would be revised to clarify that timeshare transactions are subject to the general requirement to disclose changed terms under § 226.17(f). Further, comment 19(a)(5)(iii)–1 would be revised to reflect that cross-referenced commentary on variable- or adjustable-rate transactions would be incorporated into proposed § 226.17(c)(1)(iii). Finally, commentary on § 226.19(a)(5)(ii) and (iii) would be redesignated as commentary on § 226.19(a)(4)(ii) and (iii), respectively.

19(b) Adjustable-Rate Loan Program Disclosures

Section 226.19(b) currently requires creditors to provide detailed disclosures about adjustable-rate loan programs and a CHARM booklet if a consumer expresses an interest in ARMs. Section 226.19(b) applies to closed-end transactions secured by a consumer's principal dwelling with a term greater than one year. Creditors must provide these disclosures at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. Creditors need not provide these disclosures, however, if a loan is secured by a dwelling other than a principal dwelling (such as a second home) or real property that is not a dwelling (such as vacant land) or with a term of one year or less. For such transactions, creditors instead must provide the less detailed variable-rate disclosures required by § 226.18(f)(1) within three business days after receiving the consumer's application, as discussed above.

The Board proposes to require creditors to provide ARM loan program disclosures, and additional disclosures discussed below, at the time an application form is provided, for all closed-end transactions secured by real property or a dwelling, regardless of the length of the loan's term. The ARM disclosures and the new disclosures are intended to alert consumers to certain risks before they apply for a loan. The Board believes that consumers should receive this information, even where the loan would be secured by a second home or unimproved real property, and where the loan term is one year or less. In these circumstances, the transaction likely involves a significant asset and consumers should receive information about risks, so that they can decide whether the program or loan feature is appropriate. The Board solicits comment on whether loan program disclosures should be given at the time an application form is provided to a consumer or before the consumer pays a non-refundable fee, whichever is earlier, for transactions other than ARMs.

The Board proposes to require creditors to provide the following disclosures at the time an application is provided:

• The ARM loan program disclosure, for each program in which the consumer expresses an interest (proposed § 226.19(b));
• The ''Key Questions about Risk'' document published by the Board (proposed § 226.19(c)); and
• The ''Fixed vs. Adjustable-Rate Mortgages'' document published by the Board (proposed § 226.19(c)).

Creditors no longer would be required to provide the CHARM booklet, as discussed under § 226.19(c).

Current content of ARM loan program disclosures. For adjustable-rate mortgage transactions secured by a consumer's principal dwelling with a term greater than one year, § 226.19(b)(2) requires the creditor to provide disclosures to consumers at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier. Section 226.19(b)(2) requires creditors to provide the following disclosures, as applicable, for each adjustable-rate loan program in which the consumer expresses an interest: (1) The fact that interest rate, payment, or term of the loan can change, (2) the index or formula used in making adjustments, and a source of information about the index or formula, (3) an explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin, (4) a statement that the consumer should ask about the current margin value and current interest rate, (5) the fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount, (6) the frequency of interest rate and payment changes, (7) any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance, (8) pursuant to TILA Section 128(a)(14), 15 U.S.C. 1638(a)(14), either (a) an historical example based on a $10,000 loan amount that illustrates how interest rate changes implemented according to the terms of the loan program would have affected payments and the loan balance over the past fifteen years or (b) the maximum interest rate and payment for a $10,000 loan originated at an initial interest rate in effect as of an identified month and year and a statement that the periodic payments may increase or decrease substantially, (9) an explanation of how the consumer may calculate the payments for the loan, (10) the fact that the loan program contains a demand feature, (11) the type of information that will be provided in notices of adjustments and the timing of such notices, and (12) a statement that the disclosure forms are available for the creditor's other variable-rate loan programs.

Amendments to maximum rate and historical example disclosures. TILA Section 128(a)(14), 15 U.S.C. 1638(a)(14), requires creditors to disclose at application (a) a statement that the periodic payments may increase or decrease substantially and the maximum interest rate and payment for a $10,000 loan originated at a recent interest rate, assuming the maximum periodic increases in rates and payments under the program or (b) an historical example illustrating the effects of interest rate changes implemented according to the loan program. Section 226.19(b)(2)(viii) implements TILA Section 128(a)(14). For the reasons discussed below, the Board proposes not to require creditors to provide either the historical example or the maximum interest rate and payment based on a $10,000 loan.

The Board proposes to eliminate the disclosure of the historical example or the maximum interest rate and payment based on a $10,000 loan pursuant to the Board's exception and exemption authorities in TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. *See* 15 U.S.C. 1604(f)(1). The Board must make this determination in light of specific factors. *See* 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully and based on that review believes that the proposed exemption is appropriate. Consumer testing conducted by the Board showed that examples based on hypothetical loan amounts and interest rates may be confusing to consumers and may not provide meaningful benefit. Several participants thought the historical example showed payments and rates that actually would apply if the participant chose the loan program described in the disclosure. Some participants mistakenly thought that the disclosures described an ARM with a fifteen-year term because the disclosure showed fifteen years' worth of index changes under an ARM program. Some consumer testing participants said that disclosures based on a hypothetical $10,000 loan amount are not useful to them; these consumers said they wanted to see information about rates and terms that would actually apply in the context of their own loan amount.

The Board's exception and exemption authority under Sections 105(a) and (f) does not apply in the case of a mortgage referred to in Section 103(aa), which are high-cost mortgages generally referred to as ''HOEPA loans.'' The Board does not believe that this limitation restricts its ability to apply the proposed changes to all mortgage loans, including HOEPA loans. This limitation on the Board's general exception and exemption authority is a necessary corollary to the decision of the Congress, as reflected in TILA Section 129(*l*)(1), to grant the Board more limited authority to exempt HOEPA loans from the prohibitions applicable only to HOEPA loans in Section 129(c) through (i) of TILA. *See* 15 U.S.C. 1639(*l*)(1). Here, the Board is not proposing any exemptions from the HOEPA prohibitions. This limitation does raise a question as to whether the Board could use its exception and exemption authority under Sections 105(a) and (f) to except or exempt HOEPA loans, but not other types of mortgage loans, from other, generally applicable TILA provisions. That question, however, is not implicated by this proposal.

Here, the Board is proposing to apply its general exception and exemption authority to eliminate information from the ARM loan program disclosure that consumers find confusing or not useful, for all loans secured by real property or a dwelling, including both HOEPA and non-HOEPA loans, in order to fulfill the statute's purpose of facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. It would not be consistent with the statute or with

Congressional intent to interpret the Board's authority under Sections 105(a) and (f) in such a way that the proposed revisions could apply only to mortgage loans that are not subject to HOEPA. Reading the statute in a way that would deprive HOEPA borrowers of improved ARM loan program disclosures is not a reasonable construction of the statute and contravenes the Congress's goal of ensuring ''that enhanced protections are provided to consumers who are most vulnerable to abuse.'' [42]

The Board notes that proposed § 226.38(c) would require creditors to provide consumers with the maximum possible interest rate and payment within three business days after the consumer applies for an ARM or a loan in which payments may vary. *See* discussion of § 226.38(c). Consumer testing indicated that consumers find this information very useful when provided in the context of an actual loan offer, in contrast to the information for a hypothetical loan amount in relation to an historical interest rate or the interest rate or for a recently originated loan, as required by TILA Section 128(a)(14).

In addition to removing § 226.19(b)(2)(viii), the proposed rule would remove the related requirement under § 226.19(b)(2)(ix) that creditors explain how a consumer may calculate payments for the consumer's loan amount based on either the initial interest rate used to calculate the maximum interest rate and payment disclosure or the most recent payment shown in the historical example. The proposed rule also would eliminate commentary on § 226.19(b)(2)(viii) and (ix). Further, the proposed rule would eliminate comment 19(b)(2)–2(i)(I), which provides that if a loan feature must be taken into account in preparing the historical example of payment and loan balance movements required by § 226.19(b)(2)(viii), variable-rate loans that differ as to that feature constitute separate loan programs under § 226.19(b)(2).

Amendments to other regulations and comments. Comment 19(b)–1 currently provides that in an assumption of an adjustable-rate mortgage transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b). Comment 19(b)–2(iv) currently provides that in cases where an open-end credit account will convert to a closed-end transaction subject to § 226.19(b), the creditor must provide the disclosures required by § 226.19(b). The proposed rule would integrate the foregoing commentary into § 226.19(b). Proposed § 226.19(b) would apply to all closed-end mortgage transactions secured by real property or a dwelling regardless of loan security or term, however, as discussed above.

The proposed rule would not require program disclosures to contain an explanation of how payments will be determined, a disclosure that creditors must make under existing § 226.19(b)(2)(iii). In general, consumer testing participants preferred to receive specific information about the amount of the payments they would have to make, which generally is not available at the time the consumer submits a loan application. Most participants found model loan program disclosures based on current requirements to be confusing because they contained complex terminology. Participants responded much more positively to revised model disclosures, which did not discuss technical issues about how payments are determined. If a creditor chooses to include an explanation of how payments will be determined, the explanation must be disclosed apart from the segregated disclosures that proposed § 226.19(b) requires, as a general rule under proposed § 226.37(a)(2), discussed below.

Footnote 45a to § 226.19(b) currently states that creditors may substitute information provided in accordance with variable-rate regulations of other federal agencies for the disclosures required by § 226.19(b). The proposed rule would remove and reserve that footnote and comment 19(b)–4. The footnote was designed to account for the fact that disclosure rules for variable-rate loans issued by HUD, the Federal Home Loan Bank Board, and the Office of the Comptroller of the Currency (OCC) were in effect when the Board adopted § 226.19(b). No comprehensive disclosure requirements for variable-rate loans currently are in effect under the rules of HUD, the OCC, or the Office of Thrift Supervision (OTS), the successor agency to the FHLBB. No such requirements are in effect under the rules of the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) either. Moreover, HUD and the OTS have incorporated the disclosure requirements for variable-rate loans under TILA and Regulation Z into their own regulations by cross-reference.[43] Accordingly, footnote 45a no longer appears to be necessary. The Board requests comment, however, on whether there are potential inconsistencies between any ARM loan disclosures required by other federal financial institution supervisory agencies that Regulation Z should specifically address.

Comment 19(b)–5 currently states that creditors must provide disclosures under § 226.19(b) for certain renewable balloon-payment, preferred-rate, and price-level adjusted mortgages with a fixed interest rate, if they are secured by a dwelling and have a term greater than one year. However, such mortgages lack most of the adjustable interest rate and payment features required to be disclosed under proposed § 226.19(b)(1). For example, the frequency of rate and payment changes for a preferred-rate loan with a fixed interest rate likely cannot be known because the loss of the preferred rate is based on factors other than a formula or a change in the value of an index. Accordingly, under the proposed rule creditors would not be required to provide ARM loan program disclosures under § 226.19(b) for such mortgages. Creditors would be required to provide ARM loan program disclosures for such mortgages if their interest rate is adjustable, however. Cross-references in comment 19(b)–5 would be updated and the comment would be redesignated as comment 19(b)–3 under the proposed rule.

Existing comment 19(b)(2)–2(i) provides examples of particular loan features that distinguish separate loan programs. That commentary would be redesignated as comment 19(b)–5(i) but generally would be unchanged under the proposal, with one exception. Differences among rules relating to loan balance changes would be removed as an example of a particular loan feature that distinguishes separate loan programs. However, differences in the possibility of negative amortization would continue to distinguish separate loan programs, as discussed above. Also, existing comment 19(b)(2)(vii)–2(i) on disclosing a negative amortization feature would be redesignated as comment 19(b)–5 under the proposal.

The requirement to provide loan program disclosures for each loan program in which a consumer expresses an interest generally would remain unchanged. However, comment 19(b)(2)–4 would be revised to state that a creditor ''must describe''—rather than

[42] H.R. Conf. Rept. 103–652 at 159 (Aug. 2, 1994).

[43] *See* 24 CFR 203.49(g) (HUD); 12 CFR 560.210 (OTS). Some of those agencies have issued regulations that apply to adjustable rate mortgages. *See, e.g.,* 12 CFR 34.22 (OCC) (requiring that an index specified in a national bank's loan documents for an ARM subject to § 226.19(b) be readily available to and verifiable by a borrower and beyond the bank's control). Those requirements do not establish comprehensive disclosure requirements, however.

''must fully describe''—an ARM loan program. The proposal would reduce some of the material that creditors must disclose about ARM loan programs to highlight information that is most important to consumers, as discussed above.

Use of term ''Adjustable-Rate Mortgage'' or ''ARM.'' Proposed § 226.19(b) requires the creditor to disclose the heading ''Adjustable-Rate Mortgage'' or ''ARM.'' Participants in the Board's consumer testing showed greater familiarity with the term ''adjustable-rate mortgage'' than with ''variable-rate mortgage.'' Format requirements in proposed § 226.19(b)(4)(iii) state that the statement must be more conspicuous than, and must precede, the other disclosures required by § 226.19(b) and must be located outside of the tables required by proposed § 226.19(b)(4)(iv). Finally, proposed § 226.19(b)(4)(iii) states that creditors may make the ''Adjustable-Rate Mortgage'' or ''ARM'' disclosure in a heading that states the name of the creditor and the name of the loan program, such as ''ABC Bank 3/1 Adjustable Rate Mortgage.''

19(b)(1) Interest Rate and Payment Disclosures

Proposed § 226.19(b)(1) requires the creditor to disclose the following information, as applicable, grouped together under the heading ''Interest Rate and Payment,'' using that term: (1) The introductory period, (2) the frequency of the rate and payment change, (3) the index, (4) the limit on rate changes, (5) the conversion feature, and (6) the preferred rate.

Introductory period. Proposed § 226.19(b)(1)(i) requires the creditor to disclose the period during which the interest rate or payment remains fixed and a statement that the interest rate may vary or the payment may increase after that period. This disclosure is similar to that required under existing § 226.19(b)(2)(i). Proposed § 226.19(b)(1)(i) also requires the creditor to provide an explanation of the effect on the interest rate of having an initial interest rate that is not determined using the index or formula that applies for interest rate adjustments, that is, of having a discounted or premium interest rate. This disclosure requirement is similar to that required under existing § 226.19(b)(2)(v). However, the proposed rule would eliminate the requirement that ARM loan program disclosures state that the consumer should ask about the amount of the interest rate discount.

Frequency of rate and payment change. Proposed § 226.19(b)(1)(ii) requires the creditor to disclose the frequency of interest rate and payment changes, as currently is required under § 226.19(b)(2)(vi).

Index. Proposed § 226.19(b)(1)(iii) requires the creditor to disclose the index or formula used in making adjustments and a source of information about the index or formula. Proposed § 226.19(b)(1)(iii) also requires the creditor to provide an explanation of how the interest rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin. Those requirements are contained in existing § 226.19(b)(2)(ii) and (iii). However, the proposed rule eliminates § 226.19(b)(2)(iv), which requires the creditor to disclose that the consumer should ask about the current margin value and current interest rate.

Limit on rate changes. Currently, requirements for disclosing interest rate or payment limitations and carryover are contained in existing § 226.19(b)(2)(vii). The proposed rule would retain these requirements, under proposed § 226.19(b)(1)(iv). (Existing § 226.19(b)(2)(vii) also contains a requirement to disclose negative amortization. The proposed rule would retain that requirement as proposed § 226.19(b)(2)(ii)(B), as discussed below.)

Conversion feature. Existing comment 19(b)(2)(vii)–3 provides that if a loan program permits consumers to convert a variable-rate loan to a fixed-rate loan, the creditor must disclose that the fixed interest rate after conversion may be higher than the adjustable interest rate before conversion. Comment 19(b)(2)(vii)–3 further provides that the creditor must disclose any limitations on the period during which the loan may be converted, a statement that conversion fees may be charged, and any interest rate and payment limitations that apply if the consumer exercises the conversion option. The proposed rule would integrate this commentary into proposed § 226.19(b)(1)(v).

Preferred rate. Currently, if the variable-rate mortgage transaction is a preferred-rate loan, the creditor must disclose any event that would allow the creditor to increase the interest rate, for example, upon the termination of the consumer's employment with the creditor, whether voluntary or involuntary. *See* comment 19(b)(2)(vii)–4. The creditor also must disclose that fees may be charged when the preferred rate no longer is in effect, if applicable. The Board proposes to retain these requirements in proposed § 226.19(b)(1)(vi).

19(b)(2) Key Questions About Risk

Currently, TILA Section 128(a)(14), 15 U.S.C. 1638(a)(14), and § 226.19(b)(2), require the creditor to disclose only certain information about certain adjustable-rate mortgage features early in the mortgage application process. The Board believes, however, that the consumer should be aware early in the process of other risky features, in addition to adjustable-rate features. For this reason, the Board proposes to require ''Key Question'' disclosures several times during the process to allow consumers to become aware of and track potentially risky features of their loan. Consumer testing and document design principles suggest that keeping language and design elements consistent between forms improves consumers' ability to identify and track any changes in the information being disclosed. As discussed more fully below, proposed § 226.19(c)(1) would require the creditor to provide a Board publication entitled ''*Key Questions to Ask about Your Mortgage*'' at the time an application form is provided to the consumer or before the consumer pays a non-refundable fee, whichever is earlier. The content of this disclosure would be published by the Board and would address important terms related to any type of mortgage, whether fixed-rate or adjustable-rate. At the same time, if the consumer expresses an interest in an ARM loan program, proposed § 226.19(b)(2) would require the creditor to disclose the ''Key Questions about Risk'' as part of the ARM loan program disclosure. These ''Key Questions'' would be tailored to the specific ARM loan program in which the consumer has expressed an interest. Subsequently, within three days of the creditor receiving the consumer's application for a specific loan program, proposed § 226.38(d) would require the creditor to make a similar disclosure of ''Key Questions about Risk'' in the transaction-specific TILA disclosure. The list of the ''Key Questions about Risk'' for the transaction-specific TILA disclosure required under proposed § 226.38(d) would be the same as that required for the ARM loan program disclosure under proposed § 226.19(b)(2), but the information in the TILA disclosure would be specific to the loan program for which the consumer applied and would apply to fixed-rate or adjustable-rate loan programs. The Board believes that consistently using the ''Key Questions'' terminology would enhance consumers' ability to identify, review, and understand the disclosed terms across all disclosures, and,

therefore, avoid the uninformed use of credit.

Key questions about risk. As discussed above, current § 226.19(b)(2) requires the creditor to disclose over 12 loan features. Consumer testing showed that the current format for these disclosures was very difficult for participants to understand. In addition, because the content was so general, participants felt the current disclosure would not help them shop for a mortgage. Therefore, the Board proposes to replace existing § 226.19(b)(2) with a new streamlined ARM loan program disclosure that would contain key information specific to that loan program. The proposed rule would require creditors to disclose certain information grouped together under the heading ''Key Questions about Risk,'' using that term, to draw the consumer's attention to information about the potential adverse impact that certain loan features could have on the consumer's ability to repay the loan. Proposed § 226.19(b)(2)(i) requires the creditor to always disclose information about the following three terms: (1) Rate increases, (2) payment increases, and (3) prepayment penalties. Proposed § 226.19(b)(2)(ii) would require the creditor to disclose information about the following six terms, but only if they are applicable to the loan program: (1) Interest-only payments, (2) negative amortization, (3) balloon payment, (4) demand feature, (5) no-documentation or low-documentation loans, and (6) shared-equity or shared-appreciation. The ''Key Questions about Risk'' disclosure would be subject to special format requirements, including a tabular format and a question and answer format, as described under proposed § 226.19(b)(4). The Board believes it is critical that consumers be alerted to certain risk factors before they have applied for an ARM, so that they can decide whether they want a loan with those terms. The Board solicits comment on whether there are other risk factors that loan program disclosures or publications should identify.

Required disclosures. As noted above, proposed § 226.19(b)(2)(i) requires the creditor to disclose information about the following three terms: (1) Rate increases, (2) payment increases, and (3) prepayment penalties. The Board believes that these three factors should always be disclosed. Rate and payment increases pose the most direct risk of payment shock. In addition, consumer testing showed that interest rate and monthly payment were by far the two most common terms that participants used to shop for a mortgage. The Board also believes that the prepayment penalty is a key risk factor because it is critical to the consumer's ability sell the home or to refinance the loan to obtain a lower rate and payments. While the other risk factors are important, those factors are only required to be disclosed as applicable to avoid information overload.

Rate and payment increases. With respect to rate increases, proposed § 226.19(b)(2)(i)(A) would require the creditor to disclose a statement that the interest rate on the loan may increase, along with a statement indicating when the first rate increase may occur and the frequency with which the interest rate may increase. With respect to payment increases, proposed § 226.19(b)(2)(i)(B) would require the creditor to disclose a statement indicating whether or not the periodic payment on the loan may increase. If the periodic payment on the loan may increase, then the creditor would disclose a statement indicating when the first payment may increase. For payment option loans, if the periodic payment may increase, the creditor would disclose a statement indicating when the first *minimum* payment would increase. Proposed comment 19(b)(2)(i)–1 would clarify that the requirement to disclose when the first rate or payment increase may occur refers to the time period in which the increase may occur, not the exact calendar date. For example, the disclosure may state, ''Your interest rate may increase at the end of the 3-year introductory period.''

Prepayment penalties. If the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, proposed § 226.19(b)(2)(i)(C) would require the creditor to disclose a statement indicating whether or not a penalty could be imposed if the obligation is prepaid in full. If the creditor could impose a prepayment penalty, the creditor would disclose the circumstances under which and the period in which the creditor could impose the penalty. Because of the importance of prepayment penalties, the proposed rule would also require disclosure of this feature under proposed § 226.38(a)(5). To avoid duplication, proposed comments 19(b)(2)(i)(C)–1 to –3 cross-reference proposed comments 38(a)(5)–1 to –3 for information about whether there is a prepayment penalty and examples of charges that are or are not prepayment penalties.

Some consumers take out ARM loans planning to refinance or sell the home securing the loan before the rate or payment increases. Consumer testing showed that while most participants understood the general meaning of the phrase ''prepayment penalty,'' they did not realize that the penalty would apply if they refinanced their loan or sold their home. The Board believes it is important for consumers to understand that a prepayment penalty may be imposed in various circumstances, including paying off the loan, refinancing, or selling the home early.

Additional disclosures. As noted above, proposed § 226.19(b)(2)(ii) requires the creditor to disclose information about the following six terms, as applicable: (1) Interest-only payments, (2) negative amortization, (3) balloon payment, (4) demand feature, (5) no-documentation or low-documentation loans, and (6) shared-equity or shared-appreciation. The Board proposes to require these disclosures only when the feature is present, in contrast to the required disclosures of proposed § 226.19(b)(2)(i). Proposed comment 19(b)(2)(ii)–1 would clarify that ''as applicable'' means that any disclosure not relevant to a particular ARM loan program may be omitted. Although consumer testing showed that some participants felt reassured by seeing all of the risk factors whether they were a feature of the loan or not, the Board is concerned about the potential for information overload if the entire list is included on every ARM loan program disclosure.

Interest-only payments. Proposed § 226.19(b)(2)(ii)(A) requires the creditor to disclose a statement that periodic payments will be applied only toward interest on the loan. The creditor would also disclose a statement of any limitation on the number of periodic payments that will be applied only toward interest on the loan and not towards the principal, that such payments will cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount. For payment option loans, the creditor would disclose a statement that the loan gives the consumer the choice to make periodic payments that cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount. Consumer testing showed that many participants did not understand that there are loans where the periodic payments do not pay down the mortgage principal. The Board believes it is important to alert

consumers to this feature in order to avoid payment shock when the principal becomes due or the periodic payment increases.

Negative amortization. Proposed § 226.19(b)(2)(ii)(B) would require the creditor to disclose a statement that the loan balance may increase even if the consumer makes the required periodic payments. In addition, the creditor would disclose a statement that the minimum payment covers only a part of the interest the consumer owes each period and none of the principal, that the unpaid interest will be added to the consumer's loan amount, and that over time this will increase the total amount the consumer is borrowing and cause the consumer to lose equity in the home. The proposed requirement would replace existing § 226.19(b)(2)(vii), which requires the creditor to disclose any rules relating to changes in the outstanding loan balance, including an explanation of negative amortization. The Board believes that information regarding negative amortization should be disclosed because it is a complicated feature that significantly impacts a consumer's ability to repay the loan. Consumer testing showed that participants were generally unfamiliar with the term or concept. However, participants generally understood the revised transaction-specific plain-language explanation of negative amortization's causes and effects when disclosed in the ''Key Questions'' format.

Balloon payment. Proposed § 226.19(b)(2)(ii)(C) requires the creditor to disclose a statement that the consumer will owe a balloon payment, along with a statement of when it will be due. Proposed comment 19(b)(2)(ii)(C)–1 would clarify that the creditor must make this disclosure if the loan program includes a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance. Proposed comment 19(b)(2)(ii)(C)–2 would clarify that the requirement to disclose when the balloon payment is due refers to the time period when it is due, not the exact calendar date. For example, the disclosure may state, ''You would owe a balloon payment due in seven years.'' The Board believes it is important for the consumer to be aware early in the process of any potential payment shock.

Demand feature. Proposed § 226.19(b)(2)(ii)(D) would require the creditor to disclose a statement that the creditor may demand full repayment of the loan, along with a statement of the timing of any advance notice the creditor will give the consumer before the creditor exercises such right. Proposed comment § 226.19(b)(2)(ii)(D)–1 would clarify that this requirement would apply not only to transactions payable on demand from the outset, but also to transactions that convert to a demand status after a stated period. Proposed comments § 226.19(b)(2)(ii)(D)–2 and –3 cross-reference comment 18(i)–2 regarding covered demand features and comment 18(i)–3 regarding the relationship to the payment schedule disclosures. The proposed rule replaces existing § 226.19(b)(2)(x). The Board believes that demand features are rare in consumer mortgage transactions, but pose a considerable risk when present and, therefore, should be brought to the consumer's attention. Consumer testing showed that participants understood the revised language regarding a demand feature and thought it was important information.

No-documentation or low-documentation loans. Proposed § 226.19(b)(2)(ii)(E) would require the creditor to disclose a statement that the consumer's loan could have a higher rate or fees if the consumer does not document employment, income, or other assets. In addition, the creditor would disclose a statement that if the consumer provides more documentation, the consumer could decrease the interest rate or fees. The Board is concerned that consumers who obtain loans with such features may not understand that they may pay a higher price for this feature.

Shared-equity or shared-appreciation. Proposed § 226.19(b)(2)(ii)(F) requires the creditor to disclose a statement that any future equity or appreciation in the real property or dwelling that secures the loan must be shared, along with a statement of the percentage of future equity or appreciation to which the creditor is entitled, and the events that may trigger such an obligation. The Board is aware that a number of shared-equity and shared-appreciation programs are being offered to consumers, including low- and moderate-income borrowers, on various terms. Consumer testing showed that participants were generally unfamiliar with the concept of shared-equity or shared-appreciation. However, to the extent that a shared-equity or a shared-appreciation feature is being offered as one of the loan terms, participants stated that they would want it disclosed clearly and prominently.

19(b)(3) Additional Information and Web Site

Currently, § 226.19(b)(2)(iv) and (v) require the creditor to disclose a statement that consumers should ask the creditor about the current margin value and current interest rate or the amount of any interest rate discount. Existing § 226.19(b)(2)(xii) requires a notice that disclosure forms are available for the creditor's other variable-rate programs. Consumer testing indicated that many consumers skim disclosures quickly and become frustrated if they cannot quickly locate the key information they seek. Reducing the number of non-specific notices in the loan program disclosures would increase the likelihood that consumers will read and understand specific disclosures. Under proposed § 226.19(b)(3), the creditor would be required to disclose that the consumer may visit the Web site of the Federal Reserve Board for more information about adjustable-rate mortgages and for a list of licensed housing counselors in the consumer's area that can help the consumer understand the risks and benefits of the loan. The Board believes that streamlining the notice will reduce information overload.

19(b)(4) Format Requirements

Proposed § 226.19(b)(4) contains format requirements for ARM loan program disclosures. As discussed more fully in proposed § 226.37, consumer testing showed that the location and order in which information was presented affected consumers' ability to locate and comprehend the information disclosed. Based on these findings, the Board proposes, under § 226.19(b)(4)(i), to require that creditors disclose the ''Key Questions about Risk'' using the format requirements for similar disclosures required by § 226.38, except as otherwise provided in proposed § 226.19(b)(4). Proposed § 226.19(b)(4)(ii) would require that the disclosures required by paragraphs (b)(1) through (b)(3) be grouped together and placed in a prominent location. Proposed § 226.19(b)(4)(iii) would require that the heading ''Adjustable Rate Mortgage'' or ''ARM'' required under § 226.19(b) be more conspicuous than and precede the other disclosures. The heading would be required to be outside the tables required under this paragraph. The creditor would be permitted to use a heading with the name of the loan program and the name of the creditor, such as ''XXX Bank 3/1 ARM.'' Proposed § 226.19(b)(4)(viii) would require the disclosure of the Board's Web site and list of licensed housing counselors to be disclosed outside of the required tables described below.

Proposed § 226.19(b)(4)(iv) to (vii) would require the following special formats for the ARM loan program

disclosure: tabular format, question and answer format, highlighted answers, and special order of disclosures. Proposed § 226.19(b)(4)(iv) would require the creditor to provide the interest rate disclosure required under § 226.19(b)(1) and the ''Key Questions about Risk'' disclosure required under § 226.19(b)(2) in the form of two tables with headings, content and format substantially similar to Model Form H–4(B) in Appendix H. Consumer testing showed that using a tabular format improved participants' ability to readily identify and understand key information. Only the information required or permitted by paragraphs (b)(1) and (b)(2) would be in this table. In addition, under § 226.19(b)(4)(v), the ''Key Questions about Risk'' disclosures would be required to be grouped together and presented in the format of a question and answer in a manner substantially similar to Model Form H–4(B) in Appendix H. The table with interest rate information would precede the table with the ''Key Questions about Risk.'' Consumer testing showed that using a question and answer format improved participants' ability to recognize and understand potentially risky or costly features of a loan. Proposed § 226.19(b)(4)(vi) would require the creditor to disclose each affirmative answer in bold text and in all capitalized letters to highlight the fact that a risky feature is present in the loan. Negative answers (required under proposed § 226.19(b)(2)(i) but not under proposed § 226.(b)(2)(ii)) would be disclosed in non-bold text. Finally, proposed § 226.19(b)(4)(vii) would require the creditor to make the disclosures, as applicable, in the following order: Rate increases under § 226.19(b)(2)(i)(A), payment increases under § 226.19(b)(2)(i)(B), interest-only payments under § 226.19(b)(2)(ii)(A), negative amortization under § 226.19(b)(2)(ii)(B), balloon payments under § 226.19(b)(2)(ii)(C), prepayment penalties under § 226.19(b)(2)(i)(C), demand feature under § 226.19(b)(2)(ii)(D), no-documentation or low-documentation loans under § 226.19(b)(2)(ii)(E), and shared-equity or shared-appreciation under § 226.19(b)(2)(ii)(F). This order would ensure that consumers receive critical information about their payments first. Model Clauses and Samples are proposed at Appendix H–4(C) through H–4(F).

19(c) Publications for Transactions Secured by Real Property or a Dwelling

Based on the results of consumer testing, under the proposal creditors would be required to provide to consumers two Board publications for closed-end transactions secured by real property or a dwelling. The first publication, entitled ''*Key Questions to Ask about Your Mortgage,*'' discusses loan terms and conditions that are important for consumers to consider when selecting a closed-end mortgage loan. The second publication, entitled ''*Fixed* vs. *Adjustable Rate Mortgages,*'' discusses the respective costs and benefits of fixed-rate mortgages and ARMs.

Under existing § 226.19(b)(1), the creditor must provide to the consumer a copy of the CHARM booklet published by the Board, or a suitable substitute. The Board consumer tested the CHARM booklet and a sample current loan program disclosure. Few of the consumer testing participants who had obtained an ARM recalled having seen the CHARM booklet. Although many participants thought that the information in the CHARM booklet is useful, particularly the descriptions of ''payment shock,'' prepayment penalties, and negative amortization, most participants thought that the CHARM booklet is too long and that they likely would not read it.

The proposed rule would eliminate the requirement under § 226.19(b)(1) for creditors to provide the CHARM booklet to consumers who express interest in an ARM transaction, and instead, under proposed § 226.38(c)(2) require a brief Board publication showing the principal differences between a fixed-rate loan and an ARM. Comment 19(b)(1)– and –2 on the CHARM booklet would be removed accordingly. Also, proposed § 226.38(c)(1) would require creditors to provide to all consumers—regardless of whether they express interest in an ARM—two new single-page Board publications. These new disclosure forms would contain a notice stating where consumers may obtain additional information about ARMs. The Board believes that requiring that creditors provide the ''*Key Questions to Ask about Your Mortgage*'' publication and the ''*Fixed versus Adjustable Rate Mortgages*'' publication without modifications would promote consistency in the information consumers receive about ARMs. Accordingly, proposed § 226.19(c) would require creditors to provide this information ''as published.''

The Board proposes to require creditors to provide these publications at the time a consumer is given an application form or pays a non-refundable fee, whichever is earlier, for fixed-rate mortgage loans as well as variable-rate mortgage loans. Special rules for when a consumer accesses an application form electronically and when the creditor receives a consumer's application from an intermediary agent or broker are discussed below. The Board solicits comment on whether there are other loan types for which loan program publications should be given at the time an application form is provided to a consumer or before the consumer pays a non-refundable fee, whichever is earlier.

19(d) Timing of Disclosures

Proposed comment 19(c)–1 states that creditors are not required to provide disclosures under proposed § 226.19(c) in cases where an open-end credit account will convert to a closed-end transaction. The ''*Key Questions to Ask About Your Mortgage*'' disclosure and the ''*Fixed vs. Adjustable Rate Mortgages*'' disclosure would not be helpful at that time, because the creditor and consumer already will have entered into a written agreement. By contrast, transaction-specific disclosures are required in such cases under § 226.19(b), both as in effect (*see* comment 19(b)–2(iv)) and as proposed (*see* proposed § 226.19(b) and comment 19(b)–2).

Existing § 226.19(b) requires that creditors provide variable-rate loan program disclosures at the time an application form is provided to a consumer or before the consumer pays a non-refundable fee, whichever is earlier. Comment 19(b)–2 currently discusses when a creditor should provide such disclosures in cases where the creditor receives a consumer's application through an intermediary agent or broker or a consumer requests an application by telephone. The comment also clarifies that if the creditor solicits applications by mailing application forms, the creditor must send the ARM loan program disclosures with the application form. Existing § 226.19(c) contains requirements for providing variable-rate loan program disclosures when a consumer accesses an application form electronically. (Section 226.17(a)(1) currently permits creditors to provide the ARM loan program disclosures electronically, without regard to the consumer-consent or other provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.* (E-Sign Act)).

Under the Board's proposal, timing requirements for ARM loan program disclosures would be consolidated in proposed § 226.19(d). These timing requirements also would apply to the provision of the proposed new ''*Key Questions to Ask About Your Mortgage*'' and ''*Fixed* vs. *Adjustable Rate*

Mortgages'' disclosures. Proposed § 226.19(d)(1) contains the general requirement to provide ARM loan program disclosures (if a consumer expresses interest in ARMs) at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. Proposed § 226.19(d)(1) also specifies that creditors must provide ARM loan program disclosures before charging a fee for obtaining a consumer's credit report.

Proposed § 226.19(d)(2) states that if a consumer accesses an ARM loan application electronically, a creditor must provide the disclosures in electronic form, except as provided in § 226.19(d)(2). Proposed § 226.19(d)(2), in turn, states that if a consumer who is physically present in a creditor's office accesses an ARM loan application electronically, the creditor may provide disclosures in either electronic or paper form. These provisions are consistent with existing comment 19(c)–1(i) and (ii). Comment 19(c)–1 on the form of electronic disclosures would be redesignated as comment 19(d)(2)(i)–1. Commentary on the timing of electronic disclosures, currently contained in comment 19(b)–2(v), would be redesignated as comments 19(d)(2)(i)–2 and 19(d)(2)(ii)–1. Further, under the proposed rule existing § 226.17(a) would be revised to include the proposed new *Key Questions to Ask About Your Mortgage''* and ''*Fixed* vs. *Adjustable Rate Mortgages''* disclosures among the disclosures creditors may provide without regard to the consumer-consent or other provisions of the E-Sign Act.

Proposed § 226.19(d)(3) contains rules for applications made by telephone or through an intermediary. These rules are consistent with existing comment 19(b)–2. Existing comments 19(b)–2(i) through –2(iii) are redesignated as comments 19(d)(3)–1 through 19(d)(3)–3. Existing comment 19(b)–2(iii) states that the creditor must include the disclosures required by § 226.19(b) with any application form the creditor sends by mail to solicit consumers. This comment is redesignated as proposed comment 19(d)(3)–3 and revised to cover the *Key Questions* and *Fixed versus Adjustable Rate Mortgages* disclosures required by proposed § 226.19(c).

Proposed § 226.19(d)(4) provides that, where a consumer does not express interest in an ARM until after receiving or accessing an application form or paying a non-refundable fee, the creditor must provide an ARM loan program disclosure(s) within three business days after the consumer expresses such interest to the creditor or the creditor receives notice from an intermediary broker or agent that the consumer has expressed interest in an ARM. This is consistent with existing footnote 45b. Existing comment 19(b)–3 is redesignated as comments 19(d)(3)–1 through 19(d)(3)–3 under the proposed rule.

Proposed § 226.19(d)(5) provides that if the consumer expresses an interest in negotiating loan terms that are not generally offered, the creditor need not provide the disclosures required by § 226.19(b) before an application form is provided. Proposed § 226.19(d)(5) requires that the creditor provide such disclosures as soon as reasonably possible after the terms to be disclosed have been determined and not later than the time the consumer pays a non-refundable fee. Further, proposed § 226.19(d)(5) provides that in all cases the creditor must provide the disclosures required by § 226.19(c) of this section at the time an application form is provided or before the consumer pays a non-refundable fee, including a fee for obtaining a consumer's credit history, whichever is earlier.

Comment 19(b)(2)–1 currently provides that, if ARM loan program disclosures cannot be provided because a consumer expresses an interest in individually negotiating loan terms that the creditor generally does not offer, the creditor may provide disclosures reflecting those terms as soon as reasonably possible after the terms have been decided upon, but not later than the time the consumer pays a non-refundable fee. Proposed § 226.19(d)(5) incorporates that guidance into the regulation. Further, comment 19(b)(2)–1 provides that if, after an application form is provided or the consumer pays a non-refundable fee, a consumer expresses an interest in an adjustable-mortgage loan program for which the creditor has not provided the ARM loan program disclosures, the creditor must provide such disclosures as soon as reasonably possible. Proposed § 226.19(d)(6) incorporates that guidance into the regulation. The foregoing guidance is removed from comment 19(b)(2)–1 (which the proposed rule would redesignate as comment 19(b)–4) because under the proposed rule timing rules for ARM loan program disclosures are contained in § 226.19(d) rather than § 226.19(b).

Section 226.20 Subsequent Disclosure Requirements

20(b) Assumptions

Section 226.20(b) currently requires post-consummation disclosures if the creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligator on an existing residential mortgage transaction. The Board proposes technical changes to § 226.20(b) and associated commentary to reflect the new format and content disclosure requirements for transactions secured by real property or a dwelling under §§ 226.37 and 226.38.

20(c) Rate Adjustments

For ARM transactions subject to § 226.19(b), § 226.20(c) currently requires creditors to mail or deliver to consumers a notice of interest rate adjustment at least 25, but no more than 120, calendar days before a payment at a new level is due. Section 226.20(c) also requires creditors to mail or deliver to consumers an adjustment notice at least once each year during which an interest rate adjustment is implemented without an accompanying payment change.

Those adjustment notices must state: (1) The current and prior interest rates for the loan; (2) the index values upon which the current and prior interest rates are based; (3) the extent to which the creditor has foregone any increase in the interest rate; (4) the contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance; and (5) the payment, if different from the payment due after adjustment, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term. Model clauses in Appendix H–4(H) illustrate how creditors may comply with the requirements of § 226.20(c).

Discussion

The Board adopted the requirements for post-consummation disclosures (subsequent disclosures) in 1987. The minimum advance notice of a rate adjustment was set at 25 days to track the rules of the Office of the Comptroller of the Currency (OCC) and to provide creditors with flexibility in giving adjustment notices for a variety of ARMs. *See* 52 FR 48665, 48668; Dec. 24, 1987. Since 1987, ARMs have grown in popularity, especially from 2003 to 2007. Beginning in 2007, ARM growth began to slow as consumers experienced difficulty repaying such loans and concerns grew about the risk of payment shock ARMs pose.

Because ARMs pose the risk of payment shock, it is critical that consumers receive notice of ARM payment changes so they can prepare to make higher payments if necessary. If

the new payments are unaffordable, borrowers need time to seek a refinance loan with lower payments or make other arrangements. Even if a consumer can afford a higher payment, the consumer may want to refinance into a fixed-rate loan for payment certainty or into another ARM loan with lower payments. It is particularly important that consumers with subprime loans receive adequate notice before a payment increase, as these borrowers tend to be more vulnerable to payment shock.

The Board believes the current 25-day notice is insufficient to allow many consumers to refinance into a loan with affordable payments or to make other arrangements. In the ''Subprime Mortgage Guidance'' issued in 2007, the Board, the OCC, FDIC, OTS, and NCUA stated that consumers should be given at least 60 days before an ARM adjustment in which to refinance without paying a prepayment penalty. Several consumer advocates who commented on the Board's 2008 HOEPA Final Rule stated that consumers with subprime ARMs may need significant time in which to seek out a refinancing, in some cases as much as 6 months.

The Board's Proposal

The Board proposes to require creditors to mail or deliver a notice of an interest rate adjustment at least 60 days before payment at a new level is due, instead of the current 25-day provision. Creditors would provide notice annually where interest rate changes are made without accompanying payment changes under the proposed. Proposed § 226.20(c)(1)(i) contains timing requirements for circumstances where a payment change accompanies an interest rate adjustment, and proposed § 226.20(c)(ii) contains timing requirements for circumstances where no payment change accompanies interest rate changes made during a year.

Proposed § 226.20(c)(2) contains content requirements for disclosures required where a payment change accompanies an interest rate adjustment. Proposed § 226.20(c)(3) contains content requirements for disclosures required once each year where no payment change accompanies an interest rate change. Whether or not a payment change is made, under proposed § 226.20(c)(4) creditors would disclose the following information: (1) The date until which the creditor may impose a prepayment penalty if the consumer prepays the obligation in full, if applicable; (2) a phone number the consumer may call to obtain additional information about the loan; and (3) a telephone number and Internet Web site for HUD-licensed housing counselors. Proposed § 226.20(c)(5) contains formatting requirements for discloses required by proposed § 226.20(c).

Section 226.20(c) currently provides that an adjustment to the interest rate with or without a corresponding adjustment to the payment in an adjustable-rate mortgage subject to § 226.19(b) is an event requiring new disclosures to the consumer. The proposed rule would retain this provision. Comment 20(c)–1 provides that the requirements of § 226.20(c) apply where the interest rate and payment change due to the conversion of an adjustable-rate mortgage subject to § 226.19(b) to a fixed-rate mortgage. The proposed rule would incorporate this guidance into proposed § 226.20(c). Further, the proposed rule would revise comment 20(c)–1 for clarity and to remove commentary on timing requirements, because timing requirements are contained in proposed § 226.20(c)(1).

The proposed rule would revise comment 20(c)–2 to clarify that price-level adjusted mortgages and similar mortgages are not subject to the disclosure requirements of § 226.20(c) because they are not subject to the disclosure timing requirements of § 226.19(b), as discussed above. The proposed rule would remove the commentary stating that ''shared-equity'' and ''shared-appreciation'' mortgages are not subject to the disclosure requirements of § 226.20(c) to conform with the removal of reference to such mortgages as examples of variable-rate transactions from comment 17(c)(1)–11 (redesignated as proposed comment 17(c)(1)(iii)–4), as discussed above. Under the proposed rule, whether or not creditors must provide ARM adjustment notices for a shared-equity or shared-appreciation mortgage depends on whether such mortgage has an adjustable rate or a fixed rate. Shared-equity and shared-appreciation mortgages with a fixed rate would not be considered adjustable-rate mortgages under the proposed rule.

20(c)(1) Timing of Disclosures

The Board proposes to require creditors to mail or deliver a notice of an interest rate adjustment for a closed-end ARM at least 60, but no more than 120, days before payment at a new level is due. This proposal is designed to provide borrowers with enough advance notice about an impending rate and payment change to enable them to refinance the loan if they cannot afford the adjusted payment. Even if consumers do not need or want to refinance a loan, they may need time to adjust other spending in order to afford higher mortgage loan payments.

The Board issued the current rule requiring 25 days' notice before a payment at a new level is due in 1987. Home Mortgage Disclosure Act (HMDA) data for the years 2004 through 2007 suggest that a requirement to provide ARM adjustment 60, rather than 25, days before payment at a new level is due more closely reflects the time needed for consumers to refinance a loan.[44] In each of those years, for first-lien refinance loans, the period between loan application and origination was 25 days or less for 50 percent of the loans originated, 45 days or less for 75 percent of the loans originated, and 65 days or less for 90 percent of the loans originated. (These data do not include time needed to compare available refinance loans.) Requiring creditors to provide an ARM adjustment notice at least 60 days before payment at a new level is due would better enable consumers to arrange to make a higher payment (if applicable) without missing a payment or paying less than the amount due.

The Board believes that a 60-day minimum notice requirement is consistent with many existing ARM agreements. For most ARMs, creditors base the calculation of interest rate changes on the value of an index 30 or 45 days prior to the effective date of a rate change (calculation date). Creditors generally refer to the period from the calculation date to the effective date of the interest rate change as the ''look-back period.'' (Interest rate change dates tend to be the first of a month to correspond with payment due dates.) In turn, payment in the new amount is due on the first day of the month following the month in which interest accrued at the new rate.

Thus, for most ARM loans creditors know what the new interest rate and payment will be well before payment at a new level is due, even assuming a week-long lag between publication of an index's level and the creditor's verification of that level. In fact, many creditors mail or deliver notice of an interest rate and payment change 60 or more days before payment at a new level is due.

[44] HMDA data consist of information reported by about 8,600 home lenders, including all of the nation's largest mortgage originators. Reported loans are estimated to represent about 80 percent of all home lending nationwide. Accordingly, HMDA data likely provide a broadly representative view of U.S. home lending. Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, *The 2007 HMDA Data*, 94 Fed. Reserve Bulletin A107 (Dec. 23, 2008).

However, some ARM agreements may provide for shorter look-back periods. For example, the calculation date for some ARM products is the first business day of the month that precedes the effective date of the interest rate change. The first day of that month may not be a business day, in which case the look-back period would be fewer than 30 days. In addition, it takes time for index levels to be reported and for creditors to confirm the index level and prepare disclosures for delivery or mailing.

Proposed § 226.20(c)(1) requires creditors to provide advance notice of an adjustment at least 60, but no more than 120, days before *payment* at a new level is due, not before the interest rate changes. Comment 20(c)–1 would be revised to reflect the increase in the required advance notice of a payment adjustment. Proposed comment 20(c)(1)–1 provides that if an adjustable-rate feature is added when an open-end credit account is converted to an adjustable-rate transaction, creditors must provide disclosures under § 226.20(c)(1) where payments change due to conversion of a transaction subject to § 226.19(b) to a fixed-rate transaction. Because relevant payment changes under existing and proposed § 226.20(c) are those due to interest changes, proposed comment 20(c)(1)–2 clarifies that payment changes due to adjustments in property tax obligations or premiums for mortgage-related insurance do not trigger requirements to disclose interest rate and payment adjustments.

The Board solicits comment on the operational changes creditors and servicers would need to make to provide disclosures at least 60 days before payment at a new level is due. Are there indices that are published at times that would make compliance with such a rule difficult? Are reported levels for particular indices difficult to confirm within a few days? The Board requests comment on whether requiring creditors to provide 45, rather than 60, days' advance notice of a payment change better balance concerns about providing sufficient notice to consumers and sufficient time for creditors to verify reported indices and prepare disclosures.

A look-back period of 45 days likely provides ample time for a creditor to determine a loan's new interest rate and provide disclosures at least 60 days before payment at a new level is due, as discussed above. Are there reasons why a look-back period of forty-five days is not feasible for certain loan types for which a shorter look-back period is common, for example, subordinate-lien loans? Also, where an interest rate and payment adjustment is due to the conversion of an adjustable-rate mortgage to a fixed-rate mortgage under a written agreement, should creditors continue to be required to provide an adjustment notice at least 25, rather than at least 60, days before payment at a new level is due?

Coverage. Section 226.20(c) currently applies to transactions subject to § 226.19(b), which applies to closed-end ARMs secured by a consumer's principal dwelling with a term greater than one year. The Board is proposing to apply § 226.19(b) to all closed-end ARMs secured by real property or a dwelling, as discussed above. Proposed § 226.20(c) would apply to the same category of transactions.

The Board recognizes that currently creditors need not provide ARM adjustment notices under existing § 226.20(c) for a short-term transaction, such as a construction loan, with an adjustable rate. The Board solicits comment on whether a 60-day notice period is appropriate for such loans and if not, what period would be appropriate and still provide consumers sufficient notice of a payment change.

Existing ARM loan agreements. The Board is aware that some ARM loan agreements may provide for a look-back period that is too short for the creditor to be able to provide an adjustment notice at least 60 days before payment at a new level is due. The Board seeks comment on the number or proportion of existing ARM loan agreements under which creditors or servicers could not comply with a minimum 60-day advance notice requirement.

20(c)(2)(i)

Where a payment change accompanies an interest rate change, proposed § 226.20(c)(2)(i) requires creditors to disclose a statement that changes are being made to the interest rate and the date such change is effective. Proposed § 226.20(c)(2)(i) also requires creditors to state that more detailed information is available in the loan agreements. Proposed § 226.20(c)(5)(ii) requires that these disclosures appear before the other required disclosures, as discussed below.

20(c)(2)(ii)

Proposed § 226.20(c)(2)(ii) requires creditors to provide the following disclosures for covered loans in the form of a table: (1) The current and new interest rates; (2) if payments are interest-only or negatively amortizing, the amount of the current and new payment allocated to pay interest, principal, and property taxes and mortgage-related insurance, as applicable; and (3) the current and new periodic payment amounts and the due date for the first new payment. This content is substantially similar to the content of the ''Payment Summary'' table in the TILA disclosures provided before consummation for most types of ARMs. (Under proposed § 226.38, the ''Payment Summary'' table for negatively amortizing ARMs differs from the ''Payment Summary'' table for other ARMs, as discussed below.) Under proposed § 226.20(c)(5)(iii), this table would have to contain headings, content, and format substantially similar to those in Appendix H–4(G), as discussed below.

Currently, ARM adjustment notices need not state how payments are allocated among principal, interest, and escrow accounts. The Board believes that a table showing payment allocations would benefit consumers with interest-only or negatively amortizing loans. Participants in the Board's consumer testing generally understood a sample form with a table showing the transition from interest-only payments to payments of both principal and interest. Further, all participants correctly identified the new payment and the due date of the first payment at the new level shown in the table. Almost all participants recognized the increase in the interest rate and amounts escrowed for taxes and property-related insurance and that part of the new payment would be allocated to pay principal.

Comment 20(c)(1)–1 on disclosing ''current'' and ''prior'' interest rates would be revised for clarity to refer instead to ''current'' and ''new'' interest rates. Under the proposed rule, § 226.20(c)(3) contains content requirements for annual notice disclosures and § 226.20(c)(2) contains content requirements for payment change notices. Accordingly, commentary on disclosure where no payment change has occurred during a year would be removed from comment 20(c)(1)–1.

20(c)(2)(iii)

Creditors currently must disclose the index values upon which the prior and new interest rates are based, under existing § 226.19(c)(2). Some consumer testing participants had difficulty understanding the relationship among an index, a margin, and an interest rate. Accordingly, proposed § 226.20(c)(2)(iii) substitutes a requirement that disclosures contain a description of the change in the index or formula for the disclosure required under existing § 226.20(c)(2). For example, rather than

disclose that payments previously were based on a 1-year LIBOR rate of 3.75 and now would be based on a new rate of 5.75, a creditor might disclose the following: ''Your interest rate will change due to an increase in the 1-year LIBOR index.'' Further, proposed § 226.20(c)(2)(iii) requires creditors to disclose any application of previously foregone increases together with the description of the change in the index or formula.

A simple statement of the occurrence that caused the interest rate and payment to change likely conveys a level of information suitable for most consumers' needs. In consumer testing conducted for the Board, participants indicated that they found explanations of interest rates difficult to follow. Thus, providing more information would likely result in information overload. Consumers who prefer more information can review the loan agreement to determine the interaction between the interest rate and the index and margin or to learn more about the formula used to determine the interest rate. The loan agreement also will contain information about how the creditor may apply previously foregone interest. For these reasons, proposed § 226.20(c)(2)(ii) does not require creditors to disclose the current and prior index values. Comment 20(c)(2)–1 would be removed accordingly.

Comment 20(c)(4)–1, which discusses the types of contractual effects § 226.20(c) requires creditors to disclose—for example, effects on the loan term and balance—also would be removed under the proposed rule. Proposed comments 20(c)(2)(vi)–2, 20(c)(2)(vii)–1, and 20(c)(3)(v)–1 reflect the removed commentary, however.

20(c)(2)(iv)

Existing § 226.20(c)(3) requires that a creditor disclose the extent to which the creditor has foregone any increase in the interest rate. This requirement would be redesignated as proposed § 226.20(c)(2)(iv). Further, proposed § 226.20(c)(iv) would require creditors to disclose the earliest date a creditor may apply foregone interest to future adjustments, subject to any rate caps. Proposed comment 20(c)(3)(iv)–1 states that creditors may rely on proposed comment 20(c)(2)(iv)–1 in determining to which transactions the requirement to disclose foregone interest applies and how to disclose such increases. Proposed comment 20(c)(3)(iv)–1 clarifies that creditors need not disclose the earliest date the creditor may apply foregone interest in notices provided annually when no payment change occurs during a year.

20(c)(2)(v)

Proposed § 226.20(c)(2)(v) would require creditors to disclose limits on interest rate or payment increases at each adjustment, if any, and the maximum interest rate or payment over the life of the loan. This is consistent with the disclosure of rate change limits in the ''More Information about Your Payments'' section of the disclosures provided within three business days of application. *See* proposed § 226.38(e).

20(c)(2)(vi)

Currently, where the required loan payment is different from the payment disclosed under § 226.20(c)(4), § 226.20(c)(5) requires a creditor to disclose the payment required to fully amortize the loan over the remainder of the loan term. This requirement would be redesignated as proposed § 226.20(c)(2)(vi). Further, in all cases creditors would disclose a statement regarding whether or not part of the new payment will be allocated to pay the loan principal. This is consistent with the focus on the impact of loan payments on loan principal in the proposed new ''Key Questions'' disclosure in § 226.19(c) and the ''Key Questions about Risk'' section of the disclosure creditors provide within three business days of application in proposed § 226.38(d).

Existing comment 20(c)(5)–1, on fully amortizing payments, would be redesignated as comment 20(c)(2)(vi)–1. The comment also would be revised for clarity and to update cross-references. Consistent with existing comment 20(c)(4)–1, proposed comment 20(c)(2)(vi)–2 clarifies that the creditor must disclose any change in the term or maturity of the loan if the change resulted from the rate adjustment.

20(c)(2)(vii)

Existing § 226.20(c)(4) requires creditors to disclose the loan balance. This requirement would be redesignated as proposed § 226.20(c)(2)(vii) and would require creditors to disclose the loan balance as of the effective date of the interest rate adjustment. Proposed comment 20(c)(2)(vii)–1 clarifies that the balance required to be disclosed is the balance on which the new adjusted payment is based. This is consistent with existing comment 20(c)(4)–1.

20(c)(3) Content of Annual Interest Rate Notice

Existing § 226.20(c) requires creditors to provide ARM adjustment notices at least once each year during which an interest rate adjustment is implemented without an accompanying payment change. This requirement would be redesignated as proposed § 226.20(c)(3). Currently, § 226.20(c) contains a single list of required disclosures creditors must provide as applicable, in a payment change notice and an annual notice of interest rate changes without payment changes. Proposed § 226.20(c)(3) specifies the disclosures that are applicable for purposes of annual notices.

20(c)(3)(i)

Under proposed § 226.20(c)(3)(i), where no payment adjustment has been made during a year, the creditor must disclose that the interest rate on the loan has changed without changing the payments the consumer must make. Further, proposed § 226.20(c)(3)(i) requires creditors to disclose the specific time period for which the annual notice discloses interest rates that were not accompanied by payment changes. Proposed § 226.20(c)(5)(ii) requires that this disclosure appear before the other required disclosures, as discussed below.

20(c)(3)(ii)

Under proposed § 226.20(c)(3)(ii), a creditor must disclose the highest and lowest interest rates applied during the year in which no payment change has accompanied interest rate changes. Creditors would not disclose all interest rates applied to a transaction if the payment has not changed. By contrast, existing comment 20(c)–1 provides that creditors either may disclose all interest rates that applied or the highest and lowest rates. The Board believes that a simple and clear disclosure of the highest and lowest interest rates applied better conveys to consumers the impact of interest rate changes than does a list of all of the interest rates applied. This is especially true where interest rates change more frequently than monthly.

20(c)(3)(iii)

Creditors disclose the extent to which the creditor has foregone any increase in the interest rate under existing § 226.20(c)(3). This requirement would be contained in proposed § 226.20(c)(3)(iii) for notices where payment changes do not accompany interest rate changes made during a year.

20(c)(3)(iv)

Proposed § 226.20(c)(3)(iv) requires creditors to disclose the maximum interest rate that may apply over the life of the loan. This is consistent with the disclosure of rate change limits in the ''More Information about Your Payments'' section of the disclosures

provided within three business days of application in proposed § 226.38(e).

20(c)(3)(v)

Existing § 226.20(c)(4) requires creditors to disclose the loan balance. Under the proposal, this requirement would be contained in proposed § 226.20(c)(3)(v) for purposes of annual notices where payment changes do not accompany interest rate changes. Creditors would disclose the loan balance as of the last date of the year covered by the disclosure. Proposed comment 20(c)(3)(v)–1 clarifies that the balance required to be disclosed is the balance on which the new adjusted payment is based. This is consistent with existing comment 20(c)(4)–1.

20(c)(4) Additional Information

Proposed § 226.20(c)(4) requires that ARM adjustment notices creditors provide information about prepayment penalties, contacting the creditor, and locating housing counseling resources. Proposed § 226.20(c)(5)(ii) requires that these additional disclosures be located directly below the required interest rate disclosures, as discussed below.

20(c)(4)(i)

Proposed § 226.20(c)(4)(i) requires creditors to disclose the last date the creditor may impose a penalty if the consumer prepays the obligation in full and the amount of the maximum penalty possible before that date, if applicable. Under proposed § 226.20(c)(4)(i), if an ARM has a prepayment penalty, the creditor must disclose the required information whether or not a payment change accompanies the interest rate change. The Board believes that disclosures regarding a prepayment penalty would assist consumers in determining when to seek a refinance loan. When presented with a sample ARM adjustment notice for a loan with a prepayment penalty, almost all consumer testing participants recognized that a prepayment penalty would apply if they obtained a refinance loan before a specified date.

Proposed § 226.20(c)(4)(i) provides that the creditor shall disclose the maximum prepayment penalty possible if the consumer prepays in full between the date the creditor delivers or mails the ARM adjustment notice and the last day the creditor may impose the penalty. The Board requests comment on whether creditors should determine the maximum prepayment penalty during some other period, for example between the date the creditor prepares the ARM adjustment notice and the last day the creditor may impose the penalty.

20(c)(4)(ii)

Proposed § 226.20(c)(4)(ii) requires creditors to disclose a phone number to call for additional information about the consumer's loan. Creditors must provide this information whether or not a payment change accompanies an interest rate change, under the proposed rule. Most consumer testing participants responded positively to tested disclosures stating how to contact their lender with questions and stated that they would call their lender if they realized they were unable to afford higher payments on an ARM.

20(c)(4)(iii)

Proposed § 226.20(c)(4)(iii) requires creditors to disclose a phone number and an Internet Web site consumers may use to obtain a list of HUD-licensed housing counselors. The proposed rule requires creditors to provide this disclosure whether or not a payment change accompanies an interest rate change. Most consumer testing participants thought that information about how to locate a HUD-licensed housing counselor would be useful to consumers. Some said that they would use the information themselves if they had difficulty affording payments.

20(c)(5) Format of Disclosures

20(c)(5)(i)

Proposed § 226.20(c)(5)(i) requires that the heading, content, and format of the disclosures required by § 226.20(c) be substantially similar to the heading, content, and format of the model form in Appendix H–4(G), where an interest rate adjustment is accompanied by a payment change, or the model form in Appendix H–4(K), where a creditor provides an annual notice of interest rate adjustments without an accompanying payment change. Proposed § 226.20(c)(5)(i) also requires that the disclosures required by § 226.20(c) be placed in a prominent location. (Comment 37(d)–1 states that disclosures meet the prominent location standard if they are located on the first page and on the front side of the disclosure statement.)

Further, under proposed § 226.20(c)(5)(i) the interest rate disclosures required by § 226.20(c)(2) (where a payment change accompanies an interest rate change) or § 226.20(c)(3) (where no payment change occurs during a year) must be grouped together with the additional disclosures on prepayment penalties, contacting the creditor or servicer for loan information, and locating housing counseling resources required by proposed § 226.20(c)(4). These grouped disclosures must be segregated from everything else.

20(c)(5)(ii)

Under proposed § 226.20(c)(5)(ii), the statement that changes are being made to the interest rate and payments (under proposed § 226.20(c)(2)(i)) or that the interest rate has changed without accompanying payments changes (under proposed § 226.20(c)(3)(i)) must precede the other required disclosures. The additional disclosures on information on prepayment penalties, contacting the creditor, and housing counseling resources required by proposed § 226.20(c)(4) must follow the interest rate disclosures, under proposed § 226.20(c)(5)(ii).

20(c)(5)(iii)

Under proposed § 226.20(c)(5)(iii), where a payment change accompanies an interest rate adjustment, the interest rate and payment change disclosures required by proposed § 226.20(c)(2)(ii) must contain headings, content, and format substantially similar to those in the table contained in Appendix H–4(G). The textual disclosures required by proposed § 226.20(c)(2)(iii) through (vii) must be located directly below the table. Further, the format requirements in § 226.37 apply to ARM adjustment notices, as discussed below.

Regulations of other agencies. Footnote 45c to § 226.20(c) currently states that creditors may substitute information provided in accordance with variable-rate subsequent disclosure regulations of other federal agencies for the disclosure required by § 226.20(c). The Board adopted footnote 45c in 1987, a time when OCC, FHLBB, and HUD regulations contained subsequent disclosure requirements for ARMs. *See* 52 FR 48665, 48671; Dec. 24, 1987. The proposed rule would remove footnote 45c. No comprehensive disclosure requirements for variable-rate mortgage transactions presently are in effect under the regulations of the other Federal financial institution supervisory agencies, as discussed above.

20(d) Periodic Statement for Negative Amortization Loans

The Board proposes to require creditors to provide periodic statements for payment option ARMs with a negative amortization feature that are secured by real property or a dwelling. Such ARMs permit consumers to choose the amount paid (above a specified minimum) each period. In 2006, the Board, the OCC, the OTS, the FDIC, and the NCUA expressed concerns about

consumer understanding of how such loans function and of the effect of negative amortization on a loan's balance in the Interagency Guidance on Nontraditional Mortgage Product Risks issued in 2006. 71 FR 58609; October 4, 2006. The agencies issued related sample illustrations that include a payment summary table showing the impact of various payment options on the loan balance that creditors may include with periodic statements for payment option ARMs. 72 FR 31825, 31831; Jun. 8, 2007. The illustrations were not consumer-tested. The Board's proposed model table showing payment options is similar to the summary table the agencies issued but has been revised based on consumer testing.

Payment option ARMs are complex products. Most participants in the Board's consumer testing were unfamiliar with such loans and with negative amortization generally. These loans present consumers with choices each month, and how the consumer exercises his or her choice may result in negative amortization and much higher payments when the consumer must begin to make fully amortizing payments or a balloon payment. The Board believes that consumers should be informed of the consequences of making minimum payments on such a loan. Thus, the Board proposes to require creditors to provide a periodic statement that describes a consumer's payment options and the effects of making payments in those amounts.[45]

20(d)(1) Timing and Content of Disclosures

For closed-end transactions secured by real property or a dwelling that permit the consumer to select among multiple payment options that include an option that results in negative amortization, proposed § 226.20(d) requires creditors to provide a periodic statement that discloses payment options not later than fifteen business days before a payment is due. Where payment at a new level is due, however, proposed § 226.20(c) requires creditors to provide an ARM adjustment notice no later than 60 days beforehand, as discussed above.

20(d)(1)(i) Payment

Proposed § 226.20(d)(1)(i) would require creditors to disclose, based on the interest rate in effect at the time the disclosure is made, the payment amount required to: (1) Pay off the loan balance in full by the end of the term through regular periodic payments, without a balloon payment; (2) prevent negative amortization, if the legal obligation explicitly permits the consumer to elect to pay interest only without paying principal; and (3) pay the minimum payment required under the legal obligation. Under the proposed rule, creditors would provide each disclosure as applicable. For example, if the terms of the loan obligation did not provide the option for consumers to make interest-only payments, creditors would disclose only the required minimum payment and the fully amortizing payment.

In consumer testing conducted for the Board, participants generally understood the options presented in the table. Most were able to understand that making the minimum required payment would cause their loan balance to grow. They also understood that making a fully amortizing payment would be a safe choice and would pay their loan balance off over time.

Proposed comment 20(d)(1)–1 clarifies that creditors must provide a summary table under § 226.20(d) for covered loans that allow a consumer to choose to make a payment that results in negative amortization even if the initial payments required do not negatively amortize the loan. Proposed comment 20(d)(1)–1 states that a payment summary table need only contain those disclosures that apply to payment options available to a consumer, however. For example, the proposed comment states that if a negatively amortizing loan recasts and a consumer must begin to make fully amortizing payments, the payment summary table need not disclose payments other than the fully amortizing payment.

Proposed comment 20(d)(1)–2 states that creditors may base all disclosures on the assumption that payments will be made on time and in the amounts required by the terms of the legal obligation, disregarding any possible inaccuracies resulting from consumers' payment patterns. This is consistent with existing comment 17(c)(2)(i)–3 and proposed revisions to comment 17(c)(1)–1, discussed above. Proposed comment 20(d)(1)–2 clarifies, however, that creditors may not base disclosures for loans with a negatively amortizing feature on the fully amortizing, interest-only, or other payment unless that payment is the amount the consumer is required to pay under the legal obligation. Finally, proposed comment 20(d)(1)(i)–1 states that creditors may rely on comment 38(c)(5)–1 to determine whether a payment is a regular periodic payment or a balloon payment.

20(d)(1)(ii) Effects

Proposed § 226.20(d)(1)(ii) requires creditors to disclose the effects of making payments in the amounts required to be disclosed under proposed § 226.20(d). Appendix H – 4(L) contains a proposed model form with accessible language on fully amortizing payments, interest-only payments, and negatively amortizing minimum payments. First, the model form states that a fully amortizing payment will cover all the interest owed in a particular payment plus some principal and decrease the loan balance and that if the consumer regularly makes the fully amortizing payment the consumer will pay off the loan on schedule. Second, the model form states that an interest-only payment will cover all the interest owed in a particular payment but none of the principal, that the consumer's balance will remain the same, and that if the consumer regularly makes interest-only payments the consumer will have to make larger payments as early as a specified date. Third, the model form states that a minimum payment will cover only part of the interest owed in a particular payment and result in a specified amount of unpaid interest being added to the loan balance and that if the consumer makes a minimum payment the consumer in effect will be borrowing more money and will lose home equity. Further, the model form states that if a consumer regularly makes minimum payments the consumer will have to make significantly larger payments as early as a specified date.

Proposed comment 20(d)(1)(ii)–1 states that the disclosures required by § 226.20(d) must be consistent with the terms of the legal obligation. For example, the proposed comment clarifies that disclosures may not state that making fully amortizing payments on an interest-only loan will reduce a consumer's loan balance if the creditor will not apply payments that exceed the interest-only payment to principal.

[45] The Federal financial institution supervisory agencies (the Board, the OCC, the OTS, the FDIC, and the NCUA (collectively, the agencies)) expressed concerns about consumer understanding of how such loans function and of the effect of negative amortization on a loan's balance in the Interagency Guidance on Nontraditional Mortgage Product Risks issued in 2006. 71 FR 58609; October 4, 2006. The agencies issued related sample illustrations that include a payment summary table showing the impact of various payment options on the loan balance that creditors may include with periodic statements for payment option ARMs. 72 FR 31825, 31831; Jun. 8, 2007. Proposed § 226.20(d) requires creditors to provide periodic statements that disclose payment options in the form of a table. The proposed model table is similar to the summary table the agencies issued but has been revised based on consumer testing.

20(d)(1)(iii) Unpaid Interest

Proposed § 226.20(d)(1)(iii) requires creditors to disclose the amount that will be added to the loan balance due to unpaid interest, if the consumer elects to make a payment that results in negative amortization.

20(d)(2) Format of Disclosures

Proposed § 226.20(d)(2)(i) requires that periodic statements for loans with a negative amortization feature contain payment disclosures with content substantially similar to the content of Form H–4(L) in Appendix H. Further, the proposed provision requires creditors to make payment disclosures in a payment summary table with headings, content, and format substantially similar to Form H–4(L). Proposed § 226.20(d)(2)(ii) requires that disclosures be placed in a prominent location (that is, located on the first page and on the front side of the disclosure statement, as clarified by proposed comment 37(d)(1)–1), with one exception. Under proposed § 226.20(d)(2)(ii), if the payment disclosures required by § 226.20(d) are made together with the ARM adjustment disclosures required by § 226.20(c), the payment disclosures must be located directly below the ARM adjustment disclosures.

Proposed § 226.20(d)(2)(iii) requires that the table required by § 226.20(d)(2)(i) contain only the information required by § 226.20(d)(1). Other information may be presented with the table under the proposed rule, provided that such information appears outside of the required table.

Alternatives not proposed. The Board is proposing to apply the requirement to provide periodic statements that contain a payment summary table, for payment option ARMs with a negative amortization feature that are secured by real property or a dwelling. The Board considered requiring periodic statements for all loans secured by real property or a dwelling. The Board is not proposing such a requirement, however. It is not clear that a monthly statement on a fixed-rate mortgage or an ARM without payment options would provide sufficient benefits to consumers to offset the costs of providing statements. For these loans, the consumer cannot exercise any choice in payments. Moreover, creditors must give borrowers advance notice each time the required payment for a variable-rate transaction adjusts, under § 226.20(c), as discussed above. Servicers send borrowers with escrow accounts annual statements under RESPA. Some servicers send additional escrow notices more frequently, for example quarterly. Those statements assist consumers in monitoring account changes related to changes in taxes or property insurance costs.

20(e) Creditor-Placed Property Insurance

Creditor-placed property insurance requirements. The security instrument or promissory note typically contains a requirement that the consumer maintain insurance on the property securing the loan, such as the consumer's dwelling or automobile. If the consumer fails to maintain the insurance or the insurance is cancelled, the credit agreement typically authorizes the creditor to obtain such insurance at the consumer's expense. The premium becomes additional debt of the consumer. This practice is known as ''creditor-placed property insurance.''

Industry reports indicate that the volume of creditor-placed property insurance premiums has increased significantly in the past few years.[46] Consumers struggling financially may fail to pay required property insurance premiums unaware that the creditor has the right to obtain such insurance on their behalf and add the premiums to the outstanding loan balance.[47] In some instances, creditors have improperly obtained property insurance when they arguably knew or should have known that the consumer already had insurance.[48] Generally, creditor-placed insurance is more costly and provides less coverage than insurance that a consumer purchases through an insurance agent.[49]

Currently, there is no provision in Regulation Z or federal law that requires the creditor to provide notice of the cost to the consumer before charging the consumer for creditor-placed property insurance. It appears that only a few states require creditors to provide notice, and these requirements differ. Under Michigan law, for example, a creditor may not impose charges on a debtor for creditor-placed property insurance unless the creditor provides two notices and allows the borrower a total of 30 days to provide evidence of insurance.[50] New Mexico law, on the other hand, simply requires the insurer to provide notice to the debtor within 15 days *after* the placement or renewal of creditor-placed property insurance.[51] The majority of states have no notice requirement. The servicing guidelines of Fannie Mae and Freddie Mac also vary greatly. Fannie Mae's guidelines state that the servicer ''should'' provide the borrower with at least one written notice and a total of at least 60 days to provide evidence of insurance before charging for creditor-placed property insurance.[52] Freddie Mac's guidelines do not require the servicer to provide notice to the borrower.[53]

In order to ensure that consumers are informed of the cost of creditor-placed property insurance, the Board proposes to use its authority under TILA Section 105(a), 15 U.S.C. 1604(a), to add § 226.20(e) to require the creditor to provide notice of the cost and coverage of creditor-placed property insurance before charging the consumer for such insurance. In addition, proposed § 226.20(e)(4) would require the creditor to provide the consumer with evidence of creditor-placed property insurance within 15 days of imposing a charge for such insurance. Proposed § 226.20(e)(1) would define ''creditor-placed property insurance'' as ''property insurance coverage obtained by the creditor when the property insurance required by the credit agreement has lapsed.'' Section 226.20(e) would apply to secured closed-end loans, including mortgage and automobile loans. The Board solicits comment as to whether this rule should also apply to HELOCs.

Proposed § 226.20(e)(2) contains three conditions for charging for creditor-

[46] *See, e.g.,* Consumer Credit Industry Association, *Fact Book of Credit-Related Insurance* at 1 (2007) (finding that the 2007 volume of creditor-placed property insurance premiums was over twice the 2002 amount).

[47] *See* State of Wisconsin, Office of the Commissioner of Insurance, *''Force-Placed'' Insurance Surprises Those Who Let Policies Lapse* (May 30, 2002) *available at http://oci.wi.gov/pressrel/0502home.htm* (''Many people don't realize that if they let that [homeowner's] insurance lapse, banks and other lenders can legally re-insure their home loan by buying insurance to replace it and making the homebuyer pay for it.'').

[48] *See, e.g., United States of America* v. *Fairbanks Capital Corp.,* Civ. Action No. 03–12219–DPW, Complaint at ¶ 17 (D. Mass. Nov. 12, 2003) (finding that Fairbanks improperly obtained property insurance when it knew or should have known that borrowers already had insurance); *Ocwen Federal Bank FSB,* OTS Docket No. 04592, Supervisory Agreement, OTS Docket No. 04592 (Apr. 19, 2004) (requiring the bank to take reasonable actions to determine whether appropriate hazard insurance is already in place before it obtained creditor-placed property insurance).

[49] *See, e.g., Webb, et al.* v. *Chase Manhattan Mortgage Corp.,* No. 2:05–CV–0548, 2008 U.S. Dist. LEXIS 42559, at *15 (S.D. Ohio May 28, 2008) (finding that the creditor-placed property insurance premium was four times higher than the plaintiff's original premium and did not cover personal property or provide coverage for personal liability or medical payments to others).

[50] Mich. Comp. Laws § 500.1625 (2009).

[51] N.M. Admin. Code § 13.18.3.17 (2009).

[52] Fannie Mae Single-Family Servicing Guide, Part II, Ch. 6 Lender-Placed Property Insurance (2005).

[53] Freddie Mac Single-Family Seller/Servicer Guide, Vol. 2, § 58.9 Special Insurance Requirements and Changes in Insurance Requirements (2007).

placed property insurance. First, proposed § 226.20(e)(2)(i) would require the creditor to make a reasonable determination that the required property insurance had lapsed. Second, proposed § 226.20(e)(2)(ii) would require the creditor to mail or deliver to the consumer a written notice containing the information required by the proposed rule at least 45 days before a charge is imposed on the consumer for the creditor-placed property insurance. Finally, proposed § 226.20(e)(2)(iii) would permit the creditor to charge the consumer if, during the 45-day notice period, the consumer did not provide the creditor with evidence of adequate property insurance.

Notice period timing and charges. Under the proposed rule, the creditor would have to mail or deliver to the consumer the required written notice at least 45 days before charging the consumer for the cost of creditor-placed property insurance. This 45-day notice period is consistent with the 45-day notice period required by the Flood Disaster Protection Act of 1973 Section 102(e), 42 U.S.C. 4012a(e), and represents the midpoint between State law 30-day notice periods [54] and the 60-day Fannie Mae Servicing Guide recommendation.[55] The Board notes that the provision in the Fannie Mae Servicing Guide is stated as a recommendation, but not a requirement. The Board believes that a 45-day notice period would allow the consumer reasonable time to shop for and provide evidence of insurance. The Board recognizes that it may take several days for the consumer to receive a notice sent by mail, but the consumer would still have at least one calendar month in which to shop for and purchase property insurance. Comment is solicited, however, on whether a different time period would better serve the needs of consumers and creditors.

Proposed comment 20(e)–1 would make clear that if the creditor complies with § 226.20(e), the creditor could charge the consumer for creditor-placed insurance as of the 46th day after sending the notice to the consumer. For example, a creditor that mails the required notice on January 2, 2011, may begin to charge the consumer for the cost of the creditor-placed property insurance on February 18, 2011. Proposed comment 20(e)–1 would also clarify that the creditor may charge the consumer for the cost of any required property insurance obtained during the 45-day notice period if such charge is not prohibited by applicable State or other law.

Content and format of notice. Proposed § 226.20(e)(3) would require the creditor to provide the written notice clearly and conspicuously. Proposed § 226.20(e)(3)(i) would require that the notice contain the creditor's name and contact information, the loan number, and the address or description of the property securing the credit transaction. The Board solicits comment as to whether the creditor should be required to establish a local or toll-free telephone number for the consumer to contact the creditor.

Under proposed § 226.20(e)(ii)–(viii), the notice would also need to contain the following statements: (1) That the consumer is obligated to maintain insurance on the property securing the credit transaction; (2) that the required property insurance has lapsed; (3) that the creditor is authorized to obtain the property insurance on the consumer's behalf; (4) the date the creditor can charge the consumer for the cost of the creditor-placed property insurance; (5) how the consumer may provide evidence of property insurance; (6) the cost of the creditor-placed property insurance stated as an annual premium, and that this premium is likely significantly higher than a premium for property insurance purchased by the consumer; and (7) that the creditor-placed insurance may not provide as much coverage as homeowner's insurance. The Board solicits comment on whether the notice should also contain statements, if applicable, that the creditor will receive compensation for obtaining creditor-placed property insurance and that the creditor will establish an escrow account to pay for the creditor-placed insurance premium. Although such statements would be informative, the Board is concerned that providing these additional disclosures could result in information overload for the consumer. A Model Clause is proposed at Appendix H–18.

The Board proposes to use its authority under TILA Section 105(a), 15 U.S.C. 1604(a), to add § 226.20(e) to require the creditor to provide notice before charging the consumer for the cost of creditor-placed property insurance. TILA Section 105(a), 15 U.S.C. 1604(a), authorizes the Board to prescribe regulations to carry out the purposes of the act. TILA's purpose includes promoting ''the informed use of credit,'' which ''results from an awareness of the cost thereof by consumers.'' TILA Section 102(a), 15 U.S.C. 1601(a). Currently, few consumers are aware of the cost or coverage of creditor-placed property insurance, or that the premiums become additional debt of the consumer. The Board believes that this proposed rule would inform consumers of the cost and coverage of the creditor-placed property insurance and avoid the uninformed use of credit. In addition, this proposed rule would not prohibit the creditor from charging for creditor-placed property insurance, but would simply delay the charge until the consumer has been provided sufficient notice of the cost and sufficient time to shop for his or her own homeowner's insurance.

Section 226.25 Record Retention

25(a) General Rule

Section 226.25(a) provides that creditors must retain records to evidence compliance with Regulation Z for two years. As discussed in detail below, the Board is proposing to add a new comment to § 226.25(a) to provide guidance on record retention requirements relating to proposed § 226.36(d)(1), which would prohibit any person from paying compensation to a loan originator based on any of the terms or conditions of the transaction. Proposed comment 25(a)–5 would provide that, to evidence compliance with proposed § 226.36(d)(1), a creditor must retain for each covered transaction a record of the agreement between it and the loan originator that governs the originator's compensation and a record of the amount of compensation actually paid to the originator in connection with the transaction.

Section 226.27 Language of Disclosures

Currently, § 226.27, permits TILA disclosures in a language other than English as long as the disclosures are provided in English upon the consumer's request. Many consumers do not speak English or speak English as a second language. According to the 2000 Census, at least 18% of the population (47 million people) speak a language other than English at home.[56] To protect non-native English speakers from fraud and discrimination in credit transactions, recent enforcement actions have required that creditors or mortgage brokers provide translations of presentations, disclosures, or documents.[57] Moreover, several states

[54] *See* Ark. Code Ann. § 23–101–113 (2008); Mich. Comp. Laws § 500.1625 (2009); Miss. Code Ann. § 83–54–25 (2008); Tenn. Code Ann. § 56–49–113 (2009).

[55] Fannie Mae Single-Family Servicing Guide, Part II, Ch. 6 Lender-Placed Property Insurance (2005).

[56] U.S. Census Bureau, *Language Use and English-Speaking Ability: 2000* at 2 (Oct. 2003), *available at http://www.census.gov/prod/2003pubs/c2kbr-29.pdf.*

[57] *See, e.g., In the Matter of First Mariner Bank, Baltimore, Maryland,* FDIC–07–285b, FDIC–08–

have enacted laws to require credit disclosures or documents in Spanish or other foreign languages.[58] In 2006, Fannie Mae and Freddie Mac announced the availability of non-executable Spanish translations of the Fannie Mae/Freddie Mac Uniform Instrument to help the residential mortgage industry better serve Spanish-speaking consumers.[59] Finally, Congress recently asked the General Accounting Office to conduct a study examining the relationship between fluency in English and financial literacy, and the extent, if any, to which individuals whose native language is not English are impeded in the conduct of their financial affairs.[60]

Consumer advocates are concerned that consumers who do not speak English or speak English as a second language may be more susceptible to abusive credit practices or offered less favorable credit terms or products because they are not provided with disclosures they can understand. Industry representatives, on the other hand, raise concerns about the cost and burden of translating documents into multiple foreign languages and the potential liability for inaccurate translations. Both consumer advocates and industry representatives question whether consumers who speak minority languages will still have access to credit if creditors have to bear the cost and liability for translating documents into little-known languages. Creditors may be reluctant to engage in outreach to consumers who speak those languages.

The Board solicits comment on whether it should use its rulemaking authority to require creditors to provide translations of credit disclosures. Comment is requested on whether the failure to provide credit disclosure translations is unfair or deceptive, or impedes the informed use of credit. Comment is also requested on potential litigation issues, such as whether a translation would be admissible into evidence or whether an inaccurate translation would toll TILA's statute of limitations or extend the right of rescission. Finally, comment is requested on the effectiveness of State laws that require translations of disclosures or documents and whether the Board should adopt similar regulations.

The Board requests comment on the following translation issues:

- What is the scope of the problem? That is, approximately how many consumers do not understand TILA disclosures because of language barriers?
- Should creditors be required to provide consumers with translations of required TILA disclosures? If such translations were required, what should be the trigger for such disclosures (*e.g.,* the language of the negotiation, the language of the creditor's presentation, the language of the creditor's advertisement, a consumer request)?
- Should there be an exception for consumers who are accompanied by an interpreter?
- Would a translation requirement negatively affect consumers and the type and terms of credit offered because creditors would be reluctant to risk liability for engaging in transactions in a language other than English?

Finally, the Board solicits comment on the following coverage issues:

- Should a translation requirement apply only to mortgages loans, or also to other types of credit products, such as auto loans or credit cards?
- Should a translation requirement apply only to the TILA disclosures provided before or at consummation, or to any credit disclosures or documents provided before, at, or subsequent to consummation?
- Should a translation requirement apply to Web sites that provide early TILA disclosures?
- Should a translation requirement apply only to one or a few languages, or should it apply to any foreign language?

Section 226.32 Requirements for Certain Closed-End Mortgages

32(b) Definitions

32(b)(1)

Section 226.32(b)(1) defines the ''point and fees'' used to determine whether a loan is a HOEPA loan. That definition consists of four elements: (i) All items required to be disclosed under § 226.4(a) and 226.4(b), except interest or the time-price differential; (ii) All compensation paid to mortgage brokers; (iii) All items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and (iv) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction. In light of the changes to the finance charge under proposed § 226.4, discussed above, the Board is proposing technical amendments to this provision.

The reference to ''items required to be disclosed under § 226.4(a) and 226.4(b), except interest or the time-price differential'' in § 226.32(b)(1)(i) implements TILA Section 103(aa)(4)(A). That provision includes in points and fees ''all items included in the finance charge, except interest or the time-price differential.'' 15 U.S.C. 1602(aa)(4)(A). Thus, ''items required to be disclosed under § 226.4(a) and 226.4(b)'' is intended to capture the finance charge. Section 226.32(b)(1)(ii) and (iii) parallel the additional elements in TILA Section 103(aa)(4)(B) and (C). *See* 15 U.S.C. 1602(aa)(4)(B) and (C). Finally, TILA Section 103(aa)(4)(D) provides for the inclusion of such other charges as the Board determines to be appropriate. 15 U.S.C. 1602(aa)(4)(D). Pursuant to that authority, in § 226.32(b)(1)(iv), the Board included credit insurance premiums and debt cancellation coverage fees. Thus, the statutory definition reflects Congress's intent to

358k, Consent Agreement at 5 (April 22, 2009) (alleging that the bank discriminated against Hispanics, African-Americans, and women by charging them higher prices for residential mortgage loans and requiring the bank to provide financial literacy courses in English and Spanish); *Fed. Trade Comm'n* v. *MortgagesParaHispanos.com and Daniel Moises Goldberg,* Civ. Action No. 4:06cv19, Final Judgment and Order at 5 (E.D. Tex. Sept. 27, 2006) (alleging that the mortgage broker misrepresented the mortgage terms to Spanish-speaking consumers and requiring the broker to provide a disclosure and consumer education brochure in Spanish to any consumer if they have reason to believe that the consumer's primary language is Spanish); *In re Ameriquest Mortgage Co., et al.,* Settlement Agreement at 17–18 (Jan. 23, 2006) (requiring documents and disclosures to be translated to Spanish or to any language in which Ameriquest advertises).

[58] Ariz. Rev. Stat. § 6–631 (requiring a consumer loan lender to provide a notice in English and Spanish that the consumer may request the TILA disclosure in Spanish); Cal. Civ. Code § 1632 (requiring any person engaged in a trade or business who negotiates certain transactions primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver a translation of the contract in the language in which the contract was negotiated); DC Code Ann. § 26–1113 (requiring a post-application mortgage disclosure to be provided in the language of the mortgage lender's presentation to the borrower); 815 Ill. Comp. Stat. Ann. 122/2–20 (requiring payday lenders to provide consumers with a written disclosure in English and in the language in which the loan was negotiated); Tex. Fin. Code Ann. § 341.502 (requiring that the TILA disclosure be provided in Spanish if the terms for the consumer loan, retail installment transaction, or home equity loan were negotiated in Spanish).

[59] News Release, *Fannie Mae and Freddie Mac Offer Mortgage Documents in Spanish to Aid Lenders and Industry Partners with Helping More Hispanics Become Homeowners; Collaborative Effort Aimed at Helping Close the Hispanic and Overall Minority Homeownership Gaps* (Sept. 25, 2006), *available at http://www.fanniemae.com/newsreleases/2006/3803.jhtml?p=Media&s=News+Releases.*

[60] Credit CARD Act of 2009, Public Law 111–24, § 513, 123 Stat. 1734, 1765 (2009).

include in points and fees mortgage broker compensation, certain real-estate related fees, and the insurance charges added by the Board, even if those items would be excluded from the finance charge under other applicable rules.

Under TILA Section 103(aa)(1), HOEPA applies to certain transactions that are secured by a consumer's principal dwelling. 15 U.S.C. 1602(aa)(1). Proposed § 226.4(g), and therefore the more inclusive definition of finance charge it would create, would apply to any transaction secured by real property or a dwelling. Consequently, all loans that are potentially subject to HOEPA would be subject to the proposed ''but for'' finance charge definition. Under that definition, the items included under the points and fees definition in addition to the finance charge (other than interest or the time-price differential) would never be excluded from the finance charge for transactions secured by real property or a dwelling.

The Board believes that proposed § 226.4 would render § 226.32(b)(1)(ii) through (iv) unnecessary because all items included in points and fees under those provisions already would be included as part of the finance charge. To eliminate unnecessary complexity, the Board proposes to streamline § 226.32(b)(1) by deleting those additional elements. The Board also proposes to revise § 226.32(b)(1) to provide that points and fees means all items included in the finance charge pursuant to § 226.4, except interest or the time-price differential, instead of § 226.32(b)(1)(i)'s reference to ''items required to be disclosed under § 226.4(a) and 226.4(b).'' This change would reflect the language of TILA more closely and is not meant to effect any substantive change to HOEPA's coverage.

32(c) Disclosures

32(c)(1) Notices

For HOEPA loans, TILA Sections 129(a)(1)(A) and (B), 15 U.S.C. 1639(a)(1)(A) and (B), and § 226.32(c)(1), require the creditor to provide the following disclosures in conspicuous type size: ''You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.'' The first sentence is a ''no obligation'' statement to inform the consumer that the space for the consumer's signature that may be on the credit application does not obligate the consumer to accept the terms of the loan. The next two sentences are ''security interest'' disclosures to inform the consumer of the potential consequences when the creditor takes a security interest in the consumer's home. Comment 32(c)(1)–1 states that these disclosures need not be in a particular format or part of the note or mortgage document. A Model Clause is currently provided at Appendix H–16.

As discussed more fully in § 226.38(f)(1), the MDIA amended TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), to require the creditor to provide the following ''no obligation'' statement on the TILA disclosure: ''You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.'' Based on consumer testing, the Board proposes to use its adjustments and exception authority under TILA Section 105(a), 15 U.S.C. 1604(a), to modify the specific wording on the disclosure. Proposed § 226.38(f)(1) would require the creditor to provide a statement that the consumer has no obligation to accept the loan, and, if the creditor provides space for a consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement. During consumer testing, participants' comprehension improved when they reviewed the plain-language version of the clause.

Similarly, based on consumer testing, the Board proposes to use its adjustments and exception authority under TILA Section 105(a), 15 U.S.C. 1604(a), to require the creditor under proposed § 226.32(c)(1) to provide the following ''no obligation'' statement in connection with a HOEPA loan: ''You have no obligation to accept this loan. Your signature below only confirms that you have received this form.'' TILA Section 105(a), 15 U.S.C. 1604(a), states that the Board ''may provide for such adjustments * * * as in the judgment of the Board are necessary or proper to effectuate the purposes of [TILA]''. One of the purposes of TILA is to promote the informed use of credit. TILA Section 102(a), 15 U.S.C. 1601(a). Consumer testing showed that the ''no obligation'' language improved participants' understanding of the key point that signing or accepting a disclosure did not obligate the consumer to accept the terms of the loan.

In addition, the Board proposes to use its adjustments and exception authority under TILA Section 105(a), 15 U.S.C. 1604(a), to require the creditor under proposed § 226.32(c)(1) to provide the following ''security interest'' statement in connection with a HOEPA loan: ''If you are unable to make the payments on this loan, you could lose your home.'' As discussed more fully in § 226.38(f)(2), consumer testing showed that participant comprehension of this disclosure improved when the plain-language version of the ''security interest'' disclosure was used. The Board believes that the plain-language versions of the ''no obligation'' and ''security interest'' disclosures will better inform consumers who are considering obtaining HOEPA loans.

The proposal would delete comment 32(c)(1)–1 and require these statements to be in bold text and a minimum 10-point font, consistent with proposed §§ 226.37 and 226.38. A revised Model Clause is proposed at Appendix H–16.

32(c)(5) Amount Borrowed

For HOEPA mortgage refinancing loans, § 226.32(c)(5) requires the creditor to disclose the amount borrowed, and states that ''where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed.'' In the December 2008 Open-End Final Rule, the existing rules for credit insurance and debt cancellation coverage were applied to debt suspension coverage for purposes of excluding a charge for debt suspension coverage from the finance charge. *See* 74 FR 5244, 5255; Jan. 29, 2009. In the final rule, the Board stated that ''[d]ebt cancellation coverage and debt suspension coverage are fundamentally similar to the extent they offer a consumer the ability to pay in advance for the right to reduce the consumer's obligations under the plan on the occurrence of specified events that could impair the consumer's ability to satisfy those obligations.'' 74 FR 5266. The Board also noted that the two products are different because debt cancellation coverage cancels the debt while debt suspension merely suspends payment of the debt. *Id.* Despite this difference, the Board adopted a final rule treating the two products the same for purposes of the finance charge, but adding a special disclosure warning consumers of the risks of debt suspension coverage. *Id.* Consistent with this approach, the Board proposes to treat debt suspension coverage in the same manner as debt cancellation coverage for purposes of the disclosing the amount borrowed for a HOEPA mortgage refinancing loan. The Board proposes to revise § 226.32(c)(5) to clarify that where the amount borrowed

includes charges for debt suspension coverage, that fact should be stated, grouped together with the disclosure of the amount borrowed. Proposed comment 32(c)(5)–1 would also be revised to include a reference to debt suspension coverage. Comment is solicited on this approach.

Section 226.35 Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

35(a) Higher-Priced Mortgage Loans

35(a)(2)

In its final rule implementing new requirements for higher-priced mortgage loans, 73 FR 44522; July 30, 2008, the Board adopted the ''average prime offer rate'' as the benchmark for coverage of new § 226.35. In so doing, the Board adopted commentary under new § 226.35(a)(2) regarding the calculation of the average prime offer rate and related guidance. Comment 35(a)(2)–4 indicated that the Board publishes average prime offer rates and the methodology for their calculation on the Internet. The Board is proposing to amend comment 35(a)(2)–4 to specify where on the Internet the table and methodology may be found (*http://www.ffiec.gov/hmda*).

The Board also is proposing new comment 35(a)(2)–5 to provide additional guidance on determination of applicable average prime offer rates for purposes of § 226.35. The comment would clarify that the average prime offer rate is defined identically under § 226.35 and under Regulation C (HMDA), 12 CFR 203.4(a)(12)(ii). Thus, for purposes of both coverage of § 226.35 and coverage of the rate spread reporting requirement under Regulation C, 12 CFR 203.4(a)(12)(i), the applicable average prime offer rate is identical. The comment would clarify further that guidance on the applicable average prime offer rate is provided in the staff commentary under Regulation C, the Board's *A Guide to HMDA Reporting: Getting it Right!*, and the relevant ''Frequently Asked Questions'' on HMDA compliance posted on the FFIEC's Web site referenced above.

Section 226.36 Prohibited Acts or Practices in Connection With Credit Secured by Real Property or a Consumer's Dwelling

The Board proposes to amend § 226.36 to extend the scope of the section's coverage to all closed-end transactions secured by real property or a dwelling. Currently, this section applies to closed-end credit transactions secured by a consumer's principal dwelling. As revised, § 226.36 would apply to closed-end transactions secured by any dwelling, not just a consumer's principal dwelling. This approach would be consistent with recent amendments to the TILA effected by the MDIA.

36(a) Loan Originator and Mortgage Broker Defined

As discussed below in more detail, the Board proposes to prohibit certain payments to loan originators that are based on a transaction's terms and conditions, and also proposes to prohibit loan originators from ''steering'' consumers to transactions that are not in their interest in order to increase the originator's compensation. Accordingly, the Board proposes to amend the regulation to provide a definition of ''loan originator'' in § 226.36(a)(1), which would include persons who are covered by the current definition of mortgage broker but also would include employees of the creditor, who are not considered ''mortgage brokers.'' Existing § 226.36(a) defines the term ''mortgage broker'' because mortgage brokers are subject to the prohibition on coercion of appraisers in § 226.36(b). A revised definition of mortgage broker would be designated as § 226.36(a)(2). The provision of existing § 226.36(a) stating that a creditor making a ''table funded'' transaction is considered a mortgage broker would be revised for clarity; no substantive change is intended other than the expansion of the definition from mortgage broker to loan originator. Thus, under proposed § 226.36(a)(1), a creditor that does not provide the funds for the transaction at consummation out of its own resources, out of deposits held by it, or by drawing on a bona fide warehouse line of credit would be considered a loan originator for purposes of § 226.36.

36(b) and (c) Misrepresentation of Value of Consumer's Dwelling; Servicing Practices

The Board proposes to amend § 226.36(b) and (c) to reflect the expanded scope of coverage of § 226.36, as noted above. Existing § 226.36(b) prohibits creditors and mortgage brokers and their affiliates from coercing, influencing, or otherwise encouraging appraisers to misstate or misrepresent the value of the consumer's principal dwelling in connection with a closed-end mortgage transaction. Section 226.36(c) currently prohibits certain practices of servicers of closed-end consumer credit transactions secured by a consumer's principal dwelling. Under this proposal, the rules relating to appraiser coercion and loan servicing would apply to all closed-end transactions secured by real property or a dwelling, for the reasons discussed above.

36(d) Prohibited Payments to Loan Originators

The Board is proposing to use its authority in HOEPA to prohibit unfair or deceptive acts or practices in mortgage lending to restrict certain practices related to the payment of loan originators. *See* TILA Section 129(*l*)(2)(A), 15 U.S.C. 1639(*l*)(2)(A). For this purpose, a ''loan originator'' includes both mortgage brokers and employees of creditors who perform loan origination functions.

Specifically, to address the potential unfairness that can arise with certain loan originator compensation practices, the proposed rule would prohibit a creditor or other party from paying compensation to a loan originator based on the credit transaction's terms or conditions. This prohibition would not apply to payments that consumers make directly to a loan originator. However, if a consumer directly pays the loan originator, the proposed rule would prohibit the originator from also receiving compensation from any other party in connection with that transaction.

The Board is soliciting comment on an alternative that would allow loan originators to receive payments that are based on the principal loan amount, which is a common practice today. The Board is also soliciting comment on whether it should adopt a rule that seeks to prohibit loan originators from directing or ''steering'' consumers to loans based on the fact that the originator will receive additional compensation, unless that loan is in the consumer's interest. The Board is expressly soliciting comment on whether the rule would be effective in achieving the stated purpose. Comment is also solicited on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have. These proposals and alternatives are discussed more fully below.

Background

In the summer of 2006, the Board held public hearings on home equity lending in four cities. During the hearings, consumer advocates urged the Board to ban ''yield spread premiums,'' payments that mortgage brokers receive from the creditor at closing for delivering a loan with an interest rate that is higher than the creditor's ''buy rate.'' The consumer advocates asserted that yield spread premiums provide brokers an incentive to increase consumers' interest rates

unnecessarily. They argued that a prohibition would align reality with consumers' perception that brokers serve consumers' best interests.

In light of the information received at the 2006 hearings and the rise in defaults that began soon after, the Board held an additional hearing in June of 2007 to explore how it could use its authority under HOEPA to prevent abusive lending practices in the subprime mortgage market while still preserving responsible lending. Although the Board did not expressly solicit comment on mortgage broker compensation in its notice of the June 2007 hearing, a number of commenters and some hearing panelists raised the topic. Consumer and creditor representatives alike raised concerns about the fairness and transparency of creditors' payment of yield spread premiums to brokers. Several commenters and panelists stated that consumers are not aware of the payments creditors make to brokers, or that such payments increase consumers' interest rates. They also stated that consumers may mistakenly believe that a broker seeks to obtain the best interest rate available. Consumer groups have expressed particular concern about increased payments to brokers for delivering loans both with higher interest rates and prepayment penalties. Consumer groups suggested a variety of solutions, such as prohibiting creditors paying brokers yield spread premiums, imposing on brokers that accept yield spread premiums a fiduciary duty to consumers, imposing on creditors that pay yield spread premiums liability for broker misconduct, or including yield spread premiums in the points and fees test for loans subject to HOEPA. Several creditors and creditor trade associations advocated requiring brokers to disclose whether the broker represents the consumer's interests, and how and by whom the broker is to be compensated. Some of these commenters recommended that brokers be required to disclose their total compensation to the consumer and that creditors be prohibited from paying brokers more than the disclosed amount.

To address these concerns, the Board's January 2008 proposed rule would have prohibited a creditor from paying a mortgage broker any compensation greater than the amount the consumer had previously agreed in writing that the broker would receive. 73 FR 1672, 1698–1700; Jan. 9, 2008 (HOEPA proposal). In support of the rule, the Board explained its concerns about yield spread premiums, which are summarized below.

A yield spread premium is the present dollar value of the difference between the lowest interest rate the wholesale lender would have accepted on a particular transaction and the interest rate the broker actually obtained for the lender. This dollar amount is usually paid to the mortgage broker, though it may also be applied to reduce the consumer's upfront closing costs. The creditor's payment to the broker based on the interest rate is an alternative to the consumer paying the broker directly from the consumer's preexisting resources or from loan proceeds. Preexisting resources or loan proceeds may not be sufficient to cover the broker's total fee, or may appear to the consumer to be a more costly way to finance those costs if the consumer expects to prepay the loan in a relatively short period. Thus, consumers potentially benefit from having an option to pay brokers for their services indirectly by accepting a higher interest rate.

The Board shares concerns, however, that creditors' payments to mortgage brokers are not transparent to consumers and are potentially unfair to them. Creditor payments to brokers based on the interest rate give brokers an incentive to provide consumers loans with higher interest rates. Some brokers may refrain from acting on this incentive out of legal, business, or ethical considerations. Moreover, competition in the mortgage loan market may often limit brokers' ability to act on the incentive. The market often leaves brokers room to act on the incentive should they choose, however, especially as to consumers who are less sophisticated and less likely to shop among either loans or brokers.

Large numbers of consumers are simply not aware the incentive exists. Many consumers do not know that creditors pay brokers based on the interest rate, and the current legally required disclosures seem to have only limited effect. Some consumers may not even know that creditors pay brokers: A common broker practice of charging a small part of its compensation directly to the consumer, to be paid from the consumer's existing resources or loan proceeds, may lead consumers to believe, incorrectly, that this amount is all the consumer will pay or that the broker will receive. Consumers who do understand that the creditor pays the broker based on the interest rate may not fully understand the implications of the practice. They may not appreciate the full extent of the incentive the practice gives the broker to increase the rate because they do not know the dollar amount of the creditor's payment.

Moreover, consumers often wrongly believe that brokers have agreed, or are required, to obtain the best interest rate available. Several commenters in connection with the 2006 hearings suggested that mortgage broker marketing cultivates an image of the broker as a ''trusted advisor'' to the consumer. Consumers who have this perception may rely heavily on a broker's advice, and there is some evidence that such reliance is common. In a 2003 survey of older borrowers who had obtained prime or subprime refinancings, majorities of respondents with refinance loans obtained through both brokers and creditors' employees reported that they had relied ''a lot'' on their loan originators to find the best mortgage for them.[61] The Board's recent consumer testing also suggests that many consumers shop little for mortgages and often rely on one broker or lender because of their trust in the relationship.

If consumers believe that brokers protect consumers' interests by shopping for the lowest rates available, then consumers will be less likely to take steps to protect their interests when dealing with brokers. For example, they may be less likely to shop rates across retail and wholesale channels simultaneously to assure themselves the broker is providing a competitive rate. They may also be less likely to shop and negotiate brokers' services, obligations, or compensation upfront, or at all. For example, they may be less likely to seek out brokers who will promise in writing to obtain the lowest rate available.

In response to these concerns, the 2008 HOEPA proposal would have prohibited a creditor from paying a broker more than the consumer agreed in writing to pay. Under the proposal, the consumer and mortgage broker would have had to enter into a written agreement before the broker accepted the consumer's loan application and before the consumer paid any fee in connection with the transaction (other than a fee for obtaining a credit report). The agreement also would have disclosed (i) that the consumer ultimately would bear the cost of the entire compensation even if the creditor paid part of it directly; and (ii) that a creditor's payment to a broker could influence the broker to offer the consumer loan terms or products that would not be in the consumer's interest

[61] *See* Kellie K. Kim-Sung & Sharon Hermanson, *Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender-Originated Loans*, Data Digest No. 83 (AARP Public Policy Inst., Washington, DC, Jan. 2003, at 3, available at *http://assets.aarp.org/rgcenter/post-import/dd83_loans.pdf*.

or the most favorable the consumer could obtain.

Based on the Board's analysis of comments received on the HOEPA proposal, the results of consumer testing, and other information, the Board withdrew the proposed provisions relating to broker compensation. 73 FR 44522, 44563–65; July 30, 2008. The Board's withdrawal of those provisions was based on its concern that the proposed agreement and disclosures could confuse consumers and undermine their decision-making rather than improve it. The risks of consumer confusion arose from two sources. First, an institution can act as either creditor or broker depending on the transaction. At the time the agreement and disclosures would have been required, such an institution could be uncertain as to which role it ultimately would play. This could render the proposed disclosures inaccurate and misleading in some, and possibly many, cases. Second, the Board was concerned by the reactions of consumers who participated in one-on-one interviews about the proposed agreement and disclosures as part of the Board's consumer testing. These consumers often concluded, not necessarily correctly, that brokers are more expensive than creditors. Many also believed that brokers would serve their best interests notwithstanding the conflict resulting from the relationship between interest rates and brokers' compensation.[62] The proposed disclosures presented a significant risk of misleading consumers regarding both the relative costs of brokers and lenders and the role of brokers in their transactions.

In withdrawing the broker compensation provisions of the HOEPA proposal, the Board stated it would continue to explore options to address potential unfairness associated with loan originator compensation arrangements, such as yield spread premiums. The Board indicated it would consider whether disclosures or other approaches could effectively remedy this potential unfairness without imposing unintended consequences.

Potential for Unfairness in Loan Originator Compensation Practices

As noted above, the Board is now proposing rules to prohibit certain practices relating to payments made to compensate mortgage brokers and other loan originators. These rules would be adopted pursuant to the Board's authority under HOEPA, as contained in TILA Section 129(*l*), which authorizes the Board to prohibit acts or practice in connection with mortgage loans that the Board finds to be unfair or deceptive. As discussed in part IV above, in considering whether a practice is unfair or deceptive under TILA Section 129(*l*), the Board has generally relied on the standards that have been adopted for purposes of Section 5(a) of the FTC Act, 15 U.S.C. 45(a), which also prohibits unfair and deceptive acts and practices.

For purposes of the FTC Act, an act or practice is considered unfair when it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. As explained below, the practice of basing a loan originator's compensation on the credit transaction's terms or conditions appears to meet these standards and constitute an unfair practice. Furthermore, based on its experience with consumer testing, particularly in connection with the HOEPA proposal, the Board believes that disclosure alone would be insufficient for most consumers to avoid the harm caused by this practice. Thus, the Board is proposing a rule that would remedy the practice through substantive regulations that prohibit particular practices.

Specifically, under proposed § 226.36(d)(1), compensation payments made to a mortgage broker or any other loan originator based on a mortgage transaction's terms or conditions would be prohibited. Unlike the 2008 HOEPA proposal, the rule would also apply to creditors' employees who originate loans. As noted above, such payments when made to a mortgage broker are commonly referred to as yield spread premiums. There are analogous payments made by creditors to their employees who originate loans at a higher interest rate than the minimum rate required by the creditor. This arrangement is frequently referred to as an ''overage.'' For convenience, the discussion below uses the term ''yield spread premium'' also to refer to these types of payments, which would be covered by the proposed rule as well.

Substantial injury. When loan originators receive compensation based on a transaction's terms and conditions, they have an incentive to provide consumers loans with higher interest rates or other less favorable terms. Yield spread premiums, therefore, present a significant risk of economic injury to consumers. Currently, such injury is common because consumers typically are not aware of the practice or do not understand its implications and cannot effectively negotiate its use.

Creditors' payments to mortgage brokers or their own employees that originate loans (''loan officers'') generally are not transparent to consumers. Brokers may impose a direct fee on the consumer which may lead consumers to believe that this is the sole source of the broker's compensation. While consumers expect the creditor to compensate its own loan officers, they do not necessarily understand that the loan originator may have the ability to increase the creditor's interest rate or include certain loan terms for the originator's own gain.

To guard effectively against this practice, a consumer would have to know the lowest interest rate the creditor would have accepted to ascertain that the offered interest rate represents a rate increase by the loan originator. Most consumers will not know the lowest rate the creditor would be willing to accept. The consumer also would need to understand the dollar amount of the yield spread premium that is generated by the rate increase to determine what portion, if any, is being applied to reduce the consumer's upfront loan charges. Although HUD recently adopted disclosures in Regulation X, implementing RESPA, that could enhance some consumers' understanding of mortgage broker compensation, the details of the compensation arrangements are complex and the disclosures are limited. A creditor may show the yield spread premium as a credit to the borrower that is applied to cover upfront costs, but is also permitted to add the amount of the yield spread to the total origination charges being disclosed. This would not necessarily inform the consumer that the rate has been increased by the originator and that a lower rate with a smaller origination charge was also available. In addition, the Regulation X disclosure concerning yield spread premiums would not apply to overages occurring when the loan originator is employed by the creditor. Thus, the Regulation X disclosure, while perhaps an improvement over previous rules, is not likely by itself to prevent consumers from incurring substantial injury from the practice.

Because consumers generally do not understand the yield spread premium mechanism, they are unable to engage in effective negotiation. Instead they are more likely to rely on the loan originator's advice and frequently obtain a higher rate or other unfavorable terms

[62] For more details on the consumer testing, see the report of the Board's contractor, Macro International, Inc., *Consumer Testing of Mortgage Broker Disclosures* (July 10, 2008), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf*.

solely because of greater originator compensation. These consumers suffer substantial injury by incurring greater costs for mortgage credit than they would otherwise be required to pay.

Injury not reasonably avoidable. Yield spread premiums create a conflict of interest between the loan originator and consumer. As noted above, many consumers are not aware of creditor payments to loan originators, especially in the case of mortgage brokers, because these arrangements lack transparency. Although consumers may reasonably expect creditors to compensate their own employees, consumers do not know how the loan officer's compensation is structured or that the loan officer can increase the creditor's interest rate or offer certain loan terms to increase their own compensation. Without this understanding, consumers cannot reasonably be expected to appreciate or avoid the risk of financial harm these arrangements represent.

Yield spread premiums are complex and may be counter-intuitive even to well-informed consumers. Based on the Board's experience with consumer testing, the Board believes that disclosures are insufficient to overcome the gap in consumer comprehension regarding this critical aspect of the transaction. Currently, the required disclosures of originator compensation under federal and State laws seem to have little, if any, effect on originators' incentive to provide consumers with increased interest rates or other unfavorable loan terms, such as a prepayment penalty, that can increase the originator's compensation.[63] The Board's consumer testing, discussed above, supported the finding that disclosures about yield spread premiums are ineffective; consumers in these tests did not understand yield spread premiums and did not grasp how they create an incentive for loan originators to increase consumers' costs.

Consumers' lack of comprehension of yield spread premiums is compounded where the originator also imposes a direct charge on the consumer. A mortgage broker might charge the consumer a direct fee, for example $500, for arranging the consumer's mortgage loan. This charge encourages consumers to infer that the broker accepts the consumer-paid fee to represent the consumer's financial interests. Consumers may believe that the fee they pay is the originator's sole compensation. This may lead reasonable consumers to believe, erroneously, that loan originators are working on their behalf and are under a legal or ethical obligation to help consumers obtain the most favorable loan terms and conditions. There is evidence that consumers often regard loan originators as ''trusted advisors'' or ''hired experts'' and consequently rely on originators' advice. Consumers who regard loan originators in this manner are far less likely to shop or negotiate to assure themselves that they are being offered competitive mortgage terms. Even for consumers who shop, the lack of transparency in originator compensation arrangements makes it unlikely consumers will avoid yield spread premiums that unnecessarily increase the cost of their loan.

Consumers generally lack expertise in complex mortgage transactions because they engage in such mortgage transactions infrequently. Their reliance on the loan originator is reasonable in light of the originator's greater experience and professional training in the area, the belief that originators are working on their behalf, and the apparent ineffectiveness of disclosures to dispel that belief.

Injury not outweighed by benefits to consumers or to competition. Yield spread premiums can represent a potential consumer benefit in cases where the amount is applied to reduce consumers' upfront closing costs, including originator compensation. A creditor's increase in the interest rate (or the addition of other loan terms) may be used to generate additional income that the creditor uses to compensate the originator, in lieu of adding origination points or fees that the consumer would be required to pay directly from the consumer's preexisting funds or the loan proceeds. This can benefit a consumer who lacks the resources to pay closing costs in cash, or who might have insufficient equity in the property to increase the loan amount to cover these costs. Further, some consumers prefer to fund closing costs, including origination fees, through a higher rate if the consumer expects to own the property or have the loan for a relatively short period, for example, less than five years. For those consumers who understand this trade-off there could be potential benefits. In such cases, however, the yield spread premium does not increase the amount of compensation paid by the creditor to the originator, who would receive the same amount whether the loan has a higher rate or a lower rate accompanied by higher upfront fees.

Nevertheless, without a clear understanding of yield spread premiums or effective disclosure, the majority of consumers are not equipped to police the market to ensure that yield spread premiums are in fact applied to reduce their closing costs, especially in the case of loan originator compensation. This would be particularly difficult because consumers are not likely to have any basis for determining a ''typical'' or ''reasonable'' amount for originator compensation. Accordingly, the Board is proposing a rule that prohibits any person from basing a loan originator's compensation on the loan's rate or terms but still affords creditors the flexibility to structure loan pricing to preserve the potential consumer benefit of compensating an originator through the interest rate.

The Board's Proposal

Under § 226.36(d)(1), the Board proposes to prohibit any person from compensating a loan originator, directly or indirectly, based on the terms or conditions of a loan transaction secured by real property or a dwelling. This prohibition would apply to any person, rather than only a creditor, to prevent evasion by structuring loan originator payments through non-creditors. For example, secondary market investors that purchase closed loans from creditors would not be permitted to pay compensation to loan originators that is based on the terms or conditions of their transactions.

Under the proposal, compensation that is based on the loan amount would be considered a payment that is based on a term or condition of the loan. The prohibition would not apply to consumers' direct payments to loan originators. Under § 226.36(d)(2), however, if the consumer compensates the loan originator directly, the originator would be prohibited from receiving compensation from the creditor or any other person.

Because the loan originator could not receive compensation based on the interest rate or other terms, the originator would have no incentive to alter the terms made available by the creditor to deliver a more expensive loan. For example, a company acting as a mortgage broker could not provide greater compensation to its employee acting as the loan originator for a transaction with a 7 percent interest rate than for a transaction with a 6 percent interest rate. A creditor would be under the same restriction in compensating its loan officer. For this purpose, the term ''compensation'' would not be limited to commissions, but would include

[63] Creditors may be willing to offer a loan with a lower interest rate in return for including a prepayment penalty. A loan originator that offers a loan with a prepayment penalty might not offer the lower rate, resulting in a premium interest rate and the payment of a yield spread premium.

salaries or any financial incentive that is tied to the transaction's terms or conditions, including annual or periodic bonuses or awards of merchandise or other prizes. *See* proposed comment 36(d)(1)–1.

Proposed comment 36(d)(1)–2 provides examples of compensation that is based on the transaction's terms or conditions, such as payments that are based on the interest rate, annual percentage rate, or the existence of a prepayment penalty. Examples of loan originator compensation that is not based on the transaction's terms or conditions are listed in proposed comment 36(d)(1)–3. These include compensation based on the originator's loan volume, the performance of loans delivered by the originator, or hourly wages.

The Board recognizes that loans originators may need to expend more time and resources in originating loans for consumers with limited or blemished credit histories. Because such loans are likely to carry higher rates, originators currently rely on higher yield spread premiums to compensate them for the additional time and efforts. Paying an originator based on the time expended would be permissible under the proposed rule.

Although the proposed rule would not prohibit a creditor from basing compensation on the originator's loan volume, such arrangements may raise concerns about whether it creates incentives for originators to deliver loans without proper regard for the credit risks involved. The Board expects creditors to exercise due diligence to monitor and manage such risks. Financial institution regulators generally will examine creditors they supervise to ensure they have systems in place to exercise such due diligence.

The proposed rule also would not prohibit compensation that differs by geographical area, but any such arrangements must comply with other applicable laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691–1691f) and Fair Housing Act (42 U.S.C. 3601–3619). *See* proposed comment 36(d)(1)–4. Creditors that use geography as a criterion for setting originator compensation would need to be able to demonstrate that this reflects legitimate differences in the costs of origination and in the levels of competition for originators' services.

Under the proposed rule, creditors also may compensate their own loan officers differently than mortgage brokers. For instance, in light of the fact that mortgage brokers relieve creditors of certain overhead costs of loan originations, a creditor might pay brokers more than its own loan officers. Likewise, a creditor might pay one loan originator of either type more than it pays another, as long as each originator receives compensation that is not based on the terms of the transactions they deliver to the creditor.

Scope of coverage. The Board believes that the proposed rule should apply to creditors' employees who originate loans in addition to mortgage brokers. A creditor's loan officers frequently have the same discretion over loan pricing that mortgage brokers have to modify a loan's terms to increase their compensation, and there is evidence suggesting that loan officers engage in such practices.[64] Accordingly, the coverage of § 226.36(d)(1) is broader than the 2008 HOEPA proposal, which covered only mortgage brokers. Some commenters on the HOEPA proposal expressed concern that it would create an ''unlevel playing field'' by creating an unfair advantage for creditors that would not have to comply with the same requirements as brokers.

The proposed rule would apply to covered transactions whether or not they are higher-priced mortgage loans. A loan originator's financial incentive to deliver less favorable loan terms to a consumer could result in consumer injury whether or not the loan has a rate above the coverage threshold in § 226.35. The risks of harm could be reduced in the lower-priced segment of the market, however, where consumers historically have more choices. Comment is solicited on the relative costs and benefits of applying the rule to all segments of the market, and whether the costs would outweigh the benefits for loans below the higher-priced mortgage loan threshold.

Creditors' pricing flexibility. The proposed rule would not affect creditors' flexibility in setting rates or other loan terms. The rule does not limit the creditor's ability to adjust the loan terms it offers to consumers as a means of financing costs the consumer would otherwise be obligated to pay directly (in cash or out of the loan proceeds), including the originator's compensation, provided this does not affect the amount the originator receives for the transaction. Thus, a creditor could recoup costs by adding to the loan pricing terms an origination point (calculated as one percentage point of the loan amount) even though the creditor could not pay the originator's compensation on that basis. Similarly, a creditor could add a constant premium of, for instance, ¼ of one percent to the interest rates on all transactions for which the creditor will pay compensation to the loan originator, as a means of recouping the cost of the originator's compensation. The creditor would not recoup the same dollar amount in each transaction, however, because the present value of the premium in dollars would vary with the loan amount. Consequently, even though loan pricing could be set in this manner, this method could not be used to set the loan originator's compensation. *See* proposed comment 36(d)(1)–5.

Effect of modification of loan terms. The proposed rule is designed to prevent consumers from being harmed by loan originators making unfavorable modifications to loan terms, such as increasing the interest rate, to increase the originator's compensation. Currently, loan originators might also exercise discretion to make modifications in the consumer's favor. For example, to retain the consumer's business, today a loan originator might agree with the consumer to reduce the amount the consumer must pay in origination points on the loan, which would be funded by a reduction in the amount the originator receives from the creditor as compensation for delivering the loan. Under the proposed rule, however, a creditor would not be permitted to reduce the amount it pays to the loan originator based on such a change in loan terms. As a result, the reduction in origination points would be a cost borne by the creditor.

Thus, when the creditor offers to extend a loan with specified terms and conditions (such as the rate and points), the amount of the originator's compensation for that transaction is not subject to change, through either an increase or a decrease, even if different loan terms are negotiated. If this were not the case, a creditor generally could agree to compensate originators at a high level and then subsequently lower the compensation only in selective cases, such as when the consumer obtains a competing offer with a lower interest rate. This would have the same

[64] For example, the Federal Trade Commission's settlement with Gateway Funding, Inc. in December 2008 illustrates a case where a creditor's loan officers created ''overages,'' although the primary legal theory concerned disparate treatment by race in the imposition of overages. The FTC's complaint and the court's final judgment and order can be found on the FTC's web-site at *http://www.ftc.gov/os/caselist/0623063/index.shtm*. The FTC has since filed a complaint alleging similar patterns of overages in violation of fair lending laws, against Golden Empire Mortgage, Inc. The May 2009 complaint can be found at *http://www.ftc.gov/os/caselist/0623061/090511gemcmpt.pdf*. A similar pattern of overages was alleged in legal actions brought by the Department of Justice (DOJ), which resulted in settlement agreements with Huntington Mortgage Company (1995) and Fleet Mortgage Corp. (1996).

effect as increasing the originator's compensation for higher rate loans. Proposed comment 36(d)(1)–6 would address this issue.

Periodic changes in loan originator compensation. Under proposed § 226.36(d)(1) a creditor would not be prevented from periodically revising the compensation it agrees to pay a loan originator. However, a creditor may not revise a loan originator's compensation arrangement in connection with each transaction. This guidance is reflected in proposed comment 36(d)(1)–7. The revised compensation arrangement must result in payments to the loan originator that are not based on the terms or conditions of a credit transaction. A creditor might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first six months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the loan terms. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that originator, regardless of the loan terms. The change in compensation would not be a violation even if the loans made by the creditor after July 1 generally carry higher interest rates than loans made before that date.

Alternative to permit compensation based on loan amount. The Board is also publishing for comment a proposed alternative that would allow loan originator compensation to be based on the loan amount, which would not be considered a transaction term or condition for purposes of the prohibition in § 226.36(d)(1). Currently, the compensation received by many mortgage originators is structured as a percentage of the loan amount. Other participants in the mortgage market, such as creditors, mortgage insurers, and other service providers, also receive compensation based on the loan amount. The Board is therefore seeking comment on whether prohibiting originator compensation on this basis might be unduly restrictive and unnecessary to achieve the purposes of the proposed rule.

On the other hand, prohibiting compensation based on the loan amount would eliminate an incentive for the originator to steer consumers to a larger loan amount. Such steering maximizes the originator's compensation but also increases the transaction's loan-to-value ratio and decreases the consumer's equity in the property. If the loan-to-value ratio increases sufficiently, the consumer may incur additional costs in the form of a higher interest rate or additional points and fees, including the cost of mortgage insurance premiums. Because the consumer's monthly payment would also be larger, the originator might direct the consumer to riskier loan products that have discounted initial rates but are subject to significant payment increases after the introductory period expires.

Because of the foregoing concerns, the Board is publishing two alternative versions of proposed § 226.36(d)(1). The first alternative would consider the loan amount as a term or condition of the loan, thereby prohibiting the payment of originator compensation as a percentage of the loan amount. The second alternative provides that the loan amount is not a term or condition of the loan, and would permit such payments. The second alternative would be accompanied by proposed comment 36(d)(1)–10 to provide further guidance. Under proposed comment 36(d)(1)–10, a loan originator could be paid a fixed percentage of the loan amount even though the dollar amount paid by a particular creditor would vary from transaction to transaction and would increase as the loan amount increases. Comment 36(d)(1)–10 also permits compensation paid as a fixed percentage of the loan amount to be subject to a specified minimum or maximum dollar amount. For example, a loan originator's compensation could be set at one percent of the principal loan amount but not less than $1,000 or greater than $5,000.

The Board seeks comment on the two alternatives. Further, if the final rule permits compensation based on the loan amount, should creditors be permitted to apply different percentages to loans of different amounts? Should creditors be allowed to pay a larger percentage for smaller loan amounts, which could be an incentive to originate loans in lower-priced neighborhoods that ensures that the originator receives an amount that is comparable to loans originated in high-priced neighborhoods? If so, should creditors also be permitted to pay originators a higher percentage for larger loan amounts?

Prohibition of compensation from both the consumer and another source. Proposed § 226.36(d)(2) would provide that, if a loan originator is compensated directly by the consumer for a transaction secured by real property or a dwelling, no other person may pay any compensation to the originator for that transaction. Direct compensation paid by a consumer to a loan originator would not be limited to ''origination fees,'' ''broker fees,'' or similarly labeled charges. Rather, compensation for this purpose includes any payment by the consumer that is retained by the loan originator. Thus, a creditor that is a loan originator by virtue of making a table funded transaction, as discussed above, would be subject to this prohibition if it imposes and retains any direct charge on the consumer for the transaction.

Consumers reasonably may believe that when they pay a loan originator directly, that amount is the only compensation the originator will receive. As discussed above, consumers generally are not aware of creditor payments to originators. If the consumer were aware of such payments, the consumer might reasonably expect that making a direct payment to an originator would reduce or eliminate the need for the creditor to fund the originator's compensation through the consumer's interest rate. Because the consumer is unaware of yield spread premiums, however, the consumer cannot effectively negotiate the originator's compensation. In fact, if consumers pay loan originators directly and creditors also pay originators through higher rates, consumers may be injured by unwittingly paying originators more in total compensation (directly and through the rate) than consumers believe they agreed to pay.

The Board believes that simply disclosing the yield spread premium would not address this injury to consumers. Consumer testing in connection with the Board's 2008 HOEPA Final Rule shows that, even with a disclosure, consumers do not understand how a creditor payment to a loan originator can result in a higher interest rate for the consumer. A disclosure therefore cannot inform consumers that they effectively are paying the loan originator more than they believe they agreed to pay. Without that knowledge, consumers cannot take steps to protect their own interests, such as by negotiating for a smaller direct payment, a lower rate, or both.

The Board also believes that this prohibition would increase transparency for consumers by requiring that all originator compensation come from the creditor or from the consumer, but not both. This additional consequence of proposed § 226.36(d)(2) would reduce the total number of loan pricing variables with which the consumer must contend. There is evidence that such simplification is consistent with TILA's purpose of promoting the informed use of

consumer credit.[65] *See* TILA Section 102(a), 15 U.S.C. 1601(a).

Proposed § 226.36(d)(2) would prohibit only payments to an originator that are made in connection with the particular credit transaction, such as a commission for delivering the loan. The rule is not intended to prohibit payment of a salary to a loan originator who also receives direct compensation from a consumer in connection with that consumer's transaction. This guidance is contained in proposed comment 36(d)(2)–1.

Record retention requirements. Creditors are required by § 226.25(a) to retain evidence of compliance with Regulation Z for two years. Proposed staff comment 25(a)–5 would be added to clarify that, to demonstrate compliance with § 226.36(d)(1), a creditor must retain at least two types of records.

First, a creditor must have a record of the compensation agreement with the loan originator that was in effect on the date the transaction's rate was set. The Board believes this date is most likely when a loan originator's compensation was determined for a given transaction. The Board seeks comment, however, on whether some other time would be more appropriate, in light of the purposes of the proposed rule. Proposed comment 25(a)–5 would clarify that the rules in § 226.35(a) would govern in determining when a transaction's rate is set.

Second, proposed comment 25(a)–5 would state that a creditor must retain a record of the actual amount of compensation it paid to a loan originator in connection with each covered transaction. The proposed comment would clarify that, in the case of mortgage brokers, the HUD–1 settlement statement required under RESPA would be an example of such a record because it itemizes the compensation received by a mortgage broker. The Board solicits comment on whether any comparable record exists for loan officer compensation that should be referenced in proposed comment 25(a)–5. To facilitate compliance, a cross reference to the record retention requirement would be included in proposed comment 36(d)(1)–9.

The Board solicits comment on whether there are other records that should be subject to the retention requirements. The Board also seeks comment on whether the existing two-year record retention period is adequate for purposes of the rules governing loan originator compensation.

The current record retention requirements in § 226.25 apply only to creditors. Although loan originator compensation has historically been paid by creditors, the prohibitions in § 226.36(d) apply more broadly to any person to prevent evasion by restructuring of payments through non-creditors. Accordingly, the Board expects that payments to loan originators will continue to be made largely by creditors. The Board seeks comment on whether there is a need to adopt requirements for retaining records concerning originator compensation that would apply to persons other than creditors, including the relative costs and benefits of that approach.

36(e) Prohibition on Steering

Optional Proposal on Steering by Loan Originators

The Board is also soliciting comment on whether it should adopt a rule that seeks to prohibit loan originators from directing or ''steering'' consumers to loans based on the fact that the originator will receive additional compensation, when that loan may not be in the consumer's best interest. Under proposed § 226.36(d)(1), a loan originator would receive the same compensation from a particular creditor regardless of the transaction's rate or terms. That provision, however, would not prohibit a loan originator from directing a consumer to transactions from a single creditor that offers greater compensation to the originator, while ignoring possible transactions having lower interest rates that are available from other creditors.

Attempting to address this issue presents difficulties. Determining whether a loan originator was warranted in directing a consumer to a loan that resulted in greater compensation for the originator also involves a determination of whether that loan was in the consumer's best interest compared to other available loan products. There is, however, no uniform method for making that evaluation. Consumers and loan originators may choose from among possible loan offers for a variety of reasons. The annual percentage rate (APR) is a tool that facilitates comparison shopping among different loans, but it is imperfect for reasons that are well documented, including the fact that the APR is calculated by amortizing origination fees over the full loan term rather than the expected life of the loan. *See* the 1998 Joint Report to the Congress by the Board and HUD, cited above. In considering interest rates, consumers may view the economic trade-off between rates and points differently depending on their individual financial circumstances or the amount of time they expect to hold the loan. Moreover, consumers evaluate other factors in deciding whether a loan is in their best interest even if it is not represented as the lowest cost option among the possible loan offers available through the originator. Thus, some consumers may reasonably determine that the financial risk created by a loan's prepayment penalty is acceptable in light of the loan's lower interest rate, while other consumers may prefer to accept a higher rate to avoid the risk. Consumers and loan originators also may consider factors other than loan cost, such as the creditor's rate lock-in policies, or the creditor's reputation for delivering loans within the promised time-frame, especially for home-purchase loans.

The Board believes, however, that there is benefit in attempting to craft a rule that prohibits and deters the most egregious practices, even if such a rule cannot ensure that consumers always obtain the lowest cost loan. Under the proposal, a loan originator would have a duty not to steer a consumer to higher cost loans that pay more to the originator when the loan is not in the consumer's interest. Originators would violate the rule, for example, if they directed the consumer to a fixed-rate loan option from a creditor that maximizes the originator's compensation without providing the consumer with an opportunity to choose from other available loans that have lower fixed interest rates with the equivalent amount in origination and discount points.

The Board is publishing a proposal, designated as proposed § 226.36(e)(1), to reflect this optional approach. Specifically, the rule would prohibit loan originators from directing or ''steering'' a consumer to consummate a transaction secured by real property or a dwelling that is not in the consumer's interest, based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer. The proposed rule seeks to preserve consumer choice by ensuring that consumers have appropriate loan options that reflect considerations other than the maximum amount of compensation that will be paid to the originator. Proposed comments 36(e)(1)–1 through –3 would provide additional guidance on the rule.

[65] *See, e.g.*, Woodward, Susan E., *A Study of Closing Costs for FHA Mortgages* at 70–73 (Urban Institute and U.S. Department of Housing and Urban Development 2008), available at *http://www.urban.org/UploadedPDF/411682_fha_mortgages.pdf.*

Proposed § 226.36(e) would not require a loan originator to direct a consumer to the transaction that will result in the least amount of compensation being paid to the originator by the creditor. However, if the loan originator reviews possible loan offers available from a significant number of the creditors with which the originator regularly does business and the originator directs the consumer to the transaction that will result in the least amount of creditor-paid compensation, the requirements of § 226.36(e) would be deemed to be satisfied. *See* proposed comment 36(e)(1)–2(ii).

Loan originators employed by the creditor in a transaction would be prohibited under § 226.36(d)(1) from receiving compensation based on the terms or conditions of the loan. Thus, when originating loans for the employer, the originator could not steer the consumer to a particular loan to increase compensation. Accordingly, in those cases, their compliance with § 226.36(d)(1) would be deemed to satisfy the requirements of proposed § 226.36(e). *See* proposed comment 36(e)(1)–2(ii). A creditor's employee, however, occasionally might act as a broker in forwarding a consumer's application to a creditor other than the originator's employer, such as when the employer does not offer any loan products for which the consumer would qualify. If the originator is compensated for arranging the loan with the other creditor, the originator would not be an employee of the creditor in that transaction and would be subject to proposed § 226.36(e).

The Board is also publishing provisions that would facilitate compliance with the prohibition in proposed § 226.36(e)(1). Under proposed § 226.36(e)(2) and (3), a safe harbor would be created, and there would be no violation if the loan was chosen by the consumer from at least three loan options for each type of transaction (fixed-rate or adjustable-rate loan) in which the consumer expressed an interest, provided the following conditions are met. The loan originator must obtain loan options from a significant number of creditors with which the originator regularly does business. For each type of transaction in which the consumer expressed an interest, the originator must present and permit the consumer to choose from at least three loans that include: the loan with the lowest interest rate, the loan with the second lowest interest rate, and the loan with the lowest total dollar amount for origination points or fees and discount points. The loan originator must have a good faith belief that these are loans for which the consumer likely qualifies. If the originator presents more than three loans to the consumer, the originator must highlight the three loans that satisfy the lowest rate and points criteria in the rule. Proposed comments 36(e)(2)–1 and 36(e)(3)–1 though –4 would provide guidance on the application of the rule.

Comment is expressly solicited on whether the proposed rule in § 226.36(e) and the accompanying commentary would be effective in achieving the stated purpose. Comment is also solicited on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have.

36(f)

The Board proposes to redesignate existing § 226.36(d) as § 226.36(f). Existing § 226.36(d) provides that § 226.36 does not apply to home-equity lines of credit (HELOCs). The redesignation would accommodate proposed new § 226.36(d) and (e), discussed above.

The Board proposed as part of the 2008 HOEPA proposal to exclude HELOCs from the coverage of § 226.36 because of two considerations, which suggested that the protections may be unnecessary for such transactions. First, the Board understood that most originators of HELOCs hold them in portfolio rather than sell them, which aligns these originators' interests in loan performance more closely with their borrowers' interests. Second, the Board understood that HELOCs are concentrated in the banking and thrift industries, where the federal banking agencies can use their supervisory authority to protect consumers. The Board sought comment on whether these considerations were valid or whether any or all of the protections in § 226.36 should apply to HELOCs. Although mortgage lenders and other industry representatives commented in support of the proposed exclusion and consumer advocates commented in opposition, neither group provided the Board with substantial evidence as to whether the kinds of problems § 226.36 addresses exist in the HELOC market.

In the July 2008 HOEPA Final Rule, the Board limited the scope of § 226.36 to closed-end mortgages. In the absence of clear evidence of abuse, the Board continued to believe the protections may be unnecessary for the reasons discussed above. Nevertheless, the Board remains aware of concerns that creditors may structure transactions as HELOCs solely to evade the protections of § 226.36. The Board also is aware that many of the same opportunities and incentives that underlie the abuses addressed by § 226.36 for closed-end mortgages may well exist for HELOCs. Reasons therefore exist for positing that such unfair practices either may or may not occur with HELOCs, but the Board lacks concrete evidence as to which is the case.

The Board requests comment on whether any or all of the protections in § 226.36 should apply to HELOCs. Specifically, what evidence exists that shows whether loan originators unfairly manipulate HELOC terms and conditions to receive greater compensation, injuring consumers as a result? What evidence is there as to whether appraisals obtained for HELOCs have been influenced toward misstating property values? To what extent do creditors contract out HELOC servicing to third parties, thus undermining the Board's premise regarding aligned interests between servicers and consumers? Whether third parties or the original creditors primarily service HELOCs, what evidence shows whether they engage in the abusive servicing practices addressed by § 226.36(c)?

Section 226.37 Special Disclosure Requirements for Closed-End Mortgages

Section 226.17(a), which implements Sections 122(a) and 128(b)(1) of TILA, addresses format and other disclosure standards for all closed-end credit. 15 U.S.C. 1632(a), 1638(b)(1). For closed-end credit, creditors must provide disclosures in writing in a form that the consumer may keep, grouped together and segregated from other information. In addition, the loan's ''finance charge'' and ''annual percentage rate,'' using those terms, must be more conspicuous than other required disclosures.

The Board proposes special rules in new § 226.37 to govern the format of required disclosures under TILA for transactions secured by real property or a dwelling. These new rules would be in addition to the rules in § 226.17. The proposed format rules are intended to (1) improve consumers' ability to identify disclosed loan terms more readily; (2) emphasize information that is most important to the consumer in the decision-making process; and (3) simplify the organization and structure of required disclosures to reduce complexity and ''information overload.'' Proposed § 226.37 would establish special format rules for disclosures required by proposed §§ 226.38 and 226.20(d), and existing §§ 226.19(b) and 226.20(c).

The Board is proposing § 226.37 and associated commentary to address the

duty to provide ''clear and conspicuous'' disclosures that are grouped together and segregated from other information, and to require that certain information be highlighted in table form or in a graph. Proposed § 226.37 would also require creditors to use consistent terminology for all disclosures. The Board is proposing to revise the requirement that certain terms be used or disclosed more conspicuously, for transactions secured by real property or a dwelling. The general disclosure standards under § 226.17(a)(1) and associated commentary continue to apply transactions secured by real property or a dwelling but, under the proposal creditors would also be required to meet the higher standards under proposed § 226.37.

37(a) Form of Disclosures

37(a)(1) Clear and Conspicuous

Section 122(a) of TILA and § 226.17(a)(1) require that all closed-end credit disclosures be made clearly and conspicuously. 15 U.S.C. 1632(a). Currently, under comment 17(a)(1)–1, the Board interprets the clear and conspicuous standard to mean that disclosures must be in a ''reasonably understandable'' form. This standard does not require any mathematical progression or format, or that disclosures be provided in a particular type size, although disclosures must be legible whether typewritten, handwritten, or printed by computer. Comment 17(a)(1)–3 provides that the standard does not require disclosures to be located in a particular place.

Consumer testing conducted by the Board showed that information presented without any highlighting or other emphasis, and the use of small print led many participants to miss or disregard key information about the loan transaction. As discussed more fully under the following sections, consumer testing indicates that when certain information is presented and highlighted in a specific way consumers are able to identify and use key terms more easily: proposed § 226.38 for disclosures required on transactions secured by real property or a dwelling, § 226.19(b) for ARM loan program disclosures, § 226.20(c) for ARM adjustment notices, and § 226.20(d) for periodic statements on loans that are negatively amortizing.[66] For example, consumer testing of the current TILA model form indicated that participants viewed both the interest rate and monthly payment as important. Although participants generally understood that the interest rate on their loan could change, several arrived at this conclusion because of the payment schedule disclosure, which showed different monthly payment amounts, not because they understood the loan had a variable rate feature that would affect their monthly payments. In addition to testing the current TILA model form, the Board also tested variations of that form, including a form it developed in 1998 with HUD (''Joint Form'') that was submitted to Congress in the 1998 Joint Report.[67] Participants who reviewed the Joint Form also generally understood the loan had an adjustable rate, but less than half understood the rate was fixed only for the first three years and could vary only after that time period. However, when the Board consumer tested information about interest rates and monthly payments in a tabular form, participants could identify more readily that the loan had an adjustable rate feature, and comprehension of when interest rates would adjust and the impact that rate adjustments had on their monthly payments improved.

For these reasons, the Board proposes to require that creditors make disclosures for transactions secured by real property or a dwelling clearly and conspicuously, by highlighting certain information in accordance with the requirements in proposed §§ 226.38, 226.19(b), § 226.20(c), and § 226.20(d). Proposed comment 37(a)(1)–1 would clarify that to meet the clear and conspicuous standard, disclosures must be in a reasonably understandable form and readily noticeable to the consumer. Proposed comment 37(a)(1)–2 provides that to meet the readily noticeable standard, the disclosures under proposed §§ 226.38, 226.19(b), 226.20(c), and 226.20(d) generally must be provided in a minimum 10-point font. The approach of requiring a minimum of 10-point font for certain disclosures is consistent with the approach taken by the Board in revising disclosures required under TILA for certain open-end credit. 74 FR 5244; Jan. 29, 2009.

New comment 37(a)(1)–3 would clarify that disclosures under proposed §§ 226.38 and 226.19(b) must be provided on a document separate from other information, although these disclosures, as well as disclosures under proposed §§ 226.20(c) and 226.20(d), may be made on more than one page, on the front or back side of a page, and continued from one page to the next. Consumer testing suggests that consumers may not read information carefully if it is excessive in length, and if unable to identify relevant information quickly are likely to become frustrated and not read the disclosures. The Board believes that allowing creditors to combine disclosures with other information may increase the likelihood that consumers will not read the disclosures.

37(a)(2) Grouped Together and Segregated

Section 128(b)(1) of TILA and § 226.17(a)(1) currently require that, except for certain information, the disclosures required for closed-end credit must be grouped together, segregated from everything else, and not contain any information not directly related to the required disclosures. 15 U.S.C. 1638(b)(1). Comment 17(a)(1)–2 states that creditors can satisfy the grouped together and segregation requirement in a variety of ways, including combining segregated disclosures with other information as long as they are set off by a certain format type. Comment 17(a)(1)–2 further provides that the segregation requirement does not apply to disclosures for variable rate transactions required under current §§ 226.19(b) and 226.20(c). Comment 17(a)(1)–7 clarifies that balloon-payment financing with leasing characteristics is subject to the grouped together and segregation requirement.

Consumer testing conducted by the Board indicated that participants generally are overwhelmed by the amount of information presented for loan transactions, and as a result, do not read their mortgage disclosures carefully. Consumer testing showed that emphasizing terms and costs consumers find important, and separating out less useful information, is critical to improving consumers' ability to identify and use key information in their decision-making process.[68] Consumer testing also demonstrated that grouping related concepts and figures together, and presenting them in a particular format or structure can improve

[66] *See also Improving Consumer Mortgage Disclosures* (finding that incorporating white space, using clear headings, and using certain formatting and organization create a ''less intimidating appearance than many consumer financial disclosures, making it more likely that consumers will both want to read the form and be able to use it productively in their decisions.'').

[67] *See* the *1998 Joint Report,* App.A–6.

[68] *See also Improving Consumer Mortgage Disclosure* at 69 (consumer testing results showed that current mortgage disclosure forms failed to convey key cost disclosures, but that prototype disclosures, which removed less useful information, significantly improved consumers' recognition of key mortgage costs).

consumers' ability to identify, comprehend, or use disclosed terms.

For these reasons, the Board proposes to require that certain disclosures be grouped together and segregated in the manner discussed below, pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). Grouping and segregating information which is most useful and relevant to the loan transaction would facilitate consumers' ability to evaluate a loan offer.

Segregation of disclosures. Proposed § 226.37(a)(2) would implement TILA Section 128(b)(1) of TILA, in part, for transactions secured by real property or a dwelling. 15 U.S.C. 1604(a), 1638(b)(1). Proposed § 226.37(a)(2) would require that disclosures for such transactions be grouped together in accordance with the requirements under proposed § 226.38(a) through (j), segregated from other information, and not contain any information not directly related to the segregated disclosures. Based on consumer testing, the Board also is proposing to require that ARM loan program disclosures under proposed § 226.19(b), ARM adjustment notices under proposed § 226.20(c), and periodic notices for payment option loans that are negatively amortizing under proposed § 226.20(d), be subject to a grouped-together and segregation requirement. Thus, the reference to §§ 226.19(b) and 226.20(c) would be deleted from comment 17(a)(1)–2.

Proposed comment 37(a)(2)–1 would clarify that to be segregated, disclosures must be set off from other information. Based on consumer testing, the Board is concerned that allowing creditors to combine disclosures with other information, in any format, will diminish the clarity of key disclosures, potentially cause ''information overload,'' and increase the likelihood that consumers may not read the disclosures. Proposed comment 37(a)(2)–1 also would provide guidance on how creditors can group together and segregate the disclosures in accordance with proposed § 226.38(a)–(j), such as by using bold print dividing lines.

Content of segregated disclosures; directly related information. Footnotes 37 and 38 currently provide exceptions to the grouped-together and segregation requirement under § 226.17(a)(1). Footnote 37 allows creditors to include information not directly related to the required disclosures, such as the consumer's name, address, and account number. Footnote 38, which implements TILA Section 128(b)(1), 15 U.S.C. 1638(b)(1), allows creditors to exclude certain required disclosures from the grouped-together and segregation requirement, such as the creditor's identity under § 226.18(a), the variable-rate example under § 226.18(f)(1)(iv), insurance or debt cancellation disclosures under § 226.18(n), or certain security-interest charges under § 226.18(o). Comment 17(a)(1)–4 clarifies that creditors have flexibility in grouping the disclosures listed in footnotes 37 and 38 either together with or separately from segregated disclosures, and comment 17(a)(1)–5 addresses what is considered directly related to the segregated disclosures.

Proposed § 226.37(a)(2)(i) and (ii) would provide exceptions to the grouped-together and segregation requirement, and implement TILA Section 128(b)(1) for transactions secured by real property or a dwelling. 15 U.S.C. 1638(b)(1). Proposed § 226.37(a)(2)(i) replicates the content in current footnote 37 and would allow the following disclosures to be made together with the segregated disclosures: the date of the transaction, and the consumer's name, address and account number. Proposed § 226.37(a)(2)(ii) generally replicates the substance in current footnote 38, except that the Board proposes to remove the reference to the variable-rate example under § 226.18(f)(iv), which would be eliminated for mortgage loans as discussed under proposed § 226.19(b). Under proposed § 226.37(a)(2)(ii), creditors also would have flexibility to make the tax deductibility disclosure, as discussed under proposed § 226.38(f)(4), together with or separately from other required disclosures.

Proposed comment 37(a)(2)–2 clarifies that creditors may add or delete the disclosures listed in proposed § 226.37(a)(2)(i) and (ii) in any combination together with or separate from the segregated disclosures. Proposed comment 37(a)(2)–3 provides guidance on the type of information that would be considered directly related and that may be included with the segregated disclosures for transactions secured by real property or a dwelling. Information described in comments 17(a)(1)–5(i) through (xv) are not included in proposed comment 37(a)(2)–3 because they are not applicable to transactions secured by real property or a dwelling, or are unnecessary as a result of other proposed disclosures: grace periods for late fees; unsecured interest; demand features; instructions on multi-purpose forms; minimum finance charge statement; negative amortization; due-on-sale clauses; prepayment of interest statement; the hypothetical example disclosure required by current § 226.18(f)(1)(iv); the variable rate transaction disclosure required by current § 226.18(f)(1); assumption; and the late-payment fee disclosure for single-payment loans.

The Board also proposes to require that the disclosure of the creditor's identity be grouped together and segregated from other information, for all closed-end credit. The Board proposes to make this change pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms, and avoiding the uninformed use of credit. 15 U.S.C. 1601(a). The Board believes that the creditor's identity should be included with the grouped-together and segregated disclosures so that consumers can more easily identify the appropriate entity. Thus, current footnote 38 would be revised, and proposed § 226.37(a)(2) would implement this aspect of the proposal for transactions secured by real property or a dwelling.

In technical revisions, the Board proposes to move the substance of footnotes 37 and 38 to the regulatory text of § 226.17(a)(1). Current comment 17(a)(1)–7 would be revised to address disclosures for transactions secured by real property or a dwelling that have balloon payment financing with leasing characteristics; a cross-reference to comment 17(a)(1)–7 is proposed in new comment 37(a)(2)–4.

The Board seeks comment on whether it should continue to permit creditors to make the insurance or debt cancellation disclosures under proposed § 226.4(d) together with or separately from other required disclosures. Consumer testing showed that many participants found these disclosures too long and complex, and as a result they do not read or only skim the disclosures. The Board is concerned that adding the insurance information to the information about loan terms required by proposed § 226.38 will result in ''information overload.''

Multi-purpose forms. Comment 17(a)(1)–6 currently permits creditors to design multi-purpose forms for TILA-required closed-end credit disclosures as long as the clear and conspicuous requirement is met. The Board proposes

to require that disclosures for transactions secured by real property or a dwelling be made only as applicable, as discussed more fully under proposed § 226.38. As noted, consumer testing indicates that consumers may not read information if it is excessive in length, and if unable to identify relevant information quickly are likely to become frustrated and not read the disclosures. The Board believes that allowing creditors to combine disclosures with other information that is not applicable to the transaction may contribute to ''information overload,'' and increase the likelihood that consumers will not read the disclosures.

For these reasons, under the proposal creditors would not be permitted to use forms for more than one type of mortgage transaction (*i.e.,* multi-purpose forms). The Board believes technology and form design software will allow creditors to prepare transaction-specific, customized disclosure forms at minimal cost. The Board seeks comment, however, on whether creditors already provide consumers with customized disclosures forms for mortgage loans in the regular course of business, or the extent to which creditors rely on multi-purpose forms. The Board seeks comment on potential operational changes, difficulties, or costs that would be incurred to implement the requirement to have transaction-specific disclosures for transactions secured by real property or a dwelling.

37(b) Separate Disclosures

Existing § 226.17(a)(1) requires certain disclosures to be provided separately from the segregated information, such as the itemization of amount financed required by § 226.18(c)(1) and TILA Section 128(a)(2)(A). 15 U.S.C. 1638(a)(2)(A). The Board is proposing to expand the list of disclosures that must be provided separately from the segregated information, based on consumer testing.

Consumer testing showed that certain disclosures, such as disclosures about assumption or property insurance, were confusing to participants, or were generally not as useful in the participants' decision-making process as other information. For example, with respect to assumption, few participants understood the current assumption policy model clause in Model Clause H–6 in Appendix H to Regulation Z; almost no one stated that the assumption was important information when applying for and obtaining a loan. With respect to property insurance, most participants understood that the borrower can obtain property insurance from anyone that is acceptable to the lender, but participants stated they were already aware of this fact and therefore this information was not useful. Regarding rebates, consumers understood that early payoff of the loan could result in a refund of interest and fees, and generally expressed interest in knowing this information. However, most also indicated that information about rebates would not have an impact on whether they accepted a loan and therefore, it was not as important or useful to the decision-making process as other information, such as interest rate or closing costs.

With respect to the contract reference, almost all participants understood already that they could read their contract to learn what could happen if they stopped making payments, defaulted, paid off or refinanced their loan early. In addition, other proposed disclosures, such as the prepayment penalty under proposed § 226.38(a)(5) or demand feature under proposed § 226.38(d)(2)(iv), would make the contract reference disclosure less important because such information would already be disclosed directly on the disclosure statement itself. Moreover, because creditors must provide disclosures within three business days after application for transactions secured by real property or a consumer's dwelling, consumers will not have a contract to reference at this point in time.

For these reasons, the Board proposes to require that certain information be disclosed separately from the grouped together and segregation information, to improve consumers' ability to focus on the terms that are most important for shopping and decision-making.[69] New § 226.37(b) would require that creditors provide the following disclosures separately from other information for transactions secured by real-property or a dwelling: Itemization of amount financed under proposed § 226.38(j)(1); rebates under proposed § 226.38(j)(2); late payment under proposed § 226.38(j)(3); property insurance under proposed § 226.38(j)(4); contract reference under proposed § 226.38(j)(5); and assumption under proposed § 226.38(j)(6).

The Board proposes this approach pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA for any class of transactions to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). In this case, the Board believes an exception from TILA's grouped together and segregation requirement is necessary to effectuate the Act's purposes for transactions secured by real property or a dwelling. As noted above, many consumers may not read information if it is excessive in length, and if unable to identify relevant information quickly are likely to become frustrated and not read the disclosures. The Board is concerned that allowing creditors to combine the information in proposed § 226.38(j) with other required information could contribute to ''information overload,'' distract from other important disclosures, such as the APR or monthly payments, and may increase the likelihood that consumers will not read the disclosures. Thus, the Board believes that requiring these disclosures to be separate from the other required disclosures will serve TILA's purpose to avoid the uninformed use of credit. 15 U.S.C. 1601(a).

37(c) Terminology

37(c)(1) Consistent Terminology

Currently, there is no requirement that TILA disclosures for closed-end credit use consistent terminology. Consumer testing showed that some participants were confused when different terms are used for the same information. For example, when the terms loan amount, principal, and loan balance were used, some participants attributed different meaning to each term used. Based on these findings, the Board proposes § 226.37(c)(1) to require the use of consistent terminology for the disclosures under proposed §§ 226.38, 226.19(b), 226.20(c) and 226.20(d). The Board believes that using consistent terminology will enhance a consumers' ability to identify, review, and comprehend disclosed terms across all disclosures and therefore, avoid the uninformed use of credit. Proposed comment 37(c)(1)–1 clarifies that terms do not need to be identical, unless otherwise specified, but must be close enough in meaning to enable the consumer to relate the disclosures to one another. Proposed comment 37(c)(1)–2 provides guidance on combining terms for transactions secured by real property or a dwelling when more than one numerical disclosure would be the same, and provides an example relating to the total payments and amount financed disclosures required under proposed

[69] *See also Improving Consumer Mortgage Disclosures* at 37–38, 59–60 (finding that streamlining disclosures improved consumer ability to identify and understand key terms of the loan transaction disclosed).

§§ 226.38(e)(5)(i) and 226.38(e)(5)(iii), respectively.

37(c)(2) Terms Required To Be More Conspicuous

Currently TILA Section 122(a) and § 226.17(a)(2) require creditors to disclose the terms ''finance charge'' and ''annual percentage rate,'' together with a corresponding dollar amount and percentage rate, more conspicuously than any other disclosure, except the creditor's identity under § 226.18(a). 15 U.S.C. 1632(a). Under TILA Section 103(u), the finance charge and the annual percentage rate are material disclosures; failure to disclose either term extends the right of rescission under TILA Section 125, and can result in actual and statutory damages under TILA Section 130(a). 15 U.S.C. 1602(u); 15 U.S.C. 1635, 1640(a).

Finance charge: interest and settlement charges. Section 226.18(d), which implements TILA Sections 128(a)(3) and (a)(8), requires creditors to disclose the ''finance charge,'' using that term, and a brief description such as ''the dollar amount the credit will cost you'' for closed-end credit. 15 U.S.C. 1638(a)(3), (a)(8). Consumer testing showed that participants could not correctly explain what the finance charge represented. Many consumers recognized that the finance charge included all of the interest they would pay over the loan's term, but did not know that it also included fees. Most participants did not find the finance charge to be useful in evaluating a loan offer. However, some participants expressed a general interest in knowing the information.

Based on these results, the Board tested a form with the finance charge disclosed as ''interest and settlement charges,'' to more closely represent the components of the finance charge. Participants generally understood the term, but still stated that they did not find the term very useful, particularly when compared to other information such as the interest rate or monthly payments. Consumer testing suggests that highlighting terms that are not useful in the decision-making process may generally diminish consumers' ability to understand other key terms.

For these reasons, and as discussed more fully in the discussion of proposed § 226.38(e)(5)(ii), the Board proposes to exercise its authority under TILA Section 105(a) to make certain exceptions to the disclosure of the finance charge under TILA Section 128(a)(3) and TILA Section 122(a). 15 U.S.C. 1604(a); 1632(a); 1638(a)(3). First, creditors would be required to disclose the finance charge as ''interest and settlement charges,'' not as the ''finance charge'' as required by TILA Section 128(a)(3). 15 U.S.C. 1638(a)(3). Second, the disclosure of interest and settlement charges would not have to be more conspicuous than other terms, as required by TILA Section 122(a). 15 U.S.C. 1632(a).

The exception to TILA's requirements that the finance charge be disclosed as the ''finance charge'' and that it be more conspicuous than other information is proposed pursuant to TILA Section 105(a). 15 U.S.C. 1604(a). The Board has authority under TILA Section 105(a) to adopt ''such adjustments and exceptions for any class of transactions as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' 15 U.S.C. 1601(a), 1604(a). The class of transactions that would be affected is closed-end transactions secured by real property or a dwelling. The Board believes an exception from TILA's requirements is necessary and proper to effectuate TILA's purposes to assure meaningful disclosure and informed credit use. Consumer testing showed that disclosing the finance charge as ''interest and settlement charges'' improved participants' understanding of the information, even though the figure may not include all interest and settlement charges applicable to the transaction. (See discussion under proposed § 226.4 regarding content and calculation of the interest and settlement charges.) Moreover, consumer testing showed that participants did not find the interest and settlement charges as useful, when choosing or evaluating a loan product, as other information, such as whether the loan has an adjustable rate or the monthly payment amount.

In addition, and for the reasons discussed more fully under proposed § 226.38(e)(5)(ii) regarding interest and settlement charges, the proposal would group the interest and settlement charges disclosure with other disclosures relating to the total cost of the loan offered, such as the total of payments and the amount financed. Consumer testing conducted by the Board, as well as basic document design principles, shows that grouping related concepts and figures makes it easier for consumers to identify, comprehend, or use disclosed terms.

Annual percentage rate. TILA Section 122(a) and § 226.17(a)(1) require that the term ''annual percentage rate,'' when disclosed with the corresponding percentage rate, be disclosed more conspicuously than any other required disclosure. 15 U.S.C. 1632(a). The Board is proposing to revise the description of the APR and require that creditors provide context for the APR by disclosing it on a scaled graph with explanatory text, as discussed more fully under proposed §§ 226.38(b). In addition, the Board is proposing § 226.37(c)(2) to implement TILA Section 122(a) for transactions secured by real property or a dwelling. 15 U.S.C. 1632(a). Section 226.37(c)(2) would require that creditors disclose the APR in a 16-point font, in a prominent location, and in close proximity to the scaled graph and explanations proposed under § 226.38(b)(2) through (4).

As discussed under proposed § 226.38(b), the APR is one of the most important terms disclosed about the loan; it is the only single, unified number available to help consumers understand the overall cost of a loan. To this end, the Board believes it is essential that consumers be able to identify the APR easily. Consumer testing and basic document design principles show that participants generally pay greater attention to figures, such as numbers, percentages and dollar signs, than to terminology that may accompany, describe or label any disclosed figure. However, the TILA disclosure contains many numerical figures that consumers must identify and review. Given that the Board is proposing to require a minimum 10-point font for disclosure of other terms on the TILA (see discussion under proposed comment 37(a)(1)–2), and based on document design principles, the Board consumer tested disclosing the APR figure in a larger font and in bold text to make it more readily noticeable as compared to other disclosed terms. When tested in this manner, participants were able to easily identify the APR. Based on consumer testing, the Board believes that a 16-point font requirement for the APR is sufficient to highlight the APR. The Board also notes that the approach of requiring at least a 16-point font for the APR disclosure is consistent with the approach taken by the Board in revising the purchase APR disclosure required under TILA for open-end credit. 74 FR 5244; Jan. 29, 2009.

Proposed comment 37(c)–3(i) through (iii) would provide further guidance on the more conspicuous requirement and would clarify that the APR must be more conspicuous only in relation to other required disclosures under proposed § 226.38, and only as required under proposed § 226.37(c)(2) and § 226.38(b). Proposed comment 37(c)–4 would provide guidance on how creditors can comply with the more

conspicuous requirement for transactions secured by real property or a dwelling.

The Board seeks comment on whether the APR should be made more or less prominent using a larger or smaller font-size, and whether different graphs or visuals could be used to provide better context for the APR. The Board also seeks comment on the relative advantages and disadvantages of a graphic-based versus text-based approach to disclosing the APR, and the potential operational changes, difficulties, or costs that would be incurred to implement the graphic-based APR disclosure requirement for transactions secured by real property or a dwelling.

37(d) Specific Formats

Currently, § 226.17(a)(1) does not impose special format design or location requirements on disclosures for closed-end credit. However, as discussed more fully under proposed § 226.38, consumer testing showed that the current TILA form did not present key loan information in a manner that was noticeable and easy for consumers to understand. For example, the payment schedule required under current § 226.18(g) did not effectively demonstrate to participants the relationship between monthly payments and an adjustable interest rate feature. Consumer testing also showed that the current TILA form highlighted terms that confused many participants. For example, most participants incorrectly assumed the amount financed was the same as the loan amount, a term not required on the current TILA form. In other instances, the current TILA form emphasized information that participants generally understood, but did not find useful or important, such as the total of payments. Many participants also noted that the current TILA form failed to include information they would find useful when shopping or evaluating a loan offer, such as the contract interest rate and settlement charges.

As discussed under proposed § 226.19, consumer testing of the current ARM loan program disclosure and the CHARM booklet also revealed ineffective presentation of information relating to adjustable rate loan programs. Many participants found the narrative format and terminology used in the current ARM loan program disclosure complicated, dense, and difficult to read and understand. With respect to the CHARM booklet, many participants generally indicated that the information it contained was informative and educational, but they would be unlikely to read it because it was too long.

In addition, as noted previously, consumer testing suggests that consumers may not read information carefully if it is excessive in length, and if unable to identify relevant information quickly are likely to become frustrated and not read the disclosures. As discussed more fully under proposed § 226.37(a) through (c), this suggests highlighting and structuring disclosures in a particular manner to improve clarity, identification and comprehension of disclosed terms.

To address the problems with the current TILA form and ARM loan program disclosures, the Board used various formats to present key loan information, such as tabular forms and question and answer format. Consumer testing suggests that using tabular forms improved participants' ability to readily identify and understand key information, as discussed under proposed §§ 226.19(b) and 226.38(c). For example, current ARM loan program disclosures provide information in narrative form, which participants found difficult to read and understand. However, consumer testing showed that when information about interest rate, monthly payment and loan features was presented in tabular format, participants found the information easier to locate and their comprehension of the disclosed terms improved. The benefits of disclosing important information in a tabular format are consistent with the results of consumer testing conducted by the Board in revising credit card disclosures. 74 FR 5244; Jan. 29, 2009. Consumer testing also showed that using question and answer format improved participants' ability to recognize and understand potentially risky or costly features of a loan, as discussed under proposed §§ 226.19 and 226.38(d). Consumer testing and basic document design principles suggest that keeping language and design elements consistent between forms improves consumers' ability to identify and track changes in the information being disclosed. As a result, the Board also integrated the question and answer format used on the revised TILA model form into ARM loan program disclosures required under proposed § 226.19(b).

To present key loan terms more effectively, the Board also used specific location and structure requirements. Consumer testing suggests that the location and order in which information is presented impacts consumers' ability to find and comprehend the information disclosed. For example, as discussed under proposed § 226.38(a), disclosing key information, such as the loan term, amount, type, and settlement charges, before other required disclosures and in a tabular format improved participants' ability to quickly and accurately identify key loan terms. In another example, participants' ability to identify the frequency of rate adjustments after an introductory period expired also improved when this information was included both in the loan summary section at the top of the revised TILA model form, and then again below in the interest rate and payment summary section.

Based on consumer testing results, basic document design principles, and for the reasons discussed more fully under each of the following subsections, the Board is proposing to establish special format rules for: disclosures under proposed § 226.38 for transactions secured by real property or a dwelling; ARM loan program disclosures under proposed § 226.19(b) for adjustable rate transactions; ARM adjustment notices under proposed § 226.20(c); and periodic statements required for payment option loans that are negatively amortizing under proposed § 226.20(d). The special rules regarding format, structure and location of disclosures are noted in proposed § 226.37(d)(1) through (10). Proposed comments 37(d)–1 and –2 would provide guidance to creditors on how to comply with the special format rules noted in proposed § 226.37(d)(1) through (10) regarding prominence and close proximity of disclosed terms.

37(e) Electronic Disclosures

Currently, under § 226.17(a)(1) creditors are permitted to provide in electronic form any TILA disclosure for closed-end credit that is required to be provided or made available to consumers in writing if the consumer affirmatively consents to receipt of electronic disclosures in a prescribed manner. Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.* The Board proposes § 226.37(e) to allow creditors to provide required disclosures for transactions covered by proposed § 226.38 in electronic form in accordance with the requirements under § 226.17(a)(1).

Section 226.38 Content of Disclosures for Credit Secured by Real Property or a Dwelling

38(a) Loan Summary

To shop for and understand the cost of credit, consumers must be able to identify and understand the key credit terms offered to them. As discussed

below, the Board's consumer testing suggested that loan amount, loan term and loan type are key terms that consumers are familiar with and expect to see on closed-end mortgage disclosures, together with settlement charges and whether a prepayment penalty would apply to their loan.

The Board's Proposal

The Board proposes to require creditors to provide the following key loan features in a loan summary section: loan amount, loan term, loan type, the total settlement charges, whether a prepayment penalty applies and, the maximum amount of the penalty. The purpose of the proposed disclosures is to improve their effectiveness and consumer comprehension. A concise loan summary would help consumers compare loan offers; a summary may also help consumers determine whether they can afford the loan they are offered, and whether the disclosure presents the same loan terms they discussed with their mortgage broker or lender.

The Board conducted consumer testing of loan summary disclosures. Participants were able to identify the exact loan amount, what type of a loan they were being offered, how long they would have to pay off their loan, how much they would have to pay in settlement charges, and whether a prepayment penalty would apply. A discussion of the items that would be included in the loan summary follows.

38(a)(1) Loan Amount

Currently creditors are not required to disclose the loan amount for closed-end mortgages, except for loans subject to HOEPA. Under § 226.32(c)(5), creditors are required to disclose the total amount borrowed. The Board is proposing to require a similar disclosure of the loan amount for all transactions secured by a real property or a dwelling. Proposed § 226.38(a)(1) would require creditors to disclose ''loan amount,'' which would be defined as the principal amount the consumer will borrow reflected in the note or loan contract. The loan amount is a core loan term that the consumer should be able to verify readily on the disclosure. Disclosing the loan amount may also alert the consumer to fees that are financed in addition to the principal balance.

38(a)(2) Loan Term

Currently, Regulation Z requires creditors to disclose the number of payments but not the term of the loan. The Board believes that the loan term is an important fact about the loan that consumers should know when evaluating a loan offer. Consumer testing of current model forms conducted by the Board indicated that some consumers are not able to readily identify the loan term from the number of payments disclosed in the current disclosures. Although some participants could determine the loan term by dividing by 12 the number of months shown in the payment schedule disclosed under § 226.18(g), other participants could not readily figure the term of the loan offered, particularly for loans that have multiple payment levels, such as discounted adjustable-rate mortgages. For these reasons, the Board is proposing to require disclosure of the loan term in the summary section for loans covered by § 226.38, and to define ''loan term'' for these purposes as the time to repay the obligation in full. For instance, instead of disclosing the number of months for each payment amount for variable interest rate loans and requiring the consumer to add up those months to determine the loan term, the proposed disclosure would state ''Loan term: 30 years.'' Likewise, for a 10-year loan with a balloon payment due in year 10 and an amortization schedule of 30 years, the proposed disclosure would state ''Loan term: 10 years.''

38(a)(3) Loan Type and Features

Regulation Z does not require the creditor to disclose the type of the loan, except in the case of loans with variable interest rates. Current § 226.18(f) requires a disclosure of a variable rate if the annual percentage rate may increase after consummation. The Board's consumer testing indicates that the current variable rate disclosures may not clearly convey whether the loan has a fixed or a variable interest rate. The Board believes that a specific disclosure of a loan type offered will assist consumers in better understanding whether a loan features a rate that may increase after consummation, so that the consumer may evaluate whether they want a loan in which the rate and payments can increase.

The Board is proposing to require a disclosure of the loan type in the loan summary section for loans covered by § 226.38. Proposed § 226.38(a)(3)(i) would require that a loan be classified as one of three types: an ''adjustable-rate mortgage (ARM),'' a ''step-rate mortgage,'' or a ''fixed-rate mortgage'' using those terms. The categories proposed in § 226.38(a)(3)(i) apply only to disclosures requires for closed-end transaction secured by real property or a dwelling, and are different from the categories in § 226.18(f) and commentary to § 226.17(c)(1). Proposed § 226.38(a)(3)(ii) would require an additional disclosure if the loan has one or more of the following three features: ''negative amortization,'' ''interest-only payments,'' or ''step-payments,'' using those terms. The related commentary would provide examples for each loan type and feature.

38(a)(3)(i) Loan Type

As discussed above, consumer testing indicated that the current variable rate disclosure is not sufficiently clear for many consumers. When presented with a current closed-end model form for an adjustable-rate mortgage, over half of the participants understood that the interest rate would change. However, several participants inferred this from the different monthly payments in the payment schedule, not because the check box on the form indicated that the loan had a ''variable rate.'' A few participants indicated that they did not know whether the rate would change. Some participants commented that although the current model form used the term ''variable rate,'' they were more familiar with the term ''adjustable rate.'' As a result, the Board tested revised disclosures using the term ''adjustable rate mortgage'' in the loan summary section. All participants who were shown a revised disclosure for a variable rate transaction using the term ''adjustable-rate mortgage'' understood that the interest rate and payments could change during the loan's term.

Proposed § 226.38(a)(3)(i) would define an adjustable-rate mortgage as a transaction in which the annual percentage rate may increase after consummation; a step-rate mortgage as a transaction in which the interest rate will change after consummation as specified in the legal obligation between the parties; and a fixed-rate mortgage as a transaction that is neither an adjustable-rate mortgage nor a step-rate mortgage. Proposed comment 38(a)(3)(i)(A)–2 would offer examples of adjustable-rate mortgages and clarify that some variable-rate transactions described in comment 17(c)(1)(iii)–4, such as certain renewable balloon-payment, preferred-rate and price-level-adjusted loans, would be considered fixed-rate mortgages for the purposes of the ''loan type'' disclosure in the loan summary required by § 226.38(a). This follows the current approach in comment 17(c)(1)–11 which provide that disclosures for certain variable-rate transactions should be based on the interest rate that applies at consummation.

Proposed § 226.38(a)(3)(i)(B) would require the creditor to disclose a loan as a ''step-rate mortgage'' if the interest rate will change after consummation,

provided all such interest rates are specified in the legal obligation between the parties. Under existing guidance, such a loan would not be considered a variable rate loan. The Board believes that for the purposes of the loan summary, which is to alert the consumer to the possibility that their interest rate and payment could increase after consummation, step-rate loans should not be identified as fixed or variable rate loans, even though they share certain features with both loan types. Proposed comment 38(a)(3)(i)(B)–2 would clarify that certain preferred-rate loans would not be considered step-rate mortgages for the purposes of the ''loan type'' disclosures. Proposed comment 38(a)(3)(i)(C)–1 would offer examples of fixed-rate mortgages and explain which variable-rate transactions described in comment 17(c)(1)(iii)–4 would be considered fixed-rate mortgages for the purposes of the ''loan type'' disclosure.

38(a)(3)(ii) Loan Features

The general classification of loans as fixed rate, adjustable rate and step rate would enable consumers to understand what loan type they are being offered and to shop for loan products according to consumers' needs and preferences. However, these broad categories of loan types are not sufficient to warn consumers about the potential risks that a specific loan may carry. As discussed previously, nontraditional mortgage products with negatively amortizing or interest-only payments grew in popularity in recent years, subjecting consumers to the risk of payment shock. Disclosures should clearly alert consumers to these features before the consumer becomes obligated on the loan. To alert consumers to potentially risky loan features, the Board is proposing to require an additional disclosure for each loan type in the loan summary if the loan has step-payments, payment option or negative amortization features, or interest-only payments.

Proposed § 226.38(a)(3)(ii) would require creditors to disclose whether a loan would have one or more of the following features: Step-payments if the legal obligation permits the periodic monthly payment to increase by a set amount for a specified amount of time; a payment option feature if the legal obligation permits the consumer to make payments that result in negative amortization and other types of payments; a negative amortization feature if the legal obligation requires the consumer to make payments that result in negative amortization—that is, the legal obligation does not permit the consumer to make payments that would cover all interest accrued or all interest accrued and principal; or an interest-only feature if the legal obligation permits or requires the consumer to make one or more regular periodic payments of interest accrued and no principal, and the legal obligation does not require or permit any payments that would result in negative amortization.

Proposed comment 38(a)(3)(ii)(A)–1 would offer an example of a step-payment feature. For example, if the consumer is offered a fixed-rate mortgage with 24 monthly payments at $1,000 that will later increase to $1,200 and remain at that level for a specified period of time, and the loan amortizes fully over the loan term, the creditor would disclose ''Fixed-Rate Mortgage, step-payments'' for the loan type in the loan summary. Proposed comment 38(a)(3)(ii)(B) and (C)–1 would clarify that a creditor should disclose the loan feature as either ''payment option'' or ''negative amortization'' but not both, whereas a loan may have both a ''step-payment'' feature and either a ''payment option'' or a ''negative amortization'' feature. Moreover, for a loan to have a ''payment option'' feature, all periodic payment choices must be specified in the legal obligation and must include a choice to make payments that may result in negative amortization. Proposed comment 38(a)(3)(ii)(D)–1 would provide that a creditor should not disclose both an ''interest-only'' feature and a ''payment option'' feature or ''negative amortization'' feature in a single transaction, whereas a loan may have both an ''interest-only'' feature and a ''step-payment'' feature.

38(a)(4) Total Settlement Charges

Currently, TILA and Regulation Z disclose settlement charges through the finance charge. TILA Section 128(a)(3) and § 226.18(d) require the creditor to disclose the finance charge. 15 U.S.C. 1638(a)(3). TILA Section 106(a) defines the ''finance charge'' as the ''sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the credit or as an incident to the extension of credit.'' 15 U.S.C. 1605(a). Section 226.4(a) further defines the ''finance charge'' as ''the cost of consumer credit as a dollar amount.'' The finance charge includes any interest due under the loan terms as well as other charges incurred in connection with the credit transaction. *See* § 226.4(a) and (b).

Consumer testing indicated that participants did not understand the term ''finance charge.'' Most participants believed the term referred only to the total amount of interest they would pay if they kept the loan to maturity, but did not always realize that it also includes the fees and costs incurred as part of the credit transaction. Most participants did not find the finance charge useful in evaluating a loan offer.

The disclosure of settlement charges is governed by RESPA, 12 U.S.C. 2601–2617, and implemented by HUD under Regulation X, 24 CFR part 3500. Under RESPA and Regulation X, creditors must provide a GFE of settlement costs within three business days of application for a mortgage, which is the same time creditors must provide the early TILA disclosure. RESPA and Regulation X also require a statement of the final settlement costs at loan closing (''HUD–1 or HUD–1A settlement statement''). Under the new final rule for Regulation X, effective January 1, 2010, the GFE is subject to certain accuracy requirements, absent changed circumstances. RESPA and Regulation X do not, however, provide any remedies for a violation of the accuracy requirements.

Consumer testing consistently demonstrated that participants wanted to see settlement charges on the revised TILA disclosure. Participants stated that including such a disclosure would help them confirm information that the loan originator told them about the cost of the loan during the mortgage application process. During consumer testing, participants indicated that they were often surprised at the closing table by substantial increases in the settlement charges. Despite these changes, consumers reported that they proceeded with closing because they lacked alternatives (especially in the case of a home purchase loan), or were told that they could easily refinance with better terms in the near future. Participants indicated that they would like an estimate of their settlement charges as early as possible in the loan process, and that it would be helpful to have the settlement charges displayed in the context of the other loan terms, rather than on a separate GFE or HUD–1 or HUD–1A settlement statement.

For these reasons, the Board proposes § 226.38(a)(4) to require creditors to disclose the ''total settlement charges,'' using that term, as those charges are disclosed under Regulation X, 12 CFR part 3500. The proposed rule would further require, as applicable, a statement of the amount of the charges already included in the loan amount. Finally, the proposed rule would require disclosure of a statement, as applicable, that the total amount does not include a down payment, along with

a reference to the GFE or HUD–1 for more details.

Proposed comment 38(a)(4)–1 would clarify that on the early TILA disclosure required by § 226.19(a)(1)(i), the creditor must disclose the amount of the ''Total Estimated Settlement Charges'' as disclosed on the GFE under Regulation X, 12 CFR part 3500, Appendix C. For the final TILA disclosure required by proposed § 226.19(a)(2)(ii), the creditor would be required to disclose the sum of the final settlement charges. The creditor would be permitted to use the sum of the ''Charges That Cannot Increase,'' ''Charges That In Total Cannot Increase By More Than 10%,'' and ''Charges That Can Change'' as would be disclosed in the column entitled ''HUD–1'' on page three of the HUD–1 or on page two of the HUD–1A settlement statement under Regulation X, 12 CFR part 3500, Appendix A. Alternatively, the creditor would be permitted to provide the consumer with the final HUD–1 or HUD–1A settlement statement. For transactions in which a GFE, HUD–1 or HUD–1A are not required, the proposed comment would clarify that the creditor may look to such documents for guidance on how to comply with the requirements of this section.

The Board recognizes that creditors are not currently required to provide the final settlement charges before consummation. Regulation X, 24 CFR 3500.10(b), permits the settlement agent to provide the completed HUD–1 or HUD–1A at settlement. However, proposed § 226.19(a)(2)(ii) would require the creditor to provide the TILA disclosure required by proposed § 226.38, including the total settlement charges disclosed under proposed § 226.38(a)(4), so that the consumer receives it at least three business days before consummation. In addition, under proposed § 226.19(a)(2)(iii)–Alternative 1, if anything changes during the three-business-day waiting period, including total settlement charges, the creditor would be required to supply another final TILA disclosure and three-business-day waiting period before consummation could occur. Consumers could waive the three-day waiting periods for bona fide personal financial emergencies.

The Board recognizes that proposed §§ 226.19(a)(2)(ii), 226.19(a)(2)(iii)–Alternative 1, and 226.38(a)(4) would require the creditor to disclose final settlement charge information several days in advance of consummation. These requirements would impose a cost on creditors, which may be passed on to consumers. Operational procedures and systems would need to be changed significantly to determine several days before closing the precise total amount of settlement charges that the consumer would pay at settlement. The Board believes, however, that the cost would be outweighed by the benefit to consumers of knowing their final total settlement charges three business days before consummation. This proposal would enable consumers to review and verify cost information in advance of consummation, and contact the creditor with questions or take other action, as appropriate.

38(a)(5) Prepayment Penalty

Current Disclosure Requirements

Under TILA Section 128(a)(11) and existing § 226.18(k)(1), if an obligation includes a finance charge computed by applying a rate to the unpaid principal balance (a ''simple-interest obligation''), creditors must disclose whether or not a penalty may be imposed if the consumer prepays the obligation in full. Comment 18(k)(1)–1 states that the term ''penalty'' refers only to charges that are assessed because of the prepayment in full of a simple-interest obligation, in addition to other amounts.

The existing model form in Appendix H–2 contains checkboxes for creditors to indicate whether a consumer ''may'' or ''will not'' have to pay a penalty if the consumer prepays the obligation in full. The Board adopted these checkbox options in 1980, in response to concerns that a statement that a prepayment penalty ''will be imposed'' would be misleading. The Board noted that many credit contracts allow a penalty to be imposed only if the loan is paid off within a certain time period after consummation or under other specific circumstances. *See* 45 FR 80648, 80682; Dec. 5, 1980.

Discussion

Consumer testing of the current disclosure showed that participants had difficulty identifying whether a loan would have a prepayment penalty and in what circumstances it would apply. For example, in the Board's consumer testing, participants did not understand that refinancing a loan or paying off the loan with proceeds from the sale of the home securing the loan could trigger a prepayment penalty. Similarly, consumer testing conducted by FTC staff found that two-thirds of participants who looked at a sample of the existing TILA disclosure showing a loan with a two-year prepayment penalty did not understand that a prepayment penalty would be charged if the consumer refinanced the loan two years after origination.[70] Some participants thought that a prepayment penalty could be charged only if they paid off their entire loan from their own funds, such as with money obtained through a sudden financial windfall.[71]

The Board developed and tested a revised prepayment penalty disclosure. Participants in the Board's consumer testing generally understood that if they prepaid the loan within the time specified in the disclosure, a penalty could be imposed. Participants also understood that the penalty could be imposed if they refinanced or sold the home during the time the penalty was in effect.

The Board's Proposal

Under proposed § 226.38(a)(5), if the legal obligation permits a creditor to impose a prepayment penalty the creditor must disclose in the ''Loan Summary'' section the period during which the penalty provision applies, the maximum possible penalty, and the circumstances in which the creditor may impose the penalty. If the legal obligation does not allow the creditor to impose a prepayment penalty, the creditor would make no disclosure regarding prepayment penalties in the ''Loan Summary'' section. (However, proposed § 226.38(d)(1)(iii) requires the creditor to disclose whether or not the legal obligation permits the creditor to charge a prepayment penalty in the ''Key Questions about Risk'' section.)

Maximum penalty amount. The Board is proposing to require creditors to disclose the maximum penalty possible under the legal obligation. Prepayment penalties may be substantial. The existence of a prepayment penalty may make it difficult to refinance a loan or sell a home. This may be particularly difficult for consumers who have adjustable rate loans or other loans that pose the risk of payment shock, as these consumers may believe that they can refinance or sell the home to avoid the increased payments. Thus, it is important for consumers to know the maximum penalty amount before they are obligated on a loan.

Under proposed § 226.38(a)(5) and (d)(1)(iii), creditors could not disclose the method or formula they use to determine the penalty with the disclosures required by § 226.38. Although some consumers might benefit from knowing how a prepayment penalty will be determined, the Board is concerned that consumers may be overloaded with information if the

[70] *Improving Consumer Mortgage Disclosures* at 78.

[71] *Id.*

calculation method is included with the segregated information. Many consumers would not read the prepayment penalty disclosure at all if it contains mathematical procedures and terms. Creditors may, of course, disclose how a prepayment penalty will be determined, as long as the disclosure is not disclosed together with the segregated disclosures.

Creditors also could not disclose a range of possible prepayment penalties or give examples of penalty amounts assuming the consumer prepaid at a hypothetical point in time under proposed § 226.38(a)(5) or (d)(1)(iii). The Board believes that it is important that prepayment penalty disclosures simply and clearly convey to consumers the potential magnitude of the prepayment penalty. Disclosures based on assumptions or averages could undermine the impact of the maximum penalty disclosure.

Additional penalty disclosures. Consumer testing indicated that some consumers do not understand that paying off the loan with the proceeds of a refinance loan or a home sale can trigger a prepayment penalty provision, as discussed above. Therefore, the proposed rule would require creditors to disclose the conditions upon which and the period during which they may impose a prepayment penalty.

It is important for a consumer to know what actions will trigger a prepayment penalty provision before obtaining a loan with such a provision. Consumers likely will not receive the loan agreement containing the prepayment penalty provision until consummation and may have little opportunity to review the agreement before becoming obligated. Moreover, a prepayment penalty is but one of many loan terms for consumers to consider at closing. The Board believes that including key information about a prepayment penalty provision in transaction-specific disclosures would help consumers avoid the uninformed use of credit.

Coverage. Comment 226.18(k)(1)–1 clarifies that § 226.18(k)(1) applies to transactions in which interest calculations take into account all scheduled reductions in principal, whether interest calculations are made daily or at some other interval. Proposed comment 38(a)(5)–1 is consistent with comment 18(k)(1)–1. Proposed § 38(j)(2) reflects existing § 226.18(k)(2) on rebate disclosures, as discussed below. Existing comment 18(k)–2 discusses cases where a single transaction involves both a rebate and a penalty. Proposed comment 38(a)(5)–8 reflects this existing commentary.

Definition of prepayment penalty. Comment 18(k)(1)–1 states that under § 226.18(k)(1) the term ''penalty'' refers only to those charges that are assessed because of the prepayment in full of a simple-interest obligation, in addition to other amounts. Comment 18(k)(1)–1 clarifies that interest charges for any period after prepayment in full is made and minimum finance charges are examples of prepayment penalties. The Board is proposing to revise comment 18(k)(1)–1 for clarity by substituting ''charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such 'balance' '' for ''interest charges for any period after prepayment,'' as discussed above. Proposed comments 38(a)(5)–2(i) and (ii) are consistent with comment 18(k)(1)–1, as it is proposed to be amended.

Proposed comment 38(a)(5)–2(iii) states that origination or other charges that a creditor waives on the condition that the consumer does not prepay the loan are prepayment penalties, for transactions secured by real property or a dwelling. Fees imposed for a preparing a payoff statement and performing other services when a consumer prepays the obligation would not be considered a prepayment penalty under the proposed rule, however. Such fees are not strictly linked to a consumer's prepaying the obligation, as they are charged at the end of a loan's term as well. The Board solicits comment on this distinction.

For purposes of some State laws, a minimum finance charge is not considered a prepayment penalty. For purposes of disclosure under TILA, a minimum finance charge is considered a prepayment penalty. Existing comment 18(k)(1)–1 and proposed comment 38(a)(5)–2 are designed to promote clear, consistent disclosure of charges creditors may impose when a consumer prepays the obligation in full. The proposed rule would not preempt State laws unless State law disclosure requirements are inconsistent with the rule, and then only to the extent of any inconsistency.

Existing comment 17(a)(1)–5(vii) allows creditors to disclose that the borrower may pay a minimum finance charge as information directly related to the penalty disclosure. Further, if a State or federal law prohibits creditors from charging a prepayment penalty but permits the charging of interest for some period after the consumer prepays from that prohibition, existing comment 17(a)(1)–5(xi) permits creditors to disclose that a consumer may have to pay interest for some period after prepayment as information directly related to the prepayment penalty disclosure. Comments 17(a)(1)–5(vii) and (xi), together with other commentary in comment 17(a)(1)–5, would not apply to transactions secured by real property or a dwelling, as discussed above.

Existing comment 18(k)(1)–1 states that loan guarantee fees are examples of charges that are not penalties. The Board proposes to retain this example in comment 38(a)(5)–2. (In a separate rulemaking, the Board proposed to remove the example of interim interest on a student loan as an example of charges that are not penalties. *See* 74 FR 12464, 12469; Mar. 29, 2009.)

Disclosed as applicable; disclosure content. Proposed comment 38(a)(5)–4 clarifies that if no prepayment penalty applies, creditors need not disclose that fact in the ''Loan Summary'' section of transaction-specific disclosures. Proposed § 226.38(d)(1)(iii) requires creditors to disclose whether or not the legal obligation permits the creditor to charge a prepayment penalty in the ''Key Questions about Risk'' section, however. Proposed comment 38(a)(5)–5 clarifies that creditors must disclose the maximum penalty as a numerical amount. This is consistent with the general rule of construction of the word ''amount'' required by § 226.2(b)(5).

Basis of disclosure. Proposed comment 38(a)(5)–6 explains how creditors determine the maximum penalty amount and contains examples that illustrate how those principles are applied. (Proposed comment 38(d)(1)(iii) states that creditors may rely on proposed comment 38(a)(5)–6 in determining the maximum prepayment penalty to be disclosed as one of the ''Key Questions about Risk'' disclosures.) Proposed comment 38(a)(5)–6 states that in all cases, the creditor should assume that the consumer prepays at a time when the prepayment penalty may be charged. The comment also states that if more than one type of prepayment penalty applies (for example, if the loan includes a minimum finance charge and the creditor may collect interest after prepayment), the creditor should include the maximum amount of each type of prepayment penalty in determining the maximum penalty possible.

Existing comment 18(k)(1)–1 clarifies that interest charges for any period after a consumer prepays in full and a minimum finance charge in a simple interest transaction are deemed to be prepayment penalties. Proposed comment 38(a)(5)–6(i) and (ii) clarifies that the amount of such charges must be

counted in determining the maximum penalty.

Proposed comment 38(a)(5)–6(iii) provides examples of how creditors may calculate a maximum prepayment penalty where the creditor determines the penalty by applying a constant rate to the loan balance at the time of prepayment. In such cases, the prepayment penalty amount is largest when the balance is as high as possible. Proposed comment 38(a)(5)–6(iv) illustrates a method creditors could use to approximate the maximum penalty where the penalty amount depends on both the loan balance and the time at which the consumer prepays (for example, where a prepayment penalty on an adjustable-rate loan equals six months' interest payments). If the penalty amount depends on both the loan balance and the time at which the consumer prepays, under the proposed rule creditors would disclose the greater of (1) the penalty charged when the balance is the highest possible and (2) the penalty charged when the penalty rate is the highest possible (two-stage penalty calculation).

The two-stage penalty calculation produces an amount that approximates, but does not necessarily equal, the maximum prepayment penalty. The Board believes, however, that the amount determined using the two-stage penalty calculation ordinarily will be sufficiently close to the actual maximum prepayment penalty that it would be appropriate for creditors to use the method in complying with § 226.38(a)(5) and (d)(1)(iii). The Board solicits comment on whether the Board should permit creditors to use the two-stage penalty calculation where the penalty rate increases. Will this ''two-stage penalty calculation'' method produce a prepayment penalty amount that sufficiently approximates the maximum prepayment penalty possible for a loan? Are there cases where there will be a significant disparity between the maximum penalty determined using the two-stage penalty calculation and the actual maximum penalty?

Neither the simple penalty calculation nor the two-stage penalty calculation will enable the creditor to determine the maximum penalty where the penalty rate on a negatively amortizing loan declines. In such a case, the creditor must determine the maximum prepayment penalty by determining what the penalty would be at each point during the loan term while the penalty is in effect.

Requiring all creditors to base maximum penalty disclosures on the foregoing rules ensures standardization of disclosures. Allowing creditors to select their own assumptions about when consumers are likely to prepay would result in inconsistencies among the disclosures given by different creditors. The Board considered other approaches, such as requiring creditors to disclose the maximum prepayment penalty based on a single hypothetical point in time (for example, one year after origination). However, this approach would understate the amount consumers who prepay earlier would have to pay.

Timely payment assumed. Proposed comment 38(a)(5)–7 states that creditors may assume that the consumer makes payments on time and may disregard any possible inaccuracies resulting from consumers' payment patterns. This is consistent with existing comment 17(c)(2)(i)–3 and proposed clarifications in comment 17(c)(1)–1. Proposed comment 38(a)(5)–7 further clarifies that where the payment required by a legal obligation's terms is not a fully amortizing payment, the creditor must base disclosures on the required periodic payment and may not assume that the consumer will make payments that exceed the required payment.

38(b) Annual Percentage Rate

The Board proposes to improve the APR's utility to consumers by making it a more inclusive measure of the cost of credit, as discussed under § 226.4, and also by improving the manner in which the APR is disclosed on the TILA statement. Proposed § 226.38(b)(1) would require the APR to be disclosed, using the term ''annual percentage rate'' and with the description, ''overall cost of this loan including interest and settlement charges.'' Proposed § 226.38(b)(2) would require creditors to show the APR plotted on a graph, relative to (1) the ''average prime offer rate'' (APOR) for borrowers with excellent credit for a comparable loan type, in the week in which the disclosure is provided, and (2) the higher-priced loan threshold under § 226.35(a).[72] Proposed § 226.38(b)(3) would require an explanation of the APOR and higher-priced threshold. Proposed § 226.38(b)(4) would require creditors to disclose the average per-period savings from a 1 percentage-point reduction in the disclosed APR. Certain loans, including construction loans, would be excluded from proposed § 226.38(b)(2) and (b)(3).

[72] The Board issued § 226.35(a) in its 2008 HOEPA Final Rule; compliance with § 226.35(a) is mandatory beginning on October 1, 2009.

Current Rules

For closed-end credit, TILA Section 128(a)(4) and (a)(8) require creditors to disclose the ''annual percentage rate,'' using that term, together with a brief description such as ''the cost of your credit as a yearly rate.'' 15 U.S.C. 1638(a)(4), (a)(8). Section 226.18(e) implements these requirements. As discussed in proposed § 226.37, TILA Section 122 and § 226.17(a) require the APR, with the finance charge, to be more conspicuous than other disclosures except the disclosure of the creditor's identity. Changes to the requirements of § 226.17(a) are discussed under § 226.37.

Discussion

The APR is the only single, unified number available to help consumers understand the overall cost of a loan.[73] 15 U.S.C. 1638(a)(4). Before enactment of TILA in 1968, creditors could advertise a 6 percent loan rate, but were allowed to calculate the interest charged to the consumer by using a simple interest, an add-on, or a discount rate method.[74] Although the advertised loan rate would appear the same, the amount of interest consumers actually would pay over the loan term would differ greatly under each of these calculation methods.[75] In addition, consumers were forced to evaluate different components of a loan's costs, such as interest rate, points, and closing costs, when comparing competing loan offers. The APR standardizes the interest rate calculation and seeks to capture the overall cost of the credit offered so that consumers can compare competing loan more easily than if they had to evaluate the relationship and impact of different loan costs themselves.[76]

Participants in the Board's consumer testing generally did not understand the APR and often mistook it for the loan's interest rate.[77] The Board tested alternative descriptive statements and formats for the APR, but consumers continued to be confused by the APR. For example, some participants thought the APR reflected future adjustments to the interest rate, or the maximum possible interest rate for a variable rate loan. A few participants recognized that

[73] The *1998 Joint Report* at 8; *see also* Bd. Of Governors of Fed. Res. Sys., *1996 Report to Congress: Finance Charges for Consumer Credit under the Truth in Lending Act* at (April 1996).

[74] The *1998 Joint Report* at 8.

[75] *Id.*

[76] *Id.*

[77] *See also Improving Consumer Mortgage Disclosures* at 35 (finding that most respondents in consumer testing did not understand or were confused by the APR and generally mistook it for the contract interest rate).

the APR differed from the interest rate, but were unable to articulate the reason. In addition, when presented with two hypothetical loan offers, participants did not use the APR to compare and choose between the offers. Instead, participants chose a loan based on one or more of the following pieces of information: the interest rate, monthly payment, and settlement costs.

The Board's Proposal

The Board proposes to retain the APR disclosure, with several changes designed to improve the APR's utility for consumers. These proposed changes would apply only to closed-end transactions secured by real property or a dwelling. First, the Board proposes to revise the description to use simpler terminology. Proposed § 226.38(b)(1) would require creditors to disclose the APR, expressed as a percentage, together with a statement that it represents the overall cost of the loan, including interest and settlement charges. As discussed under § 226.4, the Board also proposes to make the APR more inclusive of the cost of credit. Moreover, under § 226.38(c), the interest rate would be disclosed on the form, which would help some consumers understand that the APR does not represent the interest rate.

Second, the proposed rule also would require creditors to disclose the APR using a graph that shows the consumer how the APR for the loan offered would compare to the average prime offer rate and the threshold for higher-priced loans under § 226.35(a). This disclosure would help consumers understand how the APR on the loan offered to them compares to APRs offered to borrowers with excellent credit for a similar loan type, and higher-priced loans which generally are made to borrowers who present higher risk. Such borrowers include those with blemished credit histories, or with high loan-to-value ratios.

The Board's consumer testing shows that consumers do not understand the APR's utility. Testing the APR with different names and descriptions did not measurably increase consumers' understanding of the APR. Although the APR was designed in part to facilitate comparison of competing loan products, testing suggests that most consumers do not compare competing loans by APR, probably because they receive only one TILA disclosure before they consummate a loan. If consumers comparison shop for a loan, they do so before they apply for a loan and likely shop based on oral quotes of interest rates and points.

The Board's testing suggests that with little understanding of the APR and no ready and appropriate basis for comparison, many consumers ignore the APR in favor of information they find more accessible, such as the loan's monthly payment or settlement costs. Therefore, the Board is taking two steps to improve the disclosure of the APR. The first step is designed to draw consumers' attention to the APR. To do so, the Board proposes to require disclosure of the consumer's APR on a graph to highlight the APR and distinguish it from other numerical disclosures, including the interest rate. Consumers would be more likely to notice the APR plotted on the graph, in a prominent location on the disclosure statement. Principles of consumer design provide that a graphic device accommodates different learning styles. And, consumer research has shown that use of graphics or similar visual devices help consumers attend to or notice important information.[78]

The Board's next proposed step is to present the APR in a context that is designed to facilitate understanding of the APR. The Board believes that consumers would be more likely to use the APR if it is shown to them in context of other rates, rather than in isolation as is presently often the case. Research on consumer behavior suggests that consumer choice is affected by whether a consumer is presented with a single option for a product or multiple options. Consumers making a choice in the presence of more than one option are more likely to make a selection based on the relative merits of the options presented, rather than on their own existing ''references'' for the value of the product.[79] Here, the Board believes that presenting consumers with information about other rates, current as of the week of the consumer's application, would help consumers make more informed decisions about the loan offered.

Testing suggests that showing the consumer the APR in context of information about other APRs would result in consumer benefits. For example, the APR graph would cause consumers to ask the creditor questions about the rate offered to them and when applicable, why it differs from the average APR offered to borrowers with excellent credit histories. The proposed APR disclosure would enable consumers to determine whether they are being offered a loan that comports with their creditworthiness. A borrower who knows his or her credit history is excellent or very good would be informed that the loan offered is higher-priced. Participants in the Board's testing stated that if they knew they had excellent credit, they would ask the lender why they were being offered a higher-priced loan and what they would need to do to get a better offer. The Board notes that some participants indicated that the disclosed APR, even if higher-priced, was lower than the interest rate on their current loan and thus was attractive to them. Nevertheless, while some consumers may not be prompted by the APR graph to seek information about improved loan terms, testing suggests others may do so and benefit as a result.

The Board recognizes that not all consumers are aware of their credit history, and thus may not be able to assess whether the loan offered is consistent with their credit standing. The Board anticipates that the APR graph would cause some consumers to investigate their credit reports. If there are errors, these consumers could take steps to resolve the errors. If consumers in fact have impaired credit, some consumers might consider whether to delay seeking a loan until they could repair their credit standing.

In some instances the APR graph may be potentially confusing. That is, a loan may be a higher-priced loan for reasons other than the borrower's credit history. For example, a consumer might have little home equity, resulting in a high loan-to-value ratio and a higher APR. The Board believes that even in such cases, the APR graph nonetheless would be beneficial to consumers. It would prompt the consumer to ask questions, and creditors should be able to explain to consumers why the APR on a loan is higher-priced. In many cases the explanation may help the consumer determine whether they could take steps to get a lower APR. For example, if the creditor explains that the offered loan is a higher-priced loan because of a low down-payment, the borrower would be alerted that providing a larger down payment would result in a reduced APR and cost savings.

The Board also notes that certain loans may be higher-priced loans simply because of the loan type. For example, loans that exceed the threshold amount for eligibility for purchase by Fannie

[78] Kozup, John, Elizabeth Howlett, and Michael Pagano. 2008. ''The Effects of Summary Information on Consumer Perception of Mutual Fund Characteristics.'' *The Journal of Consumer Affairs*, vol. 42. *See also* Testimony of John Kozup, Assistant Professor, Department of Marketing, and Director, Center for Marketing and Public Policy, Villanova University; *http://www.federalreserve.gov/events/publichearings/hoepa/2006/20060711/transcript.pdf*.

[79] *See, e.g.*, Hsee, Christopher K. and France Leclerc. 1988. ''Will Products Look More Attractive When Presented Separately or Together?'' *Journal of Consumer Research*, vol. 25.

Mae and Freddie Mac, known as ''nonconforming'' or ''jumbo loans,'' may tend to be higher-priced loans because of the method for calculating the APOR. The APOR is the average APR for *conforming* loans offered to borrowers with excellent credit. In the case of such loans, creditors would have to explain to consumers why the loan's APR is higher-priced.

Third, the proposal would require the creditor to disclose the average per-period savings from a 1 percentage-point reduction in the disclosed APR. The Board believes that showing consumers the relationship between the APR and a concrete dollar figure would help make the possible benefits of obtaining better loan terms more concrete for consumers. Showing potential savings that could result from a lower APR would help encourage consumers to shop and negotiate for better loan terms, or as discussed, to increase their downpayment, resolve errors in their credit report, or seek to improve their credit standing.

38(b)(2)

Proposed § 226.38(b)(2) would require a graph indicating the consumer's APR within a range of APRs beginning with the average prime offer rate (''APOR''), as defined in § 226.35(a)(2), including the higher-priced mortgage loan threshold, as defined in § 226.35(a)(1), and terminating four percentage points greater than the higher-priced mortgage loan threshold. Proposed § 226.38(b)(3) would require a statement of the APOR as defined in § 226.35(a)(2), and the higher-priced mortgage loan threshold, as defined in § 226.35(a)(1), current as of the week the disclosure is produced. The graphic would contain different shaded areas using different scales for the range between the APOR and the higher-priced mortgage loan threshold, and for the range above the higher-priced mortgage loan threshold. The graphic would also label the range above the higher-priced mortgage loan threshold as the ''high-cost zone.''

Creditors would use the Board's table of average prime offer rates to find the APOR for the loan type that matches the loan being disclosed, for the week in which the creditor provides the disclosure. Creditors would follow the Board's guidance in commentary to § 226.35(a) in determining how to select the appropriate APOR. In the text explaining the APOR, creditors may include a statement clarifying that the APOR is for conforming loans only.

The Board requests comment on any potential operational difficulty in producing the graph proposed in § 226.38(b)(2) in an accurate and timely manner. Comment is also sought on whether a different graphical device would better draw consumers' attention to the APR and illustrate the APR's utility to consumers.

38(b)(3)

To help consumers navigate the information provided by the graph, proposed § 226.38(b)(3) would require an explanation of the average prime offer rate as defined in § 226.35(a)(2), and the higher-priced mortgage loan threshold, as defined in § 226.35(a)(1). Participants in the Board's consumer testing found this statement helpful in understanding the information in the graph.

38(b)(4)

Proposed § 226.38(b)(4) would provide how creditors must calculate the average per-period savings that would result from a 1 percentage-point reduction in the APR. (This discussion refers to monthly savings because most mortgage loans require monthly payments.) Creditors would calculate the average per-month savings by reducing the interest rate (or rates in the case of an ARM, as discussed in comment 34(b)(4)–1) by 1 percentage point, computing a hypothetical total of payments reflecting the payment schedule at the lower rate or rates. The creditor would divide the difference between (1) the total of payments disclosed under proposed § 226.38(e)(5)(i), and (2) the hypothetical total of payments by the number of payment periods required under the terms of the legal obligation. The creditor would report the results of this calculation as the average savings each month from a 1 percentage-point reduction in the APR. Proposed comment 38(b)(4)–1 would provide guidance on this method, and would include examples for fixed- and adjustable-rate mortgages.

The Board notes that the proposed method does not result in an exact 1 percentage-point reduction in APR, but is likely to be within a few basis points of a 1 percentage-point reduction. The results would be sufficiently accurate to show consumers that a lower APR will yield savings. Methods that might result in an actual 1 percentage-point reduction in the APR would likely be more complicated and would vary depending on the terms of the loan, such as whether the rate is variable and whether the payments amortize the loan. The Board believes that any additional consumer benefit from disclosing the precise 1 percentage-point APR reduction would not be sufficient to offset the costs of a more complex calculation method. The Board seeks comment, however, on its proposed method and whether another method would achieve the objectives of the disclosure without imposing undue compliance burdens.

38(b)(5) Exemptions

Proposed section 226.38(b)(5) would exempt construction loans, bridge loans, and reverse mortgages from the requirement to show the APR plotted on a graph (§ 226.38(b)(2)) and the statement of the APOR and the higher-priced loan threshold (§ 226.38(b)(3)). The exempted transactions are also exempt from the definition of a higher-priced mortgage, under § 226.35(a)(3) in the Board's 2008 HOEPA Final Rule. The Board does not publish an average prime offer rate for construction, bridge, or reverse mortgage loans. Thus, an exemption seems appropriate. The Board seeks comment, however, on whether these transactions should nevertheless be subject to § 226.38(b)(2) and (3).

38(c) Interest Rate and Payment Summary

Proposed § 226.38(c) provides requirements for disclosure of the contract interest rate and the periodic payment for transactions secured by real property or a dwelling. The information proposed to be required by this paragraph must be in the form of a table, as provided in § 226.38(c)(1), substantially similar to Model Forms H–19(A), H–19(B), or H–19(C) in Appendix H. Additional formatting requirements would be provided in § 226.37. The rules for disclosing the interest rate and periodic payments for an amortizing loan are provided in proposed §§ 226.38(c)(2)(i) and 226.38(c)(3). Rules for disclosing the interest rate and periodic payments for a loan with negative amortization are in proposed §§ 226.38(c)(2)(ii) and 226.38(c)(4). Special rules for disclosing balloon payments are found in proposed § 226.38(c)(5). Additional explanations of introductory rates and negative amortization are contained in proposed §§ 226.38(c)(2)(iii) and 226.38(c)(6), respectively. Proposed § 226.38(c)(7) provides definitions for certain terms used in § 226.38(c).

Existing Requirements for Periodic Payments

TILA Section 128(a)(6) requires the creditor to disclose the number, amount, and due dates or period of payments scheduled to repay the total of payments, for closed-end credit. 15 U.S.C. 1648(a)(6). Currently, § 226.18(g) implements TILA 128(a)(6). Under

§ 226.18(g), creditors must show the number, amounts, and timing of payments scheduled to repay the obligation, except as provided in § 226.18(g)(2) for certain loans with varying payments.[80] The creditor must provide these disclosures on the TILA statement within three business days of receiving the consumer's written application, as provided in § 226.19(a).

Comment 18(g)–1 provides that the payment schedule should include all components of the finance charge, not just interest. Thus, if mortgage insurance is required, the payment schedule must reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law. *See* comment 18(g)–5. Commentary to § 226.17(c) provides that for an adjustable-rate loan, creditors should disclose the payments and other disclosures based only on the initial rate and should not assume that the rate will increase. However, the disclosures must reflect a discounted or premium initial interest rate for as long as it is charged. The commentary permits, but does not require, creditors to include in the payments amounts that are not finance charges or part of the amount financed. Thus, creditors may, but need not, include insurance premiums excluded from the finance charge under § 226.4(d), and ''real estate escrow amounts such as taxes added to the payment in mortgage transactions.''

TILA Section 128(b)(2)(C), as recently added by the MDIA, requires additional disclosures for loans secured by a dwelling in which the interest rate or payments may vary. 15 U.S.C. 1638(b)(2)(C). Specifically, creditors must provide ''examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required * * * is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract. * * *'' TILA Section 128(b)(2)(C), 15 U.S.C. 1638(b)(2)(C). Creditors must provide these disclosures within three business days of receipt of the consumer's written application, as provided in § 226.19(a). TILA Section 128(b)(2)(C) provides that these examples must be in conspicuous type size and format and that the payment schedule be labeled ''Payment Schedule: Payments Will Vary Based on Interest Rate Changes.'' Section 128(b)(2)(C) requires the Board to conduct consumer testing to determine the appropriate format for providing the disclosures to consumers so that the disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount. 15 U.S.C. 1638(b)(2)(C).

The Board's Proposal

The Board proposes to add new § 226.38(c) to implement TILA Section 128(a)(6) and Section 128(b)(2)(C) for all closed-end transactions secured by real property or a dwelling.[81] (For all other closed-end credit transactions, § 226.18(g) would continue to provide the rules for disclosing payments). Section 226.38(c) would require creditors to disclose the contract interest rate, regular periodic payment, and balloon payment if applicable. For adjustable-rate or step-rate amortizing loans, up to three interest rates and corresponding monthly payments would be required, including the maximum possible interest rate and payment. If payments are scheduled to increase independent of an interest-rate adjustment, the increased payment must be disclosed. Payments for amortizing loans must include an itemized estimate of the amount for taxes and insurance if the creditor will establish an escrow account. If a borrower may make one or more payments of interest only, all payments disclosed must be itemized to show the amount that will be applied to interest and the amount that will be applied to principal. Special rate and payment disclosures would be required for loans with negative amortization. Creditors must provide the information about interest rates and payments in the form of a table, and creditors would not be permitted to include other unrelated information in the table.

Scope of proposed § 226.38(c). TILA Section 128(b)(2)(C) applies to all transactions secured by a dwelling. The Board proposes to expand the requirement in Section 128(b)(2)(C) to include loans secured by real property that do not include a dwelling. As discussed in § 226.19(a), unimproved real property is likely to be a significant asset for most consumers, and consumers should receive the disclosures required in Section 128(b)(2)(C) before they become obligated on a loan secured by such an asset. The disclosures would alert consumers to the potential for interest rate and payment increases and help them to determine whether these risks are appropriate to their circumstances.

The Board proposes this adjustment to TILA Section 128(b)(2)(C) pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA for any class of transactions to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The class of transactions that would be affected is transactions secured by real property or a dwelling. As discussed, providing examples of increased interest rates and payments would help consumers understand the risks involved in certain loans. The Board also proposes to revise the label for the interest rate and payment information from the statutory language, ''Payment Schedule: Payments Will Vary Based on Interest Rate Changes,'' based on plain language principles, to make the disclosure more readily understandable.

Disclosure of the interest rate. Currently, TILA does not require disclosure of the contract interest rate for closed-end credit. In the consumer testing conducted for the Board, when consumers were asked what factors they considered when looking for a mortgage, by far the most common answers were that they wanted to obtain the lowest interest rate possible and that they wanted the loan with the lowest possible monthly payment. However, as they described their thought process, most consumers were primarily focused on the initial rate and payment, rather than how those terms might vary over time. Testing conducted on the current transaction-specific TILA disclosures indicated that consumers would like to see the interest rate disclosed on the form.

In addition, testing indicated that the current TILA payment schedule, which does not show the relationship between interest rate and payment, is ineffective at communicating to consumers what could happen to their payments over time on an ARM. Most participants said they liked the current presentation of the payments because it was specific and detailed. However, when shown a payment schedule for an ARM with an

[80] For a mortgage transaction with rates or fees that exceed certain thresholds, TILA Section 129 requires special disclosures regarding payments three business days before consummation of the transaction. *See* § 226.32(c) (3), (4). The Board is not proposing revisions to these disclosures.

[81] TILA Section 128(b)(2)(C) also provides that the Board's testing should ensure that consumers can understand that there is no guarantee that they will be able to refinance. Proposed § 226.38(f)(3) implements this aspect of Section 128(b)(2)(C).

introductory rate, many incorrectly assumed that payments shown were in fact their future payments, rather than payments based on the fully-indexed rate at consummation.

Under the Board's proposal, the interest rate and payment would be shown together in a table. The Board believes that highlighting the relationship between the interest rate and payment will enhance consumers' understanding of loan terms. If the interest rate is adjustable, the table would indicate changes in the adjustable interest rate over time. In addition, payment changes that are not based on adjustments to the interest rate would also be indicated in the table. Highlighting potential changes to the interest rate and payment based on maximum interest rate increases, rather than showing a set payment schedule based on the assumption that the index used to calculate a adjustable interest rate will not change, will clarify to consumers not only *that* their interest rate and payments may change, but also *how* the interest rate and payment may change over time. Consumers would be better able to determine if a adjustable rate or payment loan will be affordable and appropriate for their individual circumstances.

Definitions for § 226.38(c). Proposed § 226.38(c) uses several terms that are defined in proposed § 226.38(c)(7). Under § 226.38(c)(7), the terms ''adjustable-rate mortgage,'' ''step-rate mortgage,'' and ''interest-only'' would have the same meanings as in § 226.38(a)(3). An ''amortizing loan'' would be defined as a loan in which the regular periodic payments cannot cause the principal balance to increase; the term ''negative amortization'' would mean a loan in which the regular periodic payments may cause the principal balance to increase. Finally, the tern ''fully-indexed rate'' would mean the interest rate calculated using the index value and margin.

Proposed § 226.38(c)(2)(i) and (c)(3) would require disclosure of interest rates and payment amounts for amortizing loans. Proposed § 226.38(c)(7) defines an amortizing loan as one in which the regular periodic payments cannot cause the principal balance to increase. Thus, loans with interest-only payments are amortizing loans. If an escrow account will be established for an amortizing loan, creditors would be required to itemize the payment to show amounts to be included for taxes and insurance. *See* proposed § 226.38(c)(3)(i)(C). Proposed §§ 226.38(c)(2)(ii) and 226.38(c)(4) would require a special table for disclosures of interest rates and payment amounts for negatively amortizing loans. For such loans in which the consumer may choose between several payment options, the table will show only two: the minimum required payment option, and the fully amortizing option. Creditors may, however, disclose other payment options to the consumer, outside the segregated information required by this section.

38(c)(1) Format

Proposed § 226.38(c)(1) would require the interest rate and payment information to be disclosed in the form of a table. This would ensure that payment examples required by the MDIA are in conspicuous format as required by TILA Section 128(b)(2)(C). The MDIA also requires conspicuous type size for the examples. Under the proposal, all disclosures must be in a minimum 10 point font, including the table required under § 226.38(c), to ensure that they are clear and conspicuous. *See* proposed § 226.37(a).

The Board's proposal would prescribe the number of interest rates and payments that could be shown in a table. The number of columns and rows for the table required by this part would vary depending on whether the loan is an amortizing loan and whether it has adjustable rates. However, tables disclosed under this section would have no more than 5 columns across, and creditors would not include information in the table that is not required under 226.38(c), to avoid information overload. Model and Sample Forms would be provided in Appendix H.

38(c)(2) Interest Rates

38(c)(2)(i) Amortizing Loans

Proposed § 226.38(c)(2)(i) would provide disclosure of interest rates for amortizing loans. For a fixed-rate mortgage with no scheduled payment increases or balloon payments, the creditor would disclose only one interest rate. Fixed-rate loans with payment increases would require the creditor to disclose the interest rate with each increase. For adjustable-rate mortgages and step-rate mortgages, more than one interest rate must be shown, as discussed below.

Interest Rates for Fixed-Rate Mortgages

For fixed-rate mortgages, proposed § 226.38(c)(2)(i)(A) would require creditors to disclose the interest rate applicable at consummation. If the transaction does not provide for any payment increases, only one interest rate would be disclosed. However, some fixed-rate mortgages will have scheduled payment increases and in those cases the creditor must show the interest rate again, even though it is redundant, as discussed under § 226.38(c)(2)(i)(C) below.

Interest Rates for Adjustable-Rate Mortgages and Step-Rate Mortgages

Interest rates at consummation, maximum possible at first adjustment, and maximum possible interest rate. As discussed, TILA Section 128(b)(2)(C) requires creditors to disclose examples of payment increases including the maximum possible payment, for adjustable-rate mortgages and mortgages where payments may vary. Under § 226.38(c)(2)(i), creditors would disclose more than one interest rate and corresponding monthly payment for adjustable-rate mortgages and step-rate mortgages. Under proposed § 226.38(c)(2)(i)A)(I), the creditor must provide the interest rate at consummation, and the period of time until the first adjustment. If the interest rate at consummation is less than the fully-indexed rate (the sum of the index and margin at consummation), the interest rate must be labeled as ''introductory.'' Additional explanation of discounted introductory rates is required in proposed § 226.38(c)(2)(iii), as discussed below.

Maximum at first adjustment. The Board proposes to require disclosure of the maximum rate and payment at first adjustment, as one of the examples required by TILA Section 128(b)(2)(C). Proposed § 226.38(c)(2)(i)(B)(1) requires the creditor to provide the maximum interest rate applicable at the first interest rate adjustment, and the calendar month and year in which the first scheduled adjustment occurs would be required to be disclosed. The creditor would take into account any limitations on interest rate increases when determining the interest rate to be disclosed under § 226.38(c)(2)(i)(B)(2). If the interest rate may reach the maximum possible at the first adjustment, the creditor should disclose the rate as the maximum possible as discussed below.

The Board proposes to require disclosure of the maximum interest rate at first adjustment because many consumers may take out adjustable-rate mortgages, planning to sell the home or refinance the loan before the first interest rate adjustment. It is important for consumers to know how much their rate and payment might increase at that point, if they are unable to refinance or sell the home before the first adjustment. The Board believes that for the same reason, the first interest rate increase should be shown for step-rate mortgages. Although such mortgages do

not present the uncertainty that an adjustable-rate mortgage does, consumers need to be informed of what their rate will increase to at the first increase. Consumer testing conducted for the Board shows that most consumers would find this information useful in determining whether the loan is affordable and suitable to their needs.

Maximum possible interest rate. Proposed § 226.38(c)(2)(i)(B)(3) would require creditors to disclose the maximum interest rate that could apply, and the earliest possible year in which that rate could apply, as required by TILA Section 128(b)(2)(C). The Board proposes to require this disclosure for step-rate mortgages as well, because the rate and payment will increase in such loans. Consumer testing conducted for the Board suggests that consumers find this information about the maximum rate and payment particularly important in evaluating a loan offer for an adjustable-rate mortgage. Participants indicated that this information is most useful to them in determining whether such a loan was affordable. If an amortizing adjustable-rate mortgage has intermediate limitation on interest rate increases, then the table required by proposed § 226.38(c) would have at least three columns; if the transaction has no intermediate limitation on interest rates then the table would have two columns, one showing the rate at consummation and the other showing the maximum possible under the loan's terms.

Interest rate applicable at scheduled payment increase. Some mortgages provide for a payment increase that is not attributable to an interest rate adjustment or increase. For example, a loan may permit the borrower to make payments that cover only accrued interest for some specified period, such as the first five years following consummation; at the end of this ''interest-only'' period, the borrower must begin making larger payments to cover both interest accrued and principal. Proposed § 226.38(c)(2)(i)(C) would provide that, where such an increase will not coincide with an interest rate adjustment or increase, the creditor must include a column that discloses the interest rate that would apply at the time the adjustment is scheduled to occur, and the date in which the increase would occur. The creditor must include a description such as ''first increase'' or ''first adjustment.'' Thus, for a fixed-rate mortgage, the creditor would show the same interest rate twice (and the corresponding payments as discussed in § 226.38(c)(4) below). The Board believes this would help the consumer understand that the increase in payment is due to the requirement to begin repaying loan principal and not to an interest-rate adjustment.

The same is true for adjustable-rate mortgages and step-rate mortgages. For example, some adjustable-rate mortgages permit the borrower to make interest-only payments for a specified period, such as the first five years following consummation. A scheduled payment increase may or may not coincide with a scheduled interest rate adjustment. Under proposed § 226.38(c)(2)(i)(C), if a scheduled payment increase does not coincide with an interest rate adjustment (or rate increase for a step-rate mortgage), creditors must include a column that discloses the interest rate that would apply at the time of the increase, the date the increase is scheduled to occur, and an appropriate description such as ''first increase'' or ''first adjustment'' as appropriate. Proposed comment 38(c)(2)(i)(C)–1 provides clarifying examples. The Board is not aware of step-rate loans with interest-only features; however, if such a loan is offered, creditors would disclose the payment increase in the same manner as for an adjustable-rate mortgage.

38(c)(2)(ii) Negative Amortization Loans

Proposed § 226.38(c)(2)(ii) would require disclosure of the interest rate applicable at consummation. Many payment option loans do not provide any limitations on interest rate increases (''interest rate caps''); the only cap is the maximum possible interest rate required by § 226.30(a.) For payment option loans, the creditor would disclose the interest rate in effect at consummation, and assume that the interest rate reaches the maximum at the next adjustment—often the second month after consummation. The creditor would disclose that rate for the first and second scheduled payment increases, as explained more fully in § 226.38(c)(4) below, and in the last column, when the loan has recast and the consumer must first make a fully amortizing payment. The proposed approach to interest rates for negative amortization loans is consistent with the MDIA, which requires disclosure of the payment at the maximum possible rate, and other examples of payment increases.

Additional proposed rules for disclosing the interest rate on a loan with negative amortization are discussed under 38(c)(6) Special Disclosures for Loans with Negative Amortization, below.

38(c)(2)(iii) Introductory Rate Disclosure for Adjustable-Rate Mortgages

Many adjustable-rate mortgages have an introductory or teaser rate, set below the index and margin used for later adjustments. Proposed § 226.38(c)(2)(iii) would require a special disclosure in the case of an introductory rate. In consumer testing conducted for the Board, many participants did not understand the ramifications of an introductory interest rate. Participants understood that if market interest rates increased, the interest rate and payment on their loan would increase. However, participants did not understand that if they had an introductory rate, their interest rate and payment would increase when the introductory rate expired, even if market interest rates did not increase. Several different disclosures designed to show the impact of an introductory rate were tested in tabular form, with mixed results. Therefore, the Board proposes to require an explanation of the introductory rate below the table itself. Proposed § 226.38(c)(2)(iii) would require disclosure of the introductory rate, how long it will last, and that the interest rate will increase at the first scheduled adjustment even if market rates do not increase. Creditors would also disclose the fully indexed rate that otherwise would apply at consummation. Proposed § 226.37(d)(4) would provide that this disclosure must be prominent and placed in a box under the table.

38(c)(3) Payments for Amortizing Loans

38(c)(3)(i) Principal and Interest Payments

Section 226.38(c)(3)(i) would require disclosure of the principal and interest payment that corresponds to each interest rate disclosed under proposed § 226.38(c)(2)(i). Special itemization of the payment is required, however, if the loan permits the consumer to make any payments that will be applied only to interest accrued. Proposed § 226.3(c)(3)(ii)(C) would require disclosure of an estimate of the amount of taxes and insurance, including mortgage insurance. Proposed § 226.3(c)(3)(i)(D) would require disclosure of the estimated total payment including principal, interest, and taxes and insurance.

Principal and interest payments. Proposed § 226.38(c)(3)(i) would require the disclosure of payment amounts that correspond to the interest rates disclosed under § 226.38(c)(2)(i). Proposed comment 38(c)(3)–1 would clarify that the interest rate and payment amount applicable at consummation are required to be

disclosed for all loans. In addition, the comment would clarify that if a payment amount is required to be disclosed under more than one subparagraph, the payment should only be disclosed once. For example, in an adjustable-rate transaction with a balloon payment, if the balloon payment will occur at the same time the loan may reach its maximum interest rate, only one disclosure of the interest rate and payment is required. Proposed comment 38(c)(3)–2 provides examples of the types of loans that trigger additional payment disclosures.

Fixed-rate mortgages. Under proposed § 226.38(c)(3)(i)(A), for fixed-rate transactions where the regular periodic payment fully amortizes the loan and there are no scheduled payment increases (such as upon the expiration of an interest-only feature), the payment amount including both principal and interest would be required to be disclosed.

Fixed-rate interest-only loans. For fixed-rate transactions in which the consumer may make one or more interest-only payments, proposed § 226.38(c)(3)(i)(B) would require disclosure of the payment at any scheduled increase in the payment amount and the date on which the increase is scheduled to occur. For example, in a fixed-rate interest-only loan a scheduled increase in the payment amount from an interest-only payment to a fully amortizing payment would be required to be disclosed. Similarly, in a fixed-rate balloon loan, the balloon payment must be disclosed, but it would be disclosed under the table pursuant to § 226.38(c)(5).

Adjustable-rate and step-rate transactions. Under proposed § 226.38(c)(3)(i), for adjustable-rate and step-rate transactions, a payment amount corresponding to each interest rate in § 226.38(c)(2) would be required to be disclosed.

Adjustable-rate interest-only and balloon loans. For adjustable-rate transactions in which the consumer may make interest-only payments, proposed § 226.38(c)(3)(ii) would require additional disclosures. Section 226.38(c)(3)(i)(B) would require disclosure of the payment amount at any scheduled payment increase that does not coincide with an interest rate adjustment, and the date on which the increase is scheduled to occur. In addition, for an adjustable-rate balloon loan, if the balloon payment will not coincide with either the first interest rate adjustment or the time when the interest rate reaches its maximum, the balloon payment is required to be disclosed separately, below the table, in accordance with § 226.38(c)(5).

Principal and interest payment itemization. Under proposed § 226.38(c)(3)(i) and (ii), the format of the payment disclosure would vary depending on whether all regular periodic payment amounts will include principal and interest. If all regular periodic payments include principal and interest, under § 226.38(c)(3)(i) each payment amount would be listed in a single row in the table with a description such as principal and interest (except that a balloon payment would be disclosed in accordance with § 226.38(c)(5)). If any regular periodic payment amounts will include interest but not principal, under § 226.38(c)(3)(ii) all payments for the loan must be itemized into principal and interest. For a payment that includes no principal, the creditor must indicate that none of the payment amount will be applied to principal. The creditor must label the dollar amount to be applied to interest ''Interest Payment.'' The Board proposes this itemization and labeling to emphasize for consumers the impact of making interest-only payments. Many participants in the Board's consumer testing did not clearly understand that an ''interest-only'' loan was different from a loan in which all payments are applied to principal and interest without this emphasis and the statement in the loan summary required in proposed § 226.38(a)(3).

Balloon payment. Under proposed § 226.38(c)(5)(i), if a payment amount is a balloon payment, the payment must be disclosed in the last row of the table rather than in a column, unless it coincides with an interest rate adjustment or other payment increase such as the expiration of an interest-only option. Section 226.38(c)(5)(i) would clarify that a payment is a balloon payment if it is more than twice the amount of other payments. This is consistent with how balloon payments are defined for purposes of restrictions on balloon payments for higher-priced and HOEPA loans.

Escrows; mortgage insurance premiums. Proposed § 226.38(c)(3)(i)(C) would provide that if an escrow account will be established, the creditor must disclose the estimated payment amount for taxes and insurance, including mortgage insurance. For transactions secured by real property or a dwelling, creditors would no longer have the flexibility provided in existing 226.18(g) to exclude escrow amounts. Consumer testing conducted for the Board shows that many consumers compare loans based on the monthly payment amount. The Board believes that in order for consumers to fully understand the monthly amount they actually will be required to pay for a particular loan, information about payments for taxes and insurance is necessary. Escrow information would be included in the table to make it easier for consumers to identify whether there is an escrow and how much of their payment would apply to the escrow.

Proposed comment 38(c)(3)(i)(C)–1 would clarify the types of taxes and insurance that would be required to be included in the estimate. Proposed comment 38(c)(i)(C)–2 would provide guidance on how to determine the length of time for which mortgage insurance payments must be included in the estimate. Under the proposed comment, which is substantially similar to current comment 18(g)–5, the payment amount should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be canceled earlier.

The Board solicits comment on whether premiums or other amounts for credit life insurance, debt suspension and debt cancellation agreements and other similar products should be included or excluded from the disclosure of escrows for taxes and insurance. Including such amounts in the estimated escrow and monthly payment, particularly on the early TILA disclosures delivered within three days of application, may cause some consumers to believe these products are required as part of the loan agreement. This may affect consumers' ability to weigh the relative merits of credit insurance and other similar products and determine whether the product is appropriate for their circumstances.

Total periodic payments. Proposed § 226.38(c)(3)(i)(D) would require disclosure of the total estimated monthly payment. The total estimated monthly payment is the sum of the principal and interest payments and the estimated taxes and insurance payments required to be disclosed in § 226.38(c)(3)(i)(C).

38(c)(4) Periodic Payments for Loans With Negative Amortization

For each interest rate disclosed under § 226.38(c)(2)(ii), the creditor would disclose a corresponding payment. One row of the table would show the fully amortizing payment for each interest rate; for purposes of calculating these payments the creditor would assume the interest rate reaches the maximum at the

earliest date, and that the consumer makes only fully amortizing payments. The other row of the table would show the minimum required payment for each rate, until the recast point. At the recast point, the minimum payment row would show the fully amortizing payment. For purposes of the minimum payment row, creditors must assume the interest rate reaches the maximum at the earliest date, and that the consumer makes only the minimum required payment for as long as permitted under the terms of the legal obligation.

Minimum payment amounts. Proposed § 226.38(c)(4)(i)(A) would require disclosure of the minimum required payment at consummation. The proposal would require a disclosure of the amount of the minimum payment applicable for each interest rate required to be disclosed under § 226.38(c)(2)(ii), and the date. Under proposed § 226.38(c)(4)(i)(C), the creditor must provide a statement that the minimum payment will cover only some of the interest accrued and none of the principal, and will cause the principal balance to increase. The Board proposes this required statement to ensure that consumers are informed about the consequences of making minimum payments. As stated above, participants in the Board's consumer testing were unfamiliar with the concept of negative amortization and struggled to understand why a loan's balance would increase when payments were made.

Payment increases. As noted above, many payment option loans do not have interest rate caps, and thus the interest rate may reach its maximum possible amount at the first interest rate adjustment. However, such loans may have limits on the amount that the minimum payment may increase following an interest rate adjustment. For example, a minimum payment increase may be limited by a certain percentage, such as 7.5% greater than the previous minimum payment. (Such limits are generally subject to conditions and will not apply either at a specific time, such as at the fifth year of the loan, or when the loan balance reaches a certain maximum.) Under proposed § 226.38(c)(2)(ii)(D), if adjustments in the minimum payment amount are limited such that the payment will not fully amortize the loan even after the interest rate has reached the maximum, a disclosure of the minimum payment amount at the first and second payment adjustments would be required. That is, in cases where the *first* interest rate adjustment will be the *only* interest rate adjustment, but payment adjustments will continue to occur before the minimum payment recasts to a fully amortizing payment, a disclosure of one additional minimum payment adjustment would be required.

Fully amortizing payment amount. Proposed § 226.38(c)(4)(iii) would require disclosure of the amount of the fully amortizing payment, assuming that the consumer makes only fully amortizing payments beginning at consummation. The fully amortizing payment row must be filled in for each interest rate required to be disclosed under § 226.38(c)(4)(ii) and (iv). The Board believes that contrasting the fully amortizing payment with the minimum required payment will help consumers to understand the implications of making the fully amortizing payment and the minimum payment. In consumer testing, participants understood from the table that if they made the fully amortizing payment each month they would pay their loan off, and that if they instead made the minimum payment they would not pay the loan off and in fact would increase the amount that they owe.

Statement of balance increase and other information. Proposed § 226.38(c)(4)(vi) would require a statement of the amount of the increase in the loan's principal balance if the consumer makes only minimum payments and the earliest month and year in which the minimum payment will recast to a fully amortizing payment under the terms of the legal obligation, assuming that the interest-rate reaches its maximum at the earliest possible time. As noted, participants in testing expressed confusion about negative amortization; the Board believes this disclosure and the other required disclosures in the table should help consumers understand the risks of making minimum payments.

In addition, the explanation preceding the table would provide the consumer's option to make fully amortizing payments or to make minimum payments, the maximum possible interest rate, the earliest number of months or years in which the interest rate could reach its maximum, and the amount of estimated taxes and insurance included in each payment disclosed. If the maximum interest rate may be reached in less than a year the statement would be required to provide the number of months after consummation in which the interest rate may reach its maximum, otherwise the statement would provide the number of years. In addition, the creditor would disclose whether an escrow account will be established and if so, an estimate of the amount for taxes and insurance included in each periodic payment.

38(c)(6) Special Disclosures for Loans With Negative Amortization

Some mortgage transactions permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the loan's balance. Thus, although the borrower is making payments, the loan balance is increasing instead of decreasing. Negative amortization could occur on a fixed-rate mortgage or an adjustable-rate mortgage. Mortgages with negative amortization were relatively rare until the early part of this decade, when the ''payment option'' loan began to grow in popularity.[82] Payment option loans have adjustable rates, and allow the borrower to choose among up to five monthly payment options, including a minimum payment that would result in negative amortization. Other options would include an interest-only option, a fully amortizing option, and the option to make extra payments of principal and pay the loan off early. Typically, payment option loans permit consumers to make minimum payments for a limited time, such as for the first five years following consummation or until the loan's principal balance reaches 115 percent of the original balance, whichever occurs first. Upon either event, the consumer must begin to make fully amortizing payments.

Payment option loans and other nontraditional mortgages can result in significant ''payment shock'' for borrowers, particularly when the loan ''recasts'' and a fully amortizing payment must be made. Concerns about payment shock led the Board, OCC, OTS, FDIC and NCUA to propose supervisory guidance on nontraditional mortgages in 2005, and issue final guidance in October 2006.[83] The guidance emphasizes that institutions should use prudence in underwriting nontraditional mortgages, and should provide accurate and balanced information to consumers before the consumer is obligated on such a mortgage. The agencies published illustrations to assist financial institutions in providing information that would help consumers understand the risks involved in nontraditional mortgages.[84] Those illustrations were not consumer tested.

The Board's consumer testing indicates that the unusual and complex nature of negative amortization loans requires a different approach to the

[82] Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609; October 4, 2006.

[83] *Id.*

[84] 72 FR 31825, 318231; Jun. 8, 2007

disclosure of interest rates and payments than for amortizing loans. Nearly all participants in the Board's consumer testing were unfamiliar with the concept of negative amortization, and technical explanations of negative amortization proved challenging for them. The Board believes that selected information about payment option loans may be more effective in conveying the risks of such mortgages than extensive text explaining negative amortization and its impact.

Accordingly, the Board developed and tested an interest rate and payment summary table designed to inform consumers about the risks of a payment option loan. The proposed rules would also require disclosure of the interest rate and payment for a loan with negative amortization that is not an adjustable rate mortgage. However, the Board found no examples of such loans in the marketplace, and seeks comment on whether such loans are offered and if so, whether proposed § 226.38(c) provides sufficient guidance on disclosing such loans.

The interest rate and payment summary would display only two payment options, even if the terms of the legal obligation provide for others, such as an option to make interest-only payments. The table would show only the option to make minimum payments that would result in negative amortization, and the option to make fully amortizing payments. The Board believes that displaying all of the options in the table would have the unintended consequence of confusion and information overload for consumers. Creditors would be free to provide information on options not displayed in the table, outside the segregated information required under this subsection.

In addition, to help consumers navigate the information in the table, proposed § 226.38(c)(6) would require a statement directly above the interest rate and payment summary table explaining that the loan offers payment options. A disclosure of the maximum possible balance would also be required, directly below the table, to help ensure that consumers understand the nature and risks involved in loans with negative amortization.

38(d) Key Questions About Risk

Based on consumer testing, as discussed in greater detail in § 226.19(b)(2) above, the Board proposes to require creditors to disclose certain information grouped together under the heading ''Key Questions about Risk,'' using that term. This disclosure would be specific to the loan program for which the consumer applied. Proposed § 226.38(d)(1) would require the creditor to disclose information about the following three terms: (1) Rate increases, (2) payment increases, and (3) prepayment penalties. Proposed § 226.38(d)(2) would require the creditor to disclose information about the following six terms, but only if they are applicable to the loan program: (1) interest-only payments, (2) negative amortization, (3) balloon payment, (4) demand feature, (5) no-documentation or low-documentation loans, and (6) shared-equity or shared-appreciation. The ''Key Questions about Risk'' disclosure would be subject to special format requirements, including a tabular format and a question and answer format, as described under proposed § 226.38(d)(3).

38(d)(1) Required Disclosures

As noted above, proposed § 226.38(d)(1) would require the creditor to disclose information about the following three terms: (1) Rate increases, (2) payment increases, and (3) prepayment penalties. The Board believes that these three factors should always be disclosed. Rate and payment increases pose the most direct risk of payment shock. In addition, consumer testing consistently showed that interest rate and monthly payment were the two most common terms that participants used to shop for a mortgage. The Board also believes that the prepayment penalty is a key risk factor because it is critical to the consumer's ability to sell the home or refinance the loan to obtain a lower rate and payments. While the other risk factors are important if contained in the loan program, the Board believes it appropriate to include those factors only as applicable to avoid information overload.

Rate increases. Proposed § 226.38(d)(1)(i) would require the creditor to indicate whether or not the interest rate on the loan may increase. If the interest rate on the loan may increase, then the creditor would indicate the frequency with which the interest rate may increase and the date on which the first interest rate increase may occur. Proposed comment 38(d)(1)–1 would clarify that disclosing the date means that the creditor must disclose the calendar month and year.

Payment increases. Proposed § 226.38(d)(1)(ii) would require the creditor to indicate whether or not the periodic payment on the loan may increase. If the periodic payment on the loan may increase, then the creditor would be required to indicate the date on which the first payment increase may occur. For payment option loans, the creditor would be required to disclose the dates on which the full and *minimum* payments may increase. Proposed comment 38(d)(1)–1 would clarify that disclosing the date means that the creditor must disclose the calendar month and year.

Prepayment penalty. As currently required under TILA Section 128(a)(11), 15 U.S.C. 1638(a)(11), and § 226.18(k)(1), if the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, proposed § 226.38(d)(1)(iii) would require the creditor to indicate whether or not a penalty will be imposed if the obligation is prepaid in full. If the creditor may impose a prepayment penalty, the creditor would disclose the circumstances under which and period in which the creditor would impose the penalty and the amount of the maximum penalty. Because of the importance of prepayment penalties, the proposed rule would also require disclosure of prepayment penalties, if applicable, under proposed § 226.38(a)(5). To avoid duplication, proposed comments 38(d)(1)(iii)–1 to –3 would cross-reference proposed comments 38(a)(5)–1 to –3 for information about whether there is a prepayment penalty, and examples of charges that are or are not prepayment penalties. In addition, proposed comment 38(d)(1)(iii)–4 would cross-reference comment 38(a)(5)–6 to determine the maximum prepayment penalty. Proposed comment 38(d)(1)(iii)–5 would cross-reference comment 38(a)(5)–7 for information about any differences resulting from the consumer's payment patterns and basing disclosures on the required payment for a negative amortization loan. Although under proposed § 226.38(a)(5) the disclosure of the prepayment penalty would appear on the first page of the transaction-specific TILA disclosure only if this feature were present in the loan, the disclosure would always appear on the second page in the ''Key Questions'' disclosure in order for the consumer to verify whether or not there is a prepayment penalty associated with the loan.

38(d)(2) Additional Disclosures

As noted above, proposed § 226.38(d)(2) would require the creditor to disclose information about the following six terms, as applicable: (1) Interest-only payments, (2) negative amortization, (3) balloon payment, (4) demand feature, (5) no-documentation or low-documentation loans, and (6) shared-equity or shared-appreciation. Proposed comment 38(d)(2)–1 would

clarify that ''as applicable'' means that any disclosure not relevant to a particular loan may be omitted. Although consumer testing showed that some participants felt reassured by seeing all of the risk factors whether the factors were a feature of the loan or not, the Board is concerned about the potential for information overload if the entire list is included.

Interest-only payments. Proposed § 226.38(d)(2)(i) would require the creditor to disclose that periodic payments will be applied only toward interest on the loan. The creditor would also disclose any limitation on the number of periodic payments that will be applied only toward interest on the loan, that such payments will cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will be not have paid any of the loan amount. For payment option loans, the creditor would disclose that the loan gives the consumer the choice to make periodic payments that cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount.

Negative amortization. Proposed § 226.38(d)(2)(ii) would require the creditor to disclose that the loan balance may increase even if the consumer makes the periodic payments. In addition, the creditor would be required to disclose that the minimum payment covers only a part of the interest the consumer owes each period and none of the principal, that the unpaid interest will be added to the consumer's loan amount, and that over time this will increase the total amount the consumer is borrowing and cause the consumer to lose equity in the home.

Balloon payment. Proposed § 226.38(d)(2)(iii) would require the creditor to disclose that the consumer will owe a balloon payment, along with a statement of the amount that will be due and the date on which it will be due. Proposed comment 38(d)(2)(iii)–1 would clarify that the creditor must make this disclosure if the loan program includes a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

Demand feature. As currently required under § 226.18(i), proposed § 226.38(d)(2)(iv) would require the creditor to disclose a statement that the creditor may demand full repayment of the loan, along with a statement of the timing of any advance notice the creditor is required to give the consumer before the creditor exercises such right. Proposed comment 38(d)(2)(iv)–1 would clarify that this requirement would apply not only to transactions payable on demand from the outset, but also to transactions that convert to a demand status after a stated period. Proposed comment 38(d)(2)(iv)–2 would cross-reference comment 18(i)–2 regarding covered demand features.

No-documentation or low-documentation loans. Proposed § 226.38(d)(2)(v) would require the creditor to disclose that the consumer's loan will have a higher rate or fees because the consumer did not document employment, income, or other assets. In addition, the creditor would disclose that if the consumer provides more documentation, the consumer could decrease the interest rate or fees.

Shared-equity or shared-appreciation. Proposed § 226.38(d)(2)(vi) would require the creditor to disclose a statement that any future equity or appreciation in the real property or dwelling that secures the loan must be shared, along with a statement of the events that may trigger such obligation.

38(d)(3) Format Requirements

Based on consumer testing, as discussed more fully in §§ 226.19(b)(2) and 226.37, proposed § 226.38(d)(3) would require the creditor to disclose the ''Key Questions about Risk'' using a special format. Proposed § 226.38(d)(3)(i) would require the creditor to provide the disclosures required in § 226.38(d)(1) and (d)(2), as applicable, in the form of a table with headings, content and format substantially similar to Model Forms H–19(A), H–19(B), or H–19(C) in Appendix H. Only the information required or permitted by § 226.38(d)(1) and (2) would be permitted in this table. In addition, under § 226.38(d)(3)(ii), the disclosures would be required to be grouped together and presented in the format of a question and answer in a manner substantially similar to Model Form H–19(A), H–19(B), or H–19(C) in Appendix H. Proposed § 226.38(d)(3)(iii) would further require the creditor to disclose each affirmative answer in bold text and in all capitalized letters, but negative answers would be disclosed in nonbold text. Finally, proposed 226.38(d)(3)(iv) would require the creditor to make the disclosures, as applicable, in the following order: rate increases under § 226.38(d)(1)(i), payment increases under § 226.38(d)(1)(ii), interest-only payments under § 226.38(d)(2)(i), negative amortization under § 226.38(d)(2)(ii), balloon payments under § 226.38(d)(2)(iii), prepayment penalties under § 226.38(d)(1)(iiii), demand feature under § 226.38(d)(2)(iv), no-documentation or low-documentation loans under § 226.38(d)(2)(v), and shared-equity or shared-appreciation under § 226.38(d)(2)(vi). This order would ensure that consumers receive critical information about their payments first.

38(e) Information About Payments

Proposed § 226.38(e) would require disclosure of additional information about interest rates and payments, including disclosure of the amount financed, the ''interest and settlement charges,'' (currently the ''finance charge''), the total of payments, and the number of payments. Proposed § 226.38(e) would also require disclosure of whether or not an escrow account for taxes and insurance is required, a disclosure about private mortgage insurance, if applicable, and information about limitations on rate and payment changes. In the consumer testing conducted by the Board, consumers did not find certain terms that are prominently disclosed on the current transaction-specific TILA form to be useful. Specifically, the amount financed, the total of payments, and the finance charge were less useful to consumers than other information such as information about the loan amount, interest rates, and monthly payments. The Board believes that it would enhance consumers' overall understanding of the disclosures if these items were placed less prominently on the form. In addition, by placing these terms in the context of a larger explanatory statement, some consumers may better be able to understand these terms. At the same time, consumer testing conducted for the Board has shown that there is other information about the loan terms that consumers find beneficial that is not currently disclosed on the transaction-specific form. Specifically, the Board believes that consumers would find it beneficial to have explanations of how the interest rate or payment amounts can change and whether there are limits on those changes, and notification of whether an escrow account or private mortgage insurance are required.

38(e)(1) and (2) Rate Calculation; Rate and Payment Change Limits

Proposed §§ 226.38(e)(1) and 226.38(e)(2) would require disclosures of how the consumer's variable interest rate is calculated, of any limitations on adjustments to the interest rate, and of any limitations on payment adjustments in negatively amortizing loans. The

requirements under proposed §§ 226.38(e)(1) and 226.38(e)(2) to provide disclosures of how the rate is calculated and any limitations on adjustments to the interest rate are similar to the requirements of current §§ 226.18(f)(1)(i) and 226.18(f)(1)(ii) for transactions not secured by the consumer's principal dwelling or secured by the consumer's principal dwelling with a term of one year or less. Currently, for transactions secured by the consumer's principal dwelling with a term greater than one year, § 226.19(b)(2) requires information about the variable interest rate to be disclosed at the time an application form is provided to the consumer, or before the consumer pays a nonrefundable fee, whichever is earlier. However, under current § 226.18(f)(2), in the transaction-specific disclosures provided before consummation, only a statement that the transaction contains a variable-rate feature, and a statement that variable-rate disclosures have been provided earlier, are required. The Board believes that providing information about how the interest rate is calculated and about limitations on interest rate adjustments along with other transaction-specific disclosures would provide consumers with meaningful information about their particular interest rate in the context of the entire transaction being disclosed. For adjustable-rate mortgages, proposed § 226.38(e)(1) would require a statement of how the interest rate is calculated. In addition, if the interest rate at consummation is not based on the index and margin that will be used to make later interest rate adjustments, the statement would be required to include the time period when the initial interest rate expires.

Proposed comment 38(e)(1)–1 is similar to current comment 18(f)(1)(i)–1 for credit not secured by the consumer's principal dwelling, or secured by the consumer's principal dwelling with a term of one year or less. The proposed comment would clarify that if the interest rate is calculated based on the addition of a margin to an index the statement would have to identify the index to which the rate is tied and the margin that will be added to the index, as well as any conditions or events on which the increase is contingent. When no specific index is used, the factors used to determine whether to increase the rate would be required to be disclosed. When the increase in the rate is discretionary, the fact that any increase is within the creditor's discretion would be required to be disclosed. When the index is internal (for example, the creditor's prime rate), the creditor would be permitted to comply with the disclosure requirement by providing either a brief description of that index or a statement that any increase is in the discretion of the creditor. An external index, however, would be required to be identified.

Proposed § 226.38(e)(2) would require a statement of any limitations on the increase in the interest rate in a variable-rate transaction, and, for negatively amortizing loans, a statement of any limitations on the increase in the minimum payment amount and the circumstances under which the minimum payment required may recast to a fully amortizing payment. Proposed comment 38(e)(2)–1, covering variable-rate transactions, would be similar to current comment 18(f)(1)(ii)–1 and would clarify that the disclosure of limitations on adjustments to the interest rate must provide any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the transaction's term to maturity.

Proposed comment 38(e)(2)–2, covering negatively amortizing loans, would clarify that any limit imposed on the change of a minimum payment amount, whether or not the change follows an adjustment to the interest rate, would be required to be disclosed. In addition, any conditions to the limitation on payment increases would also be required to be disclosed. For example, some loan programs provide that the minimum payment will not increase by more than a certain percentage, regardless of the corresponding increase in the interest rate. However, there may be exceptions to the limitation on the payment increase, such as if the consumer's principal balance reaches a certain threshold, or if the legal obligation sets out a scheduled time when payment increases will not be limited.

38(e)(3) Escrow

Proposed § 226.38(e)(3) would require, if applicable, a statement substantially similar to the following: ''An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD–1 form for more details.'' If no escrow is required, the creditor would be required to state that fact and that the consumer must pay property taxes and insurance directly.

38(e)(4) Mortgage Insurance

Proposed § 226.38(e)(4) would require, if applicable, a statement substantially similar to the following: ''Private Mortgage Insurance (PMI) is required for this loan. It is included in your escrow.'' If other mortgage insurance is required, such as insurance or guaranty obtained from a government agency, the creditor would be required to omit the word ''private'' from the description.

38(e)(5) Total Payments

38(e)(5)(i) Total Payments

Section 226.18(h), which implements TILA Section 128(a)(5) and (8), requires creditors to disclose the total of payments, using that term, together with a descriptive statement that the disclosed amount reflects the sum of all scheduled payments disclosed under § 226.18(g).[85] 15 U.S.C. 1638(a)(5), (a)(8). Current comment 18(h)–1 allows creditors to revise the total of payments descriptive statement for variable rate transactions to convey that the disclosed amount is based on the annual percentage rate and may change. In addition, current comments 18(h)–3 and –4 permit creditors to omit the total of payments disclosure in certain single-payment transactions and for demand obligations that have no alternate maturity date.

Consumer testing conducted by the Board showed that participants did not find the total of payments to be helpful in evaluating a loan offer. Most participants understood that the total of payments generally represented the sum of scheduled payments and charges, including interest; several suggested that an explanation of how the total of payments is calculated would facilitate comprehension of the term. Some participants expressed interest in knowing the total of payments required to pay off the loan obligation, but regarded this information as marginally useful to their shopping and decision-making process. On the other hand, some participants commented that information about the total of payments was unnecessary and therefore, could be removed from the form entirely.

As part of consumer testing, the Board shortened the term ''total of payments'' to ''total payments'' because it is a more

[85] Section 128(a)(5) of TILA states that the total of payments should be disclosed as the sum of the amount financed and finance charge. 15 U.S.C. 1638(a)(5). Since 1969, the Board has required that the total of payments equal the sum of payments disclosed in the payment schedule under TILA Section 128(a)(6) and § 226.18(g), which can include amounts beyond the amount financed and the finance charge. 15 U.S.C. 1638(a)(6). Thus, if a creditor includes escrowed taxes and insurance in its disclosure of scheduled payments under § 226.18(g), it must also include those amounts in the total of payments disclosed under § 226.18(h). 34 FR 02002; Feb. 11, 1969.

direct and simple term to communicate to consumers what the dollar amount represented. In addition, an explanation of the assumptions underlying the total payments calculation was added with an explicit reference to whether the amount included escrowed amounts. The total payment amount was disclosed with a statement explaining that a portion of it goes towards interest and settlement charges. This approach enhanced consumer comprehension of the total payments and, as discussed more fully below, the interest and settlement charges disclosure.

The Board proposes to rename ''total of payments'' as ''total payments,'' and require that it be disclosed with a descriptive statement, for transactions secured by real property or a dwelling. The Board proposes to make this adjustment pursuant to its exception authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that proposing the exception is appropriate. Consumer testing indicates that ''total payments'' is more understandable to consumers than ''total of payments.''

The Board proposes to add new § 226.38(e)(5)(i), which would implement TILA Sections 128(a)(5), 128(a)(6), in part, and 128(a)(8) for transactions secured by real property or a dwelling. 15 U.S.C. 1638(a)(5), (a)(6), and (a)(8). Proposed § 226.38(e)(5)(i) would require creditors to disclose for transactions secured by real property or a dwelling, the number and total amount of payments that the consumer would make over the full term of the loan. The Board proposes that this disclosure be made together with a brief statement that the amount is calculated assuming market rates will not change, and that the consumer will make all payments as scheduled for the full term of the loan. The Board believes that although the total payments disclosure is not critical to the shopping or decision-making process for many consumers, it provides information about the total cost of the loan that provides context for, and increases understanding of, other required disclosures, such as interest and settlement charges (formerly finance charge) and amount financed.

Proposed comments 38(e)(5)(i)–1 through –3 would be added to provide guidance to creditors on how to calculate and disclose the total payments amount and the number of payments. As discussed more fully under proposed § 226.38(c), the Board is proposing to require creditors to provide interest rate and monthly payment disclosures in a tabular format for transactions secured by real property or a dwelling. As a result, creditors would not be subject to the disclosure requirements for payment schedules under current § 226.18(g). However, proposed comment 38(e)(5)(i)–1 would clarify that creditors should continue to follow the rules in § 226.18(g) and associated commentary, and comments 17(c)(1)–8 and –10 for adjustable rate transactions, to calculate the total payments for transactions secured by real property or a dwelling. New comment 38(e)(5)(i)–2 would cross-reference to comment 18(g)–3, which the Board proposes to revise to require creditors to disclose the total number of payments for all payment levels as a single figure for transactions secured by real property or a dwelling. Proposed comment 38(e)(5)(i)–3 would provide guidance regarding demand obligations. In technical revisions, the text from current footnote 44 would be moved to the regulation text in § 226.18(h); however, this text is not included in proposed § 226.38(e)(5)(ii) because it is not applicable to transactions secured by real property or a dwelling.

As discussed more fully under proposed § 226.38(e)(5)(ii) for interest and settlement charges (formerly ''finance charge''), creditors would be required to group the total payments disclosure together with the interest and settlement charges and amount financed disclosures under proposed § 226.38(e)(5)(ii) and (iii), respectively.

38(e)(5)(ii) Finance Charge: Interest and Charges

Section 226.18(d), which implements TILA Sections 128(a)(3) and (a)(8), requires creditors to disclose the ''finance charge,'' using that term, and a brief description such as ''the dollar amount the credit will cost you.'' 15 U.S.C. 1638(a)(3), (a)(8). Current comment 18(d)–1 allows creditors to modify this description for variable rate transactions with a phrase that the disclosed amount is subject to change. In addition, § 226.17(a)(2), which implements TILA Section 122(a), requires creditors to disclose the finance charge, and the annual percentage rate, more conspicuously than any other required disclosure, except the creditor's identity. 15 U.S.C. 1633(a). The rules addressing which charges must be included in the finance charge are set forth under TILA Section 106 and § 226.4, and are discussed more fully under § 226.4 of this proposal. 15 U.S.C. 1605.

Consumer testing conducted by the Board indicated that many participants could not correctly explain the term ''finance charge.''[86] Most participants thought that the finance charge represented the amount of interest the borrower would pay over the life of the loan, but did not realize that it also included fees until directed to read a statement that explained fees were included. Consumer testing showed that comprehension of the finance charge improved when it was renamed to reflect the costs it actually represented—the interest and settlement charges paid over the life of the loan. However, even when participants understood what the finance charge signified they tended to disregard it, often because it was such a large dollar amount. Several participants commented that it is helpful to know the total amount of interest and fees that would be paid, but that they could not otherwise purchase a home, or refinance an existing obligation, in cash and therefore, already understood they would pay a significant amount in interest and fees when repaying the loan. Still, participants expressed an interest in knowing the total amount of interest and other charges they would pay over the full term of the loan.

The Board proposes to exercise its authority under TILA Section 105(a) to rename ''finance charge'' as ''interest and settlement charges,'' except it from the requirement under TILA Section 122(a) that it be disclosed more conspicuously, and require that it be disclosed with a descriptive statement. 15 U.S.C. 1632(a); 1604(a), (f). Section 105(a) authorizes the Board to make exceptions or adjustments to TILA for any class of transactions to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). In this case, the Board believes an exception from TILA's requirements are necessary to effectuate the Act's purposes for transactions secured by real property or a dwelling. Although some consumers expressed interest in the finance charge when evaluating a loan offer, consumer testing showed that for most consumers it is not as useful in the shopping or decision-making process as other terms, and therefore, should be de-emphasized relative to other disclosed terms. Consumer testing also showed that

[86] *See also Improving Consumer Mortgage Disclosures* (stating that a number of respondents misinterpreted the finance charge).

participants had a better understanding of the finance charge when it was disclosed as a portion of the total payments amount, accompanied by a statement that explained the finance charge amount plus the amount financed is used to calculate the APR. Thus, based on consumer testing, the Board believes that consumers will find the finance charge disclosure more meaningful when described in a manner consistent with consumers' general understanding, and disclosed in context with other information that relate to loan payments, such as the total payments.

The Board proposes to add new § 226.38(e)(5)(ii), which would implement TILA Section 128(a)(3) and (8) for closed-end mortgage loans covered by § 226.38. 15 U.S.C. 1638(a)(3), (8). Section 226.38(e)(5)(ii) would require creditors to disclose the ''interest and settlement charges,'' using that term, together with a brief statement that the disclosed amount represents part of the total payments amount disclosed. Creditors would also be required to disclose the ''interest and settlement charges'' grouped together with the ''total payments'' and ''amount financed'' disclosures under proposed § 226.38(e)(5)(i) and (iii), respectively, under the subheading ''Total Payments,'' using that term. Based on consumer testing, the Board believes this approach is appropriate to help serve TILA's purpose of assuring a meaningful disclosure of credit terms. Consumer testing suggests that providing the disclosure of ''interest and settlement charges'' in context of the total payments improves consumers' ability to understand that this disclosure represents the cost (*i.e.,* interest and fees) of borrowing the loan amount.

The Board also proposes comment 38(e)(5)(ii)–1 to provide guidance on how creditors must calculate and disclose the interest and settlement charges. However, the proposed rule would not allow creditors to modify the description that accompanies the disclosure for variable-rate transactions. The Board proposes this restriction under TILA Section 105(a) to help serve TILA's purpose of meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available, and avoid the uninformed use of credit. 15 U.S.C. 1601(a). Consumer testing showed that the simple disclosure aided consumer understanding. The Board believes that adding language that states the disclosed amount is subject to change could dilute the significance of the disclosure.

38(e)(5)(iii) Amount Financed

Disclosure of amount financed. Section 226.18(b), which implements TILA Section 128(a)(2)(A) and (a)(8), requires creditors to disclose the amount financed, using that term, together with a brief description that it represents the amount of credit of which the consumer has actual use. 15 U.S.C. 1638(a)(2)(A), (a)(8). Section 226.18(b) delineates how creditors should calculate the amount financed so that it reflects the net amount of credit being extended.

In consumer testing conducted for the Board, virtually no participant understood the disclosure of the amount financed.[87] The Board tested several versions of the amount financed disclosure, with alternative formatting and descriptions, to explain briefly that it represents the amount of credit of which the consumer has actual use to purchase a home or refinance an existing loan. However, these changes made no difference in participants' understanding of the term. In addition, consumer testing showed that the amount financed disclosure actually detracted from consumers' understanding of other disclosures. Many consumers mistook the amount financed for the loan amount. Some of these consumers were confused, however, because the amount financed was slightly lower than the amount borrowed in the hypothetical loan offer. Consumers offered various explanations regarding the difference in the disclosed amounts, including that the amount financed was the cost of purchasing a home less a down payment. Other participants stated that the amount financed represented escrowed amounts. Sample disclosures were used to try to explain that the difference between the loan amount and amount financed is attributable to prepaid finance charges, but this explanation did not appear to improve consumer comprehension. Consumer testing also indicated that participants would not consider the amount financed when shopping for a mortgage or evaluating competing loan offers.

For these reasons, the Board proposes to add new § 226.38(e)(5)(iii), which would implement TILA Section 128(a)(2)(A) and (a)(8) for transactions secured by real property or a dwelling. 15 U.S.C. 1638(a)(2)(A), (a)(8). Section 226.38(e)(5)(iii) would require creditors to disclose the amount financed with a brief statement that the amount financed, plus the interest and settlement charges, is the amount used to calculate the annual percentage rate. As noted above, creditors would be required to disclose the amount financed grouped together with the total payments and interest and settlement charges required under proposed § 226.38(e)(5)(i) and (ii).

The Board proposes this approach pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to prescribe regulations to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). Based on consumer testing, the Board believes this proposal is appropriate to help serve TILA's purpose of assuring a meaningful disclosure of credit terms. The Board believes that requiring creditors to disclose the amount financed in the loan summary with other key loan terms would add unnecessary complexity and result in ''information overload.'' Consumer testing showed that when the amount financed was disclosed with the total payments and interest and settlement charges, that consumer comprehension of the term improved slightly, and confusion over other key loan terms, such as the loan amount, was eliminated. The Board believes that disclosing the amount financed as one component in the APR calculation provided consumers with a better understanding of its significance to the loan transaction. The Board also proposes new comment 38(e)(5)(iii)–3 to provide guidance regarding disclosure of the ''amount financed.''

Calculation of amount financed. The Board proposes to simplify the calculation of the amount financed for transactions subject to the disclosure requirements of proposed § 226.38, pursuant to the Board's authority under TILA Section 105(a). The Board believes that the proposed simplification would improve understanding of the rules and facilitate compliance with Regulation Z. Under proposed § 226.38(e)(5)(iii), for a transaction secured by real property or a consumer's dwelling, the creditor would determine the amount financed by subtracting all prepaid finance charges from the loan amount as defined in proposed § 226.38(a)(1), discussed above. Under existing § 226.18(b) and its staff commentary, creditors may elect from among multiple alternatives in calculating the amount financed. All of

[87] *See also Improving Consumer Mortgage Disclosures* at 35 (finding that most respondents in consumer testing did not understand the term ''amount financed,'' and confused it for the loan amount, and discussing the risks of falling subject to predatory lending practices as a result of this confusion).

the permissible methods yield the same mathematical result.

The Board has received input from bank examiners and others that providing multiple approaches to calculation of the amount financed creates unnecessary complication. Examiners also indicate that, of the permissible approaches, mortgage lenders generally use the one that is simplest and most straightforward. The Board is now proposing to require that approach and to eliminate the alternatives. The Board also is proposing to make a conforming amendment to the staff commentary under § 226.18(b) to reflect the fact that it would not apply to mortgages.

TILA provides that the amount financed is calculated as follows:

(1) Take the principal amount of the loan (or cash price less downpayment);

(2) Add any charges that are not part of the finance charge or of the principal amount and that are financed by the consumer; and

(3) Subtract any prepaid finance charge.

TILA Section 128(a)(2)(A), 15 U.S.C. 1638(a)(2)(A). Regulation Z provides a substantially identical calculation. *See* § 226.18(b). Neither the statute nor Regulation Z defines ''principal amount of the loan.'' As a result, more than one understanding of that term is possible, and Regulation Z seeks to address several of those understandings rather than to define principal amount definitively.

Current Regulation Z permits non-finance charges and prepaid finance charges that are financed to be included in the principal loan amount under step (1) or not, at the creditor's option. The creditor then must add in under step (2) any financed non-finance charges that were not included under step (1). *See* comment 18(b)(2)–1. Similarly, the creditor must subtract under step (3) any financed prepaid finance charges only if they were included under step (1). *See* comment 18(b)(3)–1. Proposed § 226.38(e)(5)(iii) effectively would define ''principal loan amount'' as the loan amount, as that is defined in proposed § 226.38(a)(1), which would mean the principal amount the consumer will borrow reflected in the loan contract. Under that definition, all amounts that are financed necessarily would be included in step (1), whether they are finance charges or not. Consequently, no amount ever would be added under step (2). The new provision therefore would streamline the calculation to eliminate that step. Similarly, the current commentary providing that financed prepaid finance charges should be subtracted in step (3) only if they were included in step (1) would be unnecessary, as such finance charges always would be included in step (1). Proposed § 226.38(e)(5)(iii) would provide definitively that the amount financed is determined simply by subtracting the prepaid finance charge from the loan amount.

The Board also is proposing comment 38(e)(5)(iii)–2 to clarify how to treat creditor or third-party premiums and buy-downs for purposes of the amount financed calculation. This proposed comment is based on existing comment 18(b)–2, which relates to rebates and loan premiums. The discussion in comment 18(b)–2 was primarily intended to address situations that are more common in non-mortgage transactions, especially credit sales, such as automobile financing. It provides that creditor-paid premiums and seller- or manufacturer-paid rebates may be reflected in the disclosures under § 226.18 or not, at the creditor's option. Although such premiums and rebates are less likely to exist in mortgage transactions precisely as they are described in comment 18(b)–2, analogous situations can apply to mortgage financing. For example, real estate developers may offer to pay some or all closing costs or to buy down the consumer's interest rate, and creditors may agree to pay certain closing costs in return for a particular interest rate. Rather than permit any treatment at the creditor's option, however, proposed comment 38(e)(5)(iii)–2 would reflect the Board's belief that such situations are analogous to buydowns. Like buydowns, such premiums and rebates may or may not be funded by the creditor and reduce costs otherwise borne by the consumer. Accordingly, their impact on the amount financed, like that of buydowns, properly depends on whether they are part of the legal obligation. *See* comments 17(c)(1)–1 through –5. Proposed comment 38(e)(5)(iii)–2 would clarify that the disclosures, including the amount financed, must reflect loan premiums and rebates regardless of their source, but only if they are part of the terms of the legal obligation between the creditor and the consumer. As noted above, the Board also is proposing similar revisions to existing comment 18(b)–2.

38(f) Additional Disclosures

38(f)(1) No Obligation Statement

The MDIA amended Section 128(b)(2) of TILA to require creditors to disclose, in conspicuous type size and format, that receiving and signing a TILA disclosure does not obligate a consumer to accept the loan (''the MDIA statement''). 15 U.S.C. 1638(b)(2). The MDIA sets forth the following language for creditors to use in making this disclosure: ''You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.'' [88] The Board proposes to modify this statutory language to facilitate consumers' use and understanding of the MDIA statement pursuant to its authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). Based on consumer testing, the Board believes that using plain language principles to revise the statutory language improves consumers' ability to understand the disclosure and would help serve TILA's purpose to provide meaningful disclosure of credit terms.

As part of consumer testing, the Board included the MDIA statement on the front page of the TILA, modified to replace legalistic phrasing with more common word usage. On the second page, the Board included a signature line and date, as most creditors require the consumer to sign the disclosure form to establish compliance with TILA. Most participants did not notice the MDIA statement, but indicated that they understood they were under no obligation to accept the loan; participants who did notice the text similarly understood they were under no obligation to accept the loan. However, upon seeing the signature line, some participants believed they would be obligated to accept the loan if they signed or initialized the disclosure. Based on consumer testing, the Board is concerned that although consumers may initially understand they are not obligated to accept a loan, this belief may be altered by creditors' practice of requiring consumers to sign or initial receipt of the disclosures. This may further discourage negotiation and shopping among loan products and lenders.

To implement the new disclosure required by the MDIA, the Board proposes to add new § 226.38(f)(1) for all transactions secured by real property or a dwelling. Proposed § 226.38(f)(1) would require a statement that a consumer is not obligated to accept the loan because he or she has signed the disclosure. In addition, the Board proposes that if a creditor provides space for the consumer to sign or initial the TILA disclosures, then the creditor

[88] Housing and Economic Recovery Act, Public Law 110–289, 122 Stat. 2655, § 2502(a)(6) (July 30, 2008).

must place the statement in close proximity to the space provided for the consumer's signature or initials. The statement must also specify that a signature only confirms receipt of the disclosure statement.

The Board proposes this approach pursuant to its authority under TILA Section 105(a) to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that this proposal is necessary to encourage consumers to shop among available credit alternatives. The Board tested the disclosure as proposed under § 226.38(f)(1). Most participants understood they were not obligated to accept the loan and could refuse to accept the loan offer even after signing. As a result, the Board believes the disclosure proposed by new § 226.38(f)(1) is necessary to ensure that consumers are not discouraged from shopping or negotiating with the lender.

38(f)(2) Security Interest

TILA Section 128(a)(9), 15 U.S.C. 1638(a)(9), and § 226.18(m) require the creditor to disclose whether it has a security interest in the property securing the transaction. During consumer testing of the current TILA disclosure, participants were shown the following language: ''Security: You are giving a security interest in the real property, and fixtures and rents if indicated in the rider mortgage.'' Very few participants understood the current language regarding a security interest. The Board is concerned that consumers might not understand that the creditor can take the consumer's home if the consumer defaults on the loan agreement. To clarify the significance of the security interest disclosure to consumers, the Board proposes § 226.38(f)(2) to require the creditor to state that the consumer could lose the home if the consumer is unable to make the payments on the loan. This would provide a clearer disclosure regarding the effect of the lender taking a security interest in the home.

38(f)(3) No Guarantee to Refinance Statement

The MDIA also amended Section 128(b)(2) of TILA to require creditors to disclose for variable rate transactions, in conspicuous type size and format, that there is no guarantee that the consumer will be able to refinance the transaction to lower the interest rate or monthly payments (''MDIA refinancing warning'').[89] 15 U.S.C. 1638(b)(2). To implement the disclosure required by the MDIA, the Board proposes to add § 226.38(f)(3) to require that creditors disclose that there is no guarantee that the consumer will be able to refinance the loan to obtain a lower interest rate and payment. The Board believes that including such a statement on the TILA disclosure form will alert consumers to consider the impact of future rate adjustments and increased monthly payments

Although the MDIA requires this refinancing warning only for variable rate transactions secured by a dwelling, the Board proposes to expand the scope of the requirement to also include fixed-rate transactions secured by a dwelling, as well as transactions secured by real property without a dwelling. The Board proposes this approach pursuant to its authority under TILA Section 105(a) to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board is concerned that some consumers may accept loan terms that could present refinancing concerns similar to variable rate transactions, such as a three-year fixed-rate mortgage with a balloon payment. Based on consumer testing, the Board believes all consumers, regardless of transaction-type, would benefit from a statement that encourages consideration of future possible market rate increases.

38(f)(4) Tax Deductibility

The Board is also proposing changes to the closed-end disclosures to implement provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the ''Bankruptcy Act'') which requires disclosure of the tax implications for home-secured credit that may exceed the dwelling's fair market value. *See* Public Law 109–8, 119 Stat. 23. The Bankruptcy Act primarily amended the federal bankruptcy code, but also contained several provisions amending TILA. Section 1302 of the Bankruptcy Act amendments requires that advertisements and applications for credit (either open-end or closed-end) that may exceed the fair market value of the dwelling include a statement that the interest on the portion of the credit extension that exceeds the fair market value is not tax-deductible and a statement that the consumer should consult a tax advisor for further information on tax deductibility.

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

The Board implemented section 1302 with regard to advertisements in its 2008 HOEPA Final Rule. *See* 73 FR 44522, 44600; July 30, 2008. In the supplementary information to that rule, the Board stated that it intends to implement the application disclosure portion of the Bankruptcy Act during its forthcoming review of closed-end and HELOC disclosures under TILA. Proposed § 226.38(f)(4) would implement provisions of the Bankruptcy Act by requiring creditors to include the disclosure of the tax implications for a loan secured by a dwelling, if extension of credit may, by its terms, exceed the fair market value of the dwelling. The text of the proposed disclosure is based on the Board's consumer testing of model HELOC disclosure forms. The disclosure would be segregated and located directly below the table.

The Board recognizes that creditors may not be able to determine whether the amount of credit extended exceeds

[89] Specifically, the MDIA requires that the Board use consumer testing to develop disclosures for variable rate transactions, including the fact that ''there is no guarantee that the borrower will be able to refinance to a lower amount.'' Public Law 109–8, 119 Stat. 23, § 2502(a)(6).

the fair market value of the dwelling, especially three days after application when they are required to provide an early transaction-specific disclosures. The creditor may not be able to verify the value on the property until later in the loan underwriting process. The Board has considered whether the disclosure should be provided later in the approval process after the creditor has determined that the disclosure is triggered, for instance, after receiving the appraisal report or completing the underwriting process. However, such late timing of the disclosure would not satisfy the requirements of the Bankruptcy Act which requires that the disclosures be provided *at the time* of application. See 15 U.S.C. 1638(a)(15).

The Board also considered whether the disclosure should be provided to all mortgage applicants, regardless of whether the amount of credit extended exceeds the fair market value of the dwelling. To address the situations in which the creditor is not certain whether the credit extended may exceed the fair market value of the dwelling, comment 38(f)(4)–2 permits the disclosure to be provided to all mortgage applicants at creditors' discretion and provides model language.

The Board recognizes that the scope of the proposed § 226.38(f)(4) is limited to dwellings whereas proposed § 226.38 would apply to real property and dwellings. While the Bankruptcy Act amendment specifically references ''consumer's dwelling,'' the Board believes that it would be unnecessarily burdensome to require creditors to create separate disclosures for the transactions secured by real property and those secured by a dwelling solely for the purposes of the tax implications disclosure. For that reason, a creditor would be permitted, but not required, to provide the disclosures about the tax implications in connection with transactions secured by both real property and dwellings.

38(f)(5) Additional Information and Web Site

Consumer testing showed that many participants educated themselves about the mortgage process through informal networking with family, friends, and colleagues, while others relied on the Internet for information. To improve consumers' ability to make informed decisions about credit, the Board proposes § 226.38(f)(5) to require the creditor to disclose that if the consumer does not understand any of the disclosures, then the consumer should ask questions. The creditor would also disclose that the consumer may obtain additional information at the Web site of the Federal Reserve Board and disclose a reference to that Web site. The Board will enhance its Web site to further assist consumers in shopping for a mortgage. Although it is hard to predict from the results of the consumer testing how many consumers might use the Board's Web site, and recognizing that not all consumers have access to the Internet, the Board believes that this Web site may be helpful to some consumers as they shop for a mortgage. The Board seeks comment on the content for the Web site.

38(f)(6) Format

The Board is proposing to specify precise formatting requirements for the disclosures required by § 226.38(f)(1) through (5). Proposed § 226.38(f)(6)(i) would set forth location requirements, providing that the no obligation and confirmation of receipt statements must be disclosed together, the security interest and no guarantee to refinance statements must be disclosed together, and the recommendation to ask questions and statement regarding the Board's Web site must be disclosed together. Proposed § 226.38(f)(6)(ii) would set forth highlighting requirements, providing that the no obligation and security interest statements, and the advice to ask questions, must be disclosed in bold text.

38(g) Identification of Originator and Creditor

38(g)(1) Creditor

Currently, § 226.18(a), which implements TILA Section 128(a)(1), 15 U.S.C. 1638(a)(1), requires the creditor to disclose the identity of the creditor making the disclosure. Proposed § 226.38(g)(1) would require the same disclosure. In addition, proposed comment 38(g)(1)–1 would parallel existing comment 18(a)–1 to clarify that use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures, but the one doing so must be identified. The Board solicits comment on whether the creditor making the disclosures should be required to disclose its contact information, such as its address and/or telephone number.

Existing footnote 38 to § 226.17(a), which implements TILA Section 128(b)(1), 15 U.S.C. 1638(b)(1), states that the creditor's identity may be made together with or separately from the other required disclosures. The Board proposes to amend the substance of current footnote 38 to remove the reference to the creditor's identity disclosure required under § 226.18(a), thereby making it subject to the grouped-together and segregation requirement for all non-mortgage closed-end credit. Similarly, § 226.37(a)(2) would require the disclosure of the creditor's identity to be subject to the grouped-together and segregation requirement for closed-end credit transactions secured by real property or a dwelling.

The Board proposes to make this adjustment pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). Section 105(a) authorizes the Board to make exceptions and adjustments to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms, and avoid the uninformed use of credit. 15 U.S.C. 1604(a), 15 U.S.C. 1601(a). The Board believes it is important to disclose the creditor's identity so that consumers can more easily identify the appropriate entity. Thus, the Board believes this proposal would help serve TILA's purpose to provide meaningful disclosure of credit terms.

38(g)(2) Loan Originator

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

consumers with easily accessible information to research a loan originator's history of employment and any disciplinary or enforcement actions against that person. 12 U.S.C. 5101(7).

To facilitate the use of the Nationwide Mortgage Licensing System and Registry and promote the informed use of credit, the Board proposes § 226.38(g)(2) to require the loan originator to disclose his or her unique identifier on the TILA disclosure, as defined by the SAFE Act. Proposed comment 38(g)(2)–1 would clarify that in transactions with multiple loan originators, each loan originator's unique identifier must be listed on the disclosure. For example, in a transaction where a mortgage broker meets the SAFE Act definition of a loan originator, the identifiers for the broker and for its employee loan originator meeting that definition would be listed on the disclosure.

The Board notes that the Board, FDIC, OCC, OTS, NCUA, and Farm Credit Administration have published a proposed rule to implement the SAFE Act. *See* 74 FR 27386; June 9, 2009. In this proposed rule, the federal banking agencies have requested comment on whether there are mortgage loans for which there may be no mortgage loan originator. For example, the agencies query whether there are situations where a consumer applies for and is offered a loan through an automated process without contact with a mortgage loan originator. *See id.* at 27397. The Board solicits comments on the scope of this problem and its impact on the requirements of proposed § 226.38(g)(2).

38(h) Credit Insurance and Debt Cancellation and Debt Suspension Coverage

As discussed more fully in § 226.4(d)(1) and (3), concerns have been raised that consumers do not understand the voluntary nature, costs, and eligibility restrictions of credit insurance and debt cancellation and debt suspension coverage. For this reason, the Board proposes § 226.38(h) to require creditors to provide certain disclosures, which would be grouped together and substantially similar in headings, content and format to Model Clause H–17(C) in Appendix H to this part. Proposed comment 38(h)–1 would clarify that this disclosure may, at the creditor's option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by State law, or other information. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

The proposed disclosures seek to address concerns that consumers may not understand that some products are voluntary and not required as a condition of receiving credit. If the product is optional, proposed § 226.38(h)(1)(i) would require the creditor to disclose the term ''OPTIONAL COSTS,'' in capitalized and bold letters, along with the name of the program in bold letters. If the product is required, then proposed § 226.38(h)(1)(ii) would require the creditor to disclose only the name of the program in bold letters. In addition, if the product is optional, proposed § 226.38(h)(2) would require the creditor to disclose the term ''STOP,'' in capitalized and bold letters, along with a statement that the consumer does not have to buy the product to get the loan. The term ''not'' would be in bold letters and underlined.

Concerns have also been raised that consumers may not realize that there are alternatives to the product. Therefore, under proposed § 226.38(h)(3), the creditor would disclose that if the consumer already has insurance, then the policy or coverage may not provide the consumer with additional benefits. Under proposed § 226.38(h)(4), the creditor would disclose that other types of insurance may give the consumer similar benefits and are often less expensive.

As described more fully in § 226.4(d)(1) and (3), concerns have been raised that consumers are not aware that they could incur a cost for a product that may offer no benefit if the eligibility criteria are not met at the time of enrollment. That is, consumers may not be aware that if they do not meet the eligibility criteria at the time of enrollment, the product would not pay off, cancel, or suspend the credit obligation. Although the creditor typically has information about the consumer's age or employment status, some creditors do not use this information to determine whether the consumer meets the age or employment eligibility restrictions at the time of enrollment. Some consumers are later denied benefits based on these eligibility restrictions.

For these reasons, the Board is proposing under § 226.38(h)(5)(i) to require the creditor to disclose a statement that based on the creditor's review of the consumer's age and/or employment status at the time of enrollment, the consumer would be eligible to receive benefits. However, if there are other eligibility restrictions, such as pre-existing health conditions, the creditor would be required to make certain other disclosures. Under proposed § 226.38(h)(5)(ii), the creditor would disclose that based on the creditor's review of the consumer's age and/or employment status at the time of enrollment, the consumer may be eligible to receive benefits. Under proposed § 226.38(h)(6), the creditor would also disclose that the consumer may not be eligible to receive any benefits because of other eligibility restrictions.

Proposed comment 38(h)(5)–1 would state that if, based on the creditor's review of the consumer's age and/or employment status at the time of enrollment in the product, the consumer would not qualify for the benefits of the product, then providing the disclosure under § 226.38(h)(5) would not comply with this provision. That is, if the consumer does not meet the age and/or employment eligibility criteria, then the creditor cannot state that the consumer may be eligible to receive benefits and cannot comply with this provision. In addition, the proposed comment would clarify that if the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer is not eligible for all of the bundled products, then the disclosure under § 226.38(h)(5) would not comply with this provision. Finally, the proposed comment would clarify that the disclosure would still satisfy this provision if an event subsequent to enrollment, such as the consumer passing the age limit of the product, made the consumer ineligible for the product based on the product's age or employment eligibility restrictions.

Proposed comment 38(h)(5)–2 would clarify that the disclosure under § 226.38(h)(5) would be deemed to comply with this provision if the creditor used reasonably reliable evidence to determine whether the consumer met the age or employment eligibility criteria of the product. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include a consumer's statement on a credit application form, an Internal Revenue Service Form W–2, tax returns, payroll receipts, or other written evidence such as a letter or e-mail from the consumer or the consumer's employer.

Finally, the disclosure would contain the debt suspension coverage disclosure, a Web site reference, cost

information, and a space for the consumer's signature and the date. To ensure consistency with the debt suspension coverage provisions of the December 2008 Open-End Final Rule, proposed § 226.38(h)(7) would require the creditor to disclose, as applicable, a statement that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. To provide more information to consumers, proposed § 226.38(h)(8) would require the creditor to disclose a statement that the consumer may obtain additional information about credit insurance or debt suspension or debt cancellation coverage at the Web site of the Federal Reserve Board, and a reference to that Web site. If the product is optional, proposed § 226.38(h)(9)(i) would require the creditor to disclose a statement of the consumer's request to purchase or enroll in the optional product and a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years. This disclosure parallels § 226.4(d)(1) and (3), which requires cost disclosures in order to exclude from the finance charge the credit insurance premium or debt cancellation or debt suspension coverage charge. If the product is required, proposed § 226.38(h)(9)(ii) would require the creditor to disclose that fact, along with a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years. The cost, month or year, loan amount, and term of the product would be underlined. The provisions regarding required products would be applicable to the extent Regulation Y, 12 CFR part 225, or State or other law would not prohibit requiring the product. Finally, proposed § 226.38(h)(10) would require the creditor to provide a designation for the signature of the consumer and the date of the signing.

The Board proposes to require this disclosure using its authority under TILA Section 105(a), 15 U.S.C. 1604(a). Because proposed § 226.4(g) would treat a premium or charge for credit insurance or debt cancellation or debt suspension as a finance charge for closed-end credit transactions secured by real property or a dwelling, the creditor would not be required to provide the disclosure under § 226.4(d)(1) and (3) to exclude the premium or charge from the finance charge. The Board believes, however, that the consumer would still benefit from a disclosure of the voluntary nature, costs, and eligibility restrictions of credit insurance or debt cancellation or debt suspension coverage, and thus the proposal would require a substantially similar disclosure.

TILA Section 105(a), 15 U.S.C. 1604(a), authorizes the Board to prescribe regulations to carry out the purposes of the act. TILA's purpose includes promoting ''the informed use of credit,'' which ''results from an awareness of the cost thereof by consumers.'' TILA Section 102(a), 15 U.S.C. 1601(a). A premium or charge for credit insurance or debt cancellation or debt suspension coverage is a cost assessed in connection with credit. The credit transaction and the relationship between the creditor and the consumer are the reasons the product is offered or available. Because the merits of this product have long been debated,[90] the Board believes that consumers would benefit from clear and meaningful disclosures regarding the costs, benefits, and risks associated with this product. As discussed more fully in § 226.4(d)(1) and (3), consumer testing showed that without clear disclosures participants were unaware of the voluntary nature, costs, and eligibility restrictions. For these reasons, the Board believes that this proposed rule would serve to inform consumers of the cost of this credit product.

38(i) Required Deposit

Proposed § 226.38(i) addresses disclosure requirements when creditors require consumers to maintain deposits as a condition to the specific transaction, for transactions secured by real property or a dwelling. Proposed § 226.38(i) is consistent with § 226.18(r), which applies to transactions not secured by real property or a dwelling. The Board is proposing to revise § 226.18(r) and associated commentary, as discussed above, and proposed § 226.38(i) reflects the revised text and associated commentary.

38(j) Separate Disclosures

Consumer testing indicated that participants generally felt overwhelmed by the amount of information presented throughout the loan process and especially at consummation. As a result, the Board seeks to streamline the TILA disclosures and focus on the terms that participants stated were important for shopping and for understanding their loan terms. Currently, TILA and Regulation Z mandate that the following disclosures be grouped together with the required disclosures and segregated from everything else: rebate, late payment, property insurance, contract reference, and assumption policy. *See* TILA Sections 128(a)(9), (10), (11), (12), (13) and (b) and 106(c); 15 U.S.C. §§ 1638(a)(9), (10), (11), (12), (13) and (b) and 1605(c); §§ 226.4(d)(2), 226.17(a)(1), and 226.18(k)(2), (l), (n), (p), and (q). Consumer testing showed that these terms were not of primary importance to consumers in choosing a mortgage. With respect to assumption, for example, very few participants understood the language indicating that the loan was assumable, and even fewer felt it was important information. With respect to property insurance, most participants understood the language indicating that the borrower can obtain property insurance from anyone that is acceptable to the lender, but the participants felt that this was not important to their decision making.

TILA Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which includes promoting the informed use of credit. 15 U.S.C. 1601(a), 1604(a). The Board believes that requiring these disclosures to appear separately from the other required disclosures would improve the consumer's ability to focus on the terms most useful to evaluating the proposed credit transaction.

TILA Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). TILA Section 105(f) directs the Board to make this determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process for the class of transactions; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of

[90] *See, e.g.,* Credit CARD Act of 2009, Public Law No. 111–24, § 509; 123 Stat. 1734, 1763 (2009) (requiring the General Accounting Office to provide a report to Congress by December 31, 2010, of the suitability of credit insurance, debt cancellation agreements, and debt suspension agreements for target customers, the ''predatory nature'' of such offers, and the loss rates compared to more traditional insurance products).

the consumer; and (5) whether the exemption would undermine the goal of consumer protection. Although a credit transaction secured by real property or a dwelling is important to the borrower, the Board believes that removing these disclosures from the other segregated information would further, rather than undermine, the goal of consumer protection because consumers would then focus on the terms that are most important to their decision making process. The proposed rule would still require that the information be disclosed but would simply no longer require the disclosures to be provided with the segregated information.

38(j)(1) Itemization of Amount Financed

TILA Section 128(a)(2)(B), 15 U.S.C. 1638(a)(2)(B), and § 226.18(c) currently require that the creditor provide the consumer with a notice that an itemization of amount financed is available on request and to provide it when the consumer so requests. Regulation Z also provides that the good faith estimate of settlement costs (GFE) provided pursuant to RESPA suffices to satisfy the itemization of amount financed requirement. *See* § 226.18(c)(1), fn. 40. The staff commentary provides further that the HUD–1 settlement statement provided at settlement under RESPA also may be substituted for the itemization in connection with later disclosures made pursuant to § 226.19(a). *See* comment 18(c)–4.

Proposed § 226.38(j)(1) would mirror the rules currently found under § 226.l8(c) permitting a creditor to provide disclosures pursuant to RESPA in lieu of the itemization of amount financed. These rules originally were established by the Board pursuant to its authority under TILA Section 105(a) to make exceptions to facilitate compliance with TILA, and the Board is proposing to permit similar treatment under the same authority. Proposed § 226.38(j)(1) would differ from current § 226.18(c), as discussed below, to reflect recent changes to Regulation Z.

Under the proposal, the provisions permitting substitution of RESPA disclosures for the itemization of amount financed would be removed from § 226.18 and included under proposed § 226.38(j)(1). That section would govern the itemization disclosure contents for mortgage transactions, including all those subject to RESPA. As noted above, the Board also is proposing to make certain technical and conforming amendments under § 226.18(c).

Proposed § 226.38(j)(1)(i) would provide the same four categories of the itemization as currently appear in § 226.18(c)(1)—the amount of proceeds distributed directly to the consumer, the amount credited to the consumer's account, amounts paid to other persons on the consumer's behalf, and the prepaid finance charge. Proposed § 226.38(j)(1)(ii) similarly would provide to creditors the alternative under current § 226.18(c)(2) of disclosing the right to receive an itemization and providing it when the consumer so requests, instead of delivering the itemization routinely. Finally, proposed § 226.38(j)(1)(iii) would provide the alternative of substituting the RESPA GFE for the itemization. It also would state a parallel alternative of substituting the HUD–1 settlement statement for the itemization when a creditor provides later disclosures pursuant to § 226.19(a)(2), which currently is addressed only in the staff commentary under § 226.18(c). And proposed § 226.38(j)(1)(iii) would provide that the substitution is permissible for any transaction subject to § 226.38, whether subject to RESPA or not.

The Board notes that the timing of the HUD–1 settlement statement no longer is consistent with the timing of the TILA redisclosure under § 226.19(a)(2). Regulation X under RESPA requires the HUD–1 to be provided at settlement,[91] which generally corresponds with consummation of the transaction under Regulation Z. Under the MIDA final rule, and the proposed revisions to § 226.19 under this proposal, the redisclosure required under § 226.19(a)(2) must be received by the consumer at least three business days before consummation of the transaction. As current comment 18(c)–1 provides, and proposed § 226.38(j)(1) also would require, the itemization must be provided at the same time as the segregated disclosures. Accordingly, proposed § 226.38(j)(1)(iii) would provide that the HUD–1 settlement statement is a permissible substitute for the itemization of amount financed only if it is received by the consumer at least three business days prior to consummation, in accordance with § 226.19(a)(2).

The Board realizes that, in general, consumers currently receive a fully completed HUD–1 settlement statement only at consummation, in accordance with RESPA's requirements. For this reason, mortgage creditors might not take advantage of the alternative in proposed § 226.38(j)(1)(iii) as widely as they historically have done under § 226.18(c)(1), fn. 40. On the other hand, the Board notes that a creditor that does not avail itself of that alternative must follow one of the other two alternatives. Under proposed §§ 226.19(a) and 226.38(j)(1)(i), the creditor still must provide substantially the same information three business days before consummation. Under proposed §§ 226.19(a) and 226.38(j)(1)(ii), the creditor also must do so, at least in those cases where the consumer requests the itemization. Further, given the proposed expansion of the finance charge under § 226.4, discussed above, all of the information contained in either the good faith estimate or the itemization would have to be firmly established by three business days before consummation so that the creditor can comply with the timing requirements of proposed § 226.19(a)(2).

In any event, the Board believes that to permit substitution of the HUD–1 settlement statement for the itemization without requiring that it be delivered three business days before consummation would be inconsistent with the purposes of the MDIA amendments. The Board seeks comment on whether creditors would continue to make significant use of this alternative as proposed § 226.38(j)(1)(iii) would implement it and, if not, whether the alternative should be retained. If it should be retained, the Board seeks comment on how it might be structured without requiring that the HUD–1 settlement statement be received by the consumer earlier than RESPA requires while also preserving the purposes of the MDIA.

38(j)(2) Through (6) Rebate; Late Payment; Property Insurance; Contract Reference; Assumption Policy

The Board proposes to use its exception and exemption authorities under TILA Section 105(a), 15 U.S.C. 1604(a), to require creditors to provide the following disclosures separately from the other required disclosures: rebate under proposed § 226.38(j)(2), late payment under proposed § 226.38(j)(3), property insurance under proposed § 226.38(j)(4), contract reference under proposed § 226.38(j)(5), and assumption policy under proposed § 226.38(j)(6). The Board is not proposing to change the substantive content of these disclosures. Proposed § 226.38(j) would mirror § 226.18, except that the proposed requirement would be provided separately from the other required disclosures. The proposed comments for these

[91] 24 CFR 3500.10(b). The settlement agent must provide the borrower with an opportunity to inspect the HUD–1 during the business day preceding settlement, but only completed to reflect all information known to the settlement agent at the time. *Id.* 3500.10(a).

disclosures would also parallel the applicable comments under § 226.18.

In addition, the Board proposes Model Clauses at Appendix H–23 for the following non-segregated disclosures: rebate, late payment, property insurance, contract reference, and assumption policy. The Model Clauses are based on the Board's consumer testing and the Board believes that model clauses will enhance consumer understanding of the information, helping consumers to avoid the uninformed use of credit.

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

Appendices G and H set forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z. Appendix G contains model forms, model clauses and sample forms applicable to open-end plans. Appendix H contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. As discussed above, the Board proposes to revise or add several model forms, model clauses and sample forms to Appendix H for transactions secured by real property or a dwelling. The revised or new model forms and clauses, and sample forms, are discussed above in the section-by-section analysis applicable to the regulatory provisions to which the forms or clauses relate. *See* discussion under §§ 226.19(b), 226.20(c)–(e), and 226.38(a)–(j). In addition, the Board proposes to add new model clauses and a sample form relating to credit insurance, debt cancellation and debt suspension coverage to both Appendix G and H for open-end and closed-end loans. These model clauses and sample forms are discussed under proposed § 226.4(d)(1) and (3) and 226.38(h). In Appendix H, all other existing forms and clauses applicable to transactions not secured by real property or a dwelling have been retained without revision.

The Board also proposes to revise or add commentary to the model forms, model clauses and sample forms in Appendix H, as discussed below. The Board solicits comments on the proposed revisions below, as well as whether any additional commentary should be added to explain the forms and clauses contained in Appendix H.

Permissible Changes

The commentary to appendices G and H currently states that creditors may make certain changes in the format and content of the model forms and clauses, and may delete any disclosures that are inapplicable to a transaction or a plan without losing the Act's protection from liability. However, certain formatting changes may not be made with respect to certain model and sample forms in Appendix G. *See* comment app. G and H–1. As discussed above, the Board is proposing format and content requirements with respect to disclosures for transactions secured by real property or a dwelling, such as a tabular requirement for ARM loan program disclosures and ARM adjustment notices, and transaction-specific disclosures required for loans secured by real property or a dwelling. *See* proposed §§ 226.19(b), 226.20(c), and 226.38(a)–(j). Accordingly, the Board would amend comment app. G and H–1 to indicate that certain formatting changes may not be made with respect to certain model forms, model clauses and sample forms in Appendix H. In addition, as discussed more fully under § 226.38, the Board proposes to require creditors to provide disclosures for transactions secured by real property or a dwelling only as applicable. As a result, the Board would not allow creditors to use multi-purpose forms; the Board would amend comment app. G and H–1(vi) to clarify that the use of multipurpose standard forms is not permitted for transactions secured by real property or a dwelling. *See* discussion under § 226.37(a)(2).

Debt Cancellation Coverage

Currently, commentary to appendices G and H states that creditors are not authorized to characterize debt-cancellation fees as insurance premiums for purposes of the regulation. The Board proposes to amend comment app. G and H–2 to clarify that the commentary also applies to debt suspension fees.

Appendix H—Closed-End Model Forms and Clauses

Model Forms, Model Clauses, and Sample Forms for Closed-End Disclosures

As noted above, the Board proposes a new disclosure regime under § 226.38 for transactions secured by real property or a dwelling. As a result, the following sample forms are rendered unnecessary and deleted: Sample H–13 (mortgage with demand feature sample); Sample H–14 (variable-rate mortgage sample); and Sample H–15 (graduated-payment mortgage sample). Comment app. H–1 would be revised to reflect the deletion of Samples H–13 through H–15. The Board would further amend comment app. H–1 to reflect that, under the proposal, new model clauses are added regarding credit life insurance, debt cancellation, or debt suspension disclosures, and creditor-placed property insurance disclosures. *See* discussion under §§ 226.4(d)(1) and (3), 226.38(h), and 226.20(e). These deleted samples forms and new model clauses are discussed more fully below.

Currently, comment app. H–2 addresses the flexibility given to creditors in providing the itemization of amount financed disclosure required under current § 226.18(c) and illustrated by Model Clause H–3. As discussed above, the Board is proposing new § 226.38(j)(1) regarding disclosure of the itemization of amount financed for transactions secured by real property or a dwelling. As a result, the Board would amend comment app. H–2 to update cross-references. In a technical revision, the Board would amend comment app. H–3 to clarify that the guidance applies to new Model Clauses H–4(B) and H–4(C), H–4(H), H–16, H–17(A) and H–17(C), H–18, and H–20 through H–23. These new model clauses are discussed more fully below.

Model Forms, Model Clauses, and Sample Forms for ARM Loan Program Disclosures

Currently, Appendix H contains several model clauses, and a sample form, related to variable-rate loan program disclosures required under current § 226.18(f)(1), 226.18(f)(2) and 226.19(b). Current Model Clause H–4(A) contains model clauses for variable-rate disclosures required under § 226.18(f)(1) for transactions not secured by a principal dwelling, or transactions secured by a dwelling with a term of one year or less. Current Model Clause H–4(B) contains model clauses for variable-rate disclosures for transactions that are secured by a principal dwelling with a term greater than one year. Current Model Clause H–4(C) contains model clauses related to variable-rate loan program disclosures required under § 226.19(b). Current Sample H–14 is a sample disclosure illustrating required disclosures under current § 226.19(b) of interest rate and monthly payment changes, as well as an historical example, for variable-rate loan programs.

Under the proposal, the Board would require new disclosures under § 226.19(b) for adjustable-rate loan programs, and would revise § 226.18(f)(1) and delete § 226.18(f)(2) to

reflect such proposed changes to § 226.19(b). Accordingly, the Board proposes to delete current Model Clause H–4(B) and add new Model H–4(B) to illustrate, in the tabular format, the disclosures required under § 226.19(b) for adjustable-rate transactions secured by real property or a dwelling. The Board also would delete current Model Clause H–4(C) and add new Model Clauses H–4(C) to reflect the proposed changes to § 226.19(b), as discussed above, and to provide model clauses regarding interest rate carryover, conversion features, and preferred rates. The Board proposes to add Samples H–4(D) through H–4(F) to provide examples of how certain disclosures under § 226.19(b) may be provided, in the tabular format, for adjustable-rate loan programs that contain a hybrid, interest only, or payment option feature, respectively. In addition, the heading to Model Clause H–4(A) would be revised to update the cross-reference to § 226.18(f), and current Sample H–14 regarding variable-rate disclosures would be deleted and reserved.

The Board also proposes to revise existing commentary that provides guidance to creditors on how to use current Model Clauses H–4(A) through (C). Currently, comments app. H–4 through H–6 provide guidance regarding variable-rate loan program disclosures required under current §§ 226.18(f)(1)–(2) and 226.19(b). Under the proposal, the Board would delete guidance contained in current comment app. H–5 regarding disclosures under § 226.18(f)(2) as unnecessary, and instead provide that disclosures required under § 226.19(b) for adjustable-rate transactions be provided in the tabular format, as illustrated by Model H–4(B), and Samples H–4(D) through H–4(F). The Board also would delete guidance currently contained in comment app. H–6 relating to variable-rate disclosures, and instead provide guidance regarding model clauses on carryover interest, a conversion feature, or a preferred rate. In a technical revision, the Board would revise comment app. H–4 to update the cross-reference to § 226.18(f).

Model Forms, Model Clauses, and Sample Forms for ARM Adjustment Notices

Currently, Appendix H contains Model Clause H–4(D), which contains model clauses regarding interest rate and payment adjustment notices required for variable-rate transactions under current § 226.20(c). As discussed above under proposed§ 226.20(c), the Board proposes new timing and disclosure requirements regarding interest rate and payment changes for adjustable-rate transactions secured by real property or a dwelling. Accordingly, the Board would add a model form and two samples forms to illustrate, in the tabular format, the disclosures required under proposed § 226.20(c)(2) for ARM adjustment notices when there is an interest rate and payment change. *See* proposed Model H–4(G) and Samples H–4(I) and H–4(J). In addition, the Board proposes to add a model form to illustrate disclosures required under proposed § 226.20(c)(3) when there is an interest rate adjustment without any change to payment. *See* proposed Model H–4(K). Current Model Clause H–4(D) would be deleted and new Model Clauses H–4(H) would be added to reflect the proposed changes to § 226.20(c), as discussed above. The Board also proposes to revise current comment app. H–7 to provide that disclosures required under § 226.20(c) be provided in the tabular format, as illustrated by new Model H–4(G), and Samples H–4(I) and H–4(J).

Model Forms, Model Clauses, and Sample Forms for Periodic Statements

Currently, creditors are not required to provide certain disclosures with respect to periodic statements for loans that are negatively amortizing. As discussed under proposed § 226.20(d), the Board would require creditors to disclose periodic payment options on a monthly basis for transactions secured by real property or a dwelling that offer payment options and are negatively amortizing. Accordingly, the Board is proposing to add new Model Form H–4(L) that creditors may use to comply with the requirements in proposed § 226.20(d).

Model Clauses for Section 32 (HOEPA) Disclosures

Currently, Appendix H contains Mortgage Sample H–16, which provides model clauses for disclosures required under § 226.32(c), such as a notice to the borrower that he or she is not obligated to accept the terms of the loan and security interest disclosures. As discussed under proposed § 226.32(c)(1), the Board would require creditors to provide plain-language versions of the ''no obligation'' and ''security interest'' disclosures to better inform consumers who are considering obtaining HOEPA loans. The Board would revise Mortgage Sample H–16 accordingly. In addition, the Board proposes to revise commentary currently contained in comment app. H–20 to clarify that these disclosures are required for all HOEPA loans, and as noted below, would move this commentary to current comment app. H–17. In a technical revision, the Board would revise the heading to Mortgage Sample H–16 to reflect that it contains model clauses.

Model Clause for Credit Insurance, Debt Cancellation, or Debt Suspension

Currently, Appendix H contains a model clause and sample form that creditors may use to comply with the disclosure requirements under current § 226.4(d)(3) for debt suspension. *See* Model Clause H–17(A) and Sample H–17(B). As discussed above, the Board proposes new disclosure requirements for credit insurance, debt cancellation and debt suspension for all closed-end loans. *See* proposed §§ 226.4(d)(1), (d)(3) and 226.38(h). Accordingly, the Board proposes to add Model Clause H–17(C) and Sample H–17(D) that creditors may use to comply with the proposed requirements under §§ 226.4(d)(1), (d)(3) and 226.38(h).

Model Clause for Creditor-Placed Property Insurance

Currently, creditors are not required to provide any disclosures to the consumer with respect to creditor-placed property insurance. As discussed under proposed § 226.20(e), the Board would require creditors to provide notice of the cost and coverage of creditor-placed property insurance before charging the consumer for such insurance for transactions secured by real property or a dwelling. For all other closed-end loans, these disclosures would be required if creditors intend to exclude the creditor-placed property insurance fee from the finance charge under § 226.4(d). Accordingly, the Board proposes to add Model Clause H–18 that creditors may use to comply with the proposed requirements under § 226.20(e).

Model Forms, Model Clauses, and Sample Forms for Transaction-Specific Disclosures for Loans Secured by Real Property or a Dwelling

Currently, Appendix H contains several model forms, model clauses and samples that creditors may use to comply with the disclosures required under current § 226.18 for transactions secured by real property or a dwelling. Current Model H–2 illustrates the format and content of disclosures currently required under § 226.18 for mortgages. Current Model Clause H–6 contains a model clause for an assumption policy. Current Samples H–13 and H–15 are sample disclosures illustrating a mortgage with a demand feature and a graduated-payment mortgage, respectively.

As discussed under proposed § 226.38, the Board proposes a new disclosure regime for transactions secured by real property or a dwelling. Accordingly, the Board proposes to add new Model Forms, Model Clauses, and Sample Forms H–19 through H–23 that creditors may use to comply with the requirements in proposed § 226.38(a) through (j). The Board proposes to add Models H–19(A) through H–19(C) to illustrate the format and content of disclosures required under proposed § 226.38 for fixed-rate, hybrid adjustable-rate, and payment option mortgages, respectively. In addition, the Board would add Model Clauses H–20 and H–21 to provide guidance to creditors on how to disclose a balloon payment or introductory rate feature, respectively. Model Clause H–22 would be added to provide model clauses relating to key questions about risk disclosures required under proposed § 226.38(d)(2). Model Clause H–23 would be added to provide model clauses for the following disclosures required under proposed § 226.38(j)(2)–(6) for transactions secured by real property or a dwelling: rebate; late payment; property insurance; contract reference; and assumption policy. Under the proposal, current Samples H–13 and H–15 would be rendered unnecessary and therefore, are deleted and reserved. Model Clause H–6, which contains the current model clause for assumption, would be deleted because assumption policies are only applicable to transactions secured by real property or a dwelling; H–6 would be reserved.

In addition, the Board proposes to add several sample forms to provide examples of how creditors can provide certain disclosures required under proposed § 226.38 in the tabular format or scaled graph, as applicable, for various transaction types secured by real property or a dwelling. Specifically, proposed Samples H–19(D) through H–19(I) illustrate disclosures required under proposed § 226.38 for the following transaction-types, respectively: a fixed mortgage with balloon payment; an interest only, fixed mortgage; a step-payment mortgage; a hybrid adjustable-rate mortgage; an interest-only ARM; and a payment option ARM.

The Board also proposes to add or revise commentary to provide guidance to creditors on the purpose of the sample forms, and how to use Model Forms, Model Clauses, and Sample Forms H–19 through H–23 for transactions secured by real property or a dwelling. Current comment app. H–12 provides guidance to creditors regarding the purpose of sample forms generally. Under the proposal, the Board would update the cross-references contained in current comment app. H–12 to clarify that the commentary applies to proposed Sample H–4(D) through-4(F) for ARM loan program disclosures required under proposed § 226.19(b); Samples H–4(I) and H–4(J) for ARM adjustment notice disclosures required under § 226.20(c); Sample H–17(D) for credit insurance, debt cancellation or debt suspension disclosures required under § 226.4(d)(1), (d)(3) and 226.38(h); and Samples H–19(D) through H–19(I) for disclosures required under § 226.38 for transactions secured by real property or a dwelling.

Current comment app. H–16 provides guidance regarding the sample forms that creditors may use to illustrate required disclosures for mortgages subject to RESPA and would be updated to include cross-references to proposed Samples H–19(D) through H–19(I), and to the itemization of amount financed disclosure under proposed § 226.38(j)(1)(iii). Under the proposal, guidance contained in current comment app. H–17 regarding disclosure of a mortgage with a demand feature under § 226.18 would be deleted as unnecessary. As noted above, commentary regarding disclosures required under § 226.32(c) for HOEPA loans would be moved from comment app. H–20 to comment app. H–17.

In addition, under the proposal, current comment app. H–18, which contains guidance relating to variable-rate disclosures required under current § 226.19(b), would be deleted. New commentary would be added to comment app. H–18 to provide format details about proposed sample forms that illustrate the disclosures required for transactions secured by real property or a dwelling under proposed § 226.19(b) or 226.38, as applicable. For example, the commentary indicates that Samples H–4(D) through H–4(F), and H–19(D) through H–19(I) are designed to be printed on an 8½x11 inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the table to ensure that the information was readable:

1. A readable font style and font size (10-point Ariel font style, except for the APR which is shown in 16-point type).

2. Sufficient spacing between lines of the text. That is, words were not compressed to appear smaller than 10-point type, except for headings used to provide interest rate and payment summary disclosures required under proposed § 226.28(c), in the tabular format, which are shown in 9-point type.

3. Standard spacing between words and characters.

4. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

5. Sufficient contrast between the text and the background. Black text was used on white paper.

Although the Board is not requiring creditors to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font size), the Board encourages creditors to consider these techniques when disclosing information in the tabular format, or scaled graph, to ensure that the information is presented in a readable format.

Under the proposal, commentary currently contained in comment app. H–19 regarding the terms of a graduated-payment mortgage would be deleted, and would instead indicate the terms of the fixed-rate mortgage illustrated in Sample H–19(D). As noted above, guidance contained in current app.
H–20 regarding disclosures required under § 226.32(c) would be moved to comment app. H–17. The Board proposes to add new commentary to comment app. H–20 to indicate the terms of the interest-only, fixed-rate mortgage illustrated in Sample H–19(E). The Board also proposes to add comments app. H–21 through –24 to indicate the terms of the following transaction types, which are illustrated in Samples H–19(F) through 19(I), respectively: a step-payment mortgage; a hybrid ARM; an interest-only ARM; and a payment option ARM. The transactions discussed in revised comments app. H–19 and H–20, and new comments app. H–21 through –24, all assume the average prime offer rates (APORs) that would be used in providing the disclosures required under proposed § 226.38(b), and are not representative of the actual APORs for the respective weeks.

Further, the Board proposes to add comments app. H–25 through –28 relating to the following, respectively: the disclosure required under proposed § 226.38(c) for a balloon payment feature; the disclosure required under proposed § 226.38(c)(2)(iii) for transactions that have an initial discounted rate that later adjusts; disclosures required under proposed § 226.19(d)(2) for key questions about risk that would be provided only as applicable; and disclosures required under proposed § 226.38(j)(2)–(6) that would be provided separately from disclosures required under proposed § 226.38(a)–(j). In a technical revision,

current comments app. H–21 through –24, which contain guidance relating to forms issued by the U.S. Department of Health and Human Services and approved for certain student loans, would be redesignated as comments app. H–29 through –32, respectively; no substantive change is intended.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for two years, § 226.25, but Regulation Z identifies only a few specific types of records that must be retained.[92]

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the State member banks and other creditors supervised by the Federal Reserve that engage in consumer credit activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 734,127 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed in the preamble, the Board proposes changes to format, timing, and content requirements for the four main types of credit disclosures for closed-end mortgages governed by Regulation Z: (1) Disclosures at or before application; (2) disclosures within three days after application; (3) disclosures before consummation; and (4) disclosures after consummation. The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 227,600 hours, from 734,127 to 961,727 hours. In addition, the Board estimates that, on a continuing basis, the proposed revisions to the rules would increase the total annual burden on a continuing basis from 734,127 to 1,280,367 hours.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Board expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. Furthermore, the burden estimate for this rulemaking does not include the burden of complying with proposed disclosure and timing requirements that apply to private educational lenders making private education loans as announced in a separate proposed rulemaking (Docket No. R–1353) or the proposed disclosure and timing requirements of the Board's separate notice published simultaneously with this proposal for open-end credit plans secured by real property.

The Board estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 200 hours (five business weeks) to update their systems, internal procedure manuals, and provide training for relevant staff to comply with the proposed disclosure requirements in §§ 226.38 and 226.20(d), and revisions to existing disclosure requirements in §§ 226.19(b) and 226.20(c). This one-time revision would increase the burden by 227,600 hours. On a continuing basis the Board estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 40 hours a month to comply with the closed-end disclosure requirements and would increase the ongoing burden from 304,756 hours to 546,240 hours. To ease the burden and cost of complying with the new and proposed requirements under Regulation Z the Board proposes to revise or add several model forms, model clauses and sample forms to Appendix H.

The other federal financial agencies: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15. U.S.C. 1607(a). These agencies are permitted, but are not required, to use the Board's burden estimation methodology. Using the Board's method, the total current estimated annual burden for the approximately 17,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA would be approximately 13,568,725 hours. The proposed rule would impose a one-time increase in the estimated annual burden for such institutions by 3,440,000 hours to 17,765,525 hours. On a continuing basis the proposed rule would impose an increase in the estimated annual burden by 8,256,000 to 21,824,725 hours. The above estimates represent an average across all respondents; the Board expects

[92] *See* comments 25(a)–3 and –4 and proposed comment 25(a)–5.

variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VIII. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration, an entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions; and $7 million or less in revenues for non-bank mortgage lenders and mortgage brokers.[93]

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the following areas.

A. Reasons for the Proposed Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. In this regard, the goal of the proposed amendments to Regulation Z is to improve the effectiveness of the disclosures that creditors provide to consumers beginning before application and throughout the life of a closed-end mortgage transaction. Accordingly, the Board is proposing changes to format, timing, and content requirements for closed-end disclosures required by Regulation Z: (1) Program and other educational information provided before application; (2) transaction-specific disclosures provided at or shortly after application; (3) transaction-specific disclosures provided at or three business days before consummation; and notices of changes to the transaction's terms and regarding certain payment options provided during the life of the credit.

Congress enacted HOEPA in 1994 as an amendment to TILA. TILA is implemented by the Board's Regulation Z. HOEPA imposed additional substantive protections on certain high-cost mortgage transactions. HOEPA also charged the Board with prohibiting acts or practices in connection with mortgage loans that are unfair, deceptive, or designed to evade the purposes of HOEPA, and acts or practices in connection with refinancing of mortgage loans that are associated with abusive lending or are otherwise not in the interest of borrowers.

The proposed regulations would revise and enhance many of the closed-end disclosure requirements of Regulation Z for transactions secured by real property or a dwelling. The Board's proposal also would require TILA disclosures for closed-end mortgages to be provided to the consumer earlier in the loan process and would expand on the post-consummation notification requirements concerning changes in mortgage terms. These amendments are proposed in furtherance of the Board's responsibility to prescribe regulations to carry out the purposes of TILA, including promoting consumers' awareness of the cost of credit and their informed use thereof. Finally, the proposal would restrict certain loan originator compensation practices for closed-end mortgage loans to address problems that have been observed in the mortgage market. These restrictions are proposed pursuant to the Board's statutory responsibility to prohibit unfair and deceptive acts and practices in connection with mortgage loans.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** contains this information. In summary, the proposed amendments to Regulation Z are designed to achieve three goals: (1) Revise the disclosures required for closed-end mortgage loans; (2) restrict certain loan originator compensation practices for mortgage loans; and (3) require disclosures for closed-end mortgage loans to be provided earlier in the transaction and additional post-consummation disclosures for certain changes in terms.

The legal basis for the proposed rule is in Sections 105(a), 105(f), and 129(*l*)(2) of TILA. 15 U.S.C. 1604(a), 1604(f), and 1639(*l*)(2). A more detailed discussion of the Board's rulemaking authority is set forth in part IV of the **SUPPLEMENTARY INFORMATION.**

C. Description of Small Entities to Which the Proposed Rule Would Apply

The proposed regulations would apply to all institutions and entities that engage in originating or extending closed-end, home-secured credit. The Board is not aware of a reliable source for the total number of small entities likely to be affected by the proposal, and the credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that originate, extend and service even small numbers of home-secured credit. *See* § 226.1(c)(1).[94] All small entities that originate, extend, or service closed-end loans secured by real property or a dwelling potentially could be subject to at least some aspects of the proposed rule.

The Board can, however, identify through data from Reports of Condition and Income (''call reports'') approximate numbers of small depository institutions that would be subject to the proposed rules. Based on December 2008 call report data, approximately 9,418 small institutions would be subject to the proposed rule. Approximately 16,345 depository institutions in the United States filed call report data, approximately 11,907 of which had total

[93] 13 CFR 121.201.

[94] Regulation Z generally applies to ''each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly, (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes.'' § 226.1(c)(1).

domestic assets of $175 million or less and thus were considered small entities for purposes of the Regulatory Flexibility Act. Of 4,231 banks, 565 thrifts and 7,111 credit unions that filed call report data and were considered small entities, 4,091 banks, 530 thrifts, and 4,797 credit unions, totaling 9,418 institutions, extended mortgage credit. For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks.

The Board cannot identify with certainty the number of small non-depository institutions that would be subject to the proposed rule. Home Mortgage Disclosure Act (HMDA) [95] data indicate that 1,752 non-depository institutions filed HMDA reports in 2007.[96] Based on the small volume of lending activity reported by these institutions, most are likely to be small.

The proposal's restrictions on compensation of loan originators would apply to mortgage brokers. Loan originators other than mortgage brokers that would be affected by the proposal are employees of creditors (or of brokers) and, as such, are not business entities in their own right. In its 2008 proposed rule under HOEPA, 73 FR 1672, 1720; Jan. 9, 2008, the Board noted that, according to the National Association of Mortgage Brokers (NAMB), in 2004 there were 53,000 mortgage brokerage companies that employed an estimated 418,700 people.[97] The Board estimated that most of these companies are small entities. On the other hand, the U.S. Census Bureau's 2002 Economic Census indicates that there were only 17,041 ''mortgage and nonmortgage loan brokers'' in the United States at that time.[98]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the proposed rules are described in parts V and VI of the **SUPPLEMENTARY INFORMATION**. The effect of the proposed revisions to Regulation Z on small entities is unknown. Some small entities would be required, among other things, to modify their home-secured credit disclosures and processes for delivery thereof to comply with the revised rules. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and to administer and maintain accounts, the complexity of the terms of credit products that they offer, and the range of such product offerings.

Additionally, the proposed rules could affect how loan originators are compensated and would impose certain related recordkeeping requirements on creditors. The precise costs that the proposed rule would impose on mortgage creditors and loan originators are also difficult to ascertain. Nevertheless, the Board believes that these costs will have a significant economic effect on small entities, including small mortgage creditors and brokers. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small businesses.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Other Federal Rules

The Board has not identified any federal rules that conflict with the proposed revisions to Regulation Z.

Overlap With SAFE Act

The proposed rule's required disclosure contents for closed-end mortgage transactions would overlap with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) by requiring that the disclosure include the loan originator's unique identifier, as defined by that Act, if applicable.

Overlap With RESPA

Certain terms defined in the proposed rule, such as ''total settlement charges'' cross-reference definitions under the U.S. Department of Housing and Urban Development's (HUD's) Regulation X under the Real Estate Settlement Procedures Act (RESPA). The proposed rule also would modify the existing prerequisites for use of the RESPA good faith estimate of settlement costs and HUD–1 settlement statement in lieu of the itemization of the amount financed under Regulation Z.

Overlap With HUD's Guidance

The Board recognizes that HUD has issued policy statements regarding creditor payments to mortgage brokers under RESPA and guidance as to disclosure of such payments on the Good Faith Estimate and HUD–1 Settlement Statement. HUD also has published revised disclosures for broker compensation under RESPA to become effective January 1, 2010. The Board intends that its proposal would complement HUD's final rule. The proposed provision regarding creditor payments to loan originators is intended to be consistent with HUD's existing guidance regarding broker compensation under Section 8 of RESPA. The proposed provision regarding record retention to evidence compliance with the provision regarding creditor payments to loan originators would cross-reference the HUD–1 settlement statement as an acceptable record of such compensation paid in a given transaction.

F. Identification of Duplicative, Overlapping, or Conflicting State Laws

State Laws Regulating Creditor Payments to Loan Originators

The Board is aware that many states regulate loan originators, especially mortgage brokers, and their compensation in various respects. Under TILA Section 111, the proposed rule would not preempt such State laws except to the extent they are inconsistent with the proposal's requirements. 15 U.S.C. 1610.

State Equivalents to TILA and HOEPA

Many states regulate consumer credit through statutory disclosure schemes similar to TILA. Similarly to State laws regulating loan originator compensation, such state disclosure laws would be preempted only to the extent they are inconsistent with the proposal's requirements. *Id.*

The Board also is aware that many states regulate ''high-cost'' or ''high-priced'' mortgage loans, under laws that

[95] The 8,610 lenders (both depository institutions and mortgage companies) covered by HMDA in 2007 accounted for an estimated 80% of all home lending in the United States (2008 HMDA data are not yet available). Under HMDA, lenders use a ''loan/application register'' (HMDA/LAR) to report information annually to their Federal supervisory agencies for each application and loan acted on during the calendar year. Lenders must make their HMDA/LARs available to the public by March 31 following the year to which the data relate, and they must remove the two date-related fields to help preserve applicants' privacy. Only lenders that have offices (or, for non-depository institutions, are deemed to have offices) in metropolitan areas are required to report under HMDA. However, if a lender is required to report, it must report information on all of its home loan applications and loans in all locations, including non-metropolitan areas.

[96] *The 2007 HMDA Data, http://www.federalreserve.gov/pubs/bulletin/2008/articles/hmda/default.htm.*

[97] *http://www.namb.org/namb/Industry_Facts.asp?SnID=719224934.* This page of the NAMB Web site, however, no longer provides an estimate of the number of mortgage brokerage companies.

[98] *http://www.census.gov/prod/ec02/ec0252a1us.pdf* (NAICS code 522310). Data on this industry sector are not yet available from the 2007 Economic Census.

resemble HOEPA. Many such State laws set their coverage tests in part on the APR of the transaction. The proposed rule would overlap with these laws indirectly by virtue of the proposal to modify the definition of the finance charge for closed-end mortgage transactions, which would result in APRs being higher generally and potentially more loans being covered under such State laws.

The Board seeks comment regarding any State or local statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

G. Discussion of Significant Alternatives

The Board considered whether improved disclosures could protect consumers against unfair loan originator compensation practices for mortgages as well as the proposed rule. While the Board is proposing improvements to mortgage loan disclosures, it does not appear that better disclosures would address loan originator compensation practices adequately.

The Board welcomes comments on any significant alternatives, consistent with the requirements of TILA, that would minimize the impact of the proposed rule on small entities.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is shown inside bold brackets.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Public Law 111–24 § 2, 123 Stat. 1734.

Subpart A—General

2. Section 226.1, as amended on January 29, 2009 (74 FR 5397) is amended by revising paragraphs (b) and (d)(5) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

* * * * *

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by ►real property or◄ a consumer's [principal] dwelling ►in § 226.36, and credit secured by a consumer's principal dwelling in § 226.35.◄

* * * * *

(d) * * *

(5) Subpart E contains special rules for mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for ►closed-end◄ loans that have rates and fees above specified amounts. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with ►closed-end◄ mortgage transactions that are subject to § 226.32. Section 226.35 prohibits specific acts and practices in connection with ►closed-end◄ higher-priced mortgage loans, as defined in § 226.35(a). Section 226.36 prohibits specific acts and practices in connection with ►extensions of◄ credit secured by ►real property or◄ a consumer's [principal] dwelling. ►Section 226.37 provides general disclosure requirements for closed-end extensions of credit secured by real property or a consumer's dwelling. Section 38 provides the content of disclosures for closed-end extensions of credit secured by real property or a consumer's dwelling.◄

* * * * *

3. Section 226.4, as amended on January 29, 2009 (74 FR 5399) is revised to read as follows:

§ 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) Retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges.* ►Except as provided in § 226.4(g), fees◄ [Fees] charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Examples of finance charge.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation,

or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction, whether or not the debt cancellation coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge.* ►Except as provided in § 226.4(g), the◄ [The] following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees.* The following fees in ►an open-end credit plan◄ [a transaction] secured by real property or in ►an open-end◄ [a] residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

(d) *Insurance and debt cancellation and debt suspension coverage.* (1) *Voluntary credit insurance premiums.* ►Except as provided in § 226.4(g), premiums◄ [Premiums] for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

►(iv) The creditor determines at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for insurance coverage.◄

(2) *Property insurance premiums.* Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer,[5] may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice,[6] and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation or debt suspension fees.* ►Except as provided in § 226.4(g), charges◄ [Charges] or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(i) The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage.

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

►(v) The creditor determines at the time of enrollment that the consumer meets any applicable age or employment eligibility criteria for the debt cancellation or debt suspension agreement or coverage.◄

(4) *Telephone purchases.* If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end [(not home-secured)] plan by telephone, the creditor must make the disclosures under

[5] [Reserved].

[6] [Reserved].

paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

(e) *Certain security interest charges.* ►Except as provided in § 226.4(g), if◄ [If] itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

►(g) *Special rule; closed-end mortgage transactions.* Paragraphs (a)(2) and (c) through (e) of this section, other than §§ 226.4(c)(2), 226.4(c)(5) and 226.4(d)(2), do not apply to closed-end transactions secured by real property or a dwelling.◄

Subpart C—Closed-End Credit

4. Section 226.17 is revised to read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. ►In addition, transactions secured by real property or a dwelling are subject to the requirements under § 226.37.◄ The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). ►For transactions secured by real property or a dwelling, disclosures required by § 226.19(b) or (c) must be provided in electronic form in specified circumstances.◄ The disclosures required by §§ 226.17(g), 226.19(b),► 226.19(c),◄ and 226.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E–Sign Act in the circumstances set forth in those sections. The disclosures ►required by § 226.18 or § 226.38◄ shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related [37] to the disclosures required under § 226.18 [38]►or § 226.38; however, the disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the variable-rate example under § 226.18(f)(4), insurance, debt cancellation, or debt suspension under § 226.18(n), and certain security interest charges under § 226.18(o)◄. The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section.

(2)►Except for transactions secured by real property or a dwelling subject to § 226.38, t◄[T]he terms *finance charge* and *annual percentage rate,* when required to be disclosed under § 226.18(d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a).

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. [In certain mortgage transactions, special timing requirements are set forth in § 226.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in § 226.19(b) and § 226.20(c).] ►Special disclosure timing requirements for transactions secured by real property or a dwelling are set forth in § 226.19(a). Additional disclosure timing requirements for adjustable-rate transactions secured by real property or a dwelling are set forth in § 226.19(b) and § 226.20(c).◄ In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

(c) *Basis of disclosures and use of estimates.* (1) ►*Legal obligation.*◄ The disclosures ►required by this subpart◄ shall reflect the terms of the legal obligation between the parties.

►(i) *Buydowns.* The creditor shall disclose an annual percentage rate that is a composite rate based on the interest rate in effect during the initial period of the term of the loan and the interest rate in effect for the remainder of the term, if the consumer's interest rate or payments are reduced for all or part of the loan term based on payments made by:

(A) The seller or another third party, if the legal obligation reflects such an arrangement; or

(B) The consumer.

(ii) *Wrap-around financing.* If a transaction involves combining the outstanding balance on an existing loan with additional funds advanced to a consumer without paying off the outstanding balance, the amount financed shall equal the sum of the outstanding balance and the new funds advanced.

(iii) *Variable- or adjustable-rate transactions.* The creditor shall base disclosures for a variable- or adjustable-rate transaction on the full term of the transaction. Except as otherwise provided in § 226.38(a)(3) and (c) for adjustable-rate mortgage transactions secured by real property or a dwelling:

(A) If the initial interest rate for a transaction with a variable or adjustable rate is determined using the index or formula used to adjust the interest rate, the disclosures shall reflect the terms in effect at the time of consummation.

(B) If the initial interest rate for a transaction with a variable or adjustable rate is not determined using the index or formula used to adjust the interest rate, the disclosures shall reflect a composite annual percentage rate based on the initial rate for the time it is in effect and, for the remainder of the term, the rate that would have applied if such index or formula had been used at the time of consummation.

(iv) *Repayment upon occurrence of future event.* If disbursements for a transaction secured by real property or a dwelling are made during a specified period but repayment is required only upon the occurrence of a future event, the creditor shall base disclosures on

[37] ►[Reserved]◄[The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.]

[38] ►[Reserved]◄[The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), the variable-rate example under § 226.18(f)(1)(iv), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).]

the assumption that repayment will occur when disbursements end.

(v) *Tax refund-anticipation loans.* For a tax refund-anticipation loan, the creditor shall estimate the time a tax refund will be delivered to the consumer and shall include in the finance charge any repayment amount that exceeds the loan amount that is not otherwise excluded from the finance charge under § 226.4.

(vi) *Pawn transactions.* For a pawn transaction, the creditor shall disclose:

(A) The initial sum paid to the consumer as the amount financed;

(B) A finance charge that includes the difference between the initial sum paid to the consumer and the price at which the item is pledged or sold; and

(C) The annual percentage rate is determined using the earliest date on which the item pledged or sold may be redeemed as the end of the loan term.◄

(2)►*Estimates.*◄ (i) ►*Reasonably available information.*◄ If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer[,] and shall state clearly that the disclosure is an estimate►(except that § 226.19(a) limits the circumstances in which creditors may provide estimated disclosures, for mortgage transactions secured by real property or a dwelling)◄.

(ii)►*Per-diem interest.*◄ For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

(3)►*Disregarded effects.*◄ The creditor may disregard the effects of the following in making calculations and disclosures:

(i) That payments must be collected in whole cents.

(ii) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.

(iii) That months have different numbers of days.

(iv) The occurrence of leap year.

(4)►*Disregarded irregularities.*◄ In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any [payment schedule] irregularity ►in the payment schedule, in a transaction not secured by real property or a dwelling, or payment summary, in a transaction secured by real property or a dwelling,◄ that results from the irregular first period:

(i) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(ii) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(iii) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5)►*Demand obligations.*◄ If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

(6) *Multiple advance loans.*

(i)►*Series of advances.*◄ A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.

(ii)►*Multiple-advance construction loan.*◄ When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

(d) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under § 226.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this regulation, although new disclosures may be required under paragraph (f) of this section, § 226.19, or § 226.20.

(f) *Early disclosures.* If disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation ([subject to the provisions of]►except that additional timing requirements apply under◄ § 226.19(a)(2) and ►alternative timing requirements apply under◄ § 226.19(a)[(5)]►(4)◄(iii)):[39]

(1) Any changed term unless the term was based on an estimate in accordance with § 226.17(c)(2) and was labelled an estimate;

(2) All changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than ⅛ of 1 percentage point in a regular transaction, or more than ¼ of 1 percentage point in an irregular transaction, as defined in § 226.22(a).

(g) *Mail or telephone orders—delay in disclosures.* ►Except for transactions secured by real property or a dwelling subject to § 226.38, i◄[I]f a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

(1) The cash price or the principal loan amount.

(2) The total sale price.

(3) The finance charge.

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(5) The terms of repayment.

(h) *Series of sales—delay in disclosures.* If a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of this provision, in the case of items purchased on different

[39] [Reserved.]

dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

(i) *Interim student credit extensions.* For each transaction involving an interim credit extension under a student credit program, the creditor need not make the following disclosures: the finance charge under § 226.18(d), the payment schedule under § 226.18(g), the total of payments under § 226.18(h), or the total sale price under § 226.18(j).

5. Section 226.18 is revised to read as follows:

§ 226.18 General disclosure requirements.

For each transaction, the creditor shall disclose the following information as applicable►, except that for each transaction secured by real property or a dwelling, the creditor shall make the disclosures required by § 226.38◄:

(a) *Creditor.* The identity of the creditor making the disclosures.

(b) *Amount financed.* The amount financed, using that term, and a brief description such as the amount of credit provided to you or on your behalf. The amount financed is calculated by:

(1) Determining the principal loan amount or the cash price (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

(c) *Itemization of amount financed.* (1) A separate written itemization of the amount financed, including:[40]

(i) The amount of any proceeds distributed directly to the consumer.

(ii) The amount credited to the consumer's account with the creditor.

(iii) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons►,◄[.][41] ►except that the following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.◄

(iv) The prepaid finance charge.

(2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

(d) *Finance charge.* The *finance charge,* using that term, and a brief description such as ''the dollar amount the credit will cost you.''

[(1) *Mortgage loans.* In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge—

(i) Is understated by no more than $100; or

(ii) Is greater than the amount required to be disclosed.

(2) *Other credit.* In any other transaction, the]►The◄ amount disclosed as the finance charge shall be treated as accurate if[,]►:

(1)◄In a transaction involving an amount financed of $1,000 or less, it is not more than $5 above or below the amount required to be disclosed; or[,]

►(2)◄ In a transaction involving an amount financed of more than $1,000, it is not more than $10 above or below the amount required to be disclosed.

(e) *Annual percentage rate.* The *annual percentage rate,* using that term, and a brief description such as ''the cost of your credit as a yearly rate.''[42] ►For any transaction involving a finance charge of $5 or less on an amount financed of $75 or less, or a finance charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate.◄

(f) *Variable-rate loan* [*with term of one year or less*]►*not secured by real property or a dwelling*◄.

[(1)] If the annual percentage rate may increase after consummation in a transaction not secured by [the consumer's principal dwelling or a transaction secured by the consumer's principal dwelling with a term of one year or less]►real property or a dwelling◄, the following disclosures:[43]

[(i)]►(1)◄ The circumstances under which the interest rate may increase.

[(ii)]►(2)◄ Any limitations on the increase.

[(iii)]►(3)◄ The effect of an increase.

[(iv)]►(4)◄ An example of the payment terms that would result from an increase.

[(2) If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, a following disclosures:

(i) The fact that the transaction contains a variable-rate feature.

(ii) A statement that variable-rate disclosure have been provided earlier.]

(g) *Payment schedule.* The number, amounts, and timing of payments scheduled to repay the obligation.

(1) In a demand obligation with no alternate maturity date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:

(i) The dollar amounts of the largest and smallest payments in the series.

(ii) A reference to the variations in the other payments in the series.

(h) *Total of payments.* The ''total of payments,'' using that term, and a descriptive explanation such as ''the amount you will have paid when you have made all scheduled payments.''[44] ►In any transaction involving a single payment, the creditor need not disclose the total of payments.◄

(i) *Demand feature.* If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in § 226.17(c)(5), that fact shall also be disclosed.

(j) *Total sale price.* In a credit sale, the total sale price, using that term, and a descriptive explanation (including the amount of any downpayment) such as ''the total price of your purchase on credit, including your downpayment of $_____.'' The total sale price is the sum of the cash price, the items described in paragraph (b)(2), and the finance charge disclosed under paragraph (d) of this section.

(k) *Prepayment.* (1) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may

[40] ►[Reserved]◄[Good faith estimates of settlement costs provided for transactions subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) may be substituted for the disclosures required by paragraph (c) of this section.]

[41] ►[Reserved]◄[The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.]

[42] ►[Reserved]◄ [For any transaction involving a finance charge of $5 or less on an amount financed of $75 or less, or a finance charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate.]

[43] ►[Reserved]◄[Information provided in accordance with Sections 226.18(f)(2) and 226.19(b), may be substituted for the disclosures required by paragraph (f)(1) of this section.]

[44] ►[Reserved]◄ [In any transaction involving a single payment, the creditor need not disclose the total of payments.]

be imposed if the obligation is prepaid in full.

(2) When an obligation includes a finance charge other than the finance charge described in paragraph (k)(1) of this section, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.

(l) *Late payment.* Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

(m) *Security interest.* The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

(n) *Insurance*►,◄ *[and] debt cancellation*►*, and debt suspension*◄. The items required by § 226.4(d) in order to exclude certain insurance premiums►,◄ and debt-cancellation ►or debt suspension◄ fees from the finance charge.

(o) *Certain security interest charges.* The disclosures required by § 226.4(e) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

(p) *Contract reference.* A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

(q) [*Assumption policy.* In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.] ►[Reserved.]◄

(r) *Required deposit.* If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit.[45] ►A required deposit need not include:

(1) An escrow account for items such as taxes, insurance or repairs; or

(2) A deposit that earns not less than 5 percent per year.◄

[45] ►[Reserved]◄ [A required deposit need not include, for example: (1) An escrow account for items such as taxes, insurance or repairs; (2) a deposit that earns not less than 5 percent per year; or (3) payments under a Morris Plan.]

6. Section 226.19 is revised to read as follows:

§ 226.19 [Certain mortgage and variable-rate transactions.]►Early disclosures and adjustable-rate disclosures for transactions secured by real property or a dwelling.

In connection with a closed-end transaction secured by real property or a dwelling, subject to paragraph (a)(4) of this section, the following requirements shall apply:◄

(a) *Mortgage transactions* [*subject to RESPA*]*—(1)(i) Time of* ►*good faith estimates of*◄ *disclosures.* [In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by the consumer's dwelling, other than a home equity line of credit subject to § 226.5b or mortgage transaction subject to paragraph (a)(5) of this section, t]►T◄he creditor shall make good faith estimates of the disclosures required by [§ 226.18]►§ 226.38◄ and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

(ii) *Imposition of fees.* Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer ►or delivered to the consumer by means other than delivery in person◄, the consumer is considered to have received them three business days after they are mailed ►or delivered◄.

(iii) *Exception to fee restriction.* A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is *bona fide* and reasonable in amount.

[(2) *Waiting periods for early disclosures and corrected disclosures.* (i)]►(2)(i) *Seven-business-day waiting period.*◄ The creditor shall deliver or place in the mail the good faith estimates required by paragraph (a)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

►(ii) *Three-business-day waiting period.* After providing the disclosures required by paragraph (a)(1)(i) of this section, the creditor shall provide the disclosures required by § 226.38 before consummation. The consumer must receive the new disclosures no later than three business days before consummation. Only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimated disclosures.◄

Alternative 1—Paragraph (a)(2)(iii)

[(ii) If the annual percentage rate disclosed under paragraph (a)(1)(i) of this section becomes inaccurate, as defined in § 226.22, the creditor shall provide corrected disclosures with all changed terms.]►(iii) *Additional three-business-day waiting period.* If a subsequent event makes the disclosures required by paragraph (a)(2)(ii) inaccurate, the creditor shall provide corrected disclosures, subject to paragraph (a)(2)(iv) of this section.◄ The consumer must receive the corrected disclosures no later than three business days before consummation. ► Only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimated disclosures.◄ [If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.]

Alternative 2—Paragraph (a)(2)(iii)

[(ii)]►(iii) *Additional three-business-day waiting period.*◄ If the annual percentage rate disclosed under paragraph [(a)(1)(i)]►(a)(2)(ii)◄ of this section becomes inaccurate, as defined in § 226.22, ►or a transaction that was disclosed as a fixed-rate transaction becomes an adjustable-rate transaction,◄ the creditor shall provide corrected disclosures with all changed terms►, subject to paragraph (a)(2)(iv) of this section◄. The consumer must receive the corrected disclosures no later than three business days before consummation. ► Only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimated disclosures.◄ [If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.]

►(iv) *Annual percentage rate accuracy.* An annual percentage rate disclosed under paragraph (a)(2)(ii) or (a)(2)(iii) shall be considered accurate as provided by § 226.22, except that even if one of the following subsequent events makes the disclosed annual percentage rate inaccurate under

§ 226.22, the APR shall be considered accurate for purposes of paragraph (a)(2)(ii) and (a)(2)(iii) of this section:

(A) A decrease in the loan's annual percentage rate due to a discount the creditor gives the consumer to induce periodic payments by automated debit from a consumer's deposit or other account.

(B) A decrease in the loan's annual percentage rate due to a discount a title insurer gives the consumer on voluntary owners' title insurance.

(v) *Timing of receipt.* If the disclosures required by paragraph (a)(2)(ii) or paragraph (a)(2)(iii) of this section are mailed to the consumer or delivered by means other than delivery in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered.◄

(3) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a *bona fide* personal financial emergency, the consumer may modify or waive the seven-business-day waiting period or [the]►a◄ three-business-day waiting period required by paragraph (a)(2) of this section, after receiving the disclosures required by [§ 226.18]►§ 226.38◄. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

[(4) *Notice.* Disclosures made pursuant to paragraph (a)(1) or paragraph (a)(2) of this section shall contain the following statement: ''You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.'' The disclosure required by this paragraph shall be grouped together with the disclosures required by paragraph (a)(1) or (a)(2) of this section.]

[(5)]►(4)◄ *Timeshare plans.* In a mortgage transaction [subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*)] that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)):

(i) The requirements of paragraphs (a)(1) through [(a)(4)]►(a)(3)◄ of this section do not apply;

(ii) The creditor shall make good faith estimates of the disclosures required by [§ 226.18] ►§ 226.38◄ before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier; and

(iii) If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed under paragraph (a)[(5)]►(4)◄(ii) of this section by more than ⅛; of 1 percentage point in a regular transaction or ¼ of 1 percentage point in an irregular transaction, the creditor shall disclose all the changed terms no later than consummation or settlement.

[(b) *Certain variable-rate transactions.*[45a] If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier:[45b]

(1) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages* published by the Board and the Federal Home Loan Bank Board, or a suitable substitute.

(2) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

(i) The fact that the interest rate, payment, or term of the loan can change.

(ii) The index or formula used in making adjustments, and a source of information about the index or formula.

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) At the option of the creditor, either of the following:

(A) A historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program disclosure. The example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(B) The maximum interest rate and payment for a $10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either:

(A) The most recent payment shown in the historical example in paragraph (b)(2)(viii)(A) of this section; or

(B) The initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(viii)(B) of this section.

(x) The fact that the loan program contains a demand feature.

(xi) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.]

►(b) *Adjustable-rate loan program disclosures.* For adjustable-rate mortgages described in § 226.38(a)(3) secured by real property or a consumer's dwelling, the creditor shall provide to the consumer an adjustable-rate loan program disclosure for each loan program in which the consumer expresses an interest. The creditor shall disclose the heading ''Adjustable-Rate Mortgage'' or ''ARM'' in accordance with § 226.19(b)(4)(iii). The creditor shall provide disclosures under this paragraph (b) in circumstances where an open-end credit account converts to a closed-end mortgage transaction under a written agreement with the consumer. The creditor need not provide such disclosures in circumstances where the consumer assumes an adjustable-rate mortgage originated to another consumer.

(1) *Interest rate and payment.* As applicable, the creditor shall disclose the information required in paragraph

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[45a] ►Reserved.◄[Information provided in accordance with variable-rate regulations of other Federal agencies may be substituted for the disclosures required by paragraph (b) of this section.]

[45b] ►Reserved.◄[Disclosures may be delivered or placed in the mail not later than three business days following receipt of a consumer's application when the application reaches the creditor by telephone, or through an intermediary agent or broker.]

(b)(1) of this section, grouped together under the heading ''Interest Rate and Payment,'' using that term:

(i) *Introductory period.* The time period for which the interest rate or payment remains fixed, a statement that the interest rate or payment may increase after that period, and an explanation of the effect on the interest rate of having an initial interest rate that is not determined using the index or formula that applies for interest rate adjustments.

(ii) *Frequency of rate and payment change.* The frequency of interest rate and payment changes permitted under the legal obligation.

(iii) *Index.* The index or formula used in making adjustments, a source of information about the index or formula, and an explanation of how the interest rate will be determined ►when adjusted◄, including an explanation of how the index is adjusted, such as by the addition of a margin.

(iv) *Limit on rate changes.* An explanation of interest rate or payment limitations and interest rate carryover.

(v) *Conversion feature.* An explanation of any fixed-rate conversion feature that describes any limitations on the period during which the loan may be converted, a statement that the fixed interest rate may be higher than the adjustable rate at the time of conversion, a statement that conversion fees may be charged, and any interest rate and payment limitations that apply if the consumer exercises the conversion option.

(vi) *Preferred rate.* An explanation of the events that will cause the interest rate on an adjustable rate mortgage with a preferred rate to increase, a statement of the increase in the interest rate, and a statement that fees may be charged if one or more of the events occurs.

(2) *Key questions about risk.* The creditor shall disclose the information required in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, grouped together under the heading ''Key Questions About Risk,'' using that term:

(i) *Required disclosures.* The creditor shall disclose the following information—

(A) *Rate increases.* A statement that the interest rate may increase, along with a statement indicating when the first interest rate increase may occur and the frequency with which the interest rate may increase.

(B) *Payment increases.* A statement indicating whether or not the periodic payment on the loan may increase. If the periodic payment may increase, a statement that if the interest rate increases, the periodic payment will increase. For a pay option loan, if the periodic payment may increase, a statement indicating when the first minimum payment may increase.

(C) *Prepayment penalty.* If the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty could be imposed if the obligation is prepaid in full. If the creditor could impose a prepayment penalty, a statement of the circumstances under which and period in which the creditor could impose the penalty.

(ii) *Additional disclosures.* The creditor shall disclose the following information as applicable:

(A) *Interest-only payments.* A statement that periodic payments will be applied only toward interest on the loan, along with a statement of any limitation on the number of periodic payments that will be applied only toward interest on the loan, that such payments will cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount. For payment-option loans, a statement that the loan gives the consumer the choice to make periodic payments that cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount.

(B) *Negative amortization.* A statement that the loan balance may increase even if the consumer makes the periodic payments, along with a statement that the minimum payment covers only a part of the interest the consumer owes each period and none of the principal, that the unpaid interest will be added to the consumer's loan amount, and that over time this will increase the total amount the consumer is borrowing and cause the consumer to lose equity in the home.

(C) *Balloon payment.* A statement that the consumer will owe a balloon payment, along with a statement of when it will be due.

(D) *Demand feature.* A statement that the creditor may demand full repayment of the loan, along with a statement of the timing of any advance notice the creditor will give the consumer before the creditor exercises such right.

(E) *No-documentation or low-documentation loans.* A statement that the consumer's loan could have a higher rate or fees if the consumer does not document employment, income or other assets, along with a statement that if the consumer provides more documentation, the consumer could decrease the interest rate or fees.

(F) *Shared-equity or shared-appreciation.* A statement that any future equity or appreciation in the real property or dwelling that secures the loan must be shared, along with a statement of the percentage of future equity or appreciation to which the creditor is entitled, and the events that may trigger such an obligation.

(3) *Additional information and Web site.* The creditor shall disclose a statement that the consumer may obtain additional information about adjustable-rate mortgages and a list of licensed housing counselors at the Web site of the Federal Reserve Board, and a reference to that Web site.

(4) *Format requirements.* (i) *Application of § 226.37.* Except as otherwise provided by this paragraph (b)(4), the format requirements in § 226.37 apply to loan program disclosures made under this section.

(ii) *Prominent location.* The disclosures required by paragraphs (b)(1) through (b)(3) of this section shall be grouped together and placed in a prominent location.

(iii) *Disclosure of heading.* The disclosure of the heading required by paragraph (b) of this section shall be more conspicuous than, and shall precede, the other disclosures required by paragraph (b) and shall be located outside of the tables required by paragraph (b)(4)(iv). The creditor may make the heading disclosure using the name of the creditor and the name of the loan program.

(iv) *Form of disclosures; tabular format.* The creditor shall provide the disclosures required by paragraphs (b)(1) and (b)(2) of this section in the form of two tables with headings, content, and format substantially similar to Form H–4(B) in Appendix H to this part. The table shall contain only the information required or permitted by paragraphs (b)(1) and (b)(2). The table containing the disclosures required by paragraph (b)(1) shall precede the table containing the disclosures required by paragraph (b)(2).

(v) *Question and answer format.* The creditor shall provide the disclosures required by paragraph (b)(2) of this section grouped together and presented in the format of question and answer, in a manner substantially similar to Form H–4(B) in Appendix H to this part.

(vi) *Highlighting.* Each affirmative answer for a feature required to be disclosed under paragraph (b)(2) shall be disclosed in bold text and in all capitalized letters. Any negative answer shall be in nonbold text.

(vii) *Order of key questions disclosure.* The key questions disclosure shall be provided, as applicable, in the following order: rate increases under § 226.19(b)(2)(i)(A), payment increases under § 226.19(b)(2)(i)(B), interest-only payments under § 226.19(b)(2)(ii)(A), negative amortization under § 226.19(b)(2)(ii)(B), balloon payment under § 226.19(b)(2)(ii)(C), prepayment penalty under § 226.19(b)(2)(i)(C), demand feature under § 226.19(b)(2)(ii)(D), no-documentation or low-documentation loans under § 226.19(b)(2)(ii)(E), shared-equity or shared-appreciation under § 226.19(b)(2)(ii)(F).

(viii) *Disclosure of additional information and Web site.* The disclosure and Web site information required by paragraph (b)(3) of this section shall be located outside and beneath the tables required by paragraph (b)(4)(iv).

(c) *Publications for transactions secured by real property or a dwelling.* In a closed-end consumer credit transaction secured by real property or a dwelling, the creditor shall provide the following Board publications:

(1) The publication entitled ''*Key Questions to Ask about Your Mortgage,''* as published by the Board.

(2) The publication entitled ''*Fixed vs. Adjustable Rate Mortgages,''* as published by the Board.

(d) *Timing of disclosures.* (1) *General.* Except as otherwise provided by this paragraph (d), the creditor shall provide the disclosures and publications required by paragraphs (b) and (c) of this section at the time an application form is provided to the consumer or before the consumer pays a non-refundable fee, including a fee for obtaining the consumer's credit history, whichever is earlier.◄

[(c)]►(2)◄ *Electronic disclosures.* For an application that is accessed by the consumer in electronic form, the disclosures and publications required by paragraph (b) ►and (c)◄ of this section may be provided to the consumer in electronic form on or with the application.

►(i) Except as provided in paragraph (d)(2)(ii), if a consumer accesses an ARM loan application electronically, the creditor shall provide the disclosures and publications required under paragraphs (b) and (c) of this section in electronic form.

(ii) If a consumer who is physically present in the creditor's office accesses a loan application electronically, the creditor may provide disclosures and publications required under paragraphs (b) and (c) of this section in either electronic or paper form.

(3) *Applications made by telephone or through intermediary.* If the creditor receives the consumer's application through an intermediary agent or broker or by telephone, the creditor satisfies the requirements of paragraph (b) or paragraph (c) of this section if the creditor delivers the disclosures and publications or places them in the mail not later than three business days after the creditor receives the consumer's application.

(4) *Adjustable-rate feature added after application.* If the consumer first expresses interest in an adjustable-rate mortgage transaction after an application form has been provided or accessed or the consumer has paid a non-refundable fee, the creditor shall provide to the consumer the disclosures required by paragraph (b) of this section within three business days after the creditor is informed of such interest by the consumer or by an intermediary broker or agent.

(5) *Terms not usually offered.* If the consumer expresses an interest in negotiating loan terms that are not generally offered, the creditor need not provide the disclosures required by paragraph (b) of this section before an application form is provided but shall provide such disclosures as soon as reasonably possible after the terms to be disclosed have been determined and not later than the time the consumer pays a non-refundable fee. In all cases the creditor shall provide the disclosures required by paragraph (c) of this section at the time an application form is provided or before the consumer pays a non-refundable fee, including a fee for obtaining a consumer's credit history, whichever is earlier.

(6) *Additional loan program disclosures.* If, after an application form is provided or the consumer pays a non-refundable fee, a consumer expresses an interest in an adjustable-mortgage loan program for which the creditor has not provided the disclosures required by paragraph (b) of this section, the creditor shall provide such disclosures within a reasonable time after the consumer expresses such interest. ◄

7. Section 226.20 is revised to read as follows:

§ 226.20 Subsequent disclosure requirements.

(a) *Refinancings.* A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:

(1) A renewal of a single payment obligation with no change in the original terms.

(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.

(3) An agreement involving a court proceeding.

(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in § 226.4(d).

(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

(b) *Assumptions.* An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing [residential mortgage transaction]►closed-end credit transaction secured by real property or a dwelling◄. Before the assumption occurs, the creditor shall make new disclosures to the subsequent consumer, based on the remaining obligation. If the finance charge originally imposed on the existing obligation was an add-on or discount finance charge, the creditor need only disclose:

(1) The unpaid balance of the obligation assumed.

(2) The total charges imposed by the creditor in connection with the assumption.

(3) The information required to be disclosed under [§ 226.18(k), (l), (m), and (n)] ►§ 226.38 (a)(5), (f)(2), (h), (j)(2), (j)(3), and (j)(4)◄.

(4) The annual percentage rate originally imposed on the obligation.

(5) The [payment schedule under § 226.18(g)] ►interest rate and payment summary under § 226.38(c)◄ and the total [of] payments under [§ 226.18(h)], ►§ 226.38(e)(5)◄ based on the remaining obligation.

(c) [*Variable-rate adjustments.]* ►*Rate adjustments.*◄[45c] An adjustment to the interest rate with or without a corresponding adjustment to the payment in [a variable-rate]►an adjustable-rate◄ mortgage subject to

[45c] ►Reserved.◄[Information provided in accordance with variable-rate subsequent disclosure regulations of other Federal agencies may be substituted for the disclosure required by paragraph (c) of this section.]

§ 226.19(b) is an event requiring new disclosures to the consumer. ►An adjustment to the interest rate with a corresponding adjustment to the payment due to the conversion of an adjustable-rate mortgage subject to § 226.19(b) to a fixed-rate mortgage also is an event requiring new disclosures to the consumer.◄[At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following disclosures, as applicable, must be delivered or placed in the mail:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.]

►(1) *Timing of disclosures.* (i) *Payment change.* If an interest rate adjustment is accompanied by a payment change, the creditor shall deliver or place in the mail the disclosures required by paragraph (c)(2) of this section at least 60, but no more than 120, calendar days before a payment at a new level is due.

(ii) *No payment change.* At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, the creditor shall deliver or place in the mail the disclosures required by paragraph (c)(3) of this section.

(2) *Content of payment change disclosures.* The creditor must provide the following information on the notice provided pursuant to paragraph (c)(1)(i) of this section:

(i) A statement that changes are being made to the interest rate, the date such change is effective, and a statement that more detailed information is available in the loan agreement(s).

(ii) A table containing the following disclosures—

(A) The current and new interest rates.

(B) If payments on the loan may be interest-only or negatively amortizing, the amount of the current and new payment allocated to pay principal, interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed shall be based on the payment allocation in the last payment period during which the current interest rate applies. The new payment allocation disclosed shall be based on the payment allocation in the first payment period during which the new interest rate applies.

(C) The current and new payment and the due date for the new payment.

(iii) A description of the change in the index or formula and any application of previously foregone interest.

(iv) The extent to which the creditor has foregone any increase in the interest rate and the earliest date the creditor may apply foregone interest to future adjustments, subject to rate caps.

(v) Limits on interest rate or payment increases at each adjustment, if any, and the maximum interest rate or payment over the life of the loan.

(vi) A statement of whether or not part of the new payment will be allocated to pay the loan principal and a statement of the payment required to fully amortize the loan at the new interest rate over the remainder of the loan term or to fully amortize the loan without extending the loan term, if different from the new payment disclosed pursuant to paragraph (c)(2)(ii)(C) of this section.

(vii) A statement of the loan balance as of the date the interest rate change will become effective.

(3) *Content of annual interest rate notice.* The creditor shall provide the following information on the annual notice provided pursuant to paragraph (c)(1)(ii) of this section, as applicable:

(i) The specific time period covered by the disclosure, and a statement that the interest rate on the loan has changed during the past year without changing required payments.

(ii) The highest and lowest interest rates that applied during the period specified under paragraph (c)(3)(i) of this section.

(iii) Any foregone increase in the interest rate or application of previously foregone interest.

(iv) The maximum interest rate that may apply over the life of the loan.

(v) A statement of the loan balance as of the last day of the time period required to be disclosed by paragraph (c)(3)(i) of this section.

(4) *Additional information.* In addition to the disclosures provided under paragraph (c)(2) or (c)(3) of this section, the creditor shall provide the following information:

(i) If the creditor may impose a penalty if the obligation is prepaid in full, a statement of the circumstances under which and period in which the creditor may impose the penalty and the amount of the maximum penalty possible during the period between the date the creditor delivers or mails the disclosures required by this paragraph (c) and the last day the creditor may impose the penalty.

(ii) A telephone number the consumer may call to obtain additional information about the consumer's loan.

(iii) A telephone number and Internet Web site for housing counseling resources maintained by the Department of Housing and Urban Development.

(5) *Format of disclosures.* (i) The disclosures required by this paragraph (c) shall be provided in the form of tables with headings, content and format substantially similar to Form H–4(G) in Appendix H to this part, where an interest rate adjustment is accompanied by a payment change, or Form H–4(K) in Appendix H to this part, where a creditor provides an annual notice of interest rate adjustments without an accompanying payment change. The disclosures required by paragraph (c)(2) or (c)(3) of this section shall be grouped together with the disclosures required by paragraph (c)(4) of this section, and shall be in a prominent location.

(ii) The disclosures required by paragraph (c)(2)(i) or paragraph (c)(3)(i) of this section shall precede the other disclosures required by paragraph (c)(2) or (c)(3). The disclosures required by paragraph (c)(4) shall be located directly beneath the disclosures required by paragraph (c)(2) or (c)(3).

(iii) The disclosures required by paragraph (c)(2)(ii) shall be in the form of a table with headings, content, and format substantially similar to Form H–4(G) in Appendix H to this part. The disclosures required by paragraphs (c)(2)(iii) through (c)(2)(vii) of this section shall be located directly below the table required by paragraph (c)(2)(ii).

(d) *Periodic statement.* (1) *Timing and content of disclosures.* If a mortgage transaction secured by real property or a dwelling provides a consumer with multiple payment options that include a payment that results in negative amortization, for each period after consummation and not later than fifteen days before payment is due, subject to paragraph (c) of this section, the creditor shall mail or deliver to the consumer a periodic statement that discloses the following information, *as applicable:*

(i) *Payment.* Based on the interest rate in effect at the time the disclosure is made, the payment amount required to—

(A) Pay off the loan balance in full by the end of the term through regular

periodic payments without a balloon payment, with a statement that the payment is ''recommended to reduce loan balance,'' using that term;

(B) Prevent negative amortization, if the legal obligation explicitly permits the consumer to elect to pay interest only without paying principal; and

(C) Pay the minimum amount required under the legal obligation.

(ii) *Effects.* A statement of the interest and principal, if any, covered by the payment amounts disclosed under paragraph (d)(1)(i) of this section, a statement describing the effects of making such payments, and the earliest date payments at a higher level may be due.

(iii) *Unpaid interest.* The amount that will be added to the loan balance each period due to unpaid interest.

(2) *Format of disclosures.* (i) *Form of a table.* The disclosures required by paragraph (d)(1) of this section shall be in the form of a table with headings, content and format substantially similar to Form H–4(L) in Appendix H to this part.

(ii) *Location of disclosures.* The disclosures required by this paragraph (d) shall be placed in a prominent location, except that if the disclosures are made concurrently with the disclosures required by paragraph (c) of this section, the disclosures required by paragraph (c) shall precede the disclosures required by this paragraph (d).

(iii) *Segregation of disclosures.* The table described in paragraph (d)(2)(i) of this section shall contain only the information required by paragraph (d)(1). Other information may be presented with the table, provided such information appears outside the required table.

(e) *Creditor-placed property insurance.* (1) ''Creditor-placed property insurance'' means property insurance coverage obtained by the creditor when the property insurance required by the credit agreement has lapsed.

(2) A creditor may not charge a consumer for obtaining property insurance on property securing a credit transaction, unless:

(i) The creditor has made a reasonable determination that the required property insurance has lapsed;

(ii) The creditor has mailed or delivered a written notice to the consumer with the disclosures set forth in paragraph (e)(3) of this section at least 45 days before a charge is imposed on the consumer for creditor-placed property insurance; and

(iii) During the 45-day notice period, the consumer has not provided the creditor with evidence of adequate property insurance.

(3) The creditor must provide the following information, clearly and conspicuously, on the notice required in paragraph (e)(2)(ii) of this section:

(i) The creditor's name and contact information, the loan number, and the address or description of the property securing the credit transaction;

(ii) That the consumer is obligated to maintain property insurance on the property securing the credit transaction;

(iii) That the required property insurance has lapsed;

(iv) That the creditor is authorized to obtain the property insurance on the consumer's behalf;

(v) The date the creditor can charge the consumer for the cost of creditor-placed property insurance;

(vi) How the consumer may provide evidence of property insurance;

(vii) The cost of creditor-placed property insurance stated as an annual premium, and that this premium is likely significantly higher than a premium for property insurance purchased by the consumer; and

(viii) That creditor-placed property insurance may not provide as much coverage as homeowner's insurance.

(4) Within 15 days after a creditor charges the consumer for creditor-placed property insurance, the creditor must mail or deliver to the consumer a copy of the individual policy, certificate or other evidence of the creditor-placed property insurance.◄

Subpart E—Special Rules for Certain Home Mortgage Transactions

8. Section 226.32 is amended by revising paragraphs (b)(1), (c)(1), and (c)(5), to read as follows:

§ 226.32 Requirements for certain closed-end home mortgages.

* * * * *

(b) * * *

(1) For purposes of paragraph (a)(1)(ii) of this section, *points and fees* means ►all items included in the finance charge, pursuant to § 226.4, except interest or the time-price differential.◄ [:]

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

(ii) All compensation paid to mortgage brokers;

(iii) All items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(iv) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.]

* * * * *

(c) * * *

(1) *Notices.* The following statement ►in bold text and minimum 10-point font◄: [''You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.'']►''If you are unable to make the payments on this loan, you could lose your home. You have no obligation to accept this loan. Your signature below only confirms that you have received this form.''◄

* * * * *

(5) *Amount borrowed.* For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the [face] amount of the note ►or other loan agreement◄; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation ►or debt suspension◄ coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

* * * * *

9. Section 226.36, as added on July 30, 2008 (73 FR 44604), is amended by:

A. Revising the section heading,

B. Revising paragraph (a),

C. Revising paragraphs (b)(1) introductory text, (b)(1)(i)(A) through (D), (b)(1)(ii)(A) and (D), and (b)(2),

D. Revising the introductory text of paragraph (c)(1),

E. Redesignating paragraph (d) as paragraph (f), and

F. Adding new paragraphs (d) and (e).

The additions and revisions read as follows:

§ 226.36 Prohibited acts or practices in connection with credit secured by ►real property or a dwelling◄ [a consumer's principal dwelling].

(a) ►*Loan originator and*◄ *mortgage broker defined.* ►(1) *Loan originator.* For purposes of this section, the term ''loan originator'' means with respect to

a particular transaction, a person◄ [For purposes of this section ''mortgage broker'' means a person, other than an employee of a creditor,] who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. [The term includes a person meeting this definition, even if the consumer credit obligation is initially payable to such person, unless the person provides] ►The term ''loan originator'' includes employees of the creditor. The term includes the creditor if the creditor does not provide◄ the funds for the transaction at consummation out of the ►creditor's◄ [person's] own resources, out of deposits held by the ►creditor◄ [person], or by drawing on a bona fide warehouse line of credit.

►(2) *Mortgage broker.* For purposes of this section, a mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor.◄

(b) *Misrepresentation of value of consumer's dwelling*—(1) *Coercion of appraiser.* In connection with a consumer credit transaction secured by ►real property or◄ a [consumer's principal] dwelling, no creditor or mortgage broker, and no affiliate of a creditor or mortgage broker, shall directly or indirectly coerce, influence, or otherwise encourage an appraiser to misstate or misrepresent the value of such dwelling.

(i) * * *

(A) Implying to an appraiser that current or future retention of the appraiser depends on the amount at which the appraiser values a [consumer's principal] dwelling;

(B) Excluding an appraiser from consideration for future engagement because the appraiser reports a value of a [consumer's principal] dwelling that does not meet or exceed a minimum threshold;

(C) Telling an appraiser a minimum reported value of a [consumer's principal] dwelling that is needed to approve the loan;

(D) Failing to compensate an appraiser because the appraiser does not value a [consumer's principal] dwelling at or above a certain amount; and

* * * * *

(ii) * * *

(A) Asking an appraiser to consider additional information about a [consumer's principal] dwelling or about comparable properties;

* * * * *

(D) Obtaining multiple appraisals of a [consumer's principal] dwelling, so long as the creditor adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value;

* * * * *

(2) *When extension of credit prohibited.* In connection with a consumer credit transaction secured by ►real property or◄ a [consumer's principal] dwelling, a creditor who knows, at or before loan consummation, of a violation of paragraph (b)(1) of this section in connection with an appraisal shall not extend credit based on such appraisal unless the creditor documents that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

* * * * *

(c) *Servicing practices.* (1) In connection with a consumer credit transaction secured by ►real property or◄ a [consumer's principal] dwelling, no servicer shall—

* * * * *

ALTERNATIVE 1—PARAGRAPH (d).

►(d) *Prohibited payments to loan originators.* (1) *Payments based on transaction terms and conditions.* In connection with a consumer credit transaction secured by real property or a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions. For purposes of this paragraph, the principal amount of credit extended is deemed to be a transaction term. This paragraph (d)(1) shall not apply to any transaction in which paragraph (d)(2) of this section applies.

(2) *Payments by persons other than consumer.* If a loan originator receives compensation directly from the consumer in a transaction secured by real property or a dwelling:

(i) The loan originator shall not receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(ii) No person who knows or has reason to know of the consumer-paid compensation to the loan originator, other than the consumer, shall pay any compensation to the loan originator, directly or indirectly, in connection with the transaction.

(3) *Affiliates.* For purposes of paragraph (d) of this section, affiliated entities shall be treated as a single ''person.''◄

ALTERNATIVE 2—PARAGRAPH (d).

►(d) *Prohibited payments to loan originators.* (1) *Payments based on terms and conditions.* In connection with a consumer credit transaction secured by real property or a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions. For purposes of this paragraph the principal amount of credit extended is not deemed to be a transaction term or condition. This paragraph (d)(1) shall not apply to any transaction in which paragraph (d)(2) applies.

(2) *Payments by persons other than consumer.* If a loan originator receives compensation directly from the consumer in a transaction secured by real property or a dwelling:

(i) The loan originator shall not receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(ii) No person who knows or has reason to know of the consumer-paid compensation to the loan originator, other than the consumer, shall pay any compensation to the loan originator, directly or indirectly, in connection with the transaction.

(3) *Affiliates.* For purposes of paragraph (d) of this section, affiliated entities shall be treated as a single ''person.''◄

OPTIONAL PROPOSAL—PARAGRAPH (e).

►(e) *Prohibition on steering.* (1) *General.* In connection with a credit transaction secured by real property or a dwelling, a loan originator shall not direct or ''steer'' a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the transaction is in the consumer's interest.

(2) *Permissible transactions.* A transaction does not violate paragraph (e)(1) of this section if the loan was chosen by the consumer from at least three loan options for each type of transaction in which the consumer expressed an interest, and the conditions specified in paragraph (e)(3) of this section are met. For purposes of paragraph (e) of this section, the phrase ''type of transaction'' refers to whether a loan has:

(i) An annual percentage rate that cannot increase after consummation, or

(ii) An annual percentage rate that may increase after consummation.

(3) *Loan options presented.* A transaction satisfies paragraph (e)(2) of this section only if the loan originator

presents the loan options required by that paragraph and all of the following conditions are met:

(i) The loan originator obtains loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest the originator must present and permit the consumer to choose from at least three loans that include:

(A) The loan with the lowest interest rate;

(B) The loan with the second lowest interest rate; and

(C) The loan with the lowest total dollar amount for origination points or fees and discount points, as offered by the creditors.

(ii) The loan originator must have a good faith belief that the options presented to the consumer pursuant to paragraph (e)(3)(i) of this section are loans for which the consumer likely qualifies.

(iii) For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in paragraph (e)(3)(i) of this section.◄

►(f)◄ [(d)] This section does not apply to a home equity line of credit subject to § 226.5b.

10. A new § 226.37 is added to Subpart E to read as follows:

►§ 226.37 Special disclosure requirements for closed-end mortgages.

(a) *Form of disclosures*—(1) *General.* The creditor shall make the disclosures required by §§ 226.19, 226.20(c), 226.20(d) and 226.38 clearly and conspicuously in writing, in a form that the consumer may keep.

(2) *Grouped and segregated.* The disclosures required by § 226.19, as applicable, § 226.20(c), § 226.20(d), or § 226.38 shall be grouped together and segregated from everything else, except as provided in paragraph (b) of this section, and shall not contain any information not directly related to the disclosures required under §§ 226.19, 226.20(c), 226.20(d), or 226.38, except:

(i) The disclosures may include the date of the transaction and the consumer's name, address, and account number; and

(ii) The following disclosures may be made together with or separately from other required disclosures under § 226.38: the tax deductibility disclosure under § 226.38(f)(4); and insurance, debt cancellation, or debt suspension disclosure under § 226.38(h).

(b) *Separate disclosures.* The following disclosures must be provided separately from other required disclosures under § 226.38: itemization of amount financed under § 226.38(j)(1); rebate under § 226.38(j)(2); late payment under § 226.38(j)(3); property insurance under § 226.38(j)(4); contract reference under § 226.38(j)(5); and assumption under § 226.38(j)(6).

(c) *Terminology.* (1) Terminology used in providing the disclosures required by §§ 226.19, 226.20(c), 226.20(d) and 226.38 shall be consistent.

(2) The term *annual percentage rate,* when required to be disclosed under § 226.38(b)(1) together with a corresponding percentage rate, shall be more conspicuous than any other required disclosure, disclosed in at least a 16-point font, and be placed in a prominent location and in close proximity to a scaled graph in accordance with the requirements under § 226.38(b)(2).

(d) *Specific formats.* (1) The disclosures required by § 226.38(a)(1) through (5) shall be provided in accordance with the requirements of § 226.38(a), and precede all other disclosures, except the identification required by § 226.38(g) and the disclosures permitted under paragraph (a)(2)(i) of this section;

(2) The disclosures required by § 226.38(b)(2) shall be provided in the form of a graph with shading, scaling and content in accordance with the requirements of § 228.38(b)(2), placed in a prominent location and in close proximity to the disclosures required by §§ 226.38(b)(1), 226.38(b)(3) and 226.38(b)(4);

(3) The disclosures required by § 226.38(c), as applicable, shall be provided in a tabular format in accordance with the requirements of § 226.38(c), and placed in a prominent location;

(4) The disclosure required by § 226.38(c)(2)(iii) shall be outlined in a box and placed directly beneath the table required by § 226.38(c)(1) in accordance with the requirements of § 226.38(c)(2)(iii);

(5) The disclosures required by § 226.38(d) shall be provided in a question and answer format in a tabular format in accordance with the requirements of § 226.38(d), and shall not precede the disclosures required by § 226.38(a) through (c).

(6) The disclosures required by § 226.38(e) shall be provided in a tabular format in accordance with the requirements of § 226.38(e), and precede any information not directly related to the disclosures required by § 226.38.

(7) The disclosures required by § 226.38(f) shall be provided in accordance with the requirements of § 226.38(f), and precede the disclosures required by § 226.38(j).

(8) The loan program disclosures required by § 226.19(b) for an adjustable-rate mortgage shall be provided in a tabular format in accordance with the requirements of § 226.19(b).

(9) The disclosures required by § 226.20(c)(2)–(4) for an adjustable-rate adjustment notice shall be provided in a tabular format in accordance with the requirements of § 226.20(c)(2)–(5).

(10) The disclosures required by § 226.20(d)(1) for loans with negative amortization shall be provided in a tabular format in accordance with the requirements of § 226.20(d).

(e) *Electronic disclosures.* The disclosures required by § 226.38 may be provided to the consumer in electronic form in accordance with the requirements under § 226.17(a)(1).◄

11. A new § 226.38 is added to Subpart E to read as follows:

►§ 226.38 Content of disclosures for closed-end mortgages.

In connection with a closed-end transaction secured by real property or a dwelling, the creditor shall disclose the following information:

(a) *Loan summary.* A separate section, labeled ''Loan Summary.''

(1) *Loan amount.* The principal amount the consumer will borrow as reflected in the loan contract.

(2) *Loan term.* The period of time to repay the obligation in full.

(3) *Loan type and features.* The loan types and loan features described in this section.

(i) *Loan type.* The loan type, as applicable:

(A) *Adjustable-rate mortgage.* If the annual percentage rate may increase after consummation, the creditor shall disclose that the loan is an ''adjustable-rate mortgage,'' using that term.

(B) *Step-rate mortgage.* If the interest rate will change after consummation, and the rates and periods in which they will apply are known, the creditor shall disclose that the loan is a ''step-rate mortgage,'' using that term.

(C) *Fixed-rate mortgage.* If the transaction is not an adjustable-rate mortgage or a step-rate mortgage, the creditor shall disclose that the loan is a ''fixed-rate mortgage,'' using that term.

(ii) *Loan features.* No more than two loan features, as applicable:

(A) *Step-payments.* If, under the terms of the legal obligation, the regular periodic payments will gradually increase by a set amount at predetermined times, the creditor shall disclose that the loan has a ''step-payment'' feature, using that term; and

(B) *Payment option.* If, under the terms of the legal obligation, the consumer may choose to make one or more regular periodic payments that may cause the loan balance to increase, the creditor shall disclose that the loan has a ''payment option'' feature, using that term;

(C) *Negative amortization.* If, under the terms of the legal obligation, the regular periodic payments will cause the loan balance to increase and the loan is not a loan described in paragraphs (a)(3)(ii)(B) or (a)(3)(ii)(D) of this section, the creditor shall disclose that the loan has a ''negative amortization'' feature, using that term; or

(D) *Interest-only payments.* If, under the terms of the legal obligation, one or more regular periodic payments may be applied to interest accrued only and not to loan principal, and the loan is not a loan described in paragraphs (a)(3)(ii)(A) or (a)(3)(ii)(B) of this section, the creditor shall disclose that the loan has an ''interest-only payment'' feature, using that term.

(4) *Total settlement charges.* The ''total settlement charges,'' using that term, as disclosed under Regulation X, 12 CFR part 3500. As applicable, a statement of the amount of the charges already included in the loan amount and a statement that the total does not include a down payment, with a reference to the Good Faith Estimate or HUD–1 for details.

(5) *Prepayment penalty.* If the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance and permits the creditor to impose a penalty if the obligation is prepaid in full, a statement indicating the amount of the maximum penalty and the circumstances and period in which the creditor may impose the penalty.

(6) *Form of disclosures; tabular format.* The disclosures required by paragraphs (a)(1) through (5) of this section shall be in the form of a table, with headings, content and format substantially similar to Forms H–19(A), H–19(B), or H–19(C) in Appendix H to this part. The table shall contain only the information required or permitted by paragraphs (a)(1) through (5).

(b) *Annual percentage rate.* The disclosures specified in paragraph (b)(1)–(4) of this section shall be grouped together with headings, content and format substantially similar to Forms H–19(A), H–19(B), or H–19(C) in Appendix H to this part.

(1) The ''annual percentage rate,'' using that term, and the following description: ''overall cost of this loan including interest and settlement charges.''

(2) A graph depicting the annual percentage rate (APR) disclosed under paragraph (b)(1) of this section and how it relates to a range of rates including the average prime offer rate as defined in § 226.35(a)(2) for the week in which the disclosure required under this section is provided, and the higher-priced mortgage loan threshold as defined in § 226.35(a)(1).

(i) The graph shall consist of a horizontal line or axis, with a shaded bar extending above and below the line. The horizontal axis shall be used to depict a range of APRs and the shaded bar shall use lighter shading on the left and darker shading on the right to distinguish between the rates on the graph that are below and above the APR representing the higher-priced mortgage loan threshold.

(ii) The lighter shaded area shall comprise the first two-thirds of the graph to represent the rates that are below the higher-priced mortgage loan threshold. On the horizontal axis, a range of APRs shall be plotted in the lighter shaded area, starting with the average prime offer rate depicted as the lowest APR on the left, and increasing in increments of .50 percentage points, up to the APR that is the higher-priced mortgage loan threshold. The average prime offer rate shall be plotted as the lowest APR on the horizontal axis and shall be labeled as ''Average Best APR'' or ''Avg. Best APR.''

(iii) The darker shaded area to the right side of the APR representing the higher-priced mortgage loan threshold shall comprise the last third of the graph, shall contain the words ''high cost zone'' and the APR that is 4 percentage points higher than the higher-priced mortgage threshold shall be plotted as the highest APR on the horizontal axis. Ellipses shall separate the APR representing the higher-priced mortgage threshold and the highest APR on the graph.

(iv) The graph shall include the APR disclosed under paragraph (b)(1) of this section and:

(A) Identify its location on the horizontal axis, which shall be labeled ''this loan: __% APR,'' or

(B) If the APR disclosed under paragraph (b)(1) exceeds the highest APR on the axis, identify its location beyond the rightmost edge of the shaded graph, or

(C) If the APR disclosed under paragraph (b)(1) is below the average prime offer rate, identify its location beyond the leftmost edge of the shaded graph.

(v) The lighter and darker shaded areas shall each extend past the lowest and highest APRs depicted on the axis, with a left pointing arrow to the left of lowest APR and a right-pointing arrow to the right of the highest APR.

(3) A statement of the average prime offer rate as defined in § 226.35(a)(2), and the higher-priced mortgage loan threshold, as defined in § 226.35(a)(1), current as of the week the disclosure is produced.

(4) The average per-period savings from a 1 percentage point reduction in the APR, which shall be calculated as follows:

(i) Reduce the interest rate by 1 percentage point and compute the total of payments that would result from the reduced interest rate;

(ii) Compute the difference between the total of payments in paragraph (b)(4)(i) of this section and the total of payments for the loan disclosed under § 226.38(e)(5)(i), and divide the difference by the total number of payments required to pay the loan off by its maturity.

(5) *Exemptions.* The following transactions are exempt from the disclosures required under paragraphs (b)(2) and (b)(3) of this section:

(i) A transaction to finance the initial construction of a dwelling;

(ii) A temporary or ''bridge'' loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; and

(iii) A reverse-mortgage transaction subject to § 226.33.

(c) *Interest rate and payment summary.* The creditor shall disclose the following information about the interest rate and periodic payments:

(1) The information in paragraphs (c)(2)–(4) of this section shall be in the form of a table, with no more than five columns, with headings, content and format substantially similar to Forms H–19(A), H–19(B), or H–19(C) in Appendix H to this part. The table shall contain only the information required in paragraphs (c)(2)–(4).

(2) *Interest rates*—(i) *Amortizing loans.* (A) For fixed-rate mortgages, the interest rate at consummation.

(B) For an adjustable-rate mortgage or a step-rate mortgage—

(*1*) The interest rate at consummation and the period of time until the first interest rate adjustment, labeled as the ''introductory rate and monthly payment'';

(*2*) The maximum possible interest rate at the first scheduled interest rate adjustment and the date on which the

adjustment will occur, labeled as ''maximum at first adjustment''; and

(*3*) The maximum possible interest rate at any time and the earliest date on which that rate may apply, labeled as ''maximum ever.''

(C) If the loan provides for payment increases in paragraph (c)(3)(i)(B) of this section, the interest rate in effect at the time the first payment increase is scheduled to occur and the date on which the increase will occur.

(ii) *Negative amortization loans.* The creditor shall disclose—

(A) The interest rate at consummation and if it will adjust after consummation, the length of time until it will adjust and the label ''introductory'';

(B) The maximum possible interest rate that could apply when the consumer must begin making fully amortizing payments under the terms of the legal obligation;

(C) If the minimum required payment will increase before the consumer must begin making fully amortizing payments, the maximum possible interest rate that would be in effect at the first payment increase and the date the increase is scheduled to occur; and

(D) If a second payment increase in the minimum required payment may occur before the consumer must begin making fully amortizing payments, the maximum possible interest rate that would in effect at the second payment increase and the date the increase is scheduled to occur.

(iii) *Introductory rate disclosure for amortizing adjustable-rate mortgage.* If the interest rate at consummation is less than the fully-indexed rate—

(A) The interest rate that applies at consummation and the period of time the interest rate applies;

(B) A statement that even if market rates do not change, the interest rate will increase at the first adjustment and the date of such rate adjustment; and

(C) The fully-indexed rate.

(3) *Payments for amortizing loans*—(i) *Principal and interest payments.* If all regular periodic payments will be applied to the interest accrued and the principal, for each interest rate disclosed under paragraph (c)(2)(i) of this section—

(A) The corresponding regular periodic payment of principal and interest, labeled as ''principal and interest;''

(B) If the regular periodic payment may increase without regard to an interest rate adjustment, the payment that corresponds to the first increase and the earliest date on which the increase could occur;

(C) That an escrow account is required, if applicable, and an estimate of the amount of taxes and insurance, including any mortgage insurance;

(D) The sum of the amounts disclosed under paragraph (c)(3)(i)(A)–(C) of this section, with a description such as ''total estimated monthly payment.''

(ii) *Interest-only payments.* If the loan is an interest-only loan, for each interest rate disclosed under paragraph (c)(2)(i) of this section, the corresponding payment and—

(A) If the payment will be applied to only the interest accrued, the amount applied to interest and an indication that none of the payment is being applied to principal;

(B) If the payment will be applied to interest accrued and principal, the earliest date that payment will be required and the payment amount itemized by the amount applied to interest accrued and the amount applied to principal;

(C) The escrow information in paragraph (c)(3)(i)(C) of this section; and

(D) The sum of all amounts required to be disclosed under paragraph (c)(3)(i)(A)–(C) of this section, with a description such as ''total estimated monthly payment.''

(4) *Payments for negative amortization loans.* (i) The minimum payment—

(A) Required until the first payment increase or interest rate increase;

(B) That would be due at the first payment increase and the second, if any, in paragraphs (c)(2)(ii)(C) and (D) of this section; and

(C) A statement that the minimum payment covers only some interest, does not cover any principal, and will cause the loan amount to increase.

(ii) The fully amortizing payment amount at the earliest time when such a payment must be made; and, if applicable,

(iii) In addition to the payments in paragraphs (c)(4)(i) and (ii) of this section, for each interest rate required under paragraph (c)(2)(ii) of this section, the amount of the fully amortizing payment, labeled as the ''full payment option,'' and a statement that payments cover all principal and interest.

(5) *Balloon payments.* (i) Except as provided in paragraph (c)(5)(ii) of this section, if the transaction will require a balloon payment, defined as a payment that is more than two times a regular periodic payment, the balloon payment must be disclosed separately from other regular periodic payments disclosed under this paragraph (c), in a manner substantially similar to Model Clause H–20 in Appendix H to this part.

(ii) If the balloon payment is scheduled to occur at the same time as another required payment in paragraph (c)(3) or (c)(4) of this section, then the balloon payment must be disclosed in the table.

(6) *Special disclosures for loans with negative amortization.* The following information, in close proximity to the table required in paragraph (c)(1) of this section, with headings, content and format substantially similar to Form H–19(C) in Appendix H to this part:

(i) The maximum possible interest rate, the period of time in which the interest rate could reach its maximum, the amount of estimated taxes and insurance included in each payment disclosed, and a statement that the loan offers payment options, two of which are shown.

(ii) The dollar amount of the increase in the loan's principal balance if the consumer makes only the minimum required payments for the maximum possible time, and the earliest date on which the consumer must make a fully amortizing payment, assuming that the interest rate reaches its maximum at the earliest possible time.

(7) *Definitions.* For the purposes of this paragraph (c):

(i) The terms ''adjustable-rate mortgage,'' ''step-rate mortgage,'' ''fixed-rate mortgage,'' and ''interest-only'' shall have the meaning given to them in paragraphs (a)(3)(i) and (a)(3)(ii)(D) of this section;

(ii) The term ''amortizing loan'' means a loan in which the regular periodic payments cannot cause the principal balance to increase under the terms of the legal obligation; the term ''negative amortization'' means a loan in which the regular periodic payments may or will cause the principal balance to increase under the terms of the legal obligation; and

(iii) The term ''fully indexed rate'' means the interest rate calculated using the index value and margin at the time of consummation.

(d) *Key questions about risk.* The creditor shall disclose the information required in paragraphs (d)(1) and (d)(2) of this section, grouped together under the heading ''Key Questions About Risk,'' using that term:

(1) *Required disclosures.* The creditor shall disclose the following information—

(i) *Rate increases.* A statement indicating whether or not the interest rate on the loan may increase. If the interest rate on the loan may increase, a statement indicating the frequency with which the interest rate may increase and the date on which the first interest rate increase may occur.

(ii) *Payment increases.* A statement indicating whether or not the periodic payment on the loan may increase. If the

periodic payment on the loan may increase, a statement indicating the date on which the first payment increase may occur. For a payment option loan, if the periodic payment on the loan may increase, statements indicating the dates on which the full and minimum payments may increase.

(iii) *Prepayment penalty.* If the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty will be imposed if the obligation is prepaid in full. If the creditor may impose a prepayment penalty, a statement of the circumstances under which and period in which the creditor may impose the penalty and the amount of the maximum penalty.

(2) *Additional disclosures.* The creditor shall disclose the following information, as applicable—

(i) *Interest-only payments.* A statement that periodic payments will be applied only toward interest on the loan, along with a statement of any limitation on the number of periodic payments that will be applied only toward interest on the loan, that such payments will cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount. For payment-option loans, a statement that the loan gives the consumer the choice to make periodic payments that cover the interest owed each month, but none of the principal, and that making these periodic payments means the loan amount will stay the same and the consumer will not have paid any of the loan amount.

(ii) *Negative amortization.* A statement that the loan balance may increase even if the consumer makes the periodic payments, along with a statement that the minimum payment covers only a part of the interest the consumer owes each period and none of the principal, that the unpaid interest will be added to the consumer's loan amount, and that over time this will increase the total amount the consumer is borrowing and cause the consumer to lose equity in the home.

(iii) *Balloon payment.* A statement that the consumer will owe a balloon payment, along with a statement of the amount that will be due and the date on which it will be due.

(iv) *Demand feature.* A statement that the creditor may demand full repayment of the loan, along with a statement of the timing of any advance notice the creditor will give the consumer before the creditor exercises such right.

(v) *No-documentation or low-documentation loans.* A statement that the consumer's loan will have a higher rate or fees because the consumer did not document employment, income or other assets, along with a statement that if the consumer provides more documentation, the consumer could decrease the interest rate or fees.

(vi) *Shared-equity or shared-appreciation.* A statement that any future equity or appreciation in the real property or dwelling that secures the loan must be shared, along with a statement of the percentage of equity or appreciation to which the creditor is entitled, and the events that may trigger such obligation.

(3) *Format requirements.* (i) *Form of disclosures; tabular format.* The creditor shall provide the disclosures required by paragraphs (d)(1) and (2) of this section, as applicable, in the form of a table with headings, content and format substantially similar to Forms H–19(A), H–19(B), or H–19(C) in Appendix H to this part. The table shall contain only the information required or permitted by paragraphs (d)(1) and (2).

(ii) *Question and answer format.* The creditor shall provide the disclosures required by paragraphs (d)(1) through (d)(2) of this section grouped together and presented in the format of question and answer, in a manner substantially similar to Forms H–19(A), H–19(B), or H–19(C) in Appendix H to this part.

(iii) *Highlighting.* Each affirmative answer for a feature required to be disclosed under paragraphs (d)(1) and (2) of this section shall be disclosed in bold text and in all capitalized letters. Any negative answer shall be in nonbold text.

(iv) *Order.* The disclosures shall be provided, as applicable, in the following order: rate increases under § 226.38(d)(1)(i), payment increases under § 226.38(d)(1)(ii), interest-only payments under § 226.38(d)(2)(i), negative amortization under § 226.38(d)(2)(ii), balloon payment under § 226.38(d)(2)(iii), prepayment penalty under § 226.38(d)(1)(iii), demand feature under § 226.38(d)(2)(iv), no-documentation or low-documentation loans under § 226.38(d)(2)(v), and shared-equity or shared-appreciation under § 226.38(d)(2)(vi).

(e) *Information about payments.* A creditor shall disclose the following information, grouped together under the heading ''More Information About Your Payments'':

(1) *Rate calculation.* For an adjustable-rate mortgage, a statement labeled ''Rate Calculation'' that describes the method used to calculate the interest rate and the frequency of interest rate adjustments. If the interest rate that applies at consummation is not based on the index and margin that will be used to make later interest rate adjustments, the statement must include the time period when the initial interest rate expires.

(2) *Rate and payment change limits.* (i) For an adjustable-rate mortgage, any limitations on the increase in the interest rate labeled in bold type ''Rate Change Limits,'' together with a statement of the maximum rate that may apply pursuant to such limitations during the transaction's term to maturity.

(ii) If the regular periodic payment required under the terms of the legal obligation may cause the principal balance to increase, any limitations on the increase in the minimum payment amount and an identification of the circumstances under which the minimum required payment may recast to a fully amortizing payment labeled, in bold type, ''Payment Change Limits.''

(3) *Escrow.* If applicable, a statement, labeled in bold type ''Escrow,'' that explains that an escrow account is required for property taxes and insurance, that the escrow payment is an estimate that can change at any time, and that the consumer should consult the good faith estimate of settlement costs and HUD–1 settlement statement for more details. If no escrow is required, a statement of that fact and that the consumer will have to pay property taxes, homeowners', and other insurance directly.

(4) *Mortgage insurance.* If applicable, a statement, labeled in bold type, ''Private Mortgage Insurance,'' that private mortgage insurance is required and, if applicable, whether such insurance is included in any escrow account. If other mortgage insurance is required, for example, for a transaction insured by a government entity, the statement shall be labeled, in bold type, ''Mortgage Insurance.''

(5) *Total payments.* A creditor shall disclose the following information, grouped together under the subheading ''Total Payments,'' using that term:

(i) *Total payments.* The total payments amount, calculated based on the number and amount of scheduled payments in accordance with the requirements of § 226.18(g), together with a statement that the total payments is calculated on the assumption that market rates do not change, if applicable, and that the consumer makes all payments as scheduled. The statement must also specify the total

number of payments and whether the total payments amount includes estimated escrow.

(ii) *Interest and settlement charges.* The *interest and settlement charges,* using that term, calculated as the finance charge in accordance with the requirements of § 226.4 and expressed as a dollar figure, together with a brief statement that the interest and settlement charges amount represents part of the total payments amount. The disclosed interest and settlement charges, and other disclosures affected by the disclosed interest and settlement charges (including the amount financed and annual percentage rate), shall be treated as accurate if the amount disclosed as the interest and settlement charges—

(A) Is understated by no more than $100;

(B) Is greater than the amount required to be disclosed.

(iii) *Amount financed.* The *amount financed,* using that term and expressed as a dollar figure, together with a brief statement that the interest and settlement charges and the amount financed are used to calculate the annual percentage rate. The amount financed is calculated by subtracting all prepaid finance charges from the loan amount required to be disclosed under § 226.38(a)(1).

(6) *Form of disclosures; tabular format.* The creditor must provide the disclosures required by paragraphs (e)(1) through (5) of this section in the form of a table, with headings, content, and format substantially similar to Forms H–19(A), H–19(B), or H–19(C) in Appendix H to this part. The table shall contain only the information required or permitted by paragraphs (e)(1) through (e)(5).

(f) *Additional disclosures.* The creditor shall disclose the following information, grouped together:

(1) *No obligation statement.* A statement that the consumer has no obligation to accept the loan. If the creditor provides space for a consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement.

(2) *Security interest.* A statement that the consumer could lose the home if he or she is unable to make payments on the loan.

(3) *No guarantee to refinance statement.* A statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or monthly payments.

(4) *Tax deductibility.* For a transaction secured by a dwelling, if the extension of credit may exceed the fair market value of the dwelling, the creditor shall disclose that:

(i) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes; and

(ii) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(5) *Additional information and Web site.* A statement that if the consumer does not understand any disclosure required by this section the consumer should ask questions, a statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board, and a reference to that Web site.

(6) *Format*—(i) *Location.* The statements required by paragraph (f)(1) of this section must be disclosed together. The disclosure required by paragraph (f)(2) of this section must be made together with the disclosure paragraph (f)(3) of this section. The statements required by paragraph (f)(5) of this section must be made together.

(ii) *Highlighting.* The first statement required to be disclosed by paragraphs (f)(1) and (f)(5) of this section, and the statement required to be disclosed by paragraph (f)(2), must be disclosed in bold text.

(iii) *Form of disclosures.* The creditor must provide the disclosures required by paragraphs (f)(1) through (5) of this section in a manner substantially similar to Forms H–19(A), H–19(B), or H–19(C) in Appendix H to this part.

(g) *Identification of creditor and loan originator*—(1) *Creditor.* The identity of the creditor making the disclosures.

(2) *Loan originator.* The loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 Sections 1503(3) and (12), 12 U.S.C. 5102(3) and (12).

(h) *Credit insurance and debt cancellation and debt suspension coverage.* The disclosures specified in paragraphs (h)(1)–(10) of this section, which shall be grouped together and substantially similar in headings, content and format to Model Clauses H–17(A) and H–17(C) in Appendix H to this part.

(1)(i) If the product is optional, the term ''OPTIONAL COSTS,'' in capitalized and bold letters, along with the name of the program, in bold letters; or

(ii) If the product is required, the name of the program, in bold letters.

(2) If the product is optional, the term ''STOP,'' in capitalized and bold letters, along with a statement that the consumer does not have to buy the product to get the loan. The term ''not'' shall be in bold text and underlined.

(3) A statement that if the consumer already has insurance, then the policy or coverage may not provide the consumer with additional benefits.

(4) A statement that other types of insurance may give the consumer similar benefits and are often less expensive.

(5) (i) If the eligibility restrictions are limited to age and/or employment, a statement that based on the creditor's review of the consumer's age and/or employment status at this time, the consumer would be eligible to receive benefits.

(ii) If there are other eligibility restrictions in addition to age and/or employment, a statement that based on the creditor's review of the consumer's age and/or employment status at this time, the consumer may be eligible to receive benefits.

(6) If there are other eligibility restrictions in addition to age and/or employment, such as pre-existing health conditions, a statement that the consumer may not qualify to receive any benefits because of other eligibility restrictions.

(7) If the product is a debt suspension agreement, a statement that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(8) A statement that the consumer may obtain additional information about the product at the Web site of the Federal Reserve Board, and reference to that Web site.

(9)(i) If the product is optional, a statement of the consumer's request to purchase or enroll in the optional product and a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years; or

(ii) If the product is required, a statement that the product is required, along with a statement of the cost of the product expressed as a dollar amount per month or per year, as applicable, together with the loan amount and the term of the product in years.

(iii) The cost, month or year, loan amount, and term of the product shall be underlined.

(10) A designation for the signature of the consumer and the date of the signing.

(i) *Required deposit.* If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual

percentage rate does not reflect the effect of the required deposit. A required deposit need not include:

(1) An escrow account for items such as taxes, insurance or repairs; or

(2) A deposit that earns not less than 5 percent per year.

(j) *Separate disclosures.* The following information must be provided separately from the other information required to be disclosed under this section.

(1) *Itemization of amount financed.* The creditor shall provide one of the following disclosures:

(i) A separate written itemization of the amount financed, including:

(A) The amount of any proceeds distributed directly to the consumer.

(B) The amount credited to the consumer's account with the creditor.

(C) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons, except that the following payees may be described using general terms and need not be further identified: Public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

(D) The prepaid finance charge.

(ii) A statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired. If the consumer requests it, the creditor shall provide an itemization that satisfies paragraph (j)(1)(i) of this section at the same time as the other disclosures required by this section.

(iii) A good faith estimate of settlement costs provided under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.* (RESPA), in connection with disclosures under this section delivered within three business days of application pursuant to § 226.19(a)(1), or the HUD–1 settlement statement provided under RESPA, in connection with disclosures under this section delivered three business days before consummation pursuant to § 226.19(a)(2). The alternative provided by this paragraph (j)(1)(iii) is available whether or not those disclosures are required by RESPA, but the HUD–1 settlement statement satisfies this requirement only if it is provided to the consumer at the time required by § 226.19(a)(2).

(2) *Rebate.* If the obligation includes a finance charge other than one computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.

(3) *Late payment.* Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

(4) *Property insurance.* A statement that the consumer may obtain property insurance from any insurer that is acceptable to the creditor.

(5) *Contract reference.* A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and about the creditor's policy regarding assumption of the obligation.

(6) *Assumption policy.* A statement whether or not a subsequent purchaser of the real property or dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.

12. Appendix G to Part 226, as amended on January 29, 2009 (74 FR 5422) is amended by:

A. Adding entries for G–16(C) and G–16(D) to the table of contents at the beginning of the appendix; and

B. Adding new Model Clause G–16(C) and new Sample G–16(D) in numerical order.

Appendix G to Part 226—Open-End Model Forms and Clauses

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►G–16(C) Credit Insurance, Debt Cancellation or Debt Suspension Model Clause (§ 226.4(d)(1) and (d)(3))

G–16(D) Credit Insurance, Debt Cancellation or Debt Suspension Sample (§ 226.4(d)(1) and (d)(3))◄

* * * * *

►G–16(C) Credit Insurance, Debt Cancellation or Debt Suspension Model Clause

OPTIONAL COSTS

(*Name of Program*)

STOP. You do *not* have to buy this product to get this loan.

- If you have insurance already, this policy may not provide you with any additional benefits.
- Other types of insurance can give you similar benefits and are often less expensive.
- Based on our review of your age and/or employment status at this time, you [would][may] be eligible to receive benefits.
- [However, you may not qualify to receive any benefits because of other eligibility restrictions.]

To learn more about [credit insurance][debt cancellation coverage][debt suspension coverage], go to (*Board's Web site*).

☐ Yes, I want to purchase optional (*name of program*) at an additional cost of (*cost*) per (*month or year*) for a loan of (*loan amount*) with a [policy/coverage] term of (*term in years*) years.

_____

Signature of Borrower(s)

_____

Date

G–16(D) Credit Insurance, Debt Cancellation or Debt Suspension Sample

OPTIONAL COSTS

Credit Life Insurance

STOP. You do *not* have to buy this product to get this loan.

- If you have insurance already, this policy may not provide you with any additional benefits.
- Other types of insurance can give you similar benefits and are often less expensive.
- Based on our review of your age and/or employment status at this time, you may be eligible to receive benefits.
- However, you may not qualify to receive any benefits because of other eligibility restrictions.

To learn more about credit insurance, go to *http://www.xxx.gov*.

☐ Yes, I want to purchase optional credit life insurance at an additional cost of *$72* per *month* for a loan of *$100,000* with a policy term of *10* years.

_____

Signature of Borrower(s)

_____

Date◄

13. Appendix H to Part 226, as amended on January 29, 2009 (74 FR 5441) is amended by:

A. Revising the table of contents at the beginning of the appendix;

B. Republishing H–4(A);

C. Removing H–4(B), H–4(C) and H–4(D);

D. Republishing H–5;

E. Removing and reserving H–6;

F. Republishing H–7;

G. Removing and reserving H–13 through H–15;

H. Revising H–16; and

I. Adding new H–4(B) through H–4(L), H–17(C) and H–17(D), and H–18 through H–23 in numerical order.

Appendix H to Part 226—Closed-End Model Forms and Clauses

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H–4(A)—Variable-Rate Model Clauses (§ 226.18(f)[(1)])

H–4(B)—[Variable-Rate Model Clauses (§ 226.18(f)(2)]►Adjustable-Rate Loan Program Model Form (§ 226.19(b))◄

H–4(C)—[Variable-Rate Model Clauses (§ 226.19(b))]►Adjustable-Rate Loan Program Model Clauses (§ 226.19(b))◄

H–4(D)—[Variable-Rate Model Clauses (§ 226.20(c))]►Adjustable-Rate Loan Program Sample (Hybrid ARM) (§ 226.19(b))◄

►H–4(E)—Adjustable-Rate Loan Program Sample (Interest Only ARM) (§ 226.19(b))

H–4(F)—Adjustable-Rate Loan Program Sample (Payment Option ARM) (§ 226.19(b))
H–4(G)—Adjustable-Rate Adjustment Notice Model Form (§ 226.20(c))
H–4(H)—Adjustable-Rate Adjustment Notice Model Clauses (§ 226.20(c))
H–4(I)—Adjustable-Rate Adjustment Notice Sample (Interest Only ARM) (§ 226.20(c))
H–4(J)—Adjustable-Rate Adjustment Notice Sample (Hybrid ARM) (§ 226.20(c))
H–4(K)—Adjustable-Rate Annual Notice Model Form (§ 226.20(c))
H–4(L)—Negative Amortization Monthly Disclosure Model Form (§ 226.20(d))◄

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H–6—[Assumption Policy Model Clause (§ 226.18(q))]►Reserved◄

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H–13—[Mortgage with Demand Feature Sample]►Reserved◄
H–14—[Variable-Rate Mortgage Sample (§ 226.19(b))]►Reserved◄
H–15—[Graduated-Payment Mortgage Sample]►Reserved◄
H–16—[Mortgage Sample (§ 226.32)]►Section 32 Loan Model Clauses (§ 226.32(c))◄

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►H–17(C)—Credit Insurance, Debt Cancellation or Debt Suspension Model Clause (§ 226.4(d)(1), (d)(3) and § 226.38(h))
H–17(D)—Credit Insurance, Debt Cancellation or Debt Suspension Sample (§ 226.4(d)(1), (d)(3), and § 226.38(h))
H–18—Creditor-Placed Property Insurance Model Clause (§ 226.20(e))
H–19(A)—Fixed Rate Mortgage Model Form (§ 226.38)
H–19(B)—Adjustable-Rate Mortgage Model Form (§ 226.38)
H–19(C)—Mortgage with Negative Amortization Model Form (§ 226.38)
H–19(D)—Fixed Rate Mortgage with Balloon Payment Sample (§ 226.38)
H–19(E)—Fixed Rate Mortgage with Interest Only Sample (§ 226.38)
H–19(F)—Step-Payment Mortgage Sample (§ 226.38)
H–19(G)—Hybrid Adjustable-Rate Mortgage Sample (§ 226.38)
H–19(H)—Adjustable-Rate Mortgage with Interest Only Sample (§ 226.38)
H–19(I)—Adjustable-Rate Mortgage with Payment Options Sample (§ 226.38)
H–20—Balloon Payment Model Clause (§ 226.38(c)(5))
H–21—Introductory Rate Model Clause (§ 226.38(c)(2)(iii))
H–22—Key Questions About Risk Model Clauses (§ 226.38(d))
H–23—Separate Disclosure Model Clauses (§ 226.38(j)(2)–(6))◄

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H–4(A)—Variable Rate Model Clauses

The annual percentage rate may increase during the term of this transaction if:

[the prime interest rate of (creditor) increases.]
[the balance in your deposit account falls below $_____.]
[you terminate your employment with (employer).]
[The interest rate will not increase above____%.]
[The maximum interest rate increase at one time will be____%.]
[The rate will not increase more than once every (time period).]
Any increase will take the form of:
[higher payment amounts.]
[more payments of the same amount.]
[a larger amount due at maturity.]
Example based on the specific transaction
[If the interest rate increases by____% in (time period),
[your regular payments will increase to $_____.]
[you will have to make____additional payments.]
[your final payment will increase to $_____.]]
Example based on a typical transaction
[If your loan were for $_____at____% for (term) and the rate increased to____% in (time period),
[your regular payments would increase by $_____.]
[you would have to make____additional payments.]
[your final payment would increase by $_____.]]

►H-4(B) Adjustable-Rate Loan Program Model Form

(Name of Creditor)
(Name of Loan Program)

INTEREST RATE AND PAYMENT	
Introductory Period	***(Length of Time)*** The interest rate [is discounted and] will stay the same for [a] (*length of time*) [introductory period]. After this initial period, [the interest rate could increase][even if market rates do not change, this rate will [increase][decrease] by ___%].
Frequency of Rate [and Payment] Change	***(Frequency)*** The interest rate [and payment] will adjust (*frequency*) [after the introductory period]. [The payment will adjust (*frequency*) [after the introductory period].]
[Index] [Formula]	**[(*Index*)][(*Formula*)]** After the initial (*length of time*) period, your interest rate will be based on [the (*index*) plus a margin. The (*index*) is published in the (*source of index*)] [(*formula*). Information about this formula can be found at (*source of formula*)].
Limits on [Rate] [and Payment] Changes	**[___% (*Frequency*) Cap][;][___% Lifetime Cap]** Your [interest rate][payment] can increase **[no more than ___%** in any (*time period*)][, and] **[no more than ___%** over the life of the loan].]

KEY QUESTIONS ABOUT RISK	
Can my interest rate increase?	**YES.** Your interest rate could increase at the end of the (*length of time*) [introductory period], and (*frequency*) after that.
Can my monthly payment increase?	[No.] [**YES.** [If your interest rate increases, your monthly payment will increase.][Your minimum payment can increase after (*period*).]]
[Will any of my monthly payments be interest-only?]	[**YES.** [Your (*frequency*) payments for the first (*period*) of the loan][This loan would give you the choice to make (*frequency*) payments that] cover the interest you owe each month, but **none** of the principal. Making these (*frequency*) payments means your loan amount will stay the same and you will be no closer to having it paid off.]
[Even if I make my monthly payments, could my loan balance increase?]	[**YES.** Your minimum payment covers only part of the interest you owe each (*period*) and **none** of the principal. The unpaid interest will be added to your loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in your home.]
[Will I owe a balloon payment?]	[**YES.** You would owe a balloon payment due (*period*).]
Could I owe a prepayment penalty?	[No.][**YES.** If you pay off your loan, refinance, or sell your home within (*period*) you could pay a large penalty.]
[Can my lender demand full repayment at any time?]	[**YES.** We can demand that you pay off the **full** amount of your loan at any time. We would give you at least (*period*) notice.]
[Could my loan have a higher rate or fees if I do not document my employment, income or other assets?]	[**YES.** If you provide more documentation, you could decrease your interest rate or fees.]
[Do I have to share any equity I gain?]	[**YES.** We are entitled to ___% of any gain you make when you sell or refinance this property.]

For more information about ARMs, or for a list of licensed housing counselors in your area that can help you understand risks and benefits of this loan, visit (*Web site of the Federal Reserve Board*).

H–4(C)—Adjustable-Rate Loan Program Model Clauses

Interest Rate and Payment

(a) Limits on rate or payment changes

[If a rate cap prevents us from adding part of an interest rate, we can add that increase at a later adjustment date.]

(b) Conversion feature

[Conversion Feature

You have the option to convert your loan to a fixed rate loan for (*length of time*). If you convert your loan to a fixed rate loan, the [rate] [payment] may not increase more than (*frequency*)[or ____% overall]. [You may have a higher interest rate when you convert to a fixed rate loan.]

[You may have to pay fees when you convert to a fixed rate loan.]]

(c) Preferred rate

[Preferred Rate

The interest rate is a preferred rate that could [increase] [decrease] by____% if (*description of event*).] [You could pay fees if [one or more] (*description of event(s)*) occur(s).]

H-4(D) Adjustable-Rate Loan Program Sample (Hybrid ARM)

XXX Bank
3/1 Adjustable Rate Mortgage (ARM)

INTEREST RATE AND PAYMENT	
Introductory Period	**3 Years** The interest rate is discounted and will stay the same for a 3-year introductory period. After this initial period, the interest rate could increase.
Frequency of Rate Change	**Annually** The interest rate will adjust once each year after the introductory period.
Index	**LIBOR Index** After the initial 3-year period, your interest rate will be based on the 1- year LIBOR Index plus a margin. The LIBOR is published daily in the Wall Street Journal.
Limits on Rate Changes	**2% Annual Cap; 6% Lifetime Cap** Your interest rate can increase **no more than 2%** in any one year, and **no more than 6%** over the life of the loan.

KEY QUESTIONS ABOUT RISK	
Can my interest rate increase?	**YES.** Your interest rate could increase at the end of the 3-year introductory period, and annually after that.
Can my monthly payment increase?	**YES.** If your interest rate increases, your monthly payment will increase.
Could I owe a prepayment penalty?	**YES.** If you pay off your loan, refinance, or sell your home within **2 years** you could pay a large penalty.

For more information about ARMs, or for a list of licensed housing counselors in your area that can help you understand the risks and benefits of this loan, visit www.xxx.gov.

H-4(E) Adjustable-Rate Loan Program Sample (Interest Only ARM)

XXX Bank
5/1 Interest-Only Adjustable Rate Mortgage (ARM)

INTEREST RATE AND PAYMENT	
Introductory Period	**5 Years** The interest rate is discounted and will stay the same for a 5-year introductory period. After this initial period, the interest rate could increase.
Frequency of Rate Change	**Annually** The interest rate will adjust once each year after the introductory period.
Index	**LIBOR Index** After the initial 5-year period, your interest rate will be based on the 1-year LIBOR Index plus a margin. The LIBOR is published daily in the Wall Street Journal.
Limits on Rate Changes	**2% Annual Cap; 6% Lifetime Cap** Your interest rate can increase **no more than 2%** in any one year, and **no more than 6%** over the life of the loan.

KEY QUESTIONS ABOUT RISK	
Can my interest rate increase?	**YES.** Your interest rate could increase at the end of the 5-year introductory period, and annually after that.
Can my monthly payment increase?	**YES.** If your interest rate increases, your monthly payment will increase.
Will any of my monthly payments be interest-only?	**YES.** Your monthly payments for the first 5 years of the loan cover the interest you owe each month, but **none** of the principal. Making these monthly payments means your loan amount will stay the same and you will be no closer to having it paid off.
Could I owe a prepayment penalty?	**YES.** If you pay off your loan, refinance, or sell your home within **2 years** you could pay a large penalty.

For more information about ARMs, or for a list of licensed housing counselors in your area that can help you understand the risks and benefits of this loan, visit www.xxx.gov.

H-4(F) Adjustable-Rate Loan Program Sample (Payment Option ARM)

XXX Bank
1-Month Payment Option Adjustable Rate Mortgage (ARM)

INTEREST RATE AND PAYMENT	
Introductory Period	**1 Month** The interest rate is discounted and will stay the same for a 1-month introductory period. After this initial period, the interest rate could increase.
Frequency of Rate Change	**Monthly** The interest rate will adjust once each month after the introductory period.
Index	**LIBOR Index** After the initial 1-month period, your interest rate will be based on the 1-year LIBOR Index plus a margin. The LIBOR is published daily in the Wall Street Journal.
Limits on Rate Changes	**10.5% Maximum Rate** Your interest rate can increase up to **a maximum of 10.5%** over the life of the loan.

KEY QUESTIONS ABOUT RISK	
Can my interest rate increase?	**YES.** Your interest rate could increase at the end of the 1-month introductory period, and monthly after that.
Can my monthly payment increase?	**YES.** Your minimum payment can increase after one year.
Will any of my monthly payments be interest-only?	**YES.** This loan would give you the choice to make monthly payments that cover the interest you owe each month, but **none** of the principal. Making these monthly payments means your loan amount will stay the same and you will be no closer to having it paid off.
Even if I make my monthly payments, could my loan balance increase?	**YES.** Your minimum payment covers only part of the interest you owe each month and **none** of the principal. The unpaid interest will be added to your loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in your home.
Could I owe a prepayment penalty?	No.

For more information about ARMs, or for a list of licensed housing counselors in your area that can help you understand the risks and benefits of this loan, visit www.xxx.gov.

H-4(G) Adjustable-Rate Adjustment Notice Model Form

Important Changes to Your Loan Terms

The following is a summary of changes that are being made to your loan terms as a result of changes to your interest rate, effective (*date*). For more detailed information, please refer to your loan agreement(s).

The changes are as follows:

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	**___%**	**___%**
[Principal]	[$___]	[$___]
[Interest]	[$___]	[$___]
[Taxes + Insurance (Escrow)]	[$___]	[$___]
Total Monthly Payment	**$___**	**$___** (due on (*date*))

Interest Rate: Your interest rate will change due to an [increase][decrease] in the (*index*). [(__%) is being added (interest carried over) to your interest rate because the rate cap prevented this increase at your last interest rate adjustment.] [We could have increased your interest rate another __% but did not because a rate cap applied. We can add this to your interest rate when the interest rate adjusts again on (*date*).]

[**Maximum**] [**Rate**] [**Payment**] [**Limits**]: [Your [rate] [payment] can change each (*frequency*), by no more than ___%.] [Your rate can not go higher than __% over the life of the loan.]

New Monthly Payment: [Your new payment will cover all of your interest and some of your loan's principal, and therefore will reduce your loan balance.]

Loan Balance: Your new loan balance as of (*date of rate adjustment*) is $_____.

[**Prepayment Penalty:** If you pay off your loan, refinance or sell your home before (*date*) you could pay a penalty of up to **$___**.]

If you have trouble paying your mortgage, contact us at (*telephone number*) [or (*email address*)] as soon as possible.

If you would like to talk with a licensed housing counselor, you can find a list of counselors in your area on the (*Web site of the U.S. Department of Housing and Urban Development*).

H–4(H) Adjustable-Rate Adjustment Notice Model Clauses

Disclosure of New Monthly Payment

[Your new payment covers all of the interest that you owe this month, but none of the principal, and therefore will not reduce your loan balance. The payment needed to fully pay off your loan by the end of the loan term at the new interest rate is $_____.]

[Your new payment covers only part of the interest that you owe this month, and therefore unpaid interest will be added to your loan balance. The payment needed to fully pay off your loan by the end of the loan term at the new interest rate is $_____.]

[Your new payment covers only part of the interest that you owe this month, and therefore the term of your loan will increase. The payment needed to fully pay off your loan by the end of the previous loan term at the new interest rate is $_____.]

H-4(I) Adjustable-Rate Adjustment Notice Sample (Interest Only ARM)

Important Changes to Your Loan Terms

The following is a summary of changes that are being made to your loan terms as a result of changes to your interest rate, effective April 1, 2009. For more detailed information, please refer to your loan agreement(s).

The changes are as follows:

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	**6.875%**	**7.75%**
Principal	**- none -**	$218.99
Interest	$1,145.83	$1,291.67
Taxes + Insurance (Escrow)	$345.00	$400.00
Total Monthly Payment	**$1,490.83**	**$1,910.66** (due on May 1, 2009)

Interest Rate: Your interest rate will change due to an increase in the 1-year LIBOR index.

Rate Limits: Your rate can change each year, by no more than 2.00%. Your rate can not go higher than 12.875% over the life of the loan.

New Monthly Payment: Your new payment will cover all of your interest and some of your loan's principal, and therefore will reduce your loan balance.

Loan Balance: Your new loan balance as of April 1, 2009 is $200,000.

If you have trouble paying your mortgage, contact us at 1-800-XXX-XXXX or www.xxx.com as soon as possible.

If you would like to talk with a licensed housing counselor, you can find a list of counselors in your area on the U.S. Department of Housing and Urban Development's website at www.xxx.gov.

H-4(J) Adjustable-Rate Adjustment Notice Sample (Hybrid ARM)

Important Changes to Your Loan Terms

The following is a summary of changes that are being made to your loan terms as a result of changes to your interest rate, effective April 1, 2009. For more detailed information, please refer to your loan agreement(s).

The changes are as follows:

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	**5.625%**	**5.125%**
Total Monthly Payment	**$1,151.31**	**$1,093.27** (due on May 1, 2009)

Interest Rate: Your interest rate will change due to a decrease in the 1-year LIBOR index.

Rate Limits: Your rate can change each year, by no more than 2.00%. Your rate can not go higher than 11.625% over the life of the loan.

New Monthly Payment: Your new payment will cover all of your interest and some of your loan's principal, and therefore will reduce your loan balance.

Loan Balance: Your new loan balance as of April 1, 2009 is $191,888.37.

Prepayment Penalty: If you pay off your loan, refinance or sell your home before May 1, 2010 you could pay a penalty of up to **$4,323.13**.

If you have trouble paying your mortgage, contact us at 1-800-XXX-XXXX as soon as possible.

If you would like to talk with a licensed housing counselor, you can find a list of counselors in your area on the U.S. Department of Housing and Urban Development's (HUD) website at www.xxx.gov.

H-4(K) Adjustable-Rate Annual Notice Model Form

Important Interest Rate Notice

Your interest rate changed between (*date period begins*) and (*date period ends*) without changing your payment.

Highest and Lowest Rates: The lowest interest rate this (*period*) was __% and the highest interest rate was __%. [This includes a __% interest rate increase we did not make previously because a rate cap applied.] [We could have increased your interest rate another __% but did not because a rate cap applied. We can add this to your interest rate when the interest rate adjusts again on (*date*).]

Maximum Rate: Your rate can not go higher than ___% over the life of the loan.

Loan Balance: Your new loan balance as of (*last date of period*) is $_____.

[**Prepayment Penalty:** If you pay off your loan, refinance or sell your home before (*date*) you could pay a penalty of up to **$___**.]

If you have trouble paying your mortgage, contact us at (*telephone number*) [or (*email address*)] as soon as possible.

If you would like to talk with a licensed housing counselor, you can find a list of counselors in your area on the (*Web site of the U.S. Department of Housing and Urban Development*).

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H-4(L) Negative Amortization Monthly Disclosure Model Form

Your Payment Options This Month

Payment Option	This Payment Covers	If you make this payment *this* month	If you make this payment *every* month
❑ **$___** Full Payment *(recommended to reduce loan balance)*	All the interest that you owe this month, plus some principal.	Your balance will decrease. You will be closer to having it paid off.	Your balance will steadily decrease and you will pay off your loan on schedule.
❑ **$___** Interest-Only Payment	All the interest that you owe this month, but none of the principal.	Your balance will stay the same. You will be no closer to having it paid off.	As early as (*date*), you will have to make monthly payments much larger than today's "Full Payment" amount.
❑ **$___** Minimum Payment	Just part of the interest that you owe this month.	**$___ in unpaid interest will be added to your loan balance this month.** You are borrowing more money, and you will be losing equity in your home.	As early as (*date*), you will have to make payments significantly larger than today's "Full Payment" amount to pay off your loan.

◀

* * * * *

H–5—Demand Feature Model Clauses

This obligation [is payable on demand.][has a demand feature.]

[All disclosures are based on an assumed maturity of one year.]

H–6—[Assumption Policy Model Clause]►Reserved◄

[Assumption: Someone buying your house [may, subject to conditions, be allowed to][cannot] assume the remainder of the mortgage on the original terms.]

H–7—Required Deposit Model Clause

The annual percentage rate does not take into account your required deposit.

* * * * *

H–13—[Mortgage With Demand Feature Sample]►Reserved◄

H–14—[Variable-Rate Mortgage Sample]►Reserved◄

H–15—[Graduated-Payment Mortgage Sample]►Reserved◄

H–16—[Mortgage Sample]►Section 32 Loan Model Clauses◄

[You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.

If you obtain this loan, the lender will have a mortgage on your home.

YOU COULD LOSE YOUR HOME, AND ANY MONEY YOU HAVE PUT INTO IT, IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN.]

►IF YOU ARE UNABLE TO MAKE THE PAYMENTS ON THIS LOAN, YOU COULD LOSE YOUR HOME.

You have no obligation to accept this loan. Your signature below only confirms that you have received this form.◄

You are borrowing $_____ (optional credit insurance is ☐ is not ☐ included in this amount).

The annual percentage rate on your loan will be:_____%.

Your regular (*frequency*) payment will be: $_____.

[At the end of your loan, will still owe use: $ (*balloon payment*).]

[Your interest rate may increase. Increase in the interest rate could increase your payment. The highest amount your payment could increase is to $_____.]

* * * * *

►H–17(C)—Credit Insurance, Debt Cancellation or Debt Suspension Model Clause

[OPTIONAL COSTS]

(*Name of Program*)

[STOP. You do *not* have to buy this product to get this loan.]

- If you have insurance already, this policy may not provide you with any additional benefits.
- Other types of insurance can give you similar benefits and are often less expensive.
- Based on our review of your age and/or employment status at this time, you [would][may] be eligible to receive benefits.
- [However, you may not qualify to receive any benefits because of other eligibility restrictions.]

To learn more about [credit insurance][debt cancellation coverage][debt suspension coverage], go to (*Web site of the Federal Reserve Board*).

☐ [Yes, I want to purchase optional (*name of program*) at an additional cost of (*cost*) per (*month or year*) for a loan of (*loan amount*) with a (policy/coverage) term of (*term in years*) years.]

[(*Name of program*) is required and costs (*cost*) per (*month or year*) for a loan of (*loan amount*) with a [policy/coverage] term of (*term in years*) years.]

_____

Signature of Borrower(s)

_____

Date

H–17(D)—Credit Insurance, Debt Cancellation or Debt Suspension Sample

OPTIONAL COSTS

Credit Life Insurance

STOP. You do *not* have to buy this product to get this loan.

- If you have insurance already, this policy may not provide you with any additional benefits.
- Other types of insurance can give you similar benefits and are often less expensive.
- Based on our review of your age and/or employment status at this time, you may be eligible to receive benefits.
- However, you may not qualify to receive any benefits because of other eligibility restrictions.

To learn more about credit insurance, go to *www.xxx.gov.*

☐ Yes, I want to purchase optional credit life insurance at an additional cost of *$72* per *month* for a loan of *$100,000* with a policy term of *10* years.

_____

Signature of Borrower(s)

_____

Date

H–18—Creditor-Placed Property Insurance Model Clause

(Creditor name and contact information)

Re: (loan number) and (property address/ description)

Under our agreement, you must maintain adequate insurance coverage on the property. Our records show that your insurance policy has expired or been cancelled, and we do not have evidence that you have obtained new insurance coverage. Under our agreement, we can buy property insurance on your behalf and charge you for the cost as early as (*date*). Therefore, we request that you provide us with proof of insurance by (*description of procedure for providing proof of insurance*).

Please consider the following facts about the insurance policy that we buy:

- The cost of this insurance policy is $_____ per year and is probably significantly higher than the cost of insurance you can buy through your own insurance agent.
- This insurance policy may not provide as much coverage as an insurance policy you buy through your own insurance agent].

If you have any questions, please contact us at (*contact information*).

H-19(A) Fixed Rate Mortgage Model Form

(Name of Creditor)
(Loan Originator Unique Identifier)

LOAN SUMMARY

Loan Amount:	$_____
Loan Term:	*(length of term)*
Loan Type and Features:	**Fixed Rate Mortgage** • [Includes [interest-only payments][step-payments]]
Total Settlement Charges:	$_____ • [$_____ of these charges are already included in your loan amount above.] • [This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.]
[Prepayment Penalty:	Up to $_____ if you pay off your loan, refinance, or sell this property within (*period*).]

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **_____% APR**

How does this loan compare? For the week of (*date*), the average APR on similar [but]conforming loans offered to applicants with excellent credit was ___%. Today, an APR of ___% or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a __% reduction in the APR could save you an average of **$_____ each month.**

INTEREST RATE AND PAYMENT SUMMARY

	Rate & Monthly Payment
Interest Rate	____%
Principal + Interest Payment	$_____
Est. Taxes + Insurance (Escrow) • [Includes [Private] Mortgage Insurance]	$_____
Total Est. Monthly Payment	**$____**

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	No.
Can my monthly payment increase?	[No.][**YES.** Your payment can increase beginning in (*date*).]
Could I owe a prepayment penalty?	[No.][**YES.** If you pay off your loan, refinance, or sell your home within (***period***) you could pay a penalty of up to **$**_____.]

MORE INFORMATION ABOUT YOUR PAYMENTS

[Payment Change Limits]	[Your minimum payments due cannot increase more than ___% each (*period*) until (*description of recast event*). [When this happens][Beginning in (*period*)], you must make full monthly payments that cover all principal and interest owed on the loan.]
Escrow	[An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for more details.][An escrow account is not required on this loan. You must pay your property taxes, homeowners, and other insurance on your own.]
[[Private]Mortgage Insurance]	[[Private]Mortgage Insurance [(PMI)] **is** required for this loan. It is included in your escrow.]
Total Payments	If you made all payments as scheduled, you would make (*number*) payments totaling $_____[, including estimated escrow]. Of this amount, $_____ would go to interest and settlement charges. This amount, and your amount financed of $_____, are used to calculate your APR.

→ **You have no obligation to accept this loan.** [Your signature below only confirms that you have received this form.]

→ **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.

→ [If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.]

→ **If you do not understand any part of this form, ask questions.** For more information, go to (*Web site of the Federal Reserve Board*).

H-19(B) Adjustable-Rate Mortgage Model Form

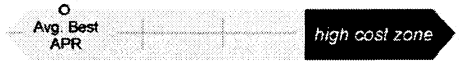
(Name of Creditor)
(Loan Originator Unique Identifier)

LOAN SUMMARY

Loan Amount:	$_____
Loan Term:	*(length of term)*
Loan Type and Features:	**[Step-Rate Mortgage][Adjustable Rate Mortgage]:** rate [is fixed for first (*period*), then] adjusts every (*frequency*).] • [Includes [interest-only payments][step-payments]]
Total Settlement Charges:	$_____ • [$_____ of these charges are already included in your loan amount above.] • [This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.]
[Prepayment Penalty:	Up to $_____ if you pay off your loan, refinance, or sell this property within (*period*).]

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **_____% APR**



How does this loan compare? For the week of (*date*), the average APR on similar [but] conforming loans offered to applicants with excellent credit was ____%. Today, an APR of ____% or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a ___% reduction in the APR could save you an average of **$_____ each month**.

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first (*period*))	**[MAXIMUM at FIRST ADJUSTMENT** (*date*)]	**MAXIMUM EVER** (as early as (*date*))
Interest Rate	___%	[___%]	___%
Principal + Interest Payment	$_____	[$_____]	$_____
Est. Taxes + Insurance [(Escrow)] • [Includes [Private] Mortgage Insurance]	[$_____]	[$_____]	[$_____]
Total Est. Monthly Payment	$_____	[$_____]	$_____

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	[No.][**YES.** Your interest rate can increase (***frequency***) beginning in (*date*).]
Can my monthly payment increase?	[No.][**YES.** Your payment can increase beginning in (*date*).]
Could I owe a prepayment penalty?	[No.][**YES.** If you pay off your loan, refinance, or sell your home within (***period***) you could pay a penalty of up to **$**_____.]

MORE INFORMATION ABOUT YOUR PAYMENTS

Rate Calculation	[When the (*length of time*) introductory period ends,] your rate will be determined (*frequency*) based on the (*identification of index*) (the market rate) plus ___%.]
[Rate Change Limits]	[When the (*length of time*) introductory period ends,] your interest rate can increase up to ___% from (*period*) to the next, and no more than ___% total for the life of the loan, which would result in a maximum ever rate of ___%.]
Escrow	[An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for more details.][An escrow account is not required on this loan. You must pay your property taxes, homeowners, and other insurance on your own.]
[[Private]Mortgage Insurance]	[[Private] Mortgage Insurance [(PMI)] **is** required for this loan. It is included in your escrow.]
Total Payments	If [the market rate did not change and] you made all payments as scheduled, you would make (*number*) payments totaling $_____ [, including estimated escrow]. Of this amount, $_____ would go to interest and settlement charges. This amount, and your amount financed of $_____, are used to calculate your APR.

→ **You have no obligation to accept this loan.** [Your signature below only confirms that you have received this form.]

→ **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.

→ [If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.]

→ **If you do not understand any part of this form, ask questions.** For more information, go to (***Web site of the Federal Reserve Board***).

H-19(C) Mortgage with Negative Amortization Model Form

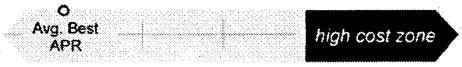
(Name of Creditor)
(Loan Originator Unique Identifier)

LOAN SUMMARY

Loan Amount	$_____
Loan Term:	*(length of term)*
Loan Type and Features:	**[Fixed Rate Mortgage][Step-Rate Mortgage][Adjustable Rate Mortgage]:** rate [is fixed for first (*period*), then] adjusts every (*frequency*).] • [includes [Step-Payments][Payment Options][Negative Amortization]]
Total Settlement Charges:	$_____ • [$_____ of these charges are already included in your loan amount above.] • [This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.]
[Prepayment Penalty:	Up to $_____ if you pay off your loan, refinance, or sell this property within (*period*).]

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **____% APR**



How does this loan compare? For the week of (*date*), the average APR on similar [but]conforming loans offered to applicants with excellent credit was ___%. Today, an APR of ___% or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a ___% reduction in the APR could save you an average of **$_____ each month.**

INTEREST RATE AND PAYMENT SUMMARY

[This loan offers you several monthly payment options. The table below shows you what your payments would be under two of these options **if the interest rate reached its maximum of ___%** in the (*period*) of this loan.]

[All payments shown in the table include **$___** for estimated taxes and insurance [(escrow)].

	(*Date*) [((*period*) [intro])]	[(*Date*) (1st adjustment)]	[(*Date*) (2nd adjustment)]	(*Date*) + every (*period*) after
Maximum Interest Rate	___% [(intro rate)]	[___%]	[___%]	___% (max. ever)
Full Payment Option *Monthly payments cover all principal and interest.*	$_____	[$_____]	[$_____]	$_____
Minimum Payment Option *Initial monthly payments cover no principal and only some interest and increase your loan amount.*	$_____	[$_____]	[$_____]	$_____

You will borrow an additional $_____ by (date) if you make only minimum payments on this loan.

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	[No.] [**YES.** Your interest rate can increase (***frequency***) beginning in (*date*).]
Can my monthly payment increase?	[No.] [**YES.** Your [full] payment can increase beginning in (*date*). [Your minimum payment can increase beginning in (*date*).]]
Could I owe a prepayment penalty?	[No.][**YES.** If you pay off your loan, refinance, or sell your home within (***period***) you could pay a penalty of up to **$**_____.]

MORE INFORMATION ABOUT YOUR PAYMENTS

Rate Calculation	[When the (*length of time*) introductory period ends,] your rate will be determined (*frequency*) based on the (*identification of index*) (the market rate) plus ___%.]
[Rate Change Limits]	[When the (*period*) introductory period ends,] your interest rate can increase up to [___% from (*period*) to the next, and no more than ___% total][a maximum of __%] for the life of the loan[, which would result in a maximum ever rate of ___%].]
[Payment Change Limits]	Your minimum payments due [will increase][cannot increase more than] ___% each (*period*) until (*description of recast event*). [When this happens][Beginning in (*period*)], you must make full monthly payments that cover all principal and interest owed on the loan.]
Escrow	[An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for more details.][An escrow account is not required on this loan. You must pay your property taxes, homeowners, and other insurance on your own.]
[[Private]Mortgage Insurance	[Private]Mortgage Insurance [(PMI)] **is** required for this loan. It is included in your escrow.]
Total Payments	If [the market rate did not change and] you made all payments as scheduled, you would make (*number*) payments totaling $_____ [, including estimated escrow]. Of this amount, $_____ would go to interest and settlement charges. This amount, and your amount financed of $_____, are used to calculate your APR.

→ **You have no obligation to accept this loan.** [Your signature below only confirms that you have received this form.]

→ **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.

→ [If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.]

→ **If you do not understand any part of this form, ask questions.** For more information, go to (***Web site of the Federal Reserve Board***).

H-19(D) Fixed Rate Mortgage with Balloon Payment Sample

Jane Smith
1234 Main Street,
Anytown, ST 12345

March 26, 2009
XXX Bank
Loan Officer No. 12345-1234

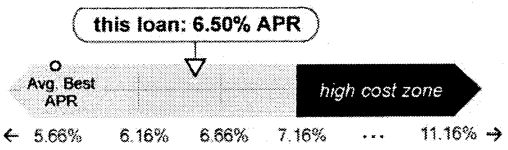
LOAN SUMMARY

Loan Amount:	**$210,000.00**
Loan Term:	**3 years**
Loan Type and Features:	**Fixed Rate Mortgage**
Total Settlement Charges:	**$7,472.00** • $3,000.00 of these charges are already included in your loan amount above. • This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges:

6.50% APR



How does this loan compare? For the week of March 23, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was **5.66%**. Today, an APR of **7.16%** or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a 1% reduction in the APR could save you an average of **$175 each month**.

INTEREST RATE AND PAYMENT SUMMARY

	Rate & Monthly Payment
Interest Rate	**5.50%**
Principal + Interest Payment	$1,192.36
Est. Taxes + Insurance (Escrow)	not included
Total Est. Monthly Payment	**$1,192.36**

Final Balloon Payment due March 2012: **$202,217.84**

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	No.
Can my monthly payment increase?	No.
Will I owe a balloon payment?	**YES.** You will owe a balloon payment of **$202,217.84**, due in March 2012.
Could I owe a prepayment penalty?	No.
Do I have to share any equity I gain?	**YES.** We are entitled to 50% of any gain you make when you sell or refinance this property.

MORE INFORMATION ABOUT YOUR PAYMENTS

Escrow	An escrow account is not required on this loan. You must pay your property taxes, homeowners, and other insurance on your own.
Total Payments	If you made all payments as scheduled, you would make 36 payments totaling $243,950.44. Of this amount, $39,530.44 would go to interest and settlement charges. This amount, and your amount financed of $204,420.00, are used to calculate your APR.

- **You have no obligation to accept this loan.** Your signature below only confirms that you have received this form.
- **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.
- If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.
- **If you do not understand any part of this form, ask questions.** For more information, go to www.xxx.gov.

Applicant's Signature **Date**

H-19(E) Fixed Rate Mortgage with Interest Only Sample

Jane Smith
1234 Main Street
Anytown, ST 12345

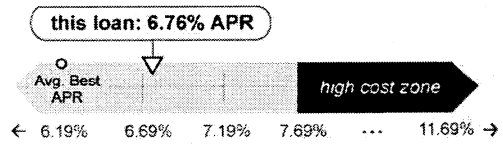
February 26, 2009
XXX Bank
Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount:	**$200,000.00**
Loan Term:	**30 years**
Loan Type and Features:	**Fixed Rate Mortgage** • Includes interest-only payments
Total Settlement Charges:	**$7,654.00** • This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **6.76% APR**



How does this loan compare? For the week of February 23, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was **6.19%**. Today, an APR of **7.69%** or above is considered high cost and is usually offered to applicants with poor credit.

How much could I save by lowering my APR? For this loan, a 1% reduction in the APR could save you an average of **$132 each month.**

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first 10 years)	MAXIMUM EVER (as early as 2019)
Interest Rate	**6.50%**	**6.50%**
Principal Payment	**- none -**	$407.82
Interest Payment	$1,083.33	$1,083.33
Est. Taxes + Insurance (Escrow)	$279.00	$279.00
Total Est. Monthly Payment	**$1,362. 33**	**$1,770.15**

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	No.
Can my monthly payment increase?	**YES.** Your payment can increase beginning in April 2019.
Will any of my monthly payments be interest-only?	**YES.** Your monthly payments for the first 10 years of the loan cover the interest you owe each month, but **none** of the principal. Making these monthly payments means your loan amount will stay the same and you will be no closer to having it paid off.
Could I owe a prepayment penalty?	No.

MORE INFORMATION ABOUT YOUR PAYMENTS

Escrow	An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for more details.
Total Payments	If you made all payments as scheduled, you would make 360 payments totaling $588,313.89, including estimated escrow. Of this amount, $293,757.89 would go to interest and settlement charges. This amount, and your amount financed of $194,116.00, are used to calculate your APR.

- → **You have no obligation to accept this loan.** Your signature below only confirms that you have received this form.
- → **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.
- → **If you do not understand any part of this form, ask questions.** For more information, go to www.xxx.gov.

Applicant's Signature **Date**

H-19(F) Step-Payment Mortgage Sample

Jane Smith
1234 Main Street,
Anytown, ST 12345

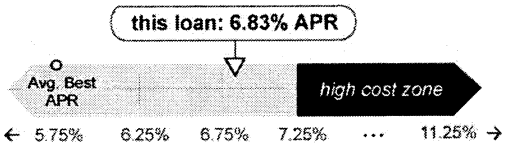
February 4, 2009
XXX Bank
Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount:	**$200,000.00**
Loan Term:	**30 years**
Loan Type and Features:	**Fixed Rate Mortgage** • Includes Step-Payments • Includes Negative Amortization
Total Settlement Charges:	**$8,010.00** • This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **6.83% APR**



How does this loan compare? For the week of February 2, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was **5.75%**. Today, an APR of **7.25%** or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a 1% reduction in the APR could save you an average of **$138 each month**.

INTEREST RATE AND PAYMENT SUMMARY

All payments shown in the table include **$305** for estimated taxes and insurance (escrow).

	March 2009	March 2010 (1st adjustment)	March 2011 (2nd adjustment)	March 2017 + every month after
Interest Rate	**6.5%**	**6.5%**	**6.5%**	**6.5%**
Minimum Payment *Initial monthly payments cover no principal and only some interest and increase your loan amount.*	$1,318.37	$1,358.90	$1,401.06	$1,669.69

*You will borrow an additional **$1,286.87** by February 2011 if you make only minimum payments on this loan.*

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	No.
Can my monthly payment increase?	**YES.** Your payment can increase beginning in March 2010.
Even if I make my monthly payments, could my loan balance increase?	**YES.** Your minimum payment covers only part of the interest you owe each month and **none** of the principal. The unpaid interest will be added to your loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in your home.
Could I owe a prepayment penalty?	No.

MORE INFORMATION ABOUT YOUR PAYMENTS

Payment Change Limits	Your minimum payments due will increase 4% each year for the first 7 years. Beginning in year 8, you must make full monthly payments that cover all principal and interest owed on the loan.
Escrow	An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for more details.
Total Payments	If you made all payments as scheduled, you would make 360 payments totaling $582,126.45, including estimated escrow. Of this amount, $279,444.45 would go to interest and settlement charges. This amount, and your amount financed of $192,882, are used to calculate your APR.

→ **You have no obligation to accept this loan.** Your signature below only confirms that you have received this form.

→ **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.

→ If you borrow more than your home is worth, the interest on the extra amount may not be deductible for Federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

→ **If you do not understand any part of this form, ask questions.** For more information, go to www.xxx.gov.

Applicant's Signature **Date**

H-19(G) Hybrid Adjustable-Rate Mortgage Sample

Jane Smith
1234 Main Street
Anytown, ST 12345

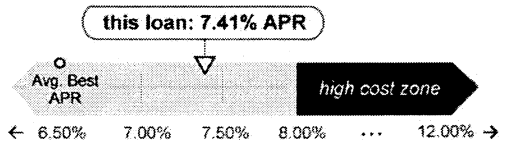
February 26, 2009
XXX Bank
Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount:	**$200,000.00**
Loan Term:	**30 years**
Loan Type and Features:	**Adjustable Rate Mortgage:** rate is fixed for first 3 years, then adjusts every year.
Total Settlement Charges:	**$6,642.00** • $2,000.00 of these charges are already included in your loan amount above. • This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.
Prepayment Penalty:	Up to **$4,000.00** if you pay off your loan, refinance, or sell this property within 2 years.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **7.41% APR**



How does this loan compare? For the week of February 23, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was **6.50%**. Today, an APR of **8.00%** or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a 1% reduction in the APR could save you an average of **$135 each month**.

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first 3 years)	MAXIMUM at FIRST ADJUSTMENT (March 2012)	MAXIMUM EVER (as early as 2014)
Interest Rate	**5.625%**	**7.625%**	**11.625%**
Principal + Interest Payment	$1,151.31	$1,397.15	$1,924.97
Est. Taxes + Insurance (Escrow)	$241.00	$241.00	$241.00
Total Est. Monthly Payment	**$1,392.31**	**$1,638.15**	**$2,165.97**

Introductory Rate Notice
You have a discounted introductory rate of **5.625%** that ends after 3 years.
In the fourth year, even if market rates **do not** change, this rate will increase to **7.625%**.

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	**YES.** Your interest rate can increase **annually** beginning in March 2012.
Can my monthly payment increase?	**YES.** Your payment can increase beginning in March 2012.
Could I owe a prepayment penalty?	**YES.** If you pay off your loan, refinance, or sell your home within **2 years** you could pay a penalty of up to **$4,000**.

MORE INFORMATION ABOUT YOUR PAYMENTS

Rate Calculation	When the 3-year introductory period ends, your rate will be determined annually based on the one-year LIBOR index (the market rate) plus 2.125%.
Rate Change Limits	When the 3-year introductory period ends, your interest rate can increase up to 2.00% from one year to the next, and no more than 6.00% total for the life of the loan, which would result in a maximum ever rate of 11.625%.
Escrow	An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for more details.
Total Payments	If the market rate did not change and you made all payments as scheduled, you would make 360 payments totaling $585,778.09, including estimated escrow. Of this amount, $303,767.47 would go to interest and settlement charges. This amount, and your amount financed of $195,250.00, are used to calculate your APR.

➔ **You have no obligation to accept this loan.** Your signature below only confirms that you have received this form.

➔ **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.

➔ **If you do not understand any part of this form, ask questions.** For more information, go to www.xxx.gov.

Applicant's Signature **Date**

H-19(H) Adjustable-Rate Mortgage with Interest-Only Sample

Jane Smith
1234 Main Street
Anytown, ST 12345

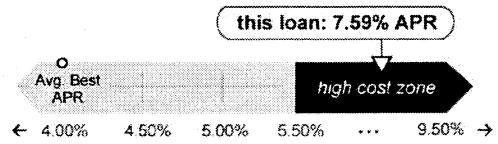
February 26, 2009
XXX Bank
Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount:	**$200,000.00**
Loan Term:	**30 years**
Loan Type and Features:	**Adjustable Rate Mortgage:** rate is fixed for first 5 years, then adjusts every year. • includes interest-only payments
Total Settlement Charges:	**$8,625.00** • $2,000.00 of these charges are already included in your loan amount above. • This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.
Prepayment Penalty:	Up to **$4,000.00** if you pay off your loan, refinance, or sell this property within 2 years.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **7.59% APR**



How does this loan compare? For the week of February 23, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was **4.00%**. Today, an APR of **5.50%** or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a 1% reduction in the APR could save you an average of **$133 each month.**

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first 5 years)	MAXIMUM at FIRST ADJUSTMENT (April 2014)	MAXIMUM EVER (as early as 2016)
Interest Rate	**6.875%**	**8.875%**	**12.875%**
Principal Payment	**-none-**	$182.14	$116.64
Interest Payment	$1,145.83	$1,479.17	$2,101.91
Est. Taxes + Insurance (Escrow) • Includes Private Mortgage Insurance	$332.00	$332.00	$297.00
Total Est. Monthly Payment	**$1,477.83**	**$1,993.31**	**$2,515.55**

Introductory Rate Notice
You have a discounted introductory rate of **6.875%** that ends after 5 years.
In the sixth year, even if market rates do not change, this rate will increase to **7.00%**.

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	**YES.** Your interest rate can increase **annually** beginning in April 2014.
Can my monthly payment increase?	**YES.** Your payment can increase beginning in April 2014.
Will any of my monthly payments be interest-only?	**YES.** Your monthly payments for the first 5 years of the loan cover the interest you owe each month, but **none** of the principal. Making these monthly payments means your loan amount will stay the same and you will be no closer to having it paid off.
Could I owe a prepayment penalty?	**YES.** If you pay off your loan, refinance, or sell your home within **2 years** you could pay a penalty of up to **$4,000**.

MORE INFORMATION ABOUT YOUR PAYMENTS

Rate Calculation	When the 5-year introductory period ends, your rate will be determined annually based on the one-year LIBOR index (the market rate) plus 5.00%.
Rate Change Limits	When the 5-year introductory period ends, your interest rate can increase up to 2.00% from one year to the next, and no more than 6.00% total for the life of the loan, which would result in a maximum ever rate of 12.875%.
Escrow	An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for more details.
Private Mortgage Insurance	Private Mortgage Insurance (PMI) **is** required for this loan. It is included in your escrow.
Total Payments	If the market rate did not change and you made all payments as scheduled, you would make 360 payments totaling $589,385.69, including estimated escrow. Of this amount, $307,935.69 would go to interest and settlement charges. This amount, and your amount financed of $193,250.00, are used to calculate your APR.

→ **You have no obligation to accept this loan.** Your signature below only confirms that you have received this form.

→ **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.

→ **If you do not understand any part of this form, ask questions.** For more information, go to www.xxx.gov.

Applicant's Signature **Date**

H-19(I) Adjustable-Rate Mortgage with Payment Option Sample

Jane Smith
1234 Main Street,
Anytown, ST 12345

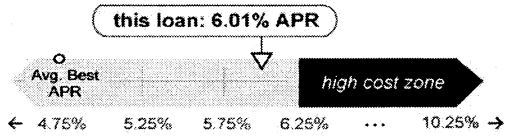
February 4, 2009
XXX Bank
Loan Officer No. 12345-1234

LOAN SUMMARY

Loan Amount:	**$200,000.00**
Loan Term:	**30 years**
Loan Type and Features:	**Adjustable Rate Mortgage**: rate is fixed for the first month, then adjusts every month. • includes Payment Options
Total Settlement Charges:	**$7,426.00** • $1,000.00 of these charges are already included in your loan amount above. • This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.

ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: **6.01% APR**



How does this loan compare? For the week of February 2, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was **4.75%**. Today, an APR of **6.25%** or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a 1% reduction in the APR could save you an average of **$142 each month**.

INTEREST RATE AND PAYMENT SUMMARY

This loan offers you several monthly payment options. The table below shows you what your payments would be under two of these options **if the interest rate reached its maximum of 10.5%** in the second month of this loan.

All payments shown in the table include **$280** for estimated taxes and insurance (escrow).

	March 2009 (1 month intro)	April 2009 (1st adjustment)	March 2010 (2nd adjustment)	June 2011 + every month after
Maximum Interest Rate	**1.5%** (intro rate)	**10.5%**	**10.5%**	**10.5%** (max. ever)
Full Payment Option *Monthly payments cover all principal and interest.*	**$970.24**	**$2,106.18**	**$2,106.18**	**$2,106.18**
Minimum Payment Option *Initial monthly payments cover no principal and only some interest and increase your loan amount.*	$970.24	$970.24	$1,022.01	$2,402.54

*You will borrow an additional **$29,242.91** by June 2011 if you make only minimum payments on this loan.*

KEY QUESTIONS ABOUT RISK

Can my interest rate increase?	**YES.** Your interest rate can increase **monthly** beginning in April 2009.
Can my monthly payment increase?	**YES.** Your full payment can increase beginning in April 2009. Your minimum payment can increase beginning in March 2010.
Will any of my monthly payments be interest-only?	**YES.** This loan gives you the choice to make monthly payments that cover the interest you owe each month, but **none** of the principal. Making these monthly payments means your loan amount will stay the same and you will be no closer to having it paid off.
Even if I make my monthly payments, could my loan balance increase?	**YES.** Your minimum payment covers only part of the interest you owe each month and **none** of the principal. The unpaid interest will be added to your loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in your home.
Could I owe a prepayment penalty?	No.

MORE INFORMATION ABOUT YOUR PAYMENTS

Rate Calculation	When the 1-month introductory period ends, your rate will be determined monthly based on the one-year LIBOR index (the market rate) plus 3.75%.
Rate Change Limits	When the 1-month introductory period ends, your interest rate can increase up to a maximum of 10.5% for the life of the loan.
Payment Change Limits	Your minimum payments due cannot increase more than 7.5% each year until the total loan amount has increased by 15%. When this happens, you must make full monthly payments that cover all principal and interest owed on the loan.
Escrow	An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for more details.
Total Payments	If the market rate did not change and you made all payments as scheduled, you would make 360 payments totaling $545,943.97, including estimated escrow. Of this amount, $251,893.97 would go to interest and settlement charges. This amount, and your amount financed of $193,250.00, are used to calculate your APR.

→ **You have no obligation to accept this loan.** Your signature below only confirms that you have received this form.

→ **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.

→ If you borrow more than your home is worth, the interest on the extra amount may not be deductible for Federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

→ **If you do not understand any part of this form, ask questions.** For more information, go to www.xxx.gov.

Applicant's Signature **Date**

BILLING CODE 6210–01–C

H–20—Balloon Payment Model Clause

[Final Balloon Payment due (*date*): $_____]

H–21—Introductory Rate Model Clause

[Introductory Rate Notice
You have a discounted introductory rate of _____% that ends after (*period*).
In the (*date*), even if market rates do not change, this rate will increase to____%.]

H–22—Key Questions About Risk Model Clauses

(a) Interest only feature

[Will any of my monthly payments be interest-only?]
[YES. Your (*frequency*) payments for the first (*period*) of the loan][This loan gives you the choice to make (*frequency*) payments that] cover the interest you owe each month, but none of the principal. Making these (*frequency*) payments means your loan amount will stay the same and you will be no closer to having it paid off.]

(b) Negative amortization feature

[Even if I make my monthly payments, could my loan balance increase?]
[YES. Your minimum payment covers only part of the interest you owe each (*period*) and none of the principal. The unpaid interest will be added to your loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in your home.]

(c) Balloon payment feature

[Will I owe a balloon payment?]
[YES. You will owe a balloon payment of $_____, due in (*date of payment*).]

(d) Demand feature

[Can my lender demand full repayment at any time?]
[YES. We can demand that you pay off the full amount of your loan. We will give you at least (*period*) notice.]

(e) No-documentation or low-documentation feature

[Will my loan have a higher rate or fees because I did not document my employment, income or other assets?]
[YES. If you provide more documentation, you could decrease your interest rate or fees.]

(f) Shared-equity or shared-appreciation feature

[Do I have to share any equity I gain?]
[YES. We are entitled to ____% of any gain you make when you sell or refinance this property.]

H–23—Separate Disclosure Model Clauses

(a) Rebate

[If you pay off or refinance your loan, or sell this property early, you will receive a refund of some of the interest and fees you have paid on your loan.]

(b) Late Payment

[If you make a payment more than (*number of days*) days late, you may be charged a penalty equal to [$_____][____%].]

(c) Property Insurance

[You may get property insurance from any insurer that is acceptable to us.]

(d) Contract Reference

Read your loan contract to find out what happens if you stop making payments, default, or pay off or refinance the loan early.

(e) Assumption Policy

[If you sell your home after you take out this loan, we may permit the new buyer to take over the payments on your mortgage.]◄

14. In Supplement I to Part 226, as amended on July 30, 2008 (73 FR 44604), and on January 29, 2009 (74 FR 5450):

A. Under *Section 226.2—Definitions and Rules of Construction, 2(a)(24) Residential mortgage transaction,* paragraphs 1, 2, and 5(ii) and 5(iii) are revised.

B. *Section 226.4—Finance Charge, Section 226.17—General Disclosure Requirements, Section 226.18—Content of Disclosures, Section 226.19—Certain Mortgage and Variable-Rate Transactions,* and *Section 226.20—Subsequent Disclosure Requirements* are revised.

C. Under *Section 226.24—Advertising, 24(c) Advertisement of rate of finance charge,* paragraph 4 is revised.

D. Under *Section 226.25—Record Retention, 25(a) General rule,* new paragraph 5 is added.

E. Under *Section 226.30—Limitation on Rates,* paragraph 1 is revised.

F. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages, 32(b) Definitions* is removed, *32(c) Disclosures,* paragraph 1 is removed, and *32(c)(5) Amount borrowed,* paragraph 1 is revised.

G. Under *Section 226.35—Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans, 35(a) Higher-priced mortgage loans, Paragraph 35(a)(2),* paragraph 4 is revised and new paragraph 5 is added.

H. Under *Section 226.36—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Principal Dwelling,* the heading is revised, *36(a) Mortgage broker defined,* the heading is revised, paragraph 1 is revised, and new paragraph 2 is added, *36(b) Misrepresentation of value of consumer's principal dwelling,* the heading is revised, and new *36(d) Prohibited payments to loan originators* and *36(e) Prohibition on steering* are added.

I. New *Section 226.37—Special Disclosure Requirements for Closed-End Mortgages* and *Section 226.38—Content of Disclosures for Closed-End Mortgages* are added.

J. Under Appendices G and H—Open-End and Closed-End Model Forms and Clauses, paragraphs 1 and 2 are revised.

K. Appendix H—Closed-End Model Forms and Clauses is revised.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

SUBPART A—GENERAL

* * * * *

Section 226.2—Definitions and Rules of Construction

* * * * *

2(a)(24) Residential mortgage transaction.

1. *Relation to other sections.* This term is important in [five]►three◄ provisions in the regulation:

i. Section 226.4(c)(7)—exclusions from the finance charge

ii. Section 226.15(f)—exemption from the right of rescission

[Section 226.18(q)—whether or not the obligation is assumable]

[Section 226.20(b)—disclosure requirements for assumptions]

iii. Section 226.23(f)—exemption from the right of rescission

2. *Lien status.* The definition is not limited to first-lien transactions. [For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a ''residential mortgage transaction'' if the dwelling purchased is the consumer's principal residence.]

* * * * *

5. *Acquisition.* * * *

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. [In these instances, disclosures are not required under § 226.18(q (assumability policies). However, the]►The◄ rescission rules of §§ 226.15 and 226.23 do apply to these new transactions.

[iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, § 226.20(b) does not apply (assumptions involving residential mortgages).]

* * * * *

§ 226.4—Finance Charge.

4(a) Definition.

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with

those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction-loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. *Costs of doing business.* Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:

i. A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (See § 226.4(b)(6).)

ii. A tax imposed by a State or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to § 226.4(a).)

3. *Forfeitures of interest.* If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to § 226.4(c)(6).) For example:

i. A consumer borrows $5,000 for 90 days and secures it with a $10,000 certificate of deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on $5,000 of the $10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.

ii. However, the consumer must be entitled to the interest that is not paid in order for the lost interest to be a finance charge. For example:

A. A consumer wishes to buy from a financial institution a $10,000 certificate of deposit paying 15% interest but has only $4,000. The financial institution offers to lend the consumer $6,000 at an interest rate of 6% but will pay the 15% interest only on the amount of the consumer's deposit, $4,000. The creditor's failure to pay interest on the $6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.

B. A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).

4. *Treatment of transaction fees on credit card plans.* Any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example:

i. Any charge imposed on a credit cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account.

ii. Any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States, with a foreign merchant, or in a foreign currency is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. The following principles apply in determining what is a foreign transaction fee and the amount of the fee:

A. Included are fees imposed when transactions are made in a foreign currency and converted to U.S. dollars; fees imposed when transactions are made in U.S. dollars outside the U.S.; and fees imposed when transactions are made (whether in a foreign currency or in U.S. dollars) with a foreign merchant, such as via a merchant's Web site. For example, a consumer may use a credit card to make a purchase in Bermuda, in U.S. dollars, and the card issuer may impose a fee because the transaction took place outside the United States.

B. Included are fees imposed by the card issuer and fees imposed by a third party that performs the conversion, such as a credit card network or the card issuer's corporate parent. (For example, in a transaction processed through a credit card network, the network may impose a 1 percent charge and the card-issuing bank may impose an additional 2 percent charge, for a total of a 3 percentage point foreign transaction fee being imposed on the consumer.)

C. Fees imposed by a third party are included only if they are directly passed on to the consumer. For example, if a credit card network imposes a 1 percent fee on the card issuer, but the card issuer absorbs the fee as a cost of doing business (and only passes it on to consumers in the general sense that the interest and fees are imposed on all its customers to recover its costs), then the fee is not a foreign transaction fee and

need not be disclosed. In another example, if the credit card network imposes a 1 percent fee for a foreign transaction on the card issuer, and the card issuer imposes this same fee on the consumer who engaged in the foreign transaction, then the fee is a foreign transaction fee and a finance charge.

D. A card issuer is not required to disclose a fee imposed by a merchant. For example, if the merchant itself performs the currency conversion and adds a fee, this fee need not be disclosed by the card issuer. Under § 226.9(d), a card issuer is not obligated to disclose finance charges imposed by a party honoring a credit card, such as a merchant, although the merchant is required to disclose such a finance charge if the merchant is subject to the Truth in Lending Act and Regulation Z.

E. The foreign transaction fee is determined by first calculating the dollar amount of the transaction by using a currency conversion rate outside the card issuer's and third party's control. Any amount in excess of that dollar amount is a foreign transaction fee. Conversion rates outside the card issuer's and third party's control include, for example, a rate selected from the range of rates available in the wholesale currency exchange markets, an average of the highest and lowest rates available in such markets, or a government-mandated or government-managed exchange rate (or a rate selected from a range of such rates).

F. The rate used for a particular transaction need not be the same rate that the card issuer (or third party) itself obtains in its currency conversion operations. In addition, the rate used for a particular transaction need not be the rate in effect on the date of the transaction (purchase or cash advance).

5. *Taxes.*

i. Generally, a tax imposed by a State or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly;

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other State or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by another provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

►6. *Transactions with no seller.* In a transaction where there is no seller, such as a refinancing of an existing extension of credit described in § 226.20(a), there is no comparable cash transaction. Thus, the exclusion from the finance charge of charges of a type payable in a comparable cash transaction does not apply to such transactions.◄

4(a)(1) Charges by third parties.

1. *Choosing the provider of a required service.* An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages.* Some creditors offer annuities in connection with a reverse-mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

4(a)(2) Special rule; closing agent charges.

1. *General.* This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum fee excluded under § 226.4(c)(7).

►3. *Closed-end mortgage transactions.* Comments 4(a)(2)–1 and 4(a)(2)–2 do not apply to closed-end transactions secured by real property or a dwelling, pursuant to § 226.4(g).◄

4(a)(3) Special rule; mortgage broker fees.

1. *General.* A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under § 226.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Coverage.* This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.

3. *Compensation by lender.* The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

4(b) Examples of finance charges.

1. *Relationship to other provisions.* Charges or fees shown as examples of finance charges in § 226.4(b) may be excludable under § 226.4(c), (d), or (e). For example[:

i. Premiums]►, premiums◄ for credit life insurance, shown as an example of a finance charge under § 226.4(b)(7), may be excluded if the requirements of § 226.4(d)(1) are met. ►They may not be excluded, however, in transactions subject to § 226.4(g).◄

[ii. Appraisal fees mentioned in § 226.4(b)(4) are excluded for real property or residential mortgage transactions under § 226.4(c)(7).]

Paragraph 4(b)(2).

1. *Checking account charges.* A checking or transaction account charge imposed in connection with a credit feature is a finance charge under

§ 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 226.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 226.4(c)(4).

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

Paragraph 4(b)(3).

1. *Assumption fees.* The assumption fees mentioned in § 226.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.

Paragraph 4(b)(5).

1. *Credit loss insurance.* Common examples of the insurance against credit loss mentioned in § 226.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.

2. *Residual value insurance.* Where a creditor requires a consumer to maintain residual value insurance or where the creditor is a beneficiary of a residual value insurance policy written in connection with an extension of credit (as is the case in some forms of automobile balloon-payment financing, for example), the premiums for the insurance must be included in the finance charge for the period that the insurance is to be maintained. If a creditor pays for residual value insurance and absorbs the payment as a cost of doing business, such costs are not considered finance charges. (See comment 4(a)–2.)

Paragraphs 4(b)(7) and (b)(8).

1. *Pre-existing insurance policy.* The insurance discussed in § 226.4(b)(7) and (b)(8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not ''written in connection with'' the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.

2. *Insurance written in connection with a transaction.* Credit insurance sold before or after an open-end [(not home-secured)] plan is opened is considered ''written in connection with a credit transaction.'' Insurance sold after consummation in closed-end credit transactions [or after the opening of a home-equity plan subject to the requirements of § 226.5b] is not considered ''written in connection with'' the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation [or the opening of a home-equity plan subject to the requirements of § 226.5b] (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed).

3. *Substitution of life insurance.* The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.

4. *Other insurance.* Fees for required insurance not of the types described in § 226.4(b)(7) and (b)(8) are finance charges and are not excludable. For example:

i. The premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

Paragraph 4(b)(9).

1. *Discounts for payment by other than credit.* The discounts to induce payment by other than credit mentioned in § 226.4(b)(9) include, for example, the following situation:

i. The seller of land offers individual tracts for $10,000 each. If the purchaser pays cash, the price is $9,000, but if the purchaser finances the tract with the seller the price is $10,000. The $1,000 difference is a finance charge for those who buy the tracts on credit.

2. *Exception for cash discounts.*

i. Creditors may exclude from the finance charge discounts offered to consumers for using cash or another means of payment instead of using a credit card or an open-end plan. The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the act, as amended) or a dollar amount. Pursuant to section 167(b) of the act, this provision applies only to transactions involving an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card). The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:

A. The merchant may limit the discount to payment by cash and not offer it for payment by check or by use of a debit card.

B. The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.

ii. Pursuant to section 171(c) of the act, discounts excluded from the finance charge under this paragraph are also excluded from treatment as a finance charge or other charge for credit under any State usury or disclosure laws.

3. *Determination of the regular price.*

i. The *regular price* is critical in determining whether the difference between the price charged to cash customers and credit customers is a *discount* or a *surcharge,* as these terms are defined in amended section 103 of the act. The *regular price* is defined in section 103 of the act as ''* * * the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted * * *.''

ii. For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps. If a pump is capable of displaying on its meter either a cash or a credit price depending upon the

consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.

4(b)(10) Debt cancellation and debt suspension fees.

1. *Definition.* Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term ''debt cancellation coverage'' includes guaranteed automobile protection, or ''GAP,'' agreements, which pay or satisfy the remaining debt after property insurance benefits are exhausted. Debt suspension coverage provides for suspension of the obligation to make one or more payments on the date(s) otherwise required by the credit agreement, when a specified event occurs. The term ''debt suspension'' does not include loan payment deferral arrangements in which the triggering event is the bank's unilateral decision to allow a deferral of payment and the borrower's unilateral election to do so, such as by skipping or reducing one or more payments (''skip payments'').

2. *Coverage written in connection with a transaction.* Coverage sold after consummation in closed-end credit transactions [or after the opening of a home-equity plan subject to the requirements of § 226.5b] is not ''written in connection with'' the credit transaction if the coverage is written because the consumer requests coverage after consummation [or the opening of a home-equity plan subject to the requirements of § 226.5b] (although credit-sale disclosures may be required for the coverage sold after consummation if it is financed). Coverage sold before or after an open-end [(not home-secured)] plan is opened is considered ''written in connection with a credit transaction.''

4(c) Charges excluded from the finance charge.

Paragraph 4(c)(1).

1. *Application fees.* An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as ►automobile◄ [mortgage] loans. However, if the fee is to be excluded from the finance charge under § 226.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

Paragraph 4(c)(2).

1. *Late-payment charges.*

i. Late-payment charges can be excluded from the finance charge under § 226.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:

A. The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.

B. The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.

ii. Section 226.4(c)(2) applies to late-payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. *Other excluded charges.* Charges for ''delinquency, default, or a similar occurrence'' include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

Paragraph 4(c)(3).

1. *Assessing interest on an overdraft balance.* A charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

Paragraph 4(c)(4).

1. *Participation fees—periodic basis.* The participation fees described in § 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, nonrecurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

2. *Participation fees—exclusions.* Minimum monthly charges, charges for nonuse of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by § 226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to § 226.4(b)(2). Also, see comment 14(c)–2 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)

Paragraph 4(c)(5).

1. *Seller's points.* The seller's points mentioned in § 226.4(c)(5) include any charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A *commitment fee* paid by a non-creditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. *Other seller-paid amounts.* Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a non-creditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

Paragraph 4(c)(6).

1. *Lost interest.* Certain federal and State laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations, because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under § 226.4(c)(6), such ''lost interest'' need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to § 226.4(a).)

Paragraph 4(c)(7).

1. *[Real estate or residential mortgage transaction]* ►*Open-end real-property-secured credit*◄*charges.* The list of charges in § 226.4(c)(7) applies ►to open-end credit plans secured by real property and open-end residential mortgage transactions◄ [both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate.] The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

2. *Lump-sum charges.* If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. *Charges assessed during the loan term.* ►Charges◄ [Real estate or residential mortgage transaction charges] excluded under § 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

4(d) Insurance and debt cancellation and debt suspension coverage.

1. *General.* Section 226.4(d) permits insurance premiums and charges and debt cancellation and debt suspension charges to be excluded from the finance charge. The required disclosures must be made in writing, except as provided in § 226.4(d)(4). The rules on location of insurance and debt cancellation and debt suspension disclosures for closed-end transactions are in § 226.17(a). For purposes of § 226.4(d), all references to insurance also include debt cancellation and debt suspension coverage unless the context indicates otherwise.

2. *Timing of disclosures.* If disclosures are given early, for example under § 226.17(f)[or § 226.19(a)], the creditor must redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge.

3. *Premium rate increases.* The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.

4. *Unit-cost disclosures.*

i. *Open-end credit.* The premium or fee for insurance or debt cancellation or debt suspension for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)–12 is available.

ii. *Closed-end credit.* One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of credit life insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance-cost disclosures on the $4,000 loan on a unit-cost basis.

5. *Required credit life insurance; debt cancellation or suspension coverage.* Credit life, accident, health, or loss-of-income insurance, and debt cancellation and suspension coverage described in § 226.4(b)(10), must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance or coverage is in fact required or optional is a factual question. If the insurance or coverage is required, the premiums must be included in the finance charge, whether the insurance or coverage is purchased from the creditor or from a third party. If the consumer is required to elect one of several options—such as to purchase credit life insurance, or to assign an existing life insurance policy, or to pledge security such as a certificate of deposit—and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under § 226.6(a)(4), § 226.6(b)(5)(ii), or § 226.18(m). See the commentary to § 226.4(b)(7) and (b)(8).)

6. *Other types of voluntary insurance.* Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If the premium for such insurance is not imposed by the creditor as an incident to or a condition of credit, it is not covered by § 226.4.

7. *Signatures.* If the creditor offers a number of insurance options under § 226.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance authorization may be signed or initialed by any consumer, as defined in § 226.2(a)(11), or by an authorized user on a credit card account.

8. *Property insurance.* To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from ►or through◄ the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less

than the term of the obligation. ►Insurance is available ''from or through a creditor'' if it is available from the creditor's affiliate, as defined under the Bank Holding Company Act, 12 U.S.C. 1841(k).◄

9. *Single-interest insurance.* Blanket and specific single-interest coverage are treated the same for purposes of the regulation. A charge for either type of single-interest insurance may be excluded from the finance charge if:

i. The insurer waives any right of subrogation.

ii. The other requirements of § 226.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. *Single-interest insurance defined.* The term *single-interest insurance* as used in the regulation refers only to the types of coverage traditionally included in the term *vendor's single-interest insurance* (or *VSI*), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the non-excludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $1.00 or less (or $5.00 or less in the case of a multiyear policy).

11. *Initial term.*

i. The initial term of insurance or debt cancellation or debt suspension coverage determines the period for which a premium amount must be disclosed, unless one of the options discussed under comment 4(d)–12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. *Initial term; alternative.*

i. *General.* A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation or debt suspension coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-end plans.* For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples.* To illustrate:

A. A credit life insurance policy providing coverage for a ►seven-year automobile◄ [30-year mortgage] loan has an initial term of ►seven◄ [30] years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. *Loss-of-income insurance.* The loss-of-income insurance mentioned in § 226.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.

►14. *Age or employment eligibility criteria.* A premium or charge for credit life, accident, health, or loss-of-income insurance, or debt cancellation or debt suspension coverage is voluntary and can be excluded from the finance charge only if the consumer meets the product's age or employment eligibility criteria at the time of enrollment. To exclude such a premium or charge from the finance charge, the creditor must determine at the time of enrollment that the consumer is eligible for the product under the product's age or employment eligibility restrictions. The creditor may use reasonably reliable evidence of the consumer's age or employment status to satisfy this condition. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include the consumer's information on a credit application, an Internal Revenue Service Form W-2, tax returns, payroll receipts, or other evidence such as a letter or e-mail from the consumer or the consumer's employer. If the consumer does not meet the product's age or employment eligibility criteria at the time of enrollment, then the premium or charge is not voluntary. In such circumstances, the premium or charge is a finance charge. If the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer is not eligible for all of the bundled products, then the creditor must either: (1) treat the entire premium or charge for the bundled product as a finance charge, or (2) offer the consumer the option of selecting only the products for which the consumer is eligible and exclude the premium or charge from the finance charge if the consumer chooses an optional product for which the consumer meets the age or employment eligibility criteria at the time of enrollment.◄

4(d)(3) Voluntary debt cancellation or debt suspension fees.

1. *General.* Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection (''GAP'') agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. *Disclosures.* Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation or debt suspension coverage constitutes insurance under State law. (See Model Clauses and Samples at G–16 and H–17 in Appendix G and Appendix H to part 226 for guidance on how to provide the disclosure required by § 226.4(d)(3)(iii) for debt suspension products.)

3. *Multiple events.* If debt cancellation or debt suspension coverage for two or more events is provided at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss

of life, health, or income and the conditions specified in § 226.4(d)(3) or, as applicable, § 226.4(d)(4), are satisfied.

4. *Disclosures in programs combining debt cancellation and debt suspension features.* If the consumer's debt can be cancelled under certain circumstances, the disclosure may be modified to reflect that fact. The disclosure could, for example, state (in addition to the language required by § 226.4(d)(3)(iii)) that ''In some circumstances, my debt may be cancelled.'' However, the disclosure would not be permitted to list the specific events that would result in debt cancellation.

4(d)(4) Telephone purchases.

1. *Affirmative request.* A creditor would not satisfy the requirement to obtain a consumer's affirmative request if the ''request'' was a response to a script that uses leading questions or negative consent. A question asking whether the consumer wishes to enroll in the credit insurance or debt cancellation or suspension plan and seeking a yes-or-no response (such as ''Do you want to enroll in this optional debt cancellation plan?'') would not be considered leading.

4(e) Certain security interest charges.

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1) and (e)(3). Examples are charges or other fees required for filing or recording security agreements, mortgages ►(for open-end credit; but see § 226.4(g) regarding closed-end mortgage credit)◄, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). (See comment 4(a)–5 regarding the treatment of taxes, generally.)

ii. *Charges not excludable.* If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

2. *Itemization.* The various charges described in § 226.4(e)(1) and (e)(3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

3. *Notary fees.* In order for a notary fee to be excluded under § 226.4(e)(1), all of the following conditions must be met:

i. The document to be notarized is one used to perfect, release, or continue a security interest.

ii. The document is required by law to be notarized.

iii. A notary is considered a public official under applicable law.

iv. The amount of the fee is set or authorized by law.

4. *Non-filing insurance.* The exclusion in § 226.4(e)(2) is available only if non-filing insurance is purchased. If the creditor collects and simply retains a fee as a sort of ''self-insurance'' against non-filing, it may not be excluded from the finance charge. If the non-filing insurance premium exceeds the amount of the fees excludable from the finance charge under § 226.4(e)(1), only the excess is a finance charge. For example:

i. The fee for perfecting a security interest is $5.00 and the fee for releasing the security interest is $3.00. The creditor charges $10.00 for non-filing insurance. Only $8.00 of the $10.00 is excludable from the finance charge.

4(f) Prohibited offsets.

1. *Earnings on deposits or investments.* The rule that the creditor shall not deduct any earnings by the consumer on deposits or investments applies whether or not the creditor has a security interest in the property.

►*4(g) Special rule; mortgage transactions.*

1. *Applicability of commentary to mortgages.* The staff commentary under §§ 226.4(a)(2) and 226.4(c) through (e) (other than that under §§ 226.4(c)(2), 226.4(c)(5), and 226.4(d)(2)) does not apply to closed-end transactions secured by real property or a dwelling. The staff commentary under §§ 226.4(a) (other than paragraph (2) of that section), 226.4(c)(2), 226.4(c)(5), and 226.4(d)(2), however, does apply to such transactions.

2. *Third-party charges.* Charges imposed by third parties are finance charges if they fit the general definition under § 226.4(a). Thus, if a third-party charge is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the extension of credit, it is a finance charge unless it would be payable in a comparable cash transaction. For example, appraisal and credit report fees are finance charges because they meet the definition in § 226.4(a). This test generally does not depend on whether the creditor requires the service for which the charge is imposed. In addition, charges imposed by closing agents required by the creditor, whether their own or those of third parties they retain, generally are finance charges unless otherwise excluded. (Note that § 226.4(a)(2) does not apply to closed-end transactions secured by real property or a dwelling, pursuant to § 226.4(g).) Insurance premiums generally are finance charges, whether imposed by a closing agent or another insurer, although premiums for property insurance are excluded if § 226.4(d)(2) is satisfied. Premiums for credit insurance (or fees for debt cancellation or debt suspension agreements) and premiums for lender's coverage under a title insurance policy are finance charges because they are imposed as an incident to the extension of credit. In contrast, premiums for owner's title insurance coverage are not finance charges because they are not imposed as an incident to the extension of credit.

3. *Charges in comparable cash transactions.* While the exclusions in § 226.4(c) through (e), other than §§ 226.4(c)(5) and 226.4(d)(2) are inapplicable to closed-end transactions secured by real property or a dwelling, charges in connection with such transactions that are payable in a comparable cash transaction are not finance charges. *See* comment 4(a)-1. For example, property taxes and fees or taxes imposed to record the deed evidencing transfer from the seller to the buyer of title to the property securing the transaction are not finance charges because they would be paid even if no credit were extended to finance the purchase. In contrast, fees or taxes imposed to record the mortgage, deed of trust, or other security instrument evidencing the creditor's security interest in the property securing the transaction are finance charges because they would not be incurred were it not for the extension of credit.

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Subpart C—Closed-End Credit

§ 226.17—General Disclosure Requirements.

17(a) Form of Disclosures

Paragraph 17(a)(1)

1. *Clear and conspicuous.* This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. In addition, although no minimum type size is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

2. *Segregation of disclosures.* The disclosures may be grouped together and segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may be set off from other information on the contract or other documents:

[•]►i.◄ By outlining them in a box

[•]►ii.◄ By bold print dividing lines

[•]►iii.◄ By a different color background

[•]►iv.◄ By a different type style

[(The general segregation requirement described in this subparagraph does not apply to the disclosures required under §§ 226.19(b) and 226.20(c) although the disclosures must be clear and conspicuous.)]

3. *Location.* The regulation imposes no specific location requirements on the segregated disclosures. For example:

[•]►i.◄ They may appear on a disclosure statement separate from all other material.

[•]►ii.◄ They may be placed on the same document with the credit contract or other information, so long as they are segregated from that information.

[•]►iii.◄ They may be shown on the front or back of a document.

[•]►iv.◄ They need not begin at the top of a page.

[•]►v.◄ They may be continued from one page to another.

4. *Content of segregated disclosures.* Footnotes 37 and 38 contain exceptions to the requirement that the disclosures under § 226.18 be segregated from material that is not directly related to those disclosures. Footnote 37 lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Footnote 38 lists the items required under § 226.18 that may be deleted from the segregated disclosures and appear elsewhere. Any one or more of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures. The itemization of the amount financed under § 226.18(c), however, must be separate from the other segregated disclosures under § 226.18. If a creditor chooses to include the security interest charges required to be itemized under § 226.4(e) and § 226.18(o) in the amount financed itemization, it need not list these charges elsewhere.

5. *Directly Related.* ►Except in a transaction secured by real property or a dwelling, t◄[T]he segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. ►(See the commentary to § 226.37(a)(2) for a discussion of directly related information for transactions secured by real property or a dwelling.)◄ The following is directly related information ►for a transaction not secured by real property or a dwelling◄:

i. A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under § 226.18(l) may state that a late charge will apply to ''any payment received more than 15 days after the due date.''

ii. A statement that the transaction is not secured. For example, the creditor may add a category labelled ''unsecured'' or ''not secured'' to the security interest disclosures given under § 226.18(m).

iii. The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.

iv. The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.

v. An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, '''You' refers to the customer and 'we' refers to the creditor.''

vi. Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, ''Check box if applicable.''

vii. A statement that the borrower may pay a minimum finance charge upon prepayment in a simple-interest transaction. For example, when State law prohibits penalties, but would allow a minimum finance charge in the event of prepayment, the creditor may make the § 226.18(k)(1) disclosure by stating, ''You may be charged a minimum finance charge.''

viii. A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosures, the creditor may include a short statement such as ''Unpaid interest will be added to principal.'' (See the commentary to § 226.18(f)[(1)(iii)]►(3)◄.)

ix. A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as ''Federal Truth in Lending Disclosures'' or a descriptive title such as ''Real Estate Loan Disclosures.''

x. A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under § 226.18(q) may state, ''Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms.''

xi. If a State or Federal law prohibits prepayment penalties and excludes the charging of interest after prepayment from coverage as a penalty, a statement that the borrower may have to pay interest for some period after prepayment in full. The disclosure may state, for example, ''If you prepay your loan on other than the regular installment date, you may be assessed interest charges until the end of the month.''

xii. More than one hypothetical example under § 226.18(f)[(1)(iv)]►(4)◄ in transactions with more than one variable-rate feature. For example, in a variable-rate transaction with an option permitting consumers to convert to a fixed-rate transaction, the disclosures may include an example illustrating the effects of an increase resulting from conversion in addition to the example illustrating an increase resulting from changes in the index.

xiii. ►Reserved.◄[The disclosures set forth under section 226.18(f)(1) for variable-rate transactions subject to section 226.18(f)(2).]

xiv. ►[Reserved]◄[A statement whether or not a subsequent purchase of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.]

xv. A late-payment fee disclosure under § 226.18(l) on a single payment loan.

xvi. The notice set forth in [§ 226.19(a)(4)]►§ 226.38(f)(1)◄, in a closed-end transaction not subject to § 226.19(a)(1)(i). In a mortgage transaction subject to § 19(a)(1)(i), the creditor must disclose the notice contained in [§ 226.19(a)(4)]►§ 226.38(f)(1)◄ grouped together with the disclosures made under [§ 226.18. *See* comment 19(a)(4)–1.]►§ 226.38.◄

6. *Multiple-purpose forms.* ►Except for transactions secured by real property or a dwelling, t◄[T]he creditor may design a disclosure statement that can be used for more than one type of transaction, so long as the required disclosures for individual transactions are clear and conspicuous. (See the Commentary to appendices G and H for a discussion of the treatment of disclosures that do not apply to specific transactions.) Any disclosure listed in § 226.18 (except the itemization of the amount financed under § 226.18(c)) may

be included on a standard disclosure statement even though not all of the creditor's transactions include those features. For example, the statement may include:

[•]►i.◄ The variable rate disclosure under § 226.18(f).

[•]►ii.◄ The demand feature disclosure under § 226.18(i).

[•]►iii.◄ A reference to the possibility of a security interest arising from a spreader clause, under § 226.18(m).

[• The assumption policy disclosure under § 226.18(q).]

[•]►iv.◄ The required deposit disclosure under § 226.18(r).

7. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M, but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership upon consumption. These transactions are governed by the disclosure requirements of this regulation instead of Regulation M. Creditors should not include in the segregated Truth in Lending disclosures additional information. Thus, disclosures should show the large final payment in the payment schedule and should not, for example, reflect the other options available to the consumer at maturity. ►For extensions of credit secured by real property or a dwelling, the large final payment in the payment schedule should be disclosed in accordance with the requirements under section 226.38(c), as applicable.◄

Paragraph 17(a)(2).

1. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the terms *annual percentage rate* and *finance charge* be shown more conspicuously:

[•]►i.◄ The terms must be more conspicuous only in relation to the other required disclosures under § 226.18. For example, when the disclosures are included on the contract document, those 2 terms need not be more conspicuous as compared to the heading on the contract document or information required by State law.

[•]►ii.◄ The terms need not be more conspicuous except as part of the finance charge and annual percentage rate disclosures under § 226.18(d) and (e), although they may, at the creditor's option, be highlighted wherever used in the required disclosures. For example, the terms may, but need not, be highlighted when used in disclosing a prepayment penalty under § 226.18(k) or a required deposit under § 226.18(r).

[•]►iii.◄ The creditor's identity under § 226.18(a) may, but need not, be more prominently displayed than the finance charge and annual percentage rate.

[•]►iv.◄ The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs)

2. *Making disclosures more conspicuous.* The terms *finance charge* and *annual percentage rate* may be made more conspicuous in any way that highlights them in relation to the other required disclosures. For example, they may be:

[•]►i.◄ Capitalized when other disclosures are printed in capital and lower case.

[•]►ii.◄ Printed in larger type, bold print or different type face.

[•]►iii.◄ Printed in a contrasting color.

[•]►iv.◄ Underlined.

[•]►v.◄ Set off with asterisks.

17(b) Time of disclosures.

1. *Consummation.* As a general rule, disclosures must be made before ''consummation'' of the transaction. The disclosures ►for transactions not secured by real property or a dwelling◄ need not be given by any particular time before consummation[, except in certain mortgage transactions and variable-rate transactions secured by the consumer's principal dwelling with a term greater than one year under § 226.19.]► Pre-consummation disclosures for transactions secured by real property or a dwelling must be provided in accordance with the timing requirements in § 226.19.◄ (See the commentary to § 226.2(a)(13) regarding the definition of consummation.)

2. *Converting open-end to closed-end credit.* Except for home equity plans subject to § 226.5b in which the agreement provides for a repayment phase, if an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction. (►See the commentary to § 226.19(a) for a discussion of disclosure timing requirements for closed-end transactions secured by real property or a dwelling.◄ See the commentary to § 226.19(b) for the timing rules for additional disclosures required upon the conversion to [a variable-rate transaction secured by a consumer's principal dwelling with a term greater than one year]►an adjustable-rate transaction secured by real property or a dwelling◄.) If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion. If disclosures are delayed until conversion and the closed-end transaction has a variable-rate feature, disclosures should be based on the rate in effect at the time of conversion. (See the commentary to § 226.5 regarding conversion of closed-end to open-end credit.)

3. *Disclosures provided on credit contracts.* Creditors must give the required disclosures to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction. *See* § 226.17(a)(1) and (b). Sometimes the disclosures are placed on the same document with the credit contract. Creditors are not required to give the consumer two separate copies of the document before consummation, one for the consumer to keep and a second copy for the consumer to execute. The disclosure requirement is satisfied if the creditor gives a copy of the document containing the unexecuted credit contract and disclosures to the consumer to read and sign; and the consumer receives a copy to keep at the time the consumer becomes obligated. It is not sufficient for the creditor merely to show the consumer the document containing the disclosures before the consumer signs and becomes obligated. The consumer must be free to take possession of and review the document in its entirety before signing.

i. Example. To illustrate:

A. A creditor gives a consumer a multiple-copy form containing a credit agreement and TILA disclosures. The consumer reviews and signs the form and returns it to the creditor, who separates the copies and gives one copy to the consumer to keep. The creditor has satisfied the disclosure requirement.

17(c) Basis of disclosures and use of estimates.

[*Paragraph*]*17(c)(1)*►*Legal obligation*◄.

1. [*Legal obligation.*]►*General.*◄ The disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under

§ 226.20(c), the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided. The legal obligation is determined by applicable State law or other law. ►The disclosures should be based on the assumption that the consumer will abide by the terms of the legal obligation throughout the term of the transaction. For example, the disclosures should be based on the assumption that the consumer makes payments on time and in full. In the case of an adjustable-rate mortgage described in § 226.38(a)(3)(i)(A), the creditor shall make the disclosure required by § 226.38(c) based on the assumption that the interest rate increases as fast as it can, taking into account any limitations on increases under the legal obligation.◄ (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to § 226.17(c).)

[•]►i.◄ The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

2. *Modification of obligation.* The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement. But this presumption is rebutted if another agreement between the parties legally modifies that note or contract. If the parties informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:

[•]►i.◄ If the creditor offers a preferential rate, such as an employee preferred rate, the disclosures should reflect the terms of the legal obligation►, subject to special disclosure rules for transactions secured by real property or a dwelling in § 226.38(a)(3) and (c)◄. [(See the commentary to § 226.19(b) for an example of a preferred-rate transaction that is a variable-rate transaction.)]

[•]►ii.◄ If the contract provides for a certain monthly payment schedule but payments are made on a voluntary payroll deduction plan or an informal principal-reduction agreement, the disclosures should reflect the schedule in the contract.

[•]►iii.◄ If the contract provides for regular monthly payments but the creditor informally permits the consumer to defer payments from time to time, for instance, to take account of holiday seasons or seasonal employment, the disclosures should reflect the regular monthly payments.

►3. *Number of transactions.* Creditors have flexibility in handling credit extensions that may be viewed as multiple transactions. For example:

i. When a creditor finances the credit sale of a radio and a television on the same day, the creditor may disclose the sales as either 1 or 2 credit sale transactions.

ii. When a creditor finances a loan along with a credit sale of health insurance, the creditor may disclose in one of several ways: a single credit sale transaction, a single loan transaction, or a loan and a credit sale transaction.

iii. The separate financing of a downpayment in a credit sale transaction may, but need not, be disclosed as 2 transactions (a credit sale and a separate transaction for the financing of the downpayment).◄

[3. *Third-party buydown.*]►*17(c)(1)(i) Buydowns.*

1. *Third-party buydown.*◄ In certain transactions, a seller or other third party may pay an amount, either to the creditor or to the consumer, in order to reduce the consumer's payments or buy down the interest rate for all or a portion of the credit term. For example, a consumer and a bank agree to a mortgage with an interest rate of 15% and level payments over 25 years. By a separate agreement, the seller of the property agrees to subsidize the consumer's payments for the first 2 years of the mortgage, giving the consumer an effective rate of 12% for that period.

[•]►i.◄ If the lower rate is reflected in the credit contract between the consumer and the bank, the disclosures must take the buydown into account. For example, the annual percentage rate must be a composite rate that takes account of both the lower initial rate and the higher subsequent rate, and if the loan is not secured by real property or a dwelling, the payment schedule disclosures must reflect the 2 payment levels. However, the amount paid by the seller would not be specifically reflected in the disclosures given by the bank, since that amount constitutes seller's points and thus is not part of the finance charge.

[•]►ii.◄ If the lower rate is not reflected in the credit contract between the consumer and the bank and the consumer is legally bound to the 15% rate from the outset, the disclosures given by the bank must not reflect the seller buydown in any way. For example, the annual percentage rate and, in a transaction not secured by real property, the payment schedule, would not take into account the reduction in the interest rate and payment level for the first 2 years resulting from the buydown.

[4.]►2.◄ *Consumer buydowns.* In certain transactions, the consumer may pay an amount to the creditor to reduce the payments or obtain a lower interest rate on the transaction. Consumer buydowns must be reflected in the disclosures given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay an amount to the creditor at consummation in return for a reduction in the interest rate to 12 percent for a portion of the mortgage term. The amount paid by the consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer. In the disclosures given for the mortgage, the creditor must reflect the terms of the buydown agreement. For example:

[•]►i.◄ The amount paid by the consumer is a prepaid finance charge [(]►,◄ even if deposited in an escrow account[)]. ►(In transactions secured by real property or a dwelling, ''finance charges'' are referred to as ''interest and settlement charges'' under § 226.38(e)(5)(ii).)◄

[•]►ii.◄ A composite annual percentage rate must be calculated, taking into account both interest rates, as well as the effect of the prepaid finance charge.

[•]►iii.◄ The payment schedule must reflect the multiple payment levels resulting from a buydown►, in a transaction not secured by real property or a dwelling◄.

►3. *Lender buydown.*◄ The rules regarding consumer buydowns do not apply to transactions known as ''lender buydowns.'' In lender buydowns. a creditor pays an amount (either into an account or to the party to whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for the remainder of the term. The disclosures for lender buydowns should be based on the terms of the legal obligation between the consumer and the creditor. See comment [17(c)(1)–3]►17(c)(1)(i)–1◄ for the analogous rules concerning third-party buydowns.

[5.]►4.◄ *Split buydowns.* In certain transactions, a third party (such as a seller) and a consumer both pay an amount to the creditor to reduce the interest rate. The creditor must include the portion paid by the consumer in the finance charge and disclose the corresponding multiple payment levels and composite annual percentage rate. The portion paid by the third party and the corresponding reduction in interest rate, however, should not be reflected in the disclosures unless the lower rate is reflected in the credit contract. See the discussion on third-party and consumer buydown transactions [elsewhere in the commentary to § 226.17(c)]►in comments 17(c)(1)(i)–1 and 17(c)(1)(i)–2, respectively◄.

►*17(c)(1)(ii) Wrap-around financing.*◄

[6. *Wraparound financing.*]►1. *General.*◄ Wrap-around transactions, usually loans, involve the creditor's wrapping the outstanding balance on an existing loan and advancing additional funds to the consumer. The pre-existing loan, which is wrapped, may be to the same consumer or to a different consumer. In either case, the consumer makes a single payment to the new creditor, whom makes the payments on the pre-existing loan to the original creditor. Wrap-around loans or sales are considered new single-advance transactions, with an amount financed equaling the sum of the new funds advanced by the wrap creditor and the remaining principal owed to the original creditor on the pre-existing loan. In disclosing the itemization of the amount financed, the creditor may use a label such as ''the amount that will be paid to creditor X'' to describe the remaining principal balance on the pre-existing loan. This approach to Truth in Lending calculations has no effect on calculations required by other statutes, such as State usury laws.

[7.]►2.◄ *Wrap-around financing with balloon payments.* For wrap-around transactions involving a large final payment of the new funds before the maturity of the pre-existing loan, the amount financed is the sum of the new funds and the remaining principal on the pre-existing loan. The disclosures should be based on the shorter term of the wrap loan, with a large final payment of both the new funds and the total remaining principal on the pre-existing loan (although only the wrap loan will actually be paid off at that time).

►*17(c)(1)(iii) Variable- or adjustable-rate transactions.*◄

[8.]►1.◄ *Basis of disclosures* [*in variable-rate transactions*]. The disclosures for a variable-►or adjustable-◄ rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors ►generally◄ should base the disclosures only on the initial rate and should not assume that this rate will increase ►(except as provided in § 226.38(c) for transactions secured by real property or a dwelling)◄. For example, in a ►a variable- or adjustable-rate◄ loan with an initial ►interest◄ rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that the rate will increase 5 percentage points. However, in a variable-rate transaction with a seller buydown that is reflected in the credit contract, a consumer buydown, or a discounted or premium rate, disclosures should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term. (See the commentary to section 226.17(c)►(1)◄ for a discussion of buydown, discounted, and premium transactions and the commentary to section 226.19(a)(2) for a discussion of [the] rediscloure in [certain mortgage transactions with a variable-rate] ►transactions secured by real property or a dwelling with an adjustable-rate◄ feature.

[9.]►2.◄ *Use of estimates in variable-►or adjustable-◄rate transactions.* The variable- ►or adjustable-◄ rate feature does not, by itself, make the disclosures estimates.

[10.]►3.◄ *Discounted and premium variable-►or adjustable-◄rate transactions.* In some variable-►or adjustable-◄rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

i. When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The interest rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that interest rate changes are based on the index value in effect 45 days before the ►interest rate◄ change date, creditors may use any index value in effect during the 45►-◄day period before consummation in calculating a composite annual percentage rate.

ii. The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule. ►(In transactions secured by real property or a dwelling, creditors disclose the ''interest and settlement charges'' rather than the ''finance charge'' and the ''payment summary'' rather than the ''payment schedule.'' *See* § 226.38(c) and (e)(5).◄

iii. If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

iv. Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of 1/4; of 1 percent applies, in accordance with § 226.22(a)(3).

v. Examples of discounted [variable]►adjustable◄-rate transactions ►secured by real property or a dwelling◄ include:

A. A 30-year loan for $100,000 with no prepaid [finance charges]►interest and settlement charges◄ and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. [Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31.] The [finance charge]►interest and settlement charges◄ should be $266,463.32 and the total of payments $366,463.32.

B. Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage

rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. [Reflecting those three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950,09, and 336 payments of $365,234.76.] The [finance charge]►interest and settlement charges◄ should be $265,234.76 and the total of payments should be $365,234.76.

C. Same loan as above, except with a 7½; percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. [Because of the payment cap, five levels of payments should be reflected.] The [finance charge]►interest and settlement charges◄ should be $277,040.60, and the total of payments $377,040.60.

vi. A loan in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation is not a discounted or premium variable-►or adjustable-◄rate loan. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

[11. *Examples of variable-rate transactions.*] ►4. *General.* In general, v◄[V]ariable-rate transactions include:

[•]►i.◄ Renewable balloon-payment instruments ►with a fixed interest rate◄ where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. ►(However, a transaction secured by real property or a dwelling with a balloon payment and a fixed interest rate must be disclosed as a fixed-rate transaction under § 226.38(a)(3) whether or not the transaction is renewable.)◄ Disclosures must be based on the payment amortization (unless the specified term of the obligation with renewals is shorter) and on the rate in effect at the time of consummation of the transaction. (Examples of conditions within a consumer's control include requirements that a consumer be current in payments or continue to reside in the mortgaged property. In contrast, setting a limit on the rate at which the creditor would be obligated to renew or reserving the right to change the credit standards at the time of renewal are examples of conditions outside a consumer's control.) If, however, a creditor is not obligated to renew as described above, disclosures must be based on the term of the balloon-payment loan. Disclosures also must be based on the term of the balloon-payment loan in balloon-payment instruments in which the legal obligation provides that the loan will be renewed by a ''refinancing'' of the obligation, as that term is defined by § 226.20(a). If it cannot be determined from the legal obligation that the loan will be renewed by a ''refinancing,'' disclosures must be based either on the term of the balloon-payment loan or on the payment amortization, depending on whether the creditor is unconditionally obligated to renew the loan as described above. (This discussion does not apply to construction loans subject to § 226.17(c)(6).)

[• ''Shared-equity'' or ''shared-appreciation'' mortgages that have a fixed rate of interest and an appreciation share based on the consumer's equity in the mortgaged property, in a transaction not secured by real property or a dwelling. The appreciation share is payable in a lump sum at a specified time. Disclosures must be based on the fixed interest rate. (As discussed in the commentary to § 226.2, other types of shared-equity arrangements are not considered ''credit'' and are not subject to Regulation Z.)]

[•]►ii.◄ Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures are to be based on the preferred rate.

[• Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions. ''Shared-equity'' or ''shared-appreciation'' mortgages are not considered variable-rate transactions.]

[•]►iii.◄ ''Price level adjusted mortgages'' or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. Disclosures are to be based on the fixed interest rate.

►5. *Not variable- or adjustable-rate transactions.* Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable- or adjustable-rate transactions.◄

[12.]► 6.◄ *Graduated-payment adjustable-rate mortgage.* Graduated payment adjustable rate mortgages involve both [a variable]►an adjustable◄ interest rate and scheduled [variations]►adjustments◄ in payment amounts during the loan term. For example, under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In any case, the initial payment amount may be insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, the disclosures should treat these features as follows:

[•]►i.◄ The finance charge includes the amount of negative amortization based on the assumption that the rate in effect at consummation remains unchanged.

[•]►ii.◄ The amount financed does not include the amount of negative amortization.

[•]►iii.◄ As in any variable- ►or adjustable-◄ rate transaction, the annual percentage rate is based on the terms in effect at consummation.

[• The schedule of payments discloses the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the payment schedule in a transaction not secured by real property or a dwelling, or payment summary, in a transaction secured by real property or a dwelling may require several different levels of payments, even with the assumption that the original interest rate does not increase.]

[13.]►7.◄ *Growth-equity mortgages.* ►Growth-equity mortgages, a◄[A]lso referred to as payment-escalated mortgages, [these mortgage plans involve] scheduled payment increases to prematurely amortize the loan. The initial payment amount is determined as for a long-term loan with a fixed interest rate. Payment increases are scheduled periodically, based on changes in an index. The larger payments result in accelerated amortization of the loan. In disclosing these mortgage plans, creditors [may either—

• Estimate]►must estimate◄ the amount of payment increases, based on the best information reasonably available[, or

• Disclose by analogy to the variable-rate disclosures in section 226.18(f)(1)]. (This discussion does not apply to growth-equity mortgages in which the

amount of payment increases can be accurately determined at the time of disclosure. For these mortgages, [as for graduated-payment mortgages,] disclosures should reflect the scheduled increases in payments.)

[14. *Reverse mortgages.*]►*17(c)(1)(iv) Repayment upon occurrence of future event.*◄

►1. *General.*◄ Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, typically involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the loan (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. ►(However, a reverse mortgage is covered by § 226.33 only if the consumer's death is one of the conditions of repayment, as provided under § 226.33(a).)◄ In disclosing these transactions, creditors must apply the following rules, as applicable:

[•]►i.◄ If the reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as ''The disclosures assume that you will repay the loan at the time our payments to you end. As provided in your agreement, your repayment may be required at a different time.''

[•]►ii.◄ If the reverse mortgage has neither a specified period for disbursements nor a specified repayment date and these terms will be determined solely by reference to future events including the consumer's death, the creditor may assume that the disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occur►r◄ence of the event estimated to be most likely to occur first.)

[•]►iii.◄ In making the disclosures, the creditor must assume that all disbursements and accrued interest will be paid by the consumer. For example, if the note has a nonrecourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be disbursed will be repaid. In this case, however, the creditor may include a statement such as ''The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement.''

[•]►iv.◄ Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. [Such loans are considered variable-rate mortgages, as described in comment 17(c)(1)–11, and the appreciation feature must be disclosed in accordance with § 226.18(f)(1). If the reverse mortgage has a variable interest rate, is written for a term greater than one year, and is secured by the consumer's principal dwelling, the shared appreciation feature must be described under § 226.19(b)(2)(vii).]►If the reverse mortgage has an adjustable interest rate and is secured by real property or a dwelling, the creditor must disclose the shared-equity or shared-appreciation feature as required by §§ 226.19(b)(3)(iii) and 226.38(d)(2)(iii).◄

[15. *Morris Plan transactions.* When a deposit account is created for the sole purpose of accumulating payments and then is applied to satisfy entirely the consumer's obligation in the transaction, each deposit made into the account is considered the same as a payment on a loan for purposes of making disclosures.

16. *Number of transactions.* Creditors have flexibility in handling credit extensions that may be viewed as multiple transactions. For example:

- When a creditor finances the credit sale of a radio and a television on the same day, the creditor may disclose the sales as either 1 or 2 credit sale transactions.
- When a creditor finances a loan along with a credit sale of health insurance, the creditor may disclose in one of several ways: a single credit sale transaction, a single loan transaction, or a loan and a credit sale transaction.
- The separate financing of a downpayment in a credit sale transaction may, but need not, be disclosed as 2 transactions (a credit sale and a separate transaction for the financing of the downpayment).]

[17. *Special rules for tax refund anticipation loans.*]►*17(c)(1)(v) Tax refund-anticipation loan.*◄

►1. *General.*◄ Tax refund loans, also known as refund anticipation loans (RALs), are transactions in which a creditor will lend up to the amount of a consumer's expected tax refund. RAL agreements typically require repayment upon demand, but also may provide that repayment is required when the refund is made. The agreements also typically provide that if the amount of the refund is less than the payment due, the consumer must pay the difference. Repayment often is made by a preauthorized offset to a consumer's account held with the creditor when the refund has been deposited by electronic transfer. Creditors may charge fees for RALs in addition to fees for filing the consumer's tax return electronically. In RAL transactions subject to the regulation the following special rules apply:

[•]►i.◄ If, under the terms of the legal obligation, repayment of the loan is required when the refund is received by the consumer (such as by deposit into the consumer's account), the disclosures should be based on the creditor's estimate of the time the refund will be delivered even if the loan also contains a demand clause. The practice of a creditor to demand repayment upon delivery of refunds does not determine whether the legal obligation requires that repayment be made at that time; this determination must be made according to applicable State or other law. (See comment 17(c)(5)–1 for the rules regarding disclosures if the loan is payable solely on demand or is payable either on demand or on an alternate maturity date.)

[•]►ii.◄ If the consumer is required to repay more than the amount borrowed, the difference is a finance charge unless excluded under § 226.4. In addition, to the extent that any fees charged in connection with the loan (such as for filing the tax return electronically) exceed those fees for a comparable cash transaction (that is, filing the tax return electronically without a loan), the difference must be included in the finance charge.

[18.]►*17(c)(1)(vi)*◄ *Pawn transactions.*

►1. *General.*◄ When, in connection with an extension of credit, a consumer pledges or sells an item to a pawnbroker

creditor in return for a sum of money and retains the right to redeem the item for a greater sum (the redemption price) within a specified period of time, disclosures are required. In addition to other disclosure requirements that may be applicable under § 226.18, for purposes of pawn transactions:

i. The amount financed is the initial sum paid to the consumer. The pawnbroker creditor need not provide a separate itemization of the amount financed if that entire amount is paid directly to the consumer and the disclosed description of the amount financed is ''the amount of cash given directly to you'' or a similar phrase.

ii. The finance charge is the difference between the initial sum paid to the consumer and the redemption price plus any other finance charges paid in connection with the transaction. (See § 226.4.)

iii. The term of the transaction, for calculating the annual percentage rate, is the period of time agreed to by the pawnbroker creditor and the consumer. The term of the transaction does not include a grace period (including any statutory grace period) after the agreed redemption date.

Paragraph 17(c)(2)(i).

1. *Basis for estimates.* Disclosures may be estimated when the exact information is unknown at the time disclosures are made►, except that creditors may not provide estimated disclosures in disclosures required by § 226.19(a)(2)(ii) and (iii)◄. Information is unknown if it is not reasonably available to the creditor at the time the disclosures are made. The ''reasonably available'' standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. For example, the creditor must at a minimum utilize generally accepted calculation tools, but need not invest in the most sophisticated computer program to make a particular type of calculation. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, or to realtors for taxes and escrow fees. The creditor may utilize estimates in making disclosures even though the creditor knows that more precise information will be available by the point of consummation. However, new disclosures may be required under § 226.17(f) or § 226.19.

2. *Labelling estimates.* Estimates must be designated as such in the segregated disclosures►, except that creditors may not provide estimated disclosures in the disclosures required by § 226.19(a)(2)(ii) and (iii)◄. Even though other disclosures are based on the same assumption on which a specific estimated disclosure was based, the creditor has some flexibility in labelling the estimates. Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, when several disclosures are affected because of the unknown information, the creditor has the option of labelling either every affected disclosure or only the disclosure primarily affected. For example, when the finance charge is unknown because the date of consummation is unknown, the creditor must label the finance charge as an estimate and may also label as estimates the total of payments and the payment schedule. When many ►numerical◄ disclosures are estimates, the creditor may use a general statement, such as ''all numerical disclosures except the late payment disclosure are estimates,'' as a method to label those disclosures as estimates.

3. *Simple-interest transactions.* If consumers do not make timely payments in a simple-interest transaction, some of the amounts calculated for Truth in Lending disclosures will differ from amounts that consumers will actually pay over the term of the transaction. Creditors may label disclosures as estimates in these transactions[.]►except as otherwise provided by § 226.19(a)(2). (See the commentary on § 226.19(a)(2) for a discussion of circumstances where creditors may not disclose estimates for transactions secured by real property or a dwelling.)◄ For example, because the finance charge and total of payments may be larger than disclosed if consumers make late payments, creditors may label the finance charge and total of payments as estimates. On the other hand, creditors may choose not to label disclosures as estimates►. In all cases, creditors◄ [and] may base [all] disclosures on the assumption that payments will be made on time ►and in the amounts required by the terms of the legal obligation,◄ disregarding any possible [inaccuracies]►differences◄ resulting from consumers' payment patterns.

Paragraph 17(c)(2)(ii)

1. *Per diem interest.* This paragraph applies to any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures are not labeled as estimates. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by $200, the disclosed finance charge is considered accurate even though the understatement is not within the $100 tolerance of § 226.18(d)(1), and the finance charge was not labeled as an estimate. In this example, if in addition to the understatement related to the per-diem interest, a $90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of $290, the finance charge is considered accurate because the $90 fee is within the tolerance in § 226.18(d)(1).

Paragraph 17(c)(3)

1. *Minor variations.* Section 226.17(c)(3) allows creditors to disregard certain factors in calculating and making disclosures. For example:

[•]►i.◄ Creditors may ignore the effects of collecting payments in whole cents. Because payments cannot be collected in fractional cents, it is often difficult to amortize exactly an obligation with equal payments; the amount of the last payment may require adjustment to account for the rounding of the other payments to whole cents.

[•]►ii.◄ Creditors may base their disclosures on calculation tools that assume that all months have an equal number of days, even if their practice is to take account of the variations in months for purposes of collecting interest. For example, a creditor may use a calculation tool based on a 360-day year, when it in fact collects interest by applying a factor of 1/365 of the annual rate to 365 days. This rule does not, however, authorize creditors to ignore, for disclosure purposes, the effects of applying 1/360 of an annual rate to 365 days.

2. *Use of special rules.* A creditor may utilize the special rules in § 226.17(c)(3) for purposes of calculating and making all disclosures for a transaction or may, at its option, use the special rules for some disclosures and not others.

Paragraph 17(c)(4).

1. *Payment schedule irregularities.* When one or more payments in a transaction differ from the others because of a long or short first period, the variations may be ignored in disclosing the payment schedule,

finance charge, annual percentage rate, and other terms. For example:

[•]►i.◄ A 36-month auto loan might be consummated on June 8 with payments due on July 1 and the first of each succeeding month. The creditor may base its calculations on a payment schedule that assumes 36 equal intervals and 36 equal installment payments, even though a precise computation would produce slightly different amounts because of the shorter first period.

[•]►ii.◄ By contrast, in the same example, if the first payment were not scheduled until August 1, the irregular first period would exceed the limits in § 226.17(c)(4); the creditor could not use the special rule and could not ignore the extra days in the first period in calculating its disclosures.

2. *Measuring odd periods.* In determining whether a transaction may take advantage of the rule in § 226.17(c)(4), the creditor must measure the variation against a regular period. For purposes of that rule:

[•]►i.◄ The first period is the period from the date on which the finance charge begins to be earned to the date of the first payment.

[•]►ii.◄ The term is the period from the date on which the finance charge begins to be earned to the date of the final payment.

[•]►iii.◄ The regular period is the most common interval between payments in the transaction.

In transactions involving regular periods that are monthly, semimonthly or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of days or an assumed 30-day month. In other transactions, the length of the periods is based on the actual number of days.

3. *Use of special rules.* A creditor may utilize the special rules in § 226.17(c)(4) for purposes of calculating and making some disclosures but may elect not to do so for all of the disclosures. For example, the variations may be ignored in calculating and disclosing the annual percentage rate but taken into account in calculating and disclosing the finance charge and payment schedule.

4. *Relation to prepaid finance charges.* Prepaid finance charges, including ''odd-days'' or ''per-diem'' interest, paid prior to or at closing may not be treated as the first payment on a loan. Thus, creditors may not disregard an irregularity in disclosing such finance charges.

Paragraph 17(c)(5).

1. *Demand disclosures.* Disclosures for demand obligations are based on an assumed 1-year term, unless an alternate maturity date is stated in the legal obligation. Whether an alternate maturity date is stated in the legal obligation is determined by applicable law. An alternate maturity date is not inferred from an informal principal reduction agreement or a similar understanding between the parties. However, when the note itself specifies a principal reduction schedule (for example, ''payable on demand or $2,000 plus interest quarterly''), an alternate maturity is stated and the disclosures must reflect that date. ►See §§ 226.19(b)(2)(ii)(D) and 226.38(d)(2)(iv) and associated commentary to determine how to disclose a demand feature for a transaction secured by real property or a dwelling.◄

2. *Future event as maturity date.* An obligation whose maturity date is determined solely by a future event, as for example, a loan payable only on the sale of property, is not a demand obligation. Because no demand feature is contained in the obligation, demand disclosures under § 226.18(i) are inapplicable. The disclosures should be based on the creditor's estimate of the time at which the specified event will occur, and ►in a transaction not secured by real property or a dwelling◄ may indicate the basis for the creditor's estimate, as noted in the commentary to § 226.17(a).

3. *Demand after stated period.* Most demand transactions contain a demand feature that may be exercised at any point during the term, but [certain transactions]►a transaction may◄ convert to demand status only after a fixed period. [For example, in States prohibiting due-on-sale clauses, the Federal National Mortgage Association (FNMA) requires mortgages that it purchases to include a call option rider that may be exercised after 7 years. These mortgages are generally written as long-term obligations, but contain a demand feature that may be exercised only within a 30-day period at 7 years.] The disclosures for [these transactions]►a transaction that converts to demand status after a fixed period◄ should be based upon the legally agreed-upon maturity date. Thus, ►for example,◄ if a mortgage containing [the 7-year FNMA call option] ►a call option the creditor may exercise during the first 30 days of the eighth year after loan origination◄ is written as a 20-year obligation, the disclosures should be based on the 20-year term, with the demand feature disclosed under [§ 226.18(i)]► § 226.38(d)(2)(iv)◄.

4. *Balloon mortgages.* Balloon payment mortgages, with payments based on a long-term amortization schedule and a large final payment due after a shorter term, are not demand obligations unless a demand feature is specifically contained in the contract. For example, a mortgage with a term of 5 years and a payment [schedule]►summary◄ based on 20 years would not be treated as a mortgage with a demand feature, in the absence of any contractual demand provisions. [In this type of mortgage, disclosures should be based on the 5-year term.]►(See § 226.38(c)(3) for requirements for interest rate and payment summary disclosures for balloon payment mortgages.)◄

Paragraph 17(c)(6).

1. *Series of advances.* Section 226.17(c)(6)(i) deals with a series of advances under an agreement to extend credit up to a certain amount. A creditor may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If these advances are treated as 1 transaction and the timing and amounts of advances are unknown, creditors must make disclosures based on estimates, as provided in § 226.17(c)(2). If the advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided by consummation.

2. *Construction loans.* Section 226.17(c)(6)(ii) provides a flexible rule for disclosure of construction loans that may be permanently financed. These transactions have 2 distinct phases, similar to 2 separate transactions. The construction loan may be for initial construction or subsequent construction, such as rehabilitation or remodelling. The construction period usually involves several disbursements of funds at times and in amounts that are unknown at the beginning of that period, with the consumer paying only accrued interest until construction is completed. Unless the obligation is paid at that time, the loan then converts to permanent financing in which the loan amount is amortized just as in a standard mortgage transaction. Section 226.17(c)(6)(ii) permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for the 2 phases. This rule is available whether the consumer is initially obligated to accept construction financing only or is obligated to accept both construction and permanent financing from the outset. If the consumer is obligated on both phases and the creditor chooses to give 2 sets of disclosures, both sets must be given to the consumer initially, because both

transactions would be consummated at that time. (Appendix D provides a method of calculating the annual percentage rate and other disclosures for construction loans, which may be used, at the creditor's option, in disclosing construction financing.)

3. *Multiple-advance construction loans.* Section 226.17(c)(6)(i) and (ii) are not mutually exclusive. For example, in a transaction that finances the construction of a dwelling that may be permanently financed by the same creditor, the construction phase may consist of a series of advances under an agreement to extend credit up to a certain amount. In these cases, the creditor may disclose the construction phase as either 1 or more than 1 transaction and also disclose the permanent financing as a separate transaction.

4. *Residential mortgage transaction.* See the commentary to § 226.2(a)(24) for a discussion of the effect of § 226.17(c)(6) on the definition of a residential mortgage transaction.

5. *Allocation of points.* When a creditor utilizes the special rule in § 226.17(c)(6) to disclose credit extensions as multiple transactions, buyers points or similar amounts imposed on the consumer must be allocated for purposes of calculating disclosures. While such amounts should not be taken into account more than once in making calculations, they may be allocated between the transactions in any manner the creditor chooses. For example, if a construction-permanent loan is subject to 5 points imposed on the consumer and the creditor chooses to disclose the 2 phases separately, the 5 points may be allocated entirely to the construction loan, entirely to the permanent loan, or divided in any manner between the two. However, the entire 5 points may not be applied twice, that is, to both the construction and the permanent phases.

17(d) Multiple creditors; multiple consumers.

1. *Multiple creditors.* If a credit transaction involves more than one creditor:

[•] ►i.◄ The creditors must choose which of them will make the disclosures.

[•] ►ii.◄ A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

[•] ►iii.◄ All disclosures for the transaction must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure. For example, if one of the creditors is the seller, the total sale price disclosure under § 226.18(j) must be made, even though the disclosing creditor is not the seller.

2. *Multiple consumers.* When two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. If one consumer is merely a surety or guarantor, the disclosures must be given to the principal debtor. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.23, although the disclosures required under § 226.19(b) need only be provided to the consumer who expresses an interest in a variable-rate loan program.

17(e) Effect of subsequent events.

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after the disclosures are made. [For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate.] The creditor may, however, be required to make new disclosures under § 226.17(f) or § 226.19 if the events occurred between disclosure and consummation or under § 226.20 if the events occurred after consummation.► For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. However, the creditor would be required to provide the notice required under § 226.20(e).◄

17(f) Early disclosures.

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in this section, even if the [initial] ►prior◄ disclosures would be considered accurate under the tolerances in § 226.18(d) or ►§ ◄ 226.22(a). To illustrate:

i. [*General.*] ►*Non-mortgage loan.*◄ A. If disclosures are made in a regular transaction ►not secured by real property or a dwelling◄ on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction ►not secured by real property or a dwelling◄, if early disclosures are marked as estimates and the disclosed annual percentage rate is within ⅛ of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

[ii. *Nonmortgage loan.*] ►C.◄ If disclosures ►for a transaction not secured by real property or a dwelling◄ are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. (See § 226.18(d)(2) of this part.)

[iii.] ►ii.◄ *Mortgage loan.* At the time [TILA disclosures] ►the disclosures required by § 226.19(a)(2)(ii)◄ are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. [Assuming there were no other changes requiring redisclosure, t] ►T◄he creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

2. *Variable ►or adjustable◄ rate.* The addition of a variable ►or adjustable◄ rate feature to the credit terms, after early disclosures are given, requires new disclosures. ►(See § 226.19(a)(2) to determine when new disclosures are required for transactions secured by real property or a dwelling.◄

3. *Content of new disclosures.* ►Subject to § 226.19(a), i◄[I]f redisclosure is required ►in a transaction not secured by real property or a dwelling◄, the creditor has the option of either providing a complete set of new disclosures, or providing disclosures of only the terms that vary from those originally disclosed. ►If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a). If the creditor chooses to disclose only the new terms, all the new

terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the only differences involve estimates other than the annual percentage rate, and no variable rate feature has been added (see comment 17(f)-2). If a transaction is secured by real property or a dwelling, the creditor must provide a complete set of new disclosures in all cases, however.◄ (See the commentary to § 226.19(a)(2).)

4. *Special rules.* [In mortgage transactions subject to § 226.19, the creditor must redisclose if, between the delivery of the required early disclosures and consummation, the annual percentage rate changes by more than a stated tolerance.]►Special disclosure timing and content requirements apply under § 226.19(a)(2) to disclosures provided before consummation for mortgage transactions secured by real property or a dwelling.◄ When subsequent events occur after consummation, new disclosures are required only if there is a refinancing or an assumption within the meaning of § 226.20.

Paragraph 17(f)(2).

1. *Irregular transactions.* For purposes of this paragraph, a transaction is deemed to be ''irregular'' according to the definition in footnote 46 of § 226.22(a)(3).

17(g) Mail or telephone orders—delay in disclosures.

1. *Conditions for use.* When the creditor receives a mail or telephone request for credit►, except for extensions of credit covered by sections 226.19(a) and 226.19(b),◄ the creditor may delay making the disclosures until the first payment is due if the following conditions are met:

[•]►i.◄ The credit request is initiated without face-to-face or direct telephone solicitation. (Creditors may, however, use the special rule when credit requests are solicited by mail.)

[•]►ii.◄ The creditor has supplied the specified credit information about its credit terms either to the individual consumer or to the public generally. That information may be distributed through advertisements, catalogs, brochures, special mailers, or similar means.

2. *Insurance.* The location requirements for the insurance disclosures under § 226.18(n) permit them to appear apart from the other disclosures. Therefore, a creditor may mail an insurance authorization to the consumer and then prepare the other disclosures to reflect whether or not the authorization is completed by the consumer. Creditors may also disclose the insurance cost on a unit-cost basis, if the transaction meets the requirements of § 226.17(g).

17(h) Series of sales—delay in disclosures.

1. *Applicability.* The creditor may delay the disclosures for individual credit sales in a series of such sales until the first payment is due on the current sale, assuming the 2 conditions in this paragraph are met. If those conditions are not met, the general timing rules in [§ 266.17(b)] ►§ 226.17(b)◄ apply.

2. *Basis of disclosures.* Creditors structuring disclosures for a series of sales under § 226.17(h) may compute the total sale price as either:

[•]►i.◄ The cash price for the sale plus that portion of the finance charge and other charges applicable to that sale; or

[•]►ii.◄ The cash price for the sale, other charges applicable to the sale, and the total finance charge and outstanding principal.

17(i) Interim student credit extensions.

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. *See* § 226.3(f).) Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under § 226.18.

2. *Basis of disclosures.* The disclosures given at the time of execution of the interim note should reflect two annual percentage rates, one for the interim period and one for the repayment period. The use of § 226.17(i) in making disclosures does not, by itself, make those disclosures estimates. Any portion of the finance charge, such as statutory interest, that is attributable to the interim period and is paid by the student (either as a prepaid finance charge, periodically during the interim period, in one payment at the end of the interim period, or capitalized at the beginning of the repayment period) must be reflected in the interim annual percentage rate. Interest subsidies, such as payments made by either a State or the Federal government on an interim loan, must be excluded in computing the annual percentage rate on the interim obligation, when the consumer has no contingent liability for payment of those amounts. Any finance charges that are paid separately by the student at the outset or withheld from the proceeds of the loan are prepaid finance charges. An example of this type of charge is the loan guarantee fee. The sum of the prepaid finance charges is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge.

3. *Consolidation.* Consolidation of the interim student credit extensions through a renewal note with a set repayment schedule is treated as a new transaction with disclosures made as they would be for a refinancing. Any unearned portion of the finance charge must be reflected in the new finance charge and annual percentage rate, and is not added to the new amount financed. In itemizing the amount financed under § 226.18(c), the creditor may combine the principal balances remaining on the interim extensions at the time of consolidation and categorize them as the amount paid on the consumer's account.

4. *Approved student credit forms.* See the commentary to appendix H regarding disclosure forms approved for use in certain student credit programs.

§ *226.18—Content of Disclosures.*

1. *As applicable.* ►i.◄ The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example:

[•]►A.◄ In a loan transaction, the creditor may delete disclosure of the total sale price.

[•]►B.◄ In a credit sale requiring disclosure of the total sale price under § 226.18(j), the creditor may delete any reference to a downpayment where no downpayment is involved.

►ii.◄ Where the amounts of several numerical disclosures are the same, the ''as applicable'' language also permits creditors to combine the terms, so long as it is done in a clear and conspicuous manner. For example:

[•]►A.◄ In a transaction in which the amount financed equals the total of payments, the creditor may disclose ''amount financed/total of payments,''

together with descriptive language, followed by a single amount.

[•]►B.◄ However, if the terms are separated on the disclosure statement and separate space is provided for each amount, both disclosures must be completed, even though the same amount is entered in each space.

2. *Format.* See the commentary to § 226.17 and appendix H for a discussion of the format to be used in making these disclosures, as well as acceptable modifications.

18(a) Creditor.

1. *Identification of creditor.* The creditor making the disclosures must be identified. [This disclosure may, at the creditor's option, appear apart from the other disclosures.] Use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

18(b) Amount financed.

1. *Disclosure required.* The net amount of credit extended must be disclosed using the term amount financed and a descriptive explanation similar to the phrase in the regulation.

2. *Rebates and loan premiums.* In a loan transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, in a credit sale transaction, a seller's or manufacturer's rebate may be offered to prospective purchasers of the creditor's goods or services. ►Such premiums and rebates must be reflected in accordance with the terms of the legal obligation between the parties. *See* § 226.17(c)(1) and its commentary. Thus, if the creditor is legally obligated to provide the premium or rebate to the consumer as part of the credit transaction, the disclosures should reflect its value in the manner and at the time the creditor is obligated to provide it.◄ [At the creditor's option, these amounts may be either reflected in the Truth in Lending disclosures or disregarded in the disclosures. If the creditor chooses to reflect them in the § 226.18 disclosures, rather than disregard them, they may be taken into account in any manner as part of those disclosures.]

Paragraph 18(b)(1).

1. *Downpayments.* A downpayment is defined in § 226.2(a)(18) to include, at the creditor's option, certain deferred downpayments or pick-up payments. A deferred downpayment that meets the criteria set forth in the definition may be treated as part of the downpayment, at the creditor's option.

[•]►i.◄ Deferred downpayments that are not treated as part of the downpayment (either because they do not meet the definition or because the creditor simply chooses not to treat them as downpayments) are included in the amount financed.

[•]►ii.◄ Deferred downpayments that are treated as part of the downpayment are not part of the amount financed under § 226.18(b)(1).

Paragraph 18(b)(2).

1. *Adding other amounts.* Fees or other charges that are not part of the finance charge and that are financed rather than paid separately at consummation of the transaction are included in the amount financed. Typical examples are [real estate settlement charges and] premiums for voluntary credit life and disability insurance excluded from the finance charge under § 226.4. This paragraph does not include any amounts already accounted for under § 226.18(b)(1), such as taxes, tag and title fees, or the costs of accessories or service policies that the creditor includes in the cash price.

Paragraph 18(b)(3).

1. *Prepaid finance charges.* ►i.◄ Prepaid finance charges that are paid separately in cash or by check should be deducted under § 226.18(b)(3) in calculating the amount financed. To illustrate[• A]►, a◄ consumer applies for a loan of $2,500 with a $40 loan fee. The face amount of the note is $2,500 and the consumer pays the loan fee separately by cash or check at closing. The principal loan amount for purposes of § 226.18(b)(1) is $2,500 and $40 should be deducted under § 226.18(b(3), thereby yielding an amount financed of $2,460.

►ii.◄ In some instances, as when loan fees are financed by the creditor, finance charges are incorporated in the face amount of the note. Creditors have the option, when the charges are not add-on or discount charges, of determining a principal loan amount under § 226.18(b)(1) that either includes or does not include the amount of the finance charges. (Thus the principal loan amount may, but need not, be determined to equal the face amount of the note.) When the finance charges are included in the principal loan amount, they should be deducted as prepaid finance charges under § 226.18(b)(3). When the finance charges are not included in the principal loan amount, they should not be deducted under § 226.18(b)(3). The following examples illustrate the application of § 226.18(b) to this type of transaction. Each example assumes a loan request of $2,500 with a loan fee of $40; the creditor assesses the loan fee by increasing the face amount of the note to $2,540.

[•]►A.◄ If the creditor determines the principal loan amount under § 226.18(b)(1) to be $2,540, it has included the loan fee in the principal loan amount and should deduct $40 as a prepaid finance charge under § 226.18(b)(3), thereby obtaining an amount financed of $2,500.

[•]►B.◄ If the creditor determines the principal loan amount under § 226.18(b)(1) to be $2,500, it has not included the loan fee in the principal loan amount and should not deduct any amount under § 226.18(b)(3), thereby obtaining an amount financed of $2,500.

►iii.◄ The same rules apply when the creditor does not increase the face amount of the note by the amount of the charge but collects the charge by withholding it from the amount advanced to the consumer. To illustrate, the following examples assume a loan request of $2,500 with a loan fee of $40; the creditor prepares a note for $2,500 and advances $2,460 to the consumer.

[•]►A.◄ If the creditor determines the principal loan amount under § 226.18(b)(1) to be $2,500, it has included the loan fee in the principal loan amount and should deduct $40 as a prepaid finance charge under § 226.18(b)(3), thereby obtaining an amount financed of $2,460.

[•]►B.◄ If the creditor determines the principal loan amount under § 226.18(b)(1) to be $2,460, it has not included the loan fee in the principal loan amount and should not deduct any amount under § 226.18(b)(3), thereby obtaining an amount financed of $2,460.

►iv.◄ Thus in the examples where the creditor derives the net amount of credit by determining a principal loan amount that does not include the amount of the finance charge, no subtraction is appropriate. Creditors should note, however, that although the charges are not subtracted as prepaid finance charges in those examples, they are nonetheless finance charges and must be treated as such.

2. *Add-on or discount charges.* All finance charges must be deducted from the amount of credit in calculating the amount financed. If the principal loan amount reflects finance charges that meet the definition of a prepaid finance charge in § 226.2, those charges are included in the § 226.18(b)(1) amount and deducted under § 226.18(b)(3). However, if the principal loan amount includes finance charges that do not meet the definition of a prepaid finance charge, the § 226.18(b)(1) amount must exclude those finance charges. The following examples illustrate the application of § 226.18(b) to these types of transactions. Each example assumes a loan request of $1000 for 1 year, subject

to a 6 percent precomputed interest rate, with a $10 loan fee paid separately at consummation.

[•]►i.◄ The creditor assesses add-on interest of $60 which is added to the $1000 in loan proceeds for an obligation with a face amount of $1060. The principal for purposes of § 226.18(b)(1) is $1000, no amounts are added under § 226.18(b)(2), and the $10 loan fee is a prepaid finance charge to be deducted under § 226.18(b)(3). The amount financed is $990.

[•]►ii.◄ The creditor assesses discount interest of $60 and distributes $940 to the consumer, who is liable for an obligation with a face amount of $1000. The principal under § 226.18(b)(1) is $940, which results in an amount financed of $930, after deduction of the $10 prepaid finance charge under § 226.18(b)(3).

[•]►iii.◄ The creditor assesses $60 in discount interest by increasing the face amount of the obligation to $1060, with the consumer receiving $1000. The principal under § 226.18(b)(1) is thus $1000 and the amount financed $990, after deducting the $10 prepaid finance charge under § 226.18(b)(3).

18(c) Itemization of amount financed.

1. *Disclosure required.* ►i.◄ The creditor has 2 alternatives in complying with § 226.18(c):

[•]►A.◄ The creditor may inform the consumer, on the segregated disclosures, that a written itemization of the amount financed will be provided on request, furnishing the itemization only if the customer in fact requests it.

[•]►B.◄ The creditor may provide an itemization as a matter of course, without notifying the consumer of the right to receive it or waiting for a request.

►ii.◄ Whether given as a matter of course or only on request, the itemization must be provided at the same time as the other disclosures required by § 226.18, although separate from those disclosures.

2. *Additional information.* Section 226.18(c) establishes only a minimum standard for the material to be included in the itemization of the amount financed. Creditors have considerable flexibility in revising or supplementing the information listed in § 226.18(c) and shown in model form H–3, although no changes are required. The creditor may, for example, do one or more of the following:

i. Include amounts that reflect payments not part of the amount financed. For example, [escrow items and] certain insurance premiums may be included, ►even though they are neither part of the amount financed nor prepaid finance charges.◄ [as discussed in the commentary to § 226.18(g).]

ii. Organize the categories in any order. For example, the creditor may rearrange the terms in a mathematical progression that depicts the arithmetic relationship of the terms.

iii. Add categories. For example, in a credit sale, the creditor may include the cash price and the downpayment. If the credit sale involves a trade-in of the consumer's car and an existing lien on that car exceeds the value of the trade-in amount, the creditor may disclose the consumer's trade-in value, the creditor's payoff of the existing lien, and the resulting additional amount financed.

iv. Further itemize each category. For example, the amount paid directly to the consumer may be subdivided into the amount given by check and the amount credited to the consumer's savings account.

v. Label categories with different language from that shown in § 226.18(c). For example, an amount paid on the consumer's account may be revised to specifically identify the account as ''your auto loan with us.''

vi. Delete, leave blank, mark ''N/A,'' or otherwise ►note◄ [not] inapplicable categories in the itemization. For example, in a credit sale with no prepaid finance charges or amounts paid to others, the amount financed may consist of only the cash price less downpayment. In this case, the itemization may be composed of only a single category and all other categories may be eliminated.

3. *Amounts appropriate to more than one category.* When an amount may appropriately be placed in any of several categories and the creditor does not wish to revise the categories shown in § 226.18(c), the creditor has considerable flexibility in determining where to show the amount. For example[:] ►,◄ [•][I]►i◄ n a credit sale, the portion of the purchase price being financed by the creditor may be viewed as either an amount paid to the consumer or an amount paid on the consumer's account.

[4. *RESPA transactions.* The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. Transactions subject to RESPA are exempt from the requirements of § 226.18(c) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate and settlement statement under RESPA differ from the requirements of §§ 226.18(c) and 226.19(a)(2). If a creditor chooses to substitute RESPA's settlement statement for the itemization when redisclosure is required under § 226.19(a)(2), the statement must be delivered to the consumer at or prior to consummation. The disclosures required by §§ 226.18(c) and 226.19(a)(2) may appear on the same page or on the same document as the good faith estimate or the settlement statement, so long as the requirements of § 226.17(a) are met.]

Paragraph 18(c)(1)(i).

1. *Amounts paid to consumer.* This encompasses funds given to the consumer in the form of cash or a check, including joint proceeds checks, as well as funds placed in an asset account. It may include money in an interest-bearing account even if that amount is considered a required deposit under § 226.18(r). For example, in a transaction with total loan proceeds of $500, the consumer receives a check for $300 and $200 is required by the creditor to be put into an interest-bearing account. Whether or not the $200 is a required deposit, it is part of the amount financed. At the creditor's option, it may be broken out and labeled in the itemization of the amount financed.

Paragraph 18(c)(1)(ii).

1. *Amounts credited to consumer's account.* The term consumer's account refers to an account in the nature of a debt with that creditor. It may include, for example, an unpaid balance on a prior loan, a credit sale balance or other amounts owing to that creditor. It does not include asset accounts of the consumer such as savings or checking accounts.

Paragraph 18(c)(1)(iii).

1. *Amounts paid to others.* This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled ''insurance'' or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote 41, third parties must be identified by name.

2. *Charges added to amounts paid to others.* A sum is sometimes added to the amount of a fee charged to a consumer for a service provided by a third party (such as for an extended warranty or a

service contract) that is payable in the same amount in comparable cash and credit transactions. In the credit transaction, the amount is retained by the creditor. Given the flexibility permitted in meeting the requirements of the amount financed itemization (see the commentary to § 226.18(c)), the creditor in such cases may reflect that the creditor has retained a portion of the amount paid to others. For example, the creditor could add to the category ''amount paid to others'' language such as ''(we may be retaining a portion of this amount).''

Paragraph 18(c)(1)(iv).

1. *Prepaid finance charge.* Prepaid finance charges that are deducted under § 226.18(b)(3) must be disclosed under this section. The prepaid finance charges must be shown as a total amount but may, at the creditor's option, also be further itemized and described. All amounts must be reflected in this total, even if portions of the prepaid finance charge are also reflected elsewhere. For example, if at consummation the creditor collects interim interest of $30 and a credit report fee of $10, a total prepaid finance charge of $40 must be shown. At the creditor's option, the credit report fee paid to a third party may also be shown elsewhere as an amount included in § 226.18(c)(1)(iii). The creditor may also further describe the 2 components of the prepaid finance charge, although no itemization of this element is required by § 226.18(c)(1)(iv).

[2. *Prepaid mortgage insurance premiums.* RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement, which are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1002 on HUD–1 or HUD 1–A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.]

18(d) Finance charge.

1. *Disclosure required.* The creditor must disclose the finance charge as a dollar amount, using the term ''finance charge,'' and must include a brief description similar to that in § 226.18(d). The creditor may, but need not, further modify the descriptor for variable rate transactions with a phrase such as ''which is subject to change.'' The finance charge must be shown on the disclosures only as a total amount; the elements of the finance charge must not be itemized in the segregated disclosures, although the regulation does not prohibit their itemization elsewhere.

[2. [Reserved]]

[18(d)(2) Other Credit]

[1]►2◄. *Tolerance.* When a finance-charge error results in a misstatement of the amount financed, or some other dollar amount for which the regulation provides no specific tolerance, the misstated disclosure does not violate the act or the regulation if the finance-charge error is within the permissible tolerance in this paragraph.

18(e) Annual percentage rate.

1. *Disclosure required.* The creditor must disclose the cost of the credit as an annual rate, using the term ''annual percentage rate,'' plus a brief descriptive phrase comparable to that used in § 226.18(e). For variable rate transactions, the descriptor may be further modified with a phrase such as ''which is subject to change.'' Under § 226.17(a), the terms ''annual percentage rate'' and ''finance charge'' must be more conspicuous than the other required disclosures.

2. *Exception.* [Footnote 42]►Section 226.18(e)◄ provides an exception for certain transactions in which no annual percentage rate disclosure is required.

18(f) Variable rate.

1. *Coverage.* The requirements of § 226.18(f) apply to [all] transactions ►not secured by real property or a dwelling◄ in which the terms of the legal obligation allow the creditor to increase the rate [originally disclosed to the consumer. It includes]►charged when the transaction is consummated. Increases in rate include◄ not only increases in the interest rate but also increases in other components, such as the rate of required credit life insurance. [The provisions, however, do not apply to]►However, increases in rate do not include◄ increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral ►, because creditors may assume that consumers abide by the terms of the legal obligation. *See* comment 17(c)(1)–1.◄ [Section 226.18(f)(1) applies to variable-rate transactions that are not secured by the consumer's principal dwelling and to those that are secured by the principal dwelling but have a term of one year or less. Section 226.18(f)(2) applies to variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Moreover, transactions subject to section 226.18(f)(2) are subject to the special early-disclosure requirements of section 226.19(b). (However, ''shared-equity'' or ''shared-appreciation'' mortgages are subject to the disclosure requirements of section 226.18(f)(1) and not to the requirements of sections 226.18(f)(2) and 226.19(b) regardless of the general coverage of those sections.) Creditors are permitted under footnote 43 to substitute in any variable-rate transaction the disclosures required under Section 226.19(b) for those disclosures ordinarily required under Section 226.18(f)(1). Creditors who provide variable-rate disclosures under section 226.19(b) must comply with all of the requirements of that section, including the timing of disclosures, and must also provide the disclosures required under section 226.18(f)(2). Creditors utilizing footnote 43 may, but need not, also provide disclosures pursuant to section 226.20(c). (Substitution of disclosures under section 226.18(f)(1) in transactions subject to section 226.19(b) is not permitted under the footnote.)]

[*Paragraph 18(f)(1).*]

[1.]►2.◄ *Terms used in disclosure.* In describing the variable rate feature, the creditor need not use any prescribed terminology. For example, limitations and hypothetical examples may be described in terms of interest rates rather than annual percentage rates. The model forms in appendix H provide examples of ways in which the variable rate disclosures may be made.

[2.]►3.◄ *Conversion feature.* In variable-rate transactions with an option permitting consumers to convert to a fixed-rate transaction, the conversion option is a variable-rate feature that must be disclosed. In making disclosures under § 226.18(f)[(1)], creditors should disclose the fact that the rate may increase upon conversion; identify the index or formula used to set the fixed rate; and state any limitations on and effects of an increase resulting from conversion that differ from other variable-rate features. Because § 226.18(f)[(1)(iv)]►(4)◄ requires only one hypothetical example (such as an example of the effect on payments resulting from changes in the index), a second hypothetical example need not be given.

Paragraph 18(f)(1)[(i)].

1. *Circumstances.* The circumstances under which the rate may increase include identification of any index to which the rate is tied, as well as any conditions or events on which the increase is contingent.

i. When no specific index is used, any identifiable factors used to determine

whether to increase the rate must be disclosed.

ii. When the increase in the rate is purely discretionary, the fact that any increase is within the creditor's discretion must be disclosed.

iii. When the index is internally defined (for example, by that creditor's prime rate), the creditor may comply with this requirement by either a brief description of that index or a statement that any increase is in the discretion of the creditor. An externally defined index, however, must be identified.

Paragraph 18(f)[(1)(ii)]►(2)◄.

1. *Limitations.* This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. When there are no limitations, the creditor may, but need not, disclose that fact. Limitations do not include legal limits in the nature of usury or rate ceilings under State or Federal statutes or regulations. (See § 226.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.)

Paragraph 18(f)[(1)(iii)]►(3)◄.

1. *Effects.* Disclosure of the effect of an increase refers to an increase in the number or amount of payments or an increase in the final payment. In addition, the creditor may make a brief reference to negative amortization that may result from a rate increase. (See the commentary to § 226.17(a)(1) regarding directly related information.) If the effect cannot be determined, the creditor must provide a statement of the possible effects. For example, if the exercise of the variable-rate feature may result in either more or larger payments, both possibilities must be noted.

Paragraph 18(f)[(1)(iv)]►(4)◄.

1. *Hypothetical example.* The example may, at the creditor's option appear apart from the other disclosures. The creditor may provide either a standard example that illustrates the terms and conditions of that type of credit offered by that creditor or an example that directly reflects the terms and conditions of the particular transaction. In transactions with more than one variable-rate feature, only one hypothetical example need be provided. (See the commentary to § 226.17(a)(1) regarding disclosure of more than one hypothetical example as directly related information.)

2. *Hypothetical example not required.* The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

i. Demand obligations with no alternate maturity date.

ii. Interim student credit extensions.

iii. Multiple-advance construction loans disclosed pursuant to appendix D, Part I.

[*Paragraph 18(f)(2).*

1. *Disclosure required.* In variable-rate transactions that have a term greater than one year and are secured by the consumer's principal dwelling, the creditor must give special early disclosures under section 226.19(b) in addition to the later disclosures required under section 226.18(f)(2). The disclosures under section 226.18(f)(2) must state that the transaction has a variable-rate feature and that variable-rate disclosures have been provided earlier. (See the commentary to section 226.17(a)(1) regarding the disclosure of certain directly related information in addition to the variable-rate disclosures required under section 226.18(f)(2).)]

18(g) Payment schedule.

1. *Amounts included in repayment schedule.* The repayment schedule should reflect all components of the finance charge, not merely the portion attributable to interest. A prepaid finance charge, however, should not be shown in the repayment schedule as a separate payment. The payments may include amounts beyond the amount financed and finance charge. For example, the disclosed payments may, at the creditor's option, reflect certain insurance premiums where the premiums are not part of either the amount financed or the finance charge, as well as real estate escrow amounts such as taxes added to the payment in mortgage transactions.

2. *Deferred downpayments.* As discussed in the commentary to § 226.2(a)(18), deferred downpayments or pick-up payments that meet the conditions set forth in the definition of downpayment may be treated as part of the downpayment. Even if treated as a downpayment, that amount may nevertheless be disclosed as part of the payment schedule, at the creditor's option.

3. *Total number of payments.* ►Except for transactions secured by real property or a dwelling, i◄[I]n disclosing the number of payments for transactions with more than one payment level, creditors may but need not disclose as a single figure the total number of payments for all levels. For example, in a transaction calling for 108 payments of $350, 240 payments of $335, and 12 payments of $330, the creditors need not state that there will be a total of 360 payments. ►For transactions secured by real property or a dwelling, creditors must disclose as a single figure the total number of payments for all levels. See § 226.38(e)(5)(i).◄

4. *Timing of payments.* i. *General rule.* Section 226.18(g) requires creditors to disclose the timing of payments. To meet this requirement, creditors may list all of the payment due dates. They also have the option of specifying the ''period of payments'' scheduled to repay the obligation. As a general rule, creditors that choose this option must disclose the payment intervals or frequency, such as ''monthly'' or ''bi-weekly,'' and the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due ''monthly beginning on July 1, 1998.'' This information, when combined with the number of payments, is necessary to define the repayment period and enable a consumer to determine all of the payment due dates.

ii. *Exception.* In a limited number of circumstances, the beginning-payment date is unknown and difficult to determine at the time disclosures are made. For example, a consumer may become obligated on a credit contract that contemplates the delayed disbursement of funds based on a contingent event, such as the completion of home repairs. Disclosures may also accompany loan checks that are sent by mail, in which case the initial disbursement and repayment dates are solely within the consumer's control. In such cases, if the beginning-payment date is unknown the creditor may use an estimated date and label the disclosure as an estimate pursuant to § 226.17(c). Alternatively, the disclosure may refer to the occurrence of a particular event, for example, by disclosing that the beginning payment is due ''30 days after the first loan disbursement.'' This information also may be included with an estimated date to explain the basis for the creditor's estimate. See comment 17(a)(1)–5(iii).

5. *Mortgage insurance.* The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment schedule must reflect the legal obligation, as determined by applicable State or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, the payment schedule

should reflect 130 premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, the payment schedule should reflect 128 monthly premium payments. (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments [17(c)(1)–8 and 17(c)(1)–10]►17(c)(1)(iii)–1 and 17(c)(1)(iii)–3◄.)

[*Paragraph*]*18(h) Total of payments.*

1. *Disclosure required.* The total of payments must be disclosed using that term, along with a descriptive phrase similar to the one in the regulation. The descriptive explanation may be revised to reflect a variable rate feature with a brief phrase such as ''based on the current annual percentage rate which may change.''

2. *Calculation of total of payments.* The total of payments is the sum of the payments disclosed under § 226.18(g). For example, if the creditor disclosed a deferred portion of the downpayment as part of the payment schedule, that payment must be reflected in the total disclosed under this paragraph.

3. *Exception.* [Footnote 44]►Section 226.18(h)◄ permits creditors to omit disclosure of the total of payments in single-payment transactions. This exception does not apply to a transaction calling for a single payment of principal combined with periodic payments of interest.

4. *Demand obligations.* In demand obligations with no alternate maturity date, the creditor may omit disclosure of payment amounts under § 226.18(g)(1). In those transactions, the creditor need not disclose the total of payments.

[Paragraph] 18(i) Demand feature.

1. *Disclosure requirements.* The disclosure requirements of this provision apply not only to transactions payable on demand from the outset, but also to transactions that are not payable on demand at the time of consummation but convert to a demand status after a stated period. In demand obligations in which the disclosures are based on an assumed maturity of 1 year under § 226.17(c)(5), that fact must also be stated. Appendix H contains model clauses that may be used in making this disclosure.

2. *Covered demand features.* The type of demand feature triggering the disclosures required by section 226.18(i)►, or section 226.38(d)(2)(iv) for transactions secured by real property or a dwelling, ◄includes only those demand features contemplated by the parties as part of the legal obligation. For example, [this provision]►section 226.18(i), or section 226.38(d)(2)(iv) for transactions secured by real property or a dwelling,◄ do[es] not apply to transactions that convert to a demand status as a result of the consumer's default. A due-on-sale clause is not considered a demand feature. A creditor may, but need not, treat its contractual right to demand payment of a loan made to its executive officers as a demand feature to the extent that the contractual right is required by Regulation O (12 CFR 215.5) or other federal law.

3. *Relationship to payment schedule disclosures.* As provided in section 226.18(g)(1), ►or section 226.38(c) for transactions secured by real property or a dwelling,◄ in demand obligations with no alternate maturity date, the creditor need only disclose the due dates or payment periods of any scheduled interest payments for the first year. If the demand obligation states an alternate maturity, however, the disclosed payment schedule must reflect that stated term; the special rule in section 226.18(g)(1)►, or section 226.38(c) for transactions secured by real property or a dwelling,◄ is not available.

[Paragraph]18(j) Total sale price.

1. *Disclosure required.* In a credit sale transaction, the total sale price must be disclosed using that term, along with a descriptive explanation similar to the one in the regulation. For variable rate transactions, the descriptive phrase may, at the creditor's option, be modified to reflect the variable rate feature. For example, the descriptor may read: ''The total cost of your purchase on credit, which is subject to change, including your downpayment of * * *.'' The reference to a downpayment may be eliminated in transactions calling for no downpayment.

2. *Calculation of total sale price.* The figure to be disclosed is the sum of the cash price, other charges added under § 226.18(b)(2), and the finance charge disclosed under § 226.18(d).

3. *Effect of existing liens.* When a credit sale transaction involves property that is being used as a trade-in (an automobile, for example) and that has a lien exceeding the value of the trade-in, the total sale price is affected by the amount of any cash provided. (See comment 2(a)(18)–3.) To illustrate, assume a consumer finances the purchase of an automobile with a cash price of $20,000. Another vehicle used as a trade-in has a value of $8,000 but has an existing lien of $10,000, leaving a $2,000 deficit that the consumer must finance.

i. If the consumer pays $1,500 in cash, the creditor may apply the cash first to the lien, leaving a $500 deficit, and reflect a downpayment of $0. The total sale price would include the $20,000 cash price, an additional $500 financed under § 226.18(b)(2), and the amount of the finance charge. Alternatively, the creditor may reflect a downpayment of $1,500 and finance the $2,000 deficit. In that case, the total sale price would include the sum of the $20,000 cash price, the $2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

ii. If the consumer pays $3,000 in cash, the creditor may apply the cash first to extinguish the lien and reflect the remainder as a downpayment of $1,000. The total sale price would reflect the $20,000 cash price and the amount of the finance charge. (The cash payment extinguishes the trade-in deficit and no charges are added under § 226.18(b)(2).) Alternatively, the creditor may elect to reflect a downpayment of $3,000 and finance the $2,000 deficit. In that case, the total sale price would include the sum of the $20,000 cash price, the $2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

[Paragraph]18(k) Prepayment.

1. *Disclosure required.* The creditor must give a definitive statement of whether or not a penalty will be imposed or a rebate will be given.

[•]►iii.◄ The fact that no penalty will be imposed may not simply be inferred from the absence of a penalty disclosure; the creditor must indicate that prepayment will not result in a penalty.

[•]►ii.◄ If a penalty or refund is possible for one type of prepayment, even though not for all, a positive disclosure is required. This applies to any type of prepayment, whether voluntary or involuntary as in the case of prepayments resulting from acceleration.

[•]►iii.◄ Any difference in rebate or penalty policy, depending on whether prepayment is voluntary or not, must not be disclosed with the segregated disclosures.

2. *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H–15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

3. *Prepaid finance charge.* The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure under § 226.18(k). A prepaid finance charge is not considered a penalty under § 226.18(k)(1), nor does it require a disclosure under § 226.18(k)(2). At its option, however, a creditor may consider a prepaid finance charge to be under § 226.18(k)(2). If a disclosure is made under § 226.18(k)(2) with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower ''will not be entitled to a refund of the prepaid finance charge'' or some other term that describes the finance charge.

Paragraph 18(k)(1).

1. *Penalty.* [This]►Section 226.18(k)(1)◄ applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term *penalty* as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

[• Interest charges for any period after prepayment in full is made.]►i. Charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such ''balance.''◄ (See the commentary to § 226.17(a)(1) regarding disclosure of [interest]►such◄ charges assessed for periods after prepayment in full as directly related information►, for transactions not secured by real property or a dwelling◄.)

[•]►ii.◄ A minimum finance charge in a simple-interest transaction. (See the commentary to § 226.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.)

Items which are not penalties include, for example[:]►,◄

[• L]►l◄oan guarantee fees►.◄

[• Interim interest on a student loan.]

Paragraph 18(k)(2).

1. *Rebate of finance charge.* This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation. This category includes, for example:

[•]►i.◄ Precomputed finance charges such as add-on charges.

[•]►ii.◄ Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.

►2.◄ *Methodology of computing.* No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under this section.

[Paragraph]18(l) Late payment.

1. *Definition.* This paragraph requires a disclosure only if charges are added to individual delinquent installments by a creditor who otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

[•]►i.◄ The right of acceleration.

[•]►ii.◄ Fees imposed for actual collection costs, such as repossession charges or attorney's fees.

[•]►iii.◄ Deferral and extension charges.

[•]►iv.◄ The continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate is a late payment charge to the extent of the increase.

2. *Content of disclosure.* Many State laws authorize the calculation of late charges on the basis of either a percentage or a specified dollar amount, and permit imposition of the lesser or greater of the 2 charges. The disclosure made under § 226.18(l) may reflect this alternative. For example, stating that the charge in the event of a late payment is 5% of the late amount, not to exceed $5.00, is sufficient. Many creditors also permit a grace period during which no late charge will be assessed; this fact may be disclosed as directly related information. (See the commentary to § 226.17(a).)

[Paragraph]18(m) Security interest.

1. *Purchase money transactions.* When the collateral is the item purchased as part of, or with the proceeds of, the credit transaction, section 226.18(m) requires only a general identification such as ''the property purchased in this transaction.'' However, the creditor may identify the property by item or type instead of identifying it more generally with a phrase such as ''the property purchased in this transaction.'' For example, a creditor may identify collateral as ''a motor vehicle,'' or as ''the property purchased in this transaction.'' Any transaction in which the credit is being used to purchase the collateral is considered a purchase money transaction and the abbreviated identification may be used, whether the obligation is treated as a loan or a credit sale.

2. *Nonpurchase money transactions.* In nonpurchase money transactions, the property subject to the security interest must be identified by item or type. This disclosure is satisfied by a general disclosure of the category of property subject to the security interest, such as ''motor vehicles,'' ''securities,'' ''certain household items,'' or ''household goods.'' (Creditors should be aware, however, that the Federal credit practices rules, as well as some State laws, prohibit certain security interests in household goods.) At the creditor's option, however, a more precise identification of the property or goods may be provided.

3. *Mixed collateral.* In some transactions in which the credit is used to purchase the collateral, the creditor may also take other property of the consumer as security. In those cases, a combined disclosure must be provided, consisting of an identification of the purchase money collateral consistent with comment 18(m)–1 and a specific identification of the other collateral consistent with comment 18(m)–2.

4. *After-acquired property.* An after-acquired property clause is not a security interest to be disclosed under § 226.18(m).

5. *Spreader clause.* The fact that collateral for pre-existing credit with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) A specific identification of that collateral is unnecessary but a reminder of the interest arising from the prior indebtedness is required. The disclosure may be made by using language such as ''collateral securing other loans with us may also secure this loan.'' At the creditor's option, a more specific description of the property involved may be given.

6. *Terms used in disclosure.* No specified terminology is required in disclosing a security interest. Although the disclosure may, at the creditor's option, use the term security interest, the creditor may designate its interest by using, for example, pledge, lien, or mortgage.

7. *Collateral from third party.* In certain transactions, the consumer's obligation may be secured by collateral belonging to a third party. For example, a loan to a student may be secured by an interest in the property of the student's parents. In such cases, the security interest is taken in connection with the transaction and must be disclosed, even though the property encumbered is owned by someone other than the consumer.

18(n) Insurance►,◄ [and] debt cancellation►, and debt suspension◄.

1. *Location.* This disclosure may, at the creditor's option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by State law, or other supplementary material. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

2. *Debt cancellation ►and debt suspension◄.* Creditors may use the model credit-insurance disclosures only if the debt-cancellation ►or debt suspension◄ coverage constitutes insurance under State law. Otherwise, they may provide a parallel disclosure that refers to debt-cancellation ►or debt suspension◄ coverage.

[Paragraph]18(o) Certain security interest charges.

1. *Format.* No special format is required for these disclosures; under § 226.4(e), taxes and fees paid to government officials with respect to a security interest may be aggregated, or may be broken down by individual charge. For example, the disclosure could be labeled ''filing fees and taxes'' and all funds disbursed for such purposes may be aggregated in a single disclosure. This disclosure may appear, at the creditor's option, apart from the other required disclosures. The inclusion of this information on a statement required under the Real Estate Settlement Procedures Act is sufficient disclosure for purposes of Truth in Lending.

[Paragraph]18(p) Contract reference.

1. *Content.* Creditors may substitute, for the phrase ''appropriate contract document,'' a reference to specific transaction documents in which the additional information is found, such as ''promissory note'' or ''retail installment sale contract.'' A creditor may, at its option, delete inapplicable items in the contract reference, as for example when the contract documents contain no information regarding the right of acceleration.

[18(q) Assumption policy

1. *Policy statement.* In many mortgages, the creditor cannot determine, at the time disclosure must be made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors such as the creditworthiness of the subsequent borrower, the potential for impairment of the lender's security, and execution of an assumption agreement by the subsequent borrower. In cases where uncertainty exists as to the future assumability of a mortgage, the disclosure under § 226.18(q) should reflect that fact. In making disclosures in such cases, the creditor may use phrases such as ''subject to conditions,'' ''under certain circumstances,'' or ''depending on future conditions.'' The creditor may provide a brief reference to more specific criteria such as a due-on-sale clause, although a complete explanation of all conditions is not appropriate. For example, the disclosure may state, ''Someone buying your home may be allowed to assume the mortgage on its original terms, subject to certain conditions, such as payment of an assumption fee.'' See comment 17(a)(1)–5 for an example of a reference to a due-on-sale clause.

2. *Original terms.* The phrase *original terms* for purposes of § 226.18(q) does not preclude the imposition of an assumption fee, but a modification of the basic credit agreement, such as a change in the contract interest rate, represents different terms.]

[Paragraph]18(r) Required deposit.

1. *Disclosure required.* The creditor must inform the consumer of the existence of a required deposit. (Appendix H provides a model clause that may be used in making that disclosure.) [Footnote 45 describes three]►§ 226.18(r)(1) and (2) describe two◄ types of deposits that need not be considered required deposits. Use of the phrase ''need not'' permits creditors to include the disclosure even in cases where there is doubt as to whether the deposit constitutes a required deposit.

[2. *Pledged-account mortgages.* In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from that account to supplement the consumer's periodic payments. Creditors may treat these pledged accounts as required deposits or they may treat them as consumer buydowns in accordance with the commentary to section 226.17(c)(1).]

3. *Escrow accounts.* The escrow exception in [footnote 45]►§ 226.18(r)(1)◄ applies, for example, to accounts for such items as maintenance fees, repairs, or improvements, whether in a realty or a nonrealty transaction. (See the commentary to section 226.17(c)(1) regarding the use of escrow accounts in consumer buydown transactions.)

4. *Interest-bearing accounts.* When a deposit earns at least 5 percent interest per year, no disclosure is required under § 226.18(r). This exception applies whether the deposit is held by the creditor or by a third party.

5. *[Morris Plan transactions]►Deposits applied solely to pay obligation◄.* A deposit [under a Morris Plan, in which]►to◄ a deposit account [is] created for the sole purpose of accumulating payments and [this is] applied to satisfy entirely the consumer's obligation in the transaction[,] is not a required deposit.

[6.] *Examples of amounts excluded.* The following are among the types of deposits that need not be treated as required deposits:

[•]►i.◄ Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.

[•]►ii.◄ Required property insurance escrow on a mobile home transaction.

[•]►iii.◄ Refund of interest when the obligation is paid in full.

[•]►iv.◄ Deposits that are immediately available to the consumer.

[•]►v.◄ Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.

[•]►vi.◄ Escrow of condominium fees.

[•]►vii.◄ Escrow of loan proceeds to be released when the repairs are completed.

§ 226.19—Certain Mortgage and Variable-Rate Transactions.

►*19 Coverage.*

1. *General.* Section 226.19 applies to transactions secured by real property or a dwelling, other than home equity lines of credit subject to § 226.5b. Creditors must make the disclosures required by § 226.19 even if the transaction is not subject to the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2602 *et seq.,* and its implementing Regulation X, 24 CFR 3500.1 *et seq.,* administered by the Department of Housing and Urban Development (HUD). For example, disclosures are required for construction loans that are not covered by RESPA or Regulation X because they are not considered ''federally related mortgage loans.'' *See* 12 U.S.C. 2602(1); 15 CFR 3500.2(b). However, § 226.19 only applies to transactions that are offered or extended to a consumer primarily for personal, family, or household purposes, even if the transactions are secured by real property or a dwelling. TILA and Regulation Z do not apply to transactions that are primarily for business, commercial, or agricultural purposes. *See* 15 U.S.C. 1603(1); § 226.3(a)(2). *See also* § 226.2(a)(12) and (b)(2). Section 226.19(a)(4) contains special disclosure

timing requirements for mortgage transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)).◄

19(a)(1)(i) Time of disclosure.

[1. *Coverage.* This section requires early disclosure of credit terms in mortgage transactions that are secured by a consumer's dwelling (other than home equity lines of credit subject to § 226.5b or mortgage transactions secured by an interest in a timeshare plan) that are also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X, administered by the Department of Housing and Urban Development (HUD). To be covered by § 226.19, a transaction must be a Federally related mortgage loan under RESPA. ''Federally related mortgage loan'' is defined under RESPA (12 U.S.C. 2602) and Regulation X (24 CFR 3500.2), and is subject to any interpretations by HUD.]

[2.]►1.◄ *Timing and use of estimates.* The disclosures required by § 226.19(a)(1)(i) must be delivered or mailed not later than three business days after the creditor receives the consumer's written application. The general definition of ''business day'' in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for substantially all of its business functions—is used for purposes of § 226.19(a)(1)(i). *See* comment 2(a)(6)–1. This general definition is consistent with the definition of ''business day'' in HUD's Regulation X—a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. *See* 24 CFR 3500.2. Accordingly, the three-business-day period in § 226.19(a)(1)(i) for making early disclosures coincides with the time period within which creditors [subject to RESPA] must provide good faith estimates of settlement costs ►for transactions subject to RESPA◄. If the creditor does not know the precise credit terms, the creditor must base the disclosures ►required by § 226.19(a)(1)(i)◄ on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as ''all numerical disclosures [except the late-payment disclosure] are estimates'') instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1)[.]►and § 226.37. The disclosures required by § 226.19(a)(2) may not contain estimates, however, with limited exceptions. See the commentary on § 226.19(a)(2) for a discussion of limitations on estimates in disclosures made under that subsection.◄

[3.]►2.◄ *Written application.* Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a ''written application'' has been received. In general, Regulation X defines an ''application'' to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a [F]►f◄ederally related mortgage loan. *See 24* CFR 3500.2(b). ►Creditors may rely on RESPA and Regulation X even for a transaction not subject to RESPA.◄ An application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. (*See* [comment 19(b)–3]►the commentary on § 19(d)(3)◄ for guidance in determining whether or not the transaction involves an intermediary agent or broker.) If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

[4.]►3.◄ *Denied or withdrawn application.* The creditor may determine within the three-business-day period that the application will not or cannot be approved on the terms requested, as, for example, when a consumer applies for a type or amount of credit that the creditor does not offer, or the consumer's application cannot be approved for some other reason. In that case, or if the consumer withdraws the application within the three-business-day waiting period, the creditor need not make the disclosures under this section. If the creditor fails to provide early disclosures and the transaction is later consummated on the original terms, the creditor will be in violation of this provision. If, however, the consumer amends the application because of the creditor's unwillingness to approve it on its original terms, no violation occurs for not providing disclosures based on the original terms. But the amended application is a new application subject to § 226.19(a)(1)(i).

[5.]►4.◄ *Itemization of amount financed.* In many mortgage transactions ►subject to RESPA◄, the itemization of the amount financed required by [§ 226.18(c)]►§ 226.38(j)◄ will contain items, such as origination fees or points, that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Creditors furnishing the RESPA good faith estimates need not give consumers any itemization of the amount financed►, whether or not a transaction is subject to RESPA◄.

19(a)(1)(ii) Imposition of fees.

1. *Timing of fees.* The consumer must receive the disclosures required by this section before paying or incurring any fee imposed by a creditor or other person in connection with the consumer's application for a mortgage transaction that is subject to § 226.19(a)(1)(i), except as provided in § 226.19(a)(1)(iii). If the creditor delivers the disclosures to the consumer in person, a fee may be imposed anytime after delivery. If the creditor places the disclosures in the mail, the creditor may impose a fee after the consumer receives the disclosures or, in all cases, after midnight [on the third business day] following ► the third business day after◄ mailing of the disclosures. ►Creditors that use electronic mail or a courier to provide disclosures may also follow this approach. Whatever method is used to provide disclosures, creditors may rely on documentation of receipt in determining when a fee may be imposed.◄ For purposes of § 226.19(a)(1)(ii), the term ''business day'' means all calendar days except Sundays and legal public holidays referred to in § 226.2(a)(6). *See* [C]►c◄omment 2(a)(6)–2. For example, assuming that there are no intervening legal public holidays, a creditor that receives the consumer's written application on Monday and mails the early mortgage loan disclosure on Tuesday may impose a fee on the consumer [after midnight on Friday]►on Saturday◄.

19(a)(2) Waiting period(s) required

1. *Business day definition.* For purposes of § 226.19(a)(2), ''business day'' means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 2(a)(6)–2.

2. *Consummation after* [*both*]►*all* ◄ *waiting periods expire.* Consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period►(s)◄ have expired. For example, assume a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, and the creditor then delivers [corrected]►new◄ disclosures in person to the consumer on Wednesday, June 3. Although Saturday,

June 6 is the third business day after the consumer received the [corrected]►new◄ disclosures, consumment may not occur before Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

19(a)(2)(i) Seven-business-day waiting period.

1. *Timing.* The disclosures required by § 226.19(a)(1)(i) must be delivered or placed in the mail no later than the seventh business day before consummation. The seven-business-day waiting period begins when the creditor delivers the early disclosures or places them in the mail, not when the consumer receives or is deemed to have received the early disclosures. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

►*19(a)(2)(ii) Three-business-day waiting period.*

1. *New disclosures in all cases.* The creditor must provide new disclosures under § 226.38 so that the consumer receives them not later than the third business day before consummation, even if the new disclosures are identical to the early disclosures provided under § 226.19(a)(1)(i).

2. *Content of disclosures.* Disclosures made under § 226.19(a)(2)(ii) must contain each of the applicable disclosures required by § 226.38.

3. *Estimates.* Section 226.19(a)(2)(ii) provides that only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i), and 226.38(e)(5)(i) may be estimated disclosures. Because estimated amounts of escrowed taxes and insurance premiums and mortgage insurance premiums disclosed (as applicable) under §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), and 226.38(c)(6)(i) are components of the total periodic payments disclosure required by §§ 226.38(c)(3)(i)(D) and 226.38(c)(3)(ii)(D) and the total payments disclosure required by § 226.38(e)(5)(i), those disclosures are estimated disclosures. (A total payments disclosure is not required for loans with a negative amortization feature subject to § 226.38(c)(6).) Creditors may estimate components of the total periodic payments disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C) and 226.38(c)(6)(i) and the total payment disclosure required by § 226.38(e)(5)(i) only to the extent the estimated escrowed amounts and mortgage insurance premiums affect those disclosures.

4. *Timing.* The creditor must provide final disclosures so that the consumer receives them not later than the third business day before consummation. For example, for consummation to occur on Thursday, June 11, the consumer must receive the disclosures on or before Monday, June 8.◄

ALTERNATIVE 1—PARAGRAPH 19(a)(2)(iii)

►*19(a)(2)(iii) Corrected disclosures.*

1. *Conditions for corrected disclosures.* A disclosed annual percentage rate is accurate for purposes of § 226.19(a)(2)(iii) if the disclosure is accurate under § 226.19(a)(2)(iv). If a change occurs that does not render the annual percentage rate inaccurate, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).

2. *Content of corrected disclosures.* Disclosures made under § 226.19(a)(2)(iii) must contain each of the applicable disclosures required by § 226.38.

3. *Estimates.* In disclosures provided under § 226.19(a)(2)(iii), only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimates. *See* comment 19(a)(2)(ii)-3 for a discussion of which of the disclosures required under § 226.38 creditors may estimate.

4. *Timing.* The creditor must provide the corrected disclosures so that the consumer receives them not later than the third business day before consummation. For example, for consummation to occur on Saturday, June 13, the consumer must receive the disclosures on or before Wednesday, June 10.◄

[*19(a)(2)(ii) Three-business-day waiting period.*

1. *Conditions for redisclosure.* If, at the time of consummation, the annual percentage rate disclosed is accurate under § 226.22, the creditor does not have to make corrected disclosures under § 226.19(a)(2). If, on the other hand, the annual percentage rate disclosed is not accurate under § 226.22, the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them not later than the third business day before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%.

i. On Thursday, June 11, the annual percentage rate will be 7.10%. The creditor is not required to make corrected disclosures under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.15%. The creditor must make corrected disclosures so that the consumer receives them on or before Monday, June 8.

2. *Content of new disclosures.* If redisclosure is required, the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a). If the new creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the only inaccuracies involve estimates other than the annual percentage rate, and no variable-rate feature has been added. *See* § 226.17(f). For a discussion of the requirement to redisclose when a variable-rate feature is added, see comment 17(f)-2. For a discussion of rediscloure requirements in general, see the commentary on § 226.17(f).

3. *Timing.* When redisclosures are necessary because the annual percentage rate has become inaccurate, they must be received by the consumer no later than the third business day before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures before consummation. *See* § 226.17(f).) If the creditor delivers the corrected disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.19(a)(2)(ii) begins. Creditors that use electronic mail or a courier other than the postal service may also follow this approach.

4. *Basis for annual percentage rate comparison.* To determine whether a creditor must make corrected disclosures under § 226.22, a creditor compares (a) what the annual percentage rate will be at consummation to (b) the annual percentage rate stated in the most recent disclosures the creditor made to the consumer. For example, assume consummation for a regular mortgage transaction is scheduled for Thursday, June 11, the early disclosures provided in May stated an annual percentage rate of 7.00%, and corrected disclosures received by the consumer on Friday, June 5 stated an annual percentage rate of 7.15%:

1. On Thursday, June 11, the annual percentage rate will be 7.25%, which exceeds the most recently disclosed annual percentage rate by less than the applicable tolerance. The creditor is not required to make additional corrected disclosures or wait an additional three business days under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.30%, which exceeds the most recently disclosed annual percentage rate by more than the applicable tolerance. The creditor must make corrected disclosures such that the consumer receives them on or before Monday, June 8.]

ALTERNATIVE 2—PARAGRAPH 19(a)(2)(iii)

►*19(a)(2)(iii) Corrected disclosures.*

1. *Conditions for corrected disclosures.* If the annual percentage rate disclosed under § 226.19(a)(2)(ii) changes so that it is not accurate under § 226.19(a)(2)(iv) or an adjustable-rate feature is added (*see* comment 17(f)–2), the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them not later than the third business day before consummation. (If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).) For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%:◄

[*19(a)(2)(ii) Three-business-day waiting period.* 1. *Conditions for redisclosure.* If, at the time of consummation, the annual percentage rate disclosed is accurate under § 226.22, the creditor does not have to make corrected disclosures under § 226.19(a)(2). If, on the other hand, the annual percentage rate disclosed is not accurate under § 226.22, the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them no later than the third business day before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%:]

i. On Thursday, June 11, the annual percentage rate will be 7.10%. The creditor is not required to make corrected disclosures under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.15%. The creditor must make corrected disclosures so that the consumer receives them on or before Monday, June 8.

2. *Content of* [*new*]►*corrected*◄ *disclosures.* If rediscloure is required ►under § 226.19(a)(2)(iii)◄, the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a) ►and § 226.37◄. If the new creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce [a different finance charge, and often a new schedule of payments]►different interest and settlement charges, and often a new payment summary◄; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed ►or an adjustable-rate feature is added (*see* comment 17(f)–2)◄, the accurate terms must be disclosed. [However, no new disclosures are required if the only inaccuracies involve estimates other than the annual percentage rate, and no variable-rate feature has been added. For a discussion of the requirement to redisclose when a variable-rate feature is added, see comment 17(f)–2. For a discussion of rediscloure requirements in general, see the commentary on § 226.17(f).]

[3. *Timing.* When redisclosures are necessary because the annual percentage rate has become inaccurate, they must be received by the consumer no later than the third business day before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures before consummation. *See* § 226.17(f).) If the creditor delivers the corrected disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting periods required under § 226.19(a)(2)(ii) begins. Creditors that use electronic mail or a courier other than the postal service may also follow this approach.]

►3. *Estimates.* In disclosures provided under § 226.19(a)(2)(iii), only the disclosures required by §§ 226.38(c)(3)(i)(C), 226.38(c)(3)(ii)(C), 226.38(c)(6)(i) and 226.38(e)(5)(i) may be estimates. *See* comment 19(a)(2)(ii)–3 for a discussion of which of the disclosures required under § 226.38 creditors may estimate.◄

4. *Basis for annual percentage rate comparison.* To determine whether a creditor must make corrected disclosures under [§ 226.22]►§ 226.19(a)(2)(iii)◄, a creditor compares (a) what the annual percentage rate will be at consummation to (b) the annual percentage rate stated in the most recent disclosures the creditor made to the consumer. For example, assume consummation for a regular mortgage transaction is scheduled for Thursday, June 11, the early disclosures provided in May stated an annual percentage rate of 7.00%, and [corrected]►new◄ disclosures received by the consumer on Friday, June 5 stated an annual percentage rate of 7.15%:

i. On Thursday, June 11, the annual percentage rate will be 7.25%, which exceeds the most recently disclosed annual percentage rate by less than the applicable tolerance. The creditor is not required to make additional corrected disclosures or wait an additional three business days under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.30%, which exceeds the most recently disclosed annual percentage rate by more than the applicable tolerance. The creditor must make corrected disclosures such that the consumer receives them on or before Monday, June 8.

►*19(a)(2)(iv) Annual percentage rate accuracy.*

1. *Other changed terms.* If a change occurs that does not render the APR inaccurate under § 226.19(a)(iv), the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).

19(a)(2)(v) Timing.

1. *General.* If the creditor delivers the disclosures required by § 226.19(a)(2)(ii)

or (a)(2)(iii) to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the disclosures required by § 226.19(a)(2)(ii) or (a)(2)(iii) of this section by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting periods required under § 226.19(a)(2)(ii) and (iii) begin. Creditors that use electronic mail or a courier to provide disclosures may also follow this approach. Whatever method is used to provide disclosures, creditors may rely on documentation of receipt in determining when the three-business-day waiting period begins.◄

19(a)(3) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver.* A consumer may modify or waive the right to a waiting period required by § 226.19(a)(2) only after the creditor makes the disclosures required by [§ 226.18]►§ 226.38. A separate waiver is required for each waiting period to be waived.◄ The consumer must have a *bona fide* personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless the loan proceeds are made available to the consumer during the waiting period, is one example of a *bona fide* personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

[2. *Examples of waivers within the seven-business-day waiting period.* Assume the early disclosures are delivered to the consumer in person on Monday, June 1, and at that time the consumer executes a waiver of the seven-business-day waiting period (which would end on Tuesday, June 9) so that the loan can be consummated on Friday, June 5:

i. If the annual percentage rate on the early disclosures is inaccurate under § 226.22, the creditor must provide a corrected disclosure to the consumer before consummation, which triggers the three-business-day waiting period in § 226.19(a)(2)(ii). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 5.

ii. If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger the additional waiting period, and the transaction may be consummated on June 5 without the consumer giving the creditor an additional modification or waiver.]

[3. *Examples of waivers made after the seven-business-day waiting period.* Assume the early disclosures are delivered to the consumer in person on Monday, June 1 and consummation is scheduled for Friday, June 19.]►2. *Examples.* Assume consummation is scheduled for Friday, June 19, the disclosures required by § 226.19(a)(1)(i) are delivered to the consumer in person on Monday, June 1, and the consumer receives the disclosures required by § 226.19(a)(2)(ii) on Monday, June 15.◄ On Wednesday, June 17, a change in the annual percentage rate occurs:

i. If the annual percentage rate on the [early] disclosures ►required by § 226.19(a)(2)(ii)◄ is [inaccurate under § 226.22]►not accurate under § 226.22 nor accurate under § 226.19(a)(2)(iv)◄, the creditor must provide a corrected disclosure before consummation, which triggers the three-business-day-waiting period in § 226.19(a)(2)►(iii)◄. After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 19.

ii. If a change occurs that does not render the annual percentage rate on the [early] disclosures ►required by § 226.19(a)(2)(ii)◄ inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger an additional waiting period, and the transaction may be consummated on Friday, June 19 without the consumer giving the creditor an additional modification or waiver.

[*19(a)(4) Notice.*

1. *Inclusion in other disclosures.* The notice required by § 226.19(a)(4) must be grouped together with the disclosures required by § 226.19(a)(1)(i) or § 226.19(a)(2). See comment 17(a)(1)–2 for a discussion of the rules for segregating disclosures. In other cases, the notice set forth in § 226.19(a)(4) may be disclosed together with or separately from the disclosures required under § 226.18. *See* comment 17(a)(1)–5(xvi).]

19(a)[(5)]►(4)◄(ii) Time of disclosures for timeshare plans.

1. *Timing.* A mortgage transaction secured by a consumer's interest in a ''timeshare plan,'' as defined in 11 U.S.C. 101(53D), [that is also a Federally related mortgage loan under RESPA] is subject to the requirements of § 226.19(a)[(5)]►(4)◄ instead of the requirements of § 226.19(a)(1) through § 226.19(a)[(4)]►(3)◄. *See* comment 19(a)(1)(i)–1. Early disclosures for transactions subject to § 226.19(a)[(5)]►(4)◄ must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The general definition of ''business day'' in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for substantially all of its business functions—applies for purposes of § 226.19(a)(5)(ii). *See* comment 2(a)(6)–1. These timing requirements are different from the timing requirements under § 226.19(a)(1)(i). Timeshare transactions covered by § 226.19(a)[(5)] may be consummated any time after the disclosures required by § 226.19(a)[(5)]►(4)◄(ii) are provided.

2. *Use of estimates.* If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as ''all numerical disclosures [except the late-payment disclosure] are estimates'') instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1)[.]►and § 226.37. The disclosures required by § 226.19(a)(2) may not contain estimates, however, with limited exceptions. See the commentary on § 226.19(a)(2) for a discussion of limitations on estimates in disclosures made under that subsection.◄

3. *Written application.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–[3]►2◄ in determining whether a ''written application'' has been received.

4. *Denied or withdrawn applications.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–[4]►3◄ in determining that disclosures are not required by § 226.19(a)[(5)]►(4)◄(ii) because the consumer's application will not or cannot be approved on the terms

requested or the consumer has withdrawn the application.

5. *Itemization of amount financed.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–[5]►4◄ in determining whether providing the good faith estimates of settlement costs required by RESPA satisfies the requirement of § 226.18(c) to provide an itemization of the amount financed.

19(a)[*(5)*]►*(4)*◄*(iii) Redisclosure for timeshare plans.*

1. *Consummation or settlement.* For extensions of credit secured by a consumer's timeshare plan, when corrected disclosures are required, they must be given no later than ''consummation or settlement.'' ''Consummation'' is defined in § 226.2(a). ''Settlement'' is defined in Regulation X (24 CFR 3500.2(b)) and is subject to any interpretations issued by HUD. In some cases, a creditor may delay redisclosure until settlement, which may be at a time later than consummation. If a creditor chooses to redisclose at settlement, disclosures may be based on the terms in effect at settlement, rather than at consummation. For example, in a variable-rate transaction, a creditor may choose to base disclosures on the terms in effect at settlement, despite the general rule in comment [17(c)(1)–8]►§ 226.17(c)(1)(iii)◄ that variable-rate disclosures ►generally◄ should be based on the terms in effect at consummation.

2. *Content of new disclosures.* Creditors may rely on comment 19(a)(2)(ii)–2 in determining the content of corrected disclosures required under § 226.19(a)[(5)]►(4)◄(iii).

19(b) [Certain variable-rate transactions]►*Adjustable-rate mortgages*◄*.*

[1. *Coverage.* Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b). (Furthermore, ''shared-equity'' or ''shared-appreciation'' mortgages are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to § 226.17(c)(5). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).]

►1. *Coverage.* Section 226.19(b) applies to all closed-end adjustable-rate mortgages described in § 226.38(a)(i) that are secured by real property or a dwelling. Closed-end adjustable-rate transactions that are not secured by real property or a dwelling are subject to the disclosure requirements of § 226.18(f) rather than those of § 226.19(b). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or a single combined transaction. *See* comment 17(c)(6)–2. In any assumption of an adjustable-rate transaction secured by real property or a dwelling, disclosures need not be provided under § 226.19(b).◄

[2. *Timing.* A creditor must give the disclosures required under this section at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

i. *Intermediary agent or broker.* In cases where a creditor receives a written application through an intermediary agent or broker, however, footnote 45b provides a substitute timing rule requiring the creditor to deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. (See comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) This three-day rule also applies where the creditor takes an application over the telephone.

ii. *Telephone request.* In cases where the consumer requests an application form over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.

iii. *Mail solicitations.* In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under this section if an application form is included with the solicitation.

iv. *Conversion.*]►2. *Disclosure at the time of conversion.*◄ In cases where an open-end credit account will convert to a closed-end transaction subject to this section under a written agreement with the consumer, disclosures under this section [may be given at the time of conversion.]►must be given at or before the time of conversion.◄ (See the commentary to § 226.20(a) for information on the timing requirements for § 226.19(b)[(2)] disclosures when [a variable-rate]►an adjustable-rate◄ feature is later added to a transaction.)

[v. *Form of electronic disclosures provided on or with electronic applications.* Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

A. The disclosures could automatically appear on the screen when the application appears;

B. The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

C. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

D. The disclosures could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

Whatever method is used, a creditor need not confirm that the consumer has read the disclosures.

3. *Intermediary agent or broker.* In certain transactions involving an ''intermediary agent or broker,'' a creditor may delay providing

disclosures. A creditor may not delay providing disclosures in transactions involving either a legal agent (as determined by applicable law) or any other third party that is not an ''intermediary agent or broker.'' In determining whether or not a transaction involves an ''intermediary agent or broker'' the following factors should be considered:

• The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total loan applications submitted by the broker in any given period of time, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor during the next period.

• The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the broker. (This factor is applicable only if the creditor has such information.) The greater the percentage of total loan applications received by the broker that is submitted to a creditor in any given period of time, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor during the next period.

• The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications, taking into consideration the customary practice of brokers in a particular area. The more work that the creditor expects the broker to do on an application, in excess of what is usually expected of a broker in that area, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor. An example of an ''intermediary agent or broker'' is a broker who, customarily within a brief period of time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area).

4. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with the disclosure requirements of the variable-rate regulations of other Federal agencies are exempt from the requirements of § 226.19(b), by virtue of footnote 45a, and are exempt from the requirements of § 226.20(c), by virtue of footnote 45c. Those variable-rate regulations include the regulations issued by the Federal Home Loan Bank Board and those issued by the Department of Housing and Urban Development. The exception in footnotes 45a and 45c is also available to creditors that are required by State law to comply with the federal variable-rate regulations noted above and to creditors that are authorized by title VIII of the Depository Institutions Act of 1982 (12 U.S.C. 3801 et seq.) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

5. *Examples of variable-rate transactions.*

(i) The following transactions, if they have a term greater than one year and are secured by the consumer's principal dwelling, constitute variable-rate mortgages subject to the disclosure requirements of § 226.19(b).]

►3. *Non-adjustable-rate mortgages.* The following transactions, if they are secured by real property or a dwelling, do not constitute adjustable-rate mortgages subject to the disclosure requirements of § 226.19(b).◄

[(A)]►(i)◄ Renewable balloon-payment instruments [where]►that have a fixed rate of interest, even if◄ the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (See comment [17(c)(1)–11]►17(c)(1)(iii)–4◄ for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.)

[(B)]►(ii)◄ Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. [The disclosures under §§ 226.19(b)(1) and 226.19(b)(2)(v), (viii), (ix), and (xii) are not applicable to such loans.]

[(C)]►(iii)◄ ''Price-level-adjusted mortgages'' or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. [The disclosures under § 226.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest rate discounts: Section 226.19(b)(2)(i), (iii), (iv), (v), (vi), (vii), (viii), and (ix).] (See comments 20(c)-2 and 30–1 regarding the inapplicability of variable-rate adjustment notices and interest rate limitations to price-level-adjusted or similar mortgages.)

[(ii)]►(iv)◄ Graduated-payment mortgages and step-rate transactions without ►an adjustable-rate feature.◄[a variable-rate feature are not considered variable-rate transactions].

[*Paragraph 19(b)(1).*

1. *Substitute.* Creditors who wish to use publications other than the *Consumer Handbook on Adjustable Rate Mortgages* must make a good faith determination that their brochures are suitable substitutes to the *Consumer Handbook.* A substitute is suitable if it is, at a minimum, comparable to the *Consumer Handbook* in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the *Consumer Handbook.*

2. *Applicability.* The *Consumer Handbook* need not be given for variable-rate transactions subject to this section in which the underlying interest rate is fixed. (See comment 19(b)–5 for an example of a variable-rate transaction where the underlying interest rate is fixed.)]

[*Paragraph 19(b)(2).*

1.]►4. ◄ *Disclosure for each [variable]►adjustable◄-rate mortgage program.* A creditor must provide disclosures to the consumer that [fully] describe each of the creditor's [variable]►adjustable◄-rate mortgage programs in which the consumer expresses an interest. If a program is made available only to certain customers of an institution, a creditor need not provide disclosures for that program to other consumers who express a general interest in a creditor's ARM programs. [Disclosures must be given at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier. If program disclosures cannot be provided because a consumer expresses an interest in individually negotiating loan terms that are not generally offered, disclosures reflecting those terms may be provided as soon as reasonably possible after the terms have been decided upon, but not later than the time a non-refundable fee is paid. If a consumer who has received program disclosures subsequently expresses an interest in other available variable-rate

mortgage programs subject to 226.19(b)(2), or the creditor and consumer decide on a program for which the consumer has not received disclosures, the creditor must provide appropriate disclosures as soon as reasonably possible. The creditor, of course, is permitted to give the consumer information about additional programs subject to § 226.19(b) initially.]

[2. *Variable-rate loan program disclosure defined.*]►5. *Adjustable-rate mortgage loan program defined.* ◄ i. Generally, if the identification, the presence or absence, or the exact value of a loan feature must be disclosed under this section, [variable]►adjustable◄-rate mortgage loans that differ as to such features constitute separate loan programs. For example, separate loan programs would exist based on differences in any of the following loan features:

A. The index or other formula used to calculate interest rate adjustments.

B. The rules relating to changes in the index value, interest rate, ►and◄ payments[, and loan balance].

C. The presence or absence of, and the amount of, rate or payment caps.

D. The presence of a demand feature.

E. The possibility of negative amortization.

F. The possibility of interest rate carryover.

G. The frequency of interest rate and payment adjustments.

H. The presence of a discount ►or premium◄ feature.

I. [In addition, if a loan feature must be taken into account in preparing the disclosures required by § 226.19(b)(2)(viii), variable-rate mortgage loans that differ as to that feature constitute separate programs under § 226.19(b)(2).]►The presence of a prepayment penalty provision.

J. The possibility of making interest-only payments.

K. The presence of a balloon payment feature.

L. The presence of a shared-equity or shared-appreciation feature.

M. The possibility of providing less than full documentation of income or assets.

N. The presence of a demand feature.◄

ii. If, however, [a representative value may be given for a loan feature or the feature need not be disclosed under § 226.19(b)(2), variable-rate]►a feature is not required or permitted to be disclosed under § 226.19(b), adjustable-rate◄ mortgage loans that differ as to such features do not constitute separate loan programs. For example, separate programs would not exist based on differences in the following loan features:

A. The amount of a discount ►or premium◄.

B. The amount of a margin.

[3. *Form of program disclosures.* A creditor may provide separate program disclosure forms for each ARM loan program it offers or a single disclosure form that describes multiple programs. A disclosure form may consist of more than one page. For example, a creditor may attach a separate page containing the historical payment example for a particular program. A disclosure form describing more than one program need not repeat information applicable to each program that is described. For example, a form describing multiple programs may disclose the information applicable to all of the programs in one place with the various program features (such as options permitting conversion to a fixed rate) disclosed separately. The form, however, must state if any program feature that is described is available only in conjunction with certain other program features. Both the separate and multiple program disclosures may illustrate more than one loan maturity or payment amortization—for example, by including multiple payment and loan balance columns in the historical payment example. Disclosures may be inserted or printed in the *Consumer Handbook* (or a suitable substitute) as long as they are identified as the creditor's loan program disclosures.

4. *As applicable.* The disclosures required by this section need only be made as applicable. Any disclosure not relevant to a particular transaction may be eliminated. For example, if the transaction does not contain a demand feature, the disclosure required under § 226.19(b)(2)(x) need not be given. As used in this section, payment refers only to a payment based on the interest rate, loan balance and loan term, and does not refer to payment of other elements such as mortgage insurance premiums.]

►6. *Payment.* As used in this section, payment refers only to a payment based on the interest rate, loan balance and loan term, and does not refer to payment of other elements such as mortgage insurance premiums.◄

[5.]►7.◄ *Revisions.* A creditor must revise the disclosures required under this section [once a year] as soon as reasonably possible [after the new index value becomes available. Revisions to the disclosures also are required] when the loan program changes.

[*Paragraph 19(b)(2)(i).*

1. *Change in interest rate, payment, or term.* A creditor must disclose the fact that the terms of the legal obligation permit the creditor, after consummation of the transaction, to increase (or decrease) the interest rate, payment, or term of the loan initially disclosed to the consumer. For example, the disclosures for a variable-rate mortgage loan program in which the interest rate and payment (but not loan term) can change might read, ''Your interest rate and payment can change yearly.'' In transactions where the term of the loan may change due to rate fluctuations, the creditor must state that fact.

Paragraph 19(b)(2)(ii).

1. *Identification of index or formula.* If a creditor ties interest rate changes to a particular index, this fact must be disclosed, along with a source of information about the index. For example, if a creditor uses the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity as its index, the disclosure might read, ''Your index is the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year published weekly in the Wall Street Journal.'' If no particular index is used, the creditor must briefly describe the formula used to calculate interest rate changes.

2. *Changes at creditor's discretion.* If interest rate changes are at the creditor's discretion, this fact must be disclosed. If an index is internally defined, such as by a creditor's prime rate, the creditor should either briefly describe that index or state that interest rate changes are at the creditor's discretion.

Paragraph 19(b)(2)(iii).

1. *Determination of interest rate and payment.* This provision requires an explanation of how the creditor will determine the consumer's interest rate and payment. In cases where a creditor bases its interest rate on a specific index and adjusts the index through the addition of a margin, for example, the disclosure might read, ''Your interest rate is based on the index plus a margin, and your payment will be based on the interest rate, loan balance, and remaining loan term.'' In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor must disclose this fact. For example, the disclosure might read, ''Your periodic payments will not fully amortize your loan and you will be required to make a single payment of the periodic payment plus the remaining unpaid balance at the end of the loan term.'' The creditor, however, need not reflect any irregular final payment in the historical example or in the disclosure

of the initial and maximum rates and payments. If applicable, the creditor should also disclose that the rate and payment will be rounded.

Paragraph 19(b)(2)(iv).

1. *Current margin value and interest rate.* Because the disclosures can be prepared in advance, the interest rate and margin may be several months old when the disclosures are delivered. A statement, therefore, is required alerting consumers to the fact that they should inquire about the current margin value applied to the index and the current interest rate. For example, the disclosure might state, ''Ask us for our current interest rate and margin.'']

►*19(b)(1) Interest rate and payment disclosures*

1. *As applicable.* The disclosures required by § 226.19(b)(1) need only be made as applicable. Any disclosure not relevant to a particular loan program may be omitted.◄

[*Paragraph 19(b)(2)(v).*]►*Paragraph 19(b)(1)(i)*◄

1. *Discounted and premium interest rate.* In some [variable]►adjustable◄-rate mortgage loan transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. If the initial interest rate will be a discount or a premium rate, creditors must alert the consumer to this fact. For example, if a creditor discounted a consumer's initial rate, the disclosure might state, [''Your initial interest rate is not based on the index used to make later adjustments.'']►''The interest rate is discounted and will stay the same for a 5-year introductory period. After this initial period, the interest rate will increase, even if market rates do not change.''◄ (See the commentary to § 226.17(c)(1) for a further discussion of discounted and premium variable-rate transactions.) [In addition, the disclosure must suggest that consumers inquire about the amount that the program is currently discounted. For example, the disclosure might state, ''Ask us for the amount our adjustable rate mortgages are currently discounted.''] In a transaction with a consumer buydown or with a third-party buydown that will be incorporated in the legal obligation, the creditor should disclose the program as a discounted [variable]►adjustable◄-rate mortgage transaction, but need not disclose additional information regarding the buydown in its program disclosures. [(See the commentary to § 226.19(b)(2)(viii) for a discussion of how to reflect the discount or premium in the historical example or the maximum rate and payment disclosure).]

[*Paragraph 19(b)(2)(vi)*]►*Paragraph 19(b)(1)(ii)*◄.

1. *Frequency.* The frequency of interest rate and payment adjustments must be disclosed. If interest rate changes will be imposed more frequently or at different intervals than payment changes, a creditor must disclose the frequency and timing of both types of changes. For example, in [a variable]►an adjustable◄-rate mortgage transaction where interest rate changes are made monthly, but payment changes occur on an annual basis, this fact must be disclosed. In certain ARM transactions, the interval between loan closing and the initial adjustment is not known and may be different than the regular interval for adjustments. In such cases, the creditor may disclose the initial adjustment period as a range of the minimum and maximum amount of time from consummation or closing. For example, the creditor might state: ''The first adjustment to your interest rate and payment will occur no sooner than 6 months and no later than 18 months after closing. Subsequent adjustments may occur once each year after the first adjustment.'' [(See comments 19(b)(2)(viii)(A)–7 and 19(b)(2)(viii)(B)–4 for guidance on other disclosures when this alternative disclosure rule is used.)]

►*Paragraph 19(b)(1)(iii).*

1. *Identification of index or formula.* If a creditor ties interest rate changes to a particular index, this fact must be disclosed, along with a source of information about the index. If no particular index is used, the creditor must briefly describe the formula used to calculate interest rate changes. To describe the index used, the disclosure might state, for example:

i. ''Your interest rate will be based on the '1-year CMT' (Constant Maturity Treasury) index plus a margin we determine upon application. That index is published weekly in the *Wall Street Journal* and is available on the Web site of the Federal Reserve Board.''

ii. ''Your interest rate is based on the 1-year LIBOR Index plus a margin that is determined at application. This index is published daily in the *Wall Street Journal.''*

iii. ''The interest rate is based on the 11th District COFI Index (Cost of Funds Index for 11th District Federal Home Loan Bank (FHLB)) plus a margin determined upon application. The 11th District COFI Index is published monthly on the Web site of the San Francisco FHLB.''

2. *Changes at creditor's discretion.* If interest rate changes are at the creditor's discretion, this fact must be disclosed. If an index is internally defined, such as by a creditor's prime rate, the creditor should either briefly describe that index or state that interest rate changes are at the creditor's discretion.◄

[*Paragraph 19(b)(2)(vii)*]►*Paragraph 19(b)(1)(iv)*◄.

1. *Rate and payment caps.* The creditor must disclose limits on changes (increases or decreases) in the interest rate or payment. If an initial discount is not taken into account in applying overall or periodic rate limitations, that fact must be disclosed. If separate overall or periodic limitations apply to interest rate increases resulting from other events, such as [the exercise of a fixed-rate conversion option or] leaving the creditor's employ, those limitations must also be stated. ►If separate overall periodic limitations apply to interest rate increases resulting from the consumer's exercise of a fixed-rate conversion option, those limitations must be stated with the disclosures about the option required by § 226.19(b)(1)(v).◄ Limitations do not include legal limits in the nature of usury or rate ceilings under State or Federal statutes or regulations. (See § 226.30 for the rule requiring that a maximum interest rate be included in certain [variable]►adjustable◄-rate mortgage transactions.) The creditor need not disclose each periodic or overall rate limitation that is currently available. As an alternative, the creditor may disclose the range of the lowest and highest periodic and overall rate limitations that may be applicable to the creditor's ARM transactions. For example, the creditor might state: ►''Your interest rate can increase between 1 and 2 percentage points in any one year and between 4 and 7 percentage points over the life of the loan.◄[''The limitation on increases to your interest rate at each adjustment will be set at an amount in the following range: Between 1 and 2 percentage points at each adjustment. The limitation on increases to your interest rate over the term of the loan will be set at an amount in the following range: Between 4 and 7 percentage points above the initial interest rate.'' A creditor using this alternative rule must include a statement in its program disclosures suggesting that the consumer ask about the overall rate limitations currently offered for the creditor's ARM loan programs. (See comments 19(b)(2)(viii)(A)–6 and 19(b)(2)(viii)(B)–3 for an explanation of

the additional requirements for a creditor using this alternative rule for disclosure of periodic and overall rate limitations.)

2. *Negative amortization and interest rate carryover.* A creditor must disclose, where applicable, the possibility of negative amortization. For example, the disclosure might state, ''If any of your payments is not sufficient to cover the interest due, the difference will be added to your loan amount.'' Loans that provide for more than one way to trigger negative amortization are separate variable-rate mortgage programs requiring separate disclosures. (See the commentary to § 226.19(b)(2) for a discussion on the definition of a variable-rate mortgage loan program and the format for disclosure.) If a consumer is given the option to cap monthly payments that may result in negative amortization, the creditor must fully disclose the rules relating to the option, including the effects of exercising the option (such as negative amortization will occur and the principal loan balance will increase); however, the disclosure in § 226.19(b)(2)(viii) need not be provided.

3. *Conversion option.* If a loan program permits consumers to convert their variable-rate mortgage loans to fixed-rate loans, the creditor must disclose that the interest rate may increase if the consumer converts the loan to a fixed-rate loan. The creditor must also disclose the rules relating to the conversion feature, such as the period during which the loan may be converted, that fees may be charged at conversion, and how the fixed rate will be determined. The creditor should identify any index or other measure or formula used to determine the fixed rate and state any margin to be added. In disclosing the period during which the loan may be converted and the margin, the creditor may use information applicable to the conversion feature during the six months preceding preparation of the disclosures and state that the information is representative of conversion features recently offered by the creditor. The information may be used until the program disclosures are otherwise revised. Although the rules relating to the conversion option must be disclosed, the effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example or in the calculation of the initial and maximum interest rate and payments.

4. *Preferred-rate loans.* Section 226.19(b) applies to preferred-rate loans, where the rate will increase upon the occurrence of some event, such as an employee leaving the creditor's employ, whether or not the underlying rate is fixed or variable. In these transactions, the creditor must disclose the event that would allow the creditor to increase the rate such as that the rate may increase if the employee leaves the creditor's employ. The creditor must also disclose the rules relating to termination of the preferred rate, such as that fees may be charged when the rate is changed and how the new rate will be determined.

Paragraph 19(b)(2)(viii).

1. *Historical example and initial and maximum interest rates and payments.* A creditor may disclose both the historical example and the initial and maximum interest rates and payments.

Paragraph 19(b)(2)(viii)(A).

1. *Index movement.* This section requires a creditor to provide an historical example, based on a $10,000 loan amount originating in 1977, showing how interest rate changes implemented according to the terms of the loan program would have affected payments and the loan balance at the end of each year during a 15-year period. (In all cases, the creditor need only calculate the payments and loan balance for the term of the loan. For example, in a five-year loan, a creditor would show the payments and loan balance for the five-year term, from 1977 to 1981, with a zero loan balance reflected for 1981. For the remaining ten years, 1982–1991, the creditor need only show the remaining index values, margin and interest rate and must continue to reflect all significant loan program terms such as rate limitations affecting them.) Pursuant to this section, the creditor must provide a history of index values for the preceding 15 years. Initially, the disclosures would give the index values from 1977 to the present. Each year thereafter, the revised program disclosures should include an additional year's index value until 15 years of values are shown. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values are available in giving a history and payment example. In all cases, only one index value per year need be shown. Thus, in transactions where interest rate adjustments are implemented more frequently than once per year, a creditor may assume that the interest rate and payment resulting from the index value chosen will stay in effect for the entire year for purposes of calculating the loan balance as of the end of the year and for reflecting other loan program terms. In cases where interest rate changes are at the creditor's discretion (see the commentary to § 226.19(b)(2)(ii)), the creditor must provide a history of the rates imposed for the preceding 15 years, beginning with the rates in 1977. In giving this history, the creditor need only go back as far as the creditor's rates can reasonably be determined.

2. *Selection of index values.* The historical example must reflect the method by which index values are determined under the program. If a creditor uses an average of index values or any other index formula, the history given should reflect those values. The creditor should select one date or, when an average of single values is used as an index, one period and should base the example on index values measured as of that same date or period for each year shown in the history. A date or period at any time during the year may be selected, but the same date or period must be used for each year in the historical example. For example, a creditor could use values for the first business day in July or for the first week ending in July for each of the 15 years shown in the example.

3. *Selection of margin.* For purposes of the disclosure required under § 226.19(b)(2)(viii)(A), a creditor may select a representative margin that has been used during the six months preceding preparation of the disclosures, and should disclose that the margin is one that the creditor has used recently. The margin selected may be used until a creditor revises the disclosure form.

4. *Amount of discount or premium.* For purposes of the disclosure required under § 226.19(b)(2)(viii)(A), a creditor may select a discount or premium (amount and term) that has been used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the historical example for as long as the discount or premium is in effect. A creditor may assume that a discount that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example. For example, a 3-month discount may be treated as being in effect for the entire first year of the example; a 15-month discount may be treated as being in effect for the first two years of the example. In illustrating the effect of the discount or premium, creditors should adjust the value of the interest rate in the historical example, and should not adjust the margin or index values. For example, if during the six months preceding preparation of the disclosures the fully indexed rate would have been 10% but the first year's rate under the program was 8%, the creditor would discount the first interest rate in the

historical example by 2 percentage points.

5. *Term of the loan.* In calculating the payments and loan balances in the historical example, a creditor need not base the disclosures on each term to maturity or payment amortization that it offers. Instead, disclosures for ARMs may be based upon terms to maturity or payment amortizations of 5, 15 and 30 years, as follows: ARMs with terms or amortizations from over 1 year to 10 years may be based on a 5-year term or amortization; ARMs with terms or amortizations from over 10 years to 20 years may be based on a 15-year term or amortization; and ARMs with terms or amortizations over 20 years may be based on a 30-year term or amortization. Thus, disclosures for ARMs offered with any term from over 1 year to 40 years may be based solely on terms of 5, 15 and 30 years. Of course, a creditor may always base the disclosures on the actual terms or amortizations offered. If the creditor bases the disclosures on 5-, 15- or 30-year terms or payment amortization as provided above, the term or payment amortization used in making the disclosure must be stated.

6. *Rate caps.* A creditor using the alternative rule described in comment 19(b)(2)(vii)–1 for disclosure of rate limitations must base the historical example upon the highest periodic and overall rate limitations disclosed under section 226.19(b)(2)(vii). In addition, the creditor must state the limitations used in the historical example. (See comment 19(b)(2)(viii)(B)–3 for an explanation of the use of the highest rate limitation in other disclosures.)

7. *Frequency of adjustments.* In certain transactions, creditors may use the alternative rule described in comment 19(b)(2)(vi)–1 for disclosure of the frequency of rate and payment adjustments. In such cases, the creditor may assume for purposes of the historical example that the first adjustment occurred at the end of the first full year in which the adjustment could occur. For example, in an ARM in which the first adjustment may occur between 6 and 18 months after closing and annually thereafter, the creditor may assume that the first adjustment occurred at the end of the first year in the historical example. (See comment 19(b)(2)(viii)(B)–4 for an explanation of how to compute the maximum interest rate and payment when the initial adjustment period is not known.)

Paragraph 19(b)(2)(viii)(B).

1. *Initial and maximum interest rates and payments.* The disclosure form must state the initial and maximum interest rates and payments for a $10,000 loan originated at an initial interest rate (index value plus margin adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure. (See comment 19(b)(2)–5 on revisions to the loan program disclosure.) In calculating the maximum payment under this paragraph, a creditor should assume that the interest rate increases as rapidly as possible under the loan program, and the maximum payment disclosed should reflect the amortization of the loan during this period. Thus, in a loan with 2 percentage point annual (and 5 percentage point overall) interest rate limitations or ''caps,'' the maximum interest rate would be 5 percentage points higher than the initial interest rate disclosed. Moreover, the loan would not reach the maximum interest rate until the fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed would reflect the amortization of the loan during this period. If the loan program includes a discounted or premium initial interest rate, the initial interest rate should be adjusted by the amount of the discount or premium.

2. *Term of the loan.* In calculating the initial and maximum payments, the creditor need not base the disclosures on each term to maturity or payment amortization offered under the program. Instead, the creditor may follow the rules set out in comment 19(b)(2)(viii)(A)–5. If a historical example is provided under § 226.19(b)(2)(viii)(A), the terms to maturity or payment amortization used in the historical example must be used in calculating the initial and maximum payment. In addition, creditors must state the term or payment amortization used in making the disclosures under this section.

3. *Rate caps.* A creditor using the alternative rule for disclosure of interest rate limitations described in comment 19(b)(2)(vii)–1 must calculate the maximum interest rate and payment based upon the highest periodic and overall rate limitations disclosed under § 226.19(b)(2)(vii). In addition, the creditor must state the rate limitations used in calculating the maximum interest rate and payment. (See comment 19(b)(2)(viii)(A)–6 for an explanation of the use of the highest rate limitation in other disclosures.)

4. *Frequency of adjustments.* In certain transactions, a creditor may use the alternative rule for disclosure of the frequency of rate and payment adjustments described in comment 19(b)(2)(vi)–1. In such cases, the creditor must base the calculations of the initial and maximum rates and payments upon the earliest possible first adjustment disclosed under § 226.19(b)(2)(vi). (See comment 19(b)(2)(viii)(A)–7 for an explanation of how to disclose the historical example when the initial adjustment period is not known.)

5. *Periodic payment statement.* The statement that the periodic payment may increase or decrease substantially may be satisfied by the disclosure in paragraph 19(b)(2)(vi) if it states for example, ''your monthly payment can increase or decrease substantially based on annual changes in the interest rate.''

Paragraph 19(b)(2)(ix).

1. *Calculation of payments.* A creditor is required to include a statement on the disclosure form that explains how a consumer may calculate his or her actual monthly payments for a loan amount other than $10,000. The example should be based upon the most recent payment shown in the historical example or upon the initial interest rate reflected in the maximum rate and payment disclosure. In transactions in which the latest payment shown in the historical example is not for the latest year of index values shown (such as in a five-year loan), a creditor may provide additional examples based on the initial and maximum payments disclosed under § 226.19(b)(2)(viii)(B). The creditor, however, is not required to calculate the consumer's payments. (See the model clauses in appendix H–4(C).)

Paragraph 19(b)(2)(x).

1. *Demand feature.* If a variable-rate mortgage loan subject to § 226.19(b) requirements contains a demand feature as discussed in the commentary to § 226.18(i), this fact must be disclosed. (Pursuant to § 226.18(i), creditors would also disclose the demand feature in the standard disclosures given later.)

Paragraph 19(b)(2)(xi).

1. *Adjustment notices.* A creditor must disclose to the consumer the type of information that will be contained in subsequent notices of adjustments and when such notices will be provided. (See the commentary to § 226.20(c) regarding notices of adjustments.) For example, the disclosure might state, ''You will be notified at least 25, but no more than 120, days before the due date of a payment at a new level. This notice will contain information about the index and interest rates, payment amount, and loan balance.'' In transactions where there may be interest rate adjustments without accompanying payment adjustments in a year, the disclosure might read, ''You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain

information about the index and interest rates, payment amount, and loan balance.''

Paragraph 19(b)(2)(xii).

1. *Multiple loan programs.* A creditor that offers multiple variable-rate mortgage loan programs is required to have disclosures for each variable-rate mortgage loan program subject to § 226.19(b)(2). Unless disclosures for all of its variable-rate programs are provided initially, the creditor must inform the consumer that other closed-end variable-rate programs exist, and that disclosure forms are available for these additional loan programs. For example, the disclosure form might state, ''Information on other adjustable rate mortgage programs is available upon request.'']

►*19(b)(2) Key questions about risk.*

19(b)(2)(i) Required disclosures.

1. *Disclosure of first rate or payment increase.* The requirement under § 226.19(b)(2)(i)(A) and (B) to disclose when the first interest rate or payment increase may occur refers to the time period in which the increase may occur, not the exact calendar date. For example, the disclosure may state, ''Your interest rate may increase at the end of the 3-year introductory period.''

19(b)(2)(i)(C) Prepayment penalty as risk factor.

1. *Coverage.* See comment 38(a)(5)–1 to determine whether there is a prepayment penalty.

2. *Penalty.* See comment 38(a)(5)–2 for examples of charges that are prepayment penalties.

3. *Not penalty.* See comment 38(a)(5)–3 for examples of charges that are not prepayment penalties.

19(b)(2)(ii) Additional disclosures.

1. *As applicable.* The disclosures required by § 226.19(b)(2)(ii) need only be made as applicable. Any disclosure not relevant to a particular loan program may be omitted.

19(b)(2)(ii)(C) Balloon payment.

1. *Coverage.* The creditor must make the disclosure required by § 226.19(b)(ii)(B) if the loan program includes a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

2. *Time period.* The requirement to disclose when the balloon payment is due refers to the time period when it is due, not the exact calendar date. For example, the disclosure may state, ''You would owe a balloon payment due in seven years.''

19(b)(2)(ii)(D) Demand feature.

1. *Disclosure requirements.* The disclosure requirements of § 226.19(b)(2)(ii)(D) apply not only to transactions payable on demand from the outset, but also to transactions that convert to a demand status after a stated period.

2. *Covered demand features.* See comment 18(i)–2 for examples of covered demand features.

19(c) Conversion to closed-end credit.

1. *Disclosure at the time of conversion.* In cases where an open-end credit account will convert to a closed-end transaction under a written agreement with the consumer, disclosures are not required under § 226.19(c). By contrast, disclosures are required in such cases under § 226.19(b). *See* comment 19(b)–2.

19(d) Timing of disclosures.

19(d)(1) General timing.

1. *Oral application.* Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether they have made a written record of a consumer's oral application, even for a transaction not subject to RESPA. In general, Regulation X defines ''application'' to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan and states that an application may either be in writing or electronically submitted, including a written record of an oral application. *See* 24 CFR 3500.2(b).◄

[*19(c)*]►*19(d)(2)*◄ *Electronic disclosures.*

►*Paragraph 19(d)(2)(i).*◄

[1. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:]

[i.]►1. *Electronic disclosures required.*◄ If a consumer accesses [an ARM]►a◄ loan application electronically (other than as described under [ii. below]►§ 226.19(d)(ii)◄), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, this requirement would not be met.

►2. *Timing of electronic disclosures provided on or with electronic applications.* Creditors have flexibility in satisfying the requirement under § 226.19(d) (subject to § 226.19(d)(1)(ii)) to provide disclosures required by § 226.19(b) and (c) in electronic form if a consumer accesses an application electronically. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

i. The disclosures could automatically appear on the screen when the application appears;

ii. The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

iii. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

iv. The disclosures could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.◄

►*Paragraph 19(d)(2)(ii)*◄

[ii. In contrast, if]►1. *Electronic disclosures optional.* If◄ a consumer is physically present in the creditor's office, and accesses an ARM loan application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

►*Paragraph 19(d)(3)*

1. *Telephone request.* Where a creditor takes a written application by telephone, the creditor must deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. In cases where the consumer only requests an application over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.

2. *Mail solicitations.* In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under § 226.19(b) and (c) if an application form is included with the solicitation.

3. *Intermediary agent or broker.* i. Where a creditor receives a written application through an intermediary agent or broker the creditor must deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application.

However, a creditor must provide disclosures at the time an application form is provided or the consumer pays a non-refundable fee, whichever is earlier, in a transaction that involves a legal agent, as determined under applicable law, or any other third party that is not an ''intermediary agent or broker.'' In determining whether or not a transaction involves an ''intermediary agent or broker'' the creditor should consider the following factors:

A. The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total loan applications submitted by the broker in any given period of time, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor during the next period.

B. The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the broker. (This factor is applicable only if the creditor has such information.) The greater the percentage of total loan applications received by the broker that is submitted to a creditor in any given period of time, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor during the next period.

C. The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications, taking into consideration the customary practice of brokers in a particular area. The more work that the creditor expects the broker to do on an application, in excess of what is usually expected of a broker in that area, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor.

ii. An example of an ''intermediary agent or broker'' is a broker who, customarily within a brief period of time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area).◀

§ 226.20—Subsequent Disclosure Requirements.

20(a) Refinancings.

1. *Definition.* A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

i. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

ii. A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions.* A transaction is subject to § 226.20(a) only if it meets the general definition of a refinancing. Section 226.20(a) (1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate.* i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

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

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists.

iii. If either of the events in paragraph 20(a)3.ii.A. or ii.B. occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 226.19(b) also must be given at that time.

4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage.* Section 226.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A ''refinancing'' by any other person is a new transaction under the regulation, not a refinancing under this section.

Paragraph 20(a)(1).

1. *Renewal.* This exception applies both to obligations with a single payment of principal and interest and to obligations with periodic payments of interest and a final payment of principal. In determining whether a new obligation replacing an old one is a renewal of the original terms or a refinancing, the creditor may consider it a renewal even if:

i. Accrued unpaid interest is added to the principal balance.

ii. Changes are made in the terms of renewal resulting from the factors listed in § 226.17(c)(3).

iii. The principal at renewal is reduced by a curtailment of the obligation.

Paragraph 20(a)(2).

1. *Annual percentage rate reduction.* A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

2. *Corresponding change.* A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the

payment amount or the number of payments of an obligation. The exception in § 226.20(a)(2) does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

Paragraph 20(a)(3).

1. *Court agreements.* This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to § 226.2(a)(14) for a discussion of court-approved agreements that are not considered ''credit.'')

Paragraph 20(a)(4).

1. *Workout agreements.* A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.

Paragraph 20(a)(5).

1. *Insurance renewal.* The renewal of optional insurance added to an existing credit transaction is not a refinancing, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.

20(b) Assumptions.

1. *General definition.* An assumption as defined in § 226.20(b) is a new transaction and new disclosures must be made to the subsequent consumer. An assumption under the regulation requires the following three elements:

i. [A residential mortgage transaction.]►A closed-end credit transaction secured by real property or a dwelling.◄

ii. An express acceptance of the subsequent consumer by the creditor.

iii. A written agreement.

The assumption of a nonexempt consumer credit obligation requires no disclosures unless all three elements are present. For example, an automobile dealer need not provide Truth in Lending disclosures to a customer who assumes an existing obligation secured by an automobile. However, [a residential mortgage transaction]►closed-end credit transaction secured by real property or a dwelling◄ with the elements described in § 226.20(b) is an assumption that calls for new disclosures; the disclosures must be given whether or not the assumption is accompanied by changes in the terms of the obligation. [(See comment 2(a)(24)–5 for a discussion of assumptions that are not considered residential mortgage transactions.)]

[2. *Existing residential mortgage transaction.* A transaction may be a residential mortgage transaction as to one consumer and not to the other consumer. In that case, the creditor must look to the assuming consumer in determining whether a residential mortgage transaction exists. To illustrate:

i. The original consumer obtained a mortgage to purchase a home for vacation purposes. The loan was not a residential mortgage transaction as to that consumer. The mortgage is assumed by a consumer who will use the home as a principal dwelling. As to that consumer, the loan is a residential mortgage transaction. For purposes of § 226.20(b), the assumed loan is an ''existing residential mortgage transaction'' requiring disclosures, if the other criteria for an assumption are met.]

[3.]►2.◄ *Express agreement.* Expressly agrees means that the creditor's agreement must relate specifically to the new debtor and must unequivocally accept that debtor as a primary obligor. The following events are not construed to be express agreements between the creditor and the subsequent consumer:

i. Approval of creditworthiness.

ii. Notification of a change in records.

iii. Mailing of a coupon book to the subsequent consumer.

iv. Acceptance of payments from the new consumer.

[4.]►3.◄ *Retention of original consumer.* The retention of the original consumer as an obligor in some capacity does not prevent the change from being an assumption, provided the new consumer becomes a primary obligor. But the mere addition of a guarantor to an obligation for which the original consumer remains primarily liable does not give rise to an assumption. However, if neither party is designated as the primary obligor but the creditor accepts payment from the subsequent consumer, an assumption exists for purposes of § 226.20(b).

[5.]►4.◄ *Status of parties.* Section 226.20(b) applies only if the previous debtor was a consumer and the obligation is assumed by another consumer. It does not apply, for example, when an individual takes over the obligation of a corporation.

[6.]►5.◄ *Disclosures.* For transactions that are assumptions within this provision, the creditor must make disclosures based on the ''remaining obligation.'' For example:

i. The amount financed is the remaining principal balance plus any arrearages or other accrued charges from the original transaction.

ii. If the finance charge is computed from time to time by application of a percentage rate to an unpaid balance, in determining the amount of the finance charge and the annual percentage rate to be disclosed, the creditor should disregard any prepaid finance charges paid by the original obligor, but must include in the finance charge any prepaid finance charge imposed in connection with the assumption.

iii. If the creditor requires the assuming consumer to pay any charges as a condition of the assumption, those sums are prepaid finance charges as to that consumer, unless exempt from the finance charge under § 226.4. If a transaction involves add-on or discount finance charges, the creditor may make abbreviated disclosures, as outlined in section 226.20(b)(1) through (5). [Creditors providing disclosures pursuant to this section for assumptions of variable-rate transactions secured by the consumer's principal dwelling with a term longer than one year need not provide new disclosures under sections 226.18(f)(2)(ii) or. In such transactions, a creditor may disclose the variable-rate feature solely in accordance with section 226.18(f)(1).

7. *Abbreviated disclosures.* The abbreviated disclosures permitted for assumptions of transactions involving add-on or discount finance charges must be made clearly and conspicuously in writing in a form that the consumer may keep. However, the creditor need not comply with the segregation requirement of § 226.17(a)(1). The terms *annual percentage rate* and *total of payments,* when disclosed according to § 226.20(b)(4) and (5), are not subject to the description requirements of § 226.18 (e) and (h). The term *annual percentage rate* disclosed under § 226.20(b)(4) need not be more conspicuous than other disclosures.

Paragraph 20(c) Variable-rate adjustments]►20(c) Rate adjustments.◄

1. [*Timing of adjustment notices*]►*General*◄. This section requires a creditor (or a subsequent holder) to provide certain disclosures in cases where an adjustment to the interest rate is made in an [variable-rate] ►adjustable-rate◄ mortgage transaction subject to § 226.19(b). [There are two timing rules, depending on whether payment changes accompany interest rate changes. A creditor is required to provide at least one notice each year during which interest-rate adjustments have occurred without accompanying payment adjustments. For payment adjustments, a creditor must deliver or place in the mail notices to borrowers at least 25, but not more than 120, calendar days before a payment at a new level is due. The timing rules also apply to the notice

required to be given in connection with the adjustment to the rate and payment that follows conversion of a transaction subject to § 226.19(b) to a fixed-rate transaction.]►This section also requires that notice be given where a transaction subject to § 226.19(b) is converted to a fixed-rate transaction.◄ (In cases where an open-end account is converted to a closed-end transaction subject to § 226.19(b), the requirements of this section do not apply until adjustments are made following conversion.)

2. [*Exceptions.*]►*Not applicable.*◄ Section 226.20(c) does not apply to [''shared-equity,'' ''shared-appreciation,'' or] ''price level adjusted'' or similar mortgages►, because such mortgages are not adjustable-rate mortgages subject to the disclosure requirements of § 226.19(b). *See* comment 19(b)–3◄.

3. *Basis of disclosures.* The disclosures required under this section shall reflect the terms of the parties' legal obligation, as required under § 226.17(c)(1).

►*20(c)(1) Timing of disclosures.*

1. *When required.* Payment changes due to changes in property tax obligations or mortgage-related insurance premiums do not trigger the requirement to make disclosures under § 226.20(c)(1)(i).◄

[*Paragraph 20(c)(1)*]►*Paragraph 20(c)(2)(ii)*◄.

1. *Current and* [*prior*]►*new*◄ *interest rates.* The requirements under this paragraph are satisfied by disclosing the interest rate used to compute the new adjusted payment amount [(''current rate'')]►(''new rate'')◄ and the adjusted interest rate that was disclosed in the last adjustment notice[, as well as all other interest rates applied to the transaction in the period since the last notice (''prior rates'')]►(''current rate'')◄. (If there has been no prior adjustment notice, the [prior rates are]►current rate is◄ the interest rate applicable to the transaction at consummation►.)◄[, as well as all other interest rates applied to the transaction in the period since consummation.) If no payment adjustment has been made in a year, the current rate is the new adjusted interest rate for the transaction, and the prior rates are the adjusted interest rate applicable to the loan at the time of the last adjustment notice, and all other rates applied to the transaction in the period between the current and last adjustment notices. In disclosing all other rates applied to the transaction during the period between notices, a creditor may disclose a range of the highest and lowest rates applied during that period.]

[*Paragraph 20(c)(2).*

1. *Current and prior index values.* This section requires disclosure of the index or formula values used to compute the current and prior interest rates disclosed in § 226.20(c)(1). The creditor need not disclose the margin used in computing the rates. If the prior interest rate was not based on an index or formula value, the creditor also need not disclose the value of the index that would otherwise have been used to compute the prior interest rate.]

[*Paragraph 20(c)(3)*]►*Paragraph 20(c)(2)(iv)*◄.

1. *Unapplied index increases.* The requirement that the consumer receive information about the extent to which the creditor has foregone any increase in the interest rate ►and the earliest date a creditor may apply foregone interest to future adjustments, subject to rate caps,◄ is applicable only to those transactions permitting interest rate carryover. The amount of increase that is foregone at an adjustment is the amount that, subject to rate caps, can be applied to future adjustments independently to increase, or offset decreases in, the rate that is determined according to the index or formula.

[*Paragraph 20(c)(4).*

1. *Contractual effects of the adjustment.* The contractual effects of an interest rate adjustment must be disclosed including the payment due after the adjustment is made whether or not the payment has been adjusted. A contractual effect of a rate adjustment would include, for example, disclosure of any change in the term or maturity of the loan if the change resulted from the rate adjustment. In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the amount of the adjusted payment must be disclosed if such payment has changed as a result of the rate adjustment. A statement of the loan balance also is required. The balance required to be disclosed is the balance on which the new adjusted payment is based. If no payment adjustment is disclosed in the notice, the balance disclosed should be the loan balance on which the payment disclosed under § 226.20(c)(5) is based, if applicable, or the balance at the time the disclosure is prepared.]

Paragraph 20(c)(5)]►*Paragraph 20(c)(2)(vi)*◄.

1. *Fully-amortizing payment.* This paragraph requires a disclosure ►of the fully amortizing payment◄ only when negative amortization occurs as a result of the adjustment. A disclosure is not required simply because a loan calls for non-amortizing or partially amortizing payments. For example, in a transaction with a five-year term and payments based on a longer amortization schedule, and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor would not have to disclose the payment necessary to fully amortize the loan in the remainder of the five-year term. A disclosure is required, however, if the ►new◄ payment disclosed under [§ 226.20(c)(4)] ►§ 226.20(c)(2)(ii)(C)◄ is not sufficient to prevent negative amortization in the loan. The adjustment notice must state the payment required to prevent negative amortization. (This paragraph does not apply if the payment disclosed in [§ 226.20(c)(4)] ►§ 226.20(c)(2)(ii)(C)◄ is sufficient to prevent negative amortization in the loan but the final payment will be a different amount due to rounding.)

►2. *Effect on loan term.* The creditor must disclose any change in the term or maturity of the loan if the change resulted from the rate adjustment. The creditor need not make that disclosure if the loan term or maturity has not changed.

20(c)(2)(vii) Loan balance in payment change notice.

1. *Basis of disclosure.* A statement of the loan balance must be disclosed. The balance required to be disclosed is the balance on which the new adjusted payment is based.

Paragraph 20(c)(3)(iii).

1. *Unapplied index increases.* Creditors may rely on comment 20(c)(2)(iv)–1 in determining which transactions the requirement to disclose foregone interest increases applies to and how to disclose such increases. Although creditors must disclose the earliest date the creditor may apply foregone interest to future adjustments under § 226.20(c)(2)(iv), creditors need not disclose this information in the disclosures required by § 226.20(c)(3)(iv), which are made when interest rate changes do not cause payment changes during a year.

Paragraph 20(c)(3)(v).

1. *Basis of disclosure.* A statement of the loan balance must be disclosed. The balance required to be disclosed is the balance on the last day of the period for which the creditor discloses the highest and lowest interest rates.

20(d) Periodic statement.

20(d)(1) Timing and content of disclosures.

1. *Timing and content.* Creditors must provide payment summary tables under § 226.20(d) starting with the first period after consummation, even if the initial

payments required do not negatively amortize the loan. However, payment summary tables need contain only those disclosures that apply to payment options actually available to a consumer. For example, if a consumer has been making the minimum required payments but must begin making fully amortizing payments because the creditor has recast the loan, the payment summary table need not disclose payments other than the fully amortizing payment.

2. *Assumptions.* Creditors may base all disclosures on the assumption that payments will be made on time and in the amounts required by the terms of the legal obligation, disregarding any possible inaccuracies resulting from consumers' payment patterns. *See* comment 17(c)(1)–1 and comment 17(c)(2)(i)–3. Creditors may not assume that consumers make payments greater than the minimum payment required by the legal obligation. That is, creditors may not base disclosures for loans with a payment option that results in negative amortization on the fully amortizing, interest-only, or other payment unless that payment is the amount the consumer is required to pay under the terms of the legal obligation.

20(d)(1)(i) Payment.

1. *Payment type.* Creditors may rely on comment 38(c)(5)–1 to determine whether a payment is a regular periodic payment or a balloon payment.

20(d)(1)(ii) Effects.

1. *Legal obligation.* The disclosures required by § 226.20(d) must reflect the terms of the legal obligation. For example, the disclosures may not state that making fully amortizing payments on an interest-only loan will reduce a consumer's loan balance if the creditor will not apply payments that exceed the interest-only payment to principal.

20(e) Creditor-placed property insurance.

1. *Notice period timing and charges.* The notice period begins on the day that the creditor mails or delivers the notice to the consumer and expires 45 days later. The creditor may begin to charge the consumer for creditor-placed property insurance on the 46th calendar day after sending the notice if the creditor has fulfilled the requirements of section 226.20(e)(1)–(3). For example, a creditor that mails the required notice on January 2, 2011, may begin to charge the consumer for the cost of the creditor-placed property insurance on February 18, 2011. After expiration of the 45-day notice period, a creditor may retroactively charge a consumer for the cost of any required property insurance obtained during the 45-day notice period if such charge is not prohibited by applicable State or other law.◄

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§ 226.24—Advertising.

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24(c) Advertisement of rate of finance charge.

* * * * *

4. *Discounted variable-rate transactions.* The advertised annual percentage rate for discounted variable-rate transactions must be determined in accordance with comment [17(c)(1)–10] ►17(c)(1)(iii)–3◄ regarding the basis of transactional disclosures for such financing.

* * * * *

ii. Limits or caps on periodic rate or payment adjustments need not be stated. To illustrate using the second example in comment [17(c)(1)–10] ►17(c)(1)(iii)–3◄, the fact that the rate is presumed to be 11 percent in the second year and 12 percent for the remaining 28 years need not be included in the advertisement.

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Subpart D—Miscellaneous

§ 226.25—Record Retention.

25(a) General rule.

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►5. *Prohibited payments to loan originators.* For each transaction secured by real property or a dwelling subject to the loan originator compensation provisions in § 226.36(d)(1), a creditor should maintain records of the compensation it provided to the loan originator for the transaction as well as the compensation agreement in effect on the date the interest rate was set for the transaction. *See* § 226.35(a) and comment 35(a)(2)–3 for additional guidance on when a transaction's rate is set. Where a loan originator is a mortgage broker, a copy of the HUD–1 settlement statement required by the Real Estate Settlement Procedures Act (RESPA) would be presumed to be a record of the amount actually paid to the loan originator in connection with the transaction.◄

* * * * *

§ 226.30—Limitation on Rates.

1. *Scope of coverage.* ►i.◄ The requirement of this section applies to consumer credit obligations secured by a dwelling (as dwelling is defined in § 226.2(a)(19)) in which the annual percentage rate may increase after consummation (or during the term of the plan, in the case of open-end credit) as a result of an increase in the interest rate component of the finance charge—whether those increases are tied to an index or formula or are within a creditor's discretion. The section applies to credit sales as well as loans. Examples of credit obligations subject to this section include:

[•]►A.◄ Dwelling-secured credit obligations that require variable-rate disclosures under the regulation because the interest rate may increase during the term of the obligation.

[•]►B.◄ Dwelling-secured open-end credit plans entered into before November 7, 1989 (the effective date of the home equity rules) that are not considered variable-rate obligations for purposes of disclosure under the regulation but where the creditor reserves the contractual right to increase the interest rate—periodic rate and corresponding annual percentage rate—during the term of the plan.

►ii.◄ In contrast, credit obligations in which there is no contractual right to increase the interest rate during the term of the obligation are not subject to this section. Examples include:

[•]►A.◄ ''Shared-equity'' or ''shared-appreciation'' mortgage loans that have a fixed rate of interest and a shared-appreciation feature based on the consumer's equity in the mortgaged property. (The appreciation share is payable in a lump sum at a specified time.)

[•]►B.◄ Dwelling-secured fixed-rate closed-end balloon-payment mortgage loans and dwelling-secured fixed-rate open-end plans with a stated term that the creditor may renew at maturity. (Contrast with the renewable balloon-payment mortgage instrument described in comment [17(c)(1)–11.)]►17(c)(1)(iii)–4.◄

[•]►C.◄ Dwelling-secured fixed rate closed-end multiple advance transactions in which each advance is disclosed as a separate transaction.

[•]►D.◄ ''Price level adjusted mortgages'' or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation.

►iii.◄ The requirement of this section does not apply to credit obligations entered into prior to December 9, 1987. Consequently, new advances under open-end credit plans existing prior to December 9, 1987, are not subject to this section.

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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§ 226.32—Requirements for Certain Closed-End Home Mortgages.

* * * * *

[*32(b) Definitions.*

Paragraph 32(b)(1)(i).

1. *General.* Section 226.32(b)(1)(i) includes in the total ''points and fees'' items defined as finance charges under §§ 226.4(a) and 226.4(b). Items excluded from the finance charge under other provisions of § 226.4 are not included in the total ''points and fees'' under paragraph 32(b)(1)(i), but may be included in ''points and fees'' under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii). Interest, including per-diem interest, is excluded from ''points and fees'' under § 226.32(b)(1).

Paragraph 32(b)(1)(ii).

1. *Mortgage broker fees.* In determining ''points and fees'' for purposes of this section, compensation paid by a consumer to a mortgage broker (directly or through the creditor for delivery to the broker) is included in the calculation whether or not the amount is disclosed as a finance charge. Mortgage broker fees that are not paid by the consumer are not included. Mortgage broker fees already included in the calculation as finance charges under § 226.32(b)(1)(i) need not be counted again under § 226.32(b)(1)(ii).

2. *Example.* Section 226.32(b)(1)(iii) defines ''points and fees'' to include all items listed in § 226.4(c)(7), other than amounts held for the future payment of taxes. An item listed in § 226.4(c)(7) may be excluded from the ''points and fees'' calculation, however, if the charge is reasonable, the creditor receives no direct or indirect compensation from the charge, and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be excluded from the ''points and fees'' calculation (assuming no compensation is paid to the creditor). A fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation, even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount.

Paragraph 32(b)(1)(iv).

1. *Premium amount.* In determining ''points and fees'' for purposes of this section, premiums paid at or before closing for credit insurance are included whether they are paid in cash or financed, and whether the amount represents the entire premium for the coverage or an initial payment.]

32(c) Disclosures.

[1. *Format.* The disclosures must be clear and conspicuous but need not be in any particular type size or typeface, nor presented in any particular manner. The disclosures need not be a part of the note or mortgage document.]

* * * * *

32(c)(5) Amount borrowed.

1. *Optional insurance; debt-cancellation* ►*or debt-suspension*◄*coverage.* This disclosure is required when the amount borrowed in a refinancing includes premiums or other charges for credit life, accident, health, or loss-of-income insurance►;◄[or] debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident►; or debt-suspension coverage that provides for suspension of the obligation to make one or more payments on the date(s) otherwise required by the credit agreement in the event of loss of life, health, or income or in the case of accident◄. See comment 4(d)(3)–2 and comment app. G and H–2 regarding terminology for debt-cancellation ►and debt-suspension◄ coverage.

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§ 226.35—Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans.

35(a) Higher-priced mortgage loans.

Paragraph 35(a)(2).

* * * * *

4. *Board table.* The Board publishes on the ►FFIEC's Web site,◄ [Internet,] in table form, average prime offer rates for a wide variety of transaction types. ►*See http://www.ffiec.gov/hmda.*◄ The Board calculates an annual percentage rate, consistent with Regulation Z (see § 226.22 and appendix J), for each transaction type for which pricing terms are available from a survey. The Board estimates annual percentage rates for other types of transactions for which direct survey data are not available based on the loan pricing terms available in the survey and other information. The Board publishes on the ►FFIEC's Web site◄ [Internet] the methodology it uses to arrive at these estimates.

►5. *Additional guidance on determination of average prime offer rates.* The average prime offer rate has the same meaning in this section as under Regulation C, 12 CFR part 203. *See* 12 CFR 203.4(a)(12)(ii). Guidance on the average prime offer rate under § 226.35(a)(2), such as when a transaction's rate is set and determination of the comparable transaction, is provided in the staff commentary under Regulation C, the Board's *A Guide to HMDA Reporting: Getting it Right!,* and the relevant ''Frequently Asked Questions'' on HMDA compliance posted on the FFIEC's Web site at *http://ffiec.gov/hmda.*◄

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§ 226.36—Prohibited Acts or Practices in Connection with Credit Secured by ►*Real Property or a Dwelling*◄ *[a Consumer's Principal Dwelling].*

* * * * *

36(a) ►Loan originator and◄ mortgage broker defined.

1. *Meaning of* ►*loan originator*◄ *[mortgage broker].* Section 226.36(a) provides that a ►loan originator◄ [mortgage broker] is any person who for compensation or other monetary gain arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. ►The term ''loan originator'' includes employees of the creditor◄ [but is not an employee of a creditor]. In addition, this definition expressly includes any ►creditor◄ [person] that satisfies this definition but makes use of ''table funding.'' Table funding occurs when a transaction is consummated with the debt obligation initially payable by its terms to one person, but another person provides the funds for the transaction at consummation and receives an immediate assignment of the note, loan contract, or other evidence of the debt obligation. Although § 226.2(a)(17)(i)(B) provides that a person to whom a debt obligation is initially payable on its face generally is a creditor, § 226.36(a) provides that, solely for the purposes of § 226.36, such a person is ►also considered a loan originator◄ [considered a mortgage broker]. ►The creditor is not considered a loan originator unless table funding occurs.◄ In addition, although consumers themselves often arrange, negotiate, or otherwise obtain extensions of consumer credit on their own behalf, they do not do so for compensation or other monetary gain or for another person and, therefore, are not ►loan originators◄ [mortgage brokers] under this section.

►2. *Mortgage broker.* For purposes of § 226.36, with respect to a particular transaction, the term ''mortgage broker'' refers to a loan originator who is not an employee of the creditor. Accordingly, the term ''mortgage broker'' includes companies that engage in the activities described in § 226.36(a) and also includes employees of such companies that engage in these activities. Section 226.36(d) prohibits certain payments to a loan originator. These prohibitions

apply to payments made to all loan originators, including payments made to mortgage brokers, and payments made by a company acting as a mortgage broker to its employees who are loan originators.◄

36(b) Misrepresentation of value of consumer's [principal] dwelling.

* * * * *

►*36(d) Prohibited payments to loan originators.*

1. *Persons covered.* Section 226.36(d) prohibits any person (including the creditor) from paying compensation to a loan originator in connection with a covered credit transaction, if the amount of the payment is based on any of the transaction's terms or conditions. For example, a person that purchases a loan from the creditor may not compensate the loan originator in a manner that violates this section.

2. *Mortgage brokers.* The payments made by a company acting as a mortgage broker to its employees who are loan originators are subject to the section's prohibitions. For example, a mortgage broker may not pay its employee more for a transaction with a 7 percent interest rate than for a transaction with a 6 percent interest rate.

36(d)(1) Payments based on transaction terms and conditions.

1. *Compensation.* For purposes of § 226.36(d)(1) and (e) the term ''compensation'' is not limited to commissions; it includes salaries and any financial or similar incentive provided to a loan originator that is based on any of the terms and conditions of the loan originator's transactions. (*See* comment 36(d)(1)–2 for examples of types of compensation that are not covered by § 226.36(d) and (e)). For example, the term ''compensation'' includes:

i. An annual or other periodic bonus; or

ii. Awards of merchandise, services, trips, or similar prizes.

2. *Examples of compensation that is based on transaction terms or conditions.* Section 226.36(d)(1) prohibits loan originator compensation that is based on a transaction's terms or conditions. For example, the rule prohibits compensation based on the transaction's interest rate, annual percentage rate, loan-to-value ratio, or the existence of a prepayment penalty. A consumer's credit score or similar representation of credit risk is not one of the transaction's terms and conditions, but a creditor does not necessarily avoid having based a loan originator's compensation on the interest rate or the annual percentage rate solely because the originator's compensation happens to vary with the consumer's credit score as well.

3. *Examples of compensation not based on transaction terms or conditions.* Compensation would not be based on the transaction's terms or conditions if it were based on, for example:

i. The loan originator's overall loan volume delivered to the creditor.

ii. The long-term performance of the originator's loans.

iii. A fixed hourly rate of pay to compensate the originator for the actual number of hours worked.

iv. Whether the consumer is an existing customer of the creditor or a new customer.

4. *Geographic differences.* Section 226.36(d)(1) does not prohibit the payment of compensation to a loan originator that differs by geographical area, provided such compensation is not based on the transaction's terms or conditions. Any such arrangement must comply with other applicable laws, such as the Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f, and Fair Housing Act, 42 U.S.C. 3601–3619.

5. *Creditor's flexibility in setting loan terms.* Section 226.36(d)(1) does not limit the creditor's ability to offer a higher interest rate in a transaction as a means for the consumer to finance the payment of the loan originator's compensation or other costs that the consumer would otherwise be required to pay directly (either in cash or out of the loan proceeds). Thus, a creditor may charge a higher interest rate to a consumer who will pay fewer of the costs of the transaction directly, or the creditor may offer the consumer a lower rate if the consumer pays more of the costs directly. For example, if the consumer pays half of the transaction costs directly, the creditor may charge an interest rate of 6% but, if the consumer pays none of the transaction costs directly, may charge an interest rate of 6.5%. Section 226.36(d)(1) also does not limit a creditor from offering or providing different loan terms to the consumer based on the creditor's assessment of the credit risk involved. A creditor also may set loan terms by offering varying interest rates to different consumers that include a constant interest rate premium to recoup the loan originator's compensation through increased interest paid by the consumer (such as by adding a constant ¼ of one percent to the interest rate on each loan).

6. *Effect of modification of loan terms.* Under § 226.36(d)(1), a loan originator's compensation may not vary based on any of a credit transaction's terms and conditions. Thus, a creditor and originator could not agree to set the originator's compensation at a higher level and then subsequently lower it in selective cases (such as where the consumer is able to obtain a lower rate from another creditor). When the creditor offers to extend a loan with specified terms and conditions (such as the rate and points) the amount of the originator's compensation for that transaction is not subject to change (increase or decrease) based on whether different loan terms are negotiated. For example, if the creditor agrees to lower the rate that was initially offered, the new offer may not be accompanied by a reduction in the loan originator's compensation.

7. *Periodic changes in loan originator compensation and transactions' terms and conditions.* This section does not limit a creditor from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must result in payments to the loan originator that do not vary based on the terms or conditions of a credit transaction. A creditor might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first 6 months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the loan terms. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that particular originator, regardless of the loan terms. No violation occurs even if the loans made by the creditor after July 1 generally carry a higher interest rate than loans made before that date, to reflect the higher compensation.

8. *Compensation received directly from a consumer.* The prohibition in § 226.36(d)(1) does not apply to transactions in which the loan originator receives compensation directly from the consumer, in which case no other person may provide any compensation to the loan originator, directly or indirectly, in connection with that particular transaction pursuant to § 226.36(d)(2).

9. *Record retention.* See comment 25(a)–5 for guidance on complying with the record retention requirements of § 226.25(a) as they apply to this section.◄

ALTERNATIVE COMMENT 36(d)(1)–10, TO ACCOMPANY ALTERNATIVE 2—PARAGRAPH (d):

►10. *Principal loan amount.* A loan originator's compensation may be based on the loan amount. Thus, an arrangement that pays a loan originator a fixed percentage of the loan amount does not violate this section even though the dollar amount received by the originator will vary from transaction to transaction and will be greater as the loan amount increases. Section 226.36(d)(1) does not prohibit an arrangement under which a loan originator is paid a fixed percentage of the loan amount, subject to specified minimum or maximum dollar amount. For example, a loan originator's compensation may be set at one percent of the principal loan amount but not less than $1,000 or greater than $5,000.◄

►*36(d)(2) Payments by persons other than consumer.*

1. *Compensation in connection with a particular transaction.* Under § 226.36(d)(2), if a loan originator receives compensation directly from a consumer in a transaction, no other person may provide any compensation to the loan originator, directly or indirectly, in connection with that particular credit transaction. The restrictions imposed under § 226.36(d)(2) relate only to payments, such as commissions, that are specific to, and paid solely in connection with, the transaction in which the consumer has paid compensation directly to the loan originator. Thus, compensation paid by a mortgage broker company to an employee in the form of a salary or hourly wage, which is not tied specifically to a single transaction, does not violate § 226.36(d)(2) even if the consumer directly pays a broker a fee in connection with a specific transaction.

2. *Compensation received directly from a consumer.* Under Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), a yield spread premium paid by a creditor to the loan originator may be characterized on the RESPA disclosures as a ''credit'' that will be applied to reduce the consumer's settlement charges, including origination fees. A yield spread premium disclosed in this manner is not considered to be received by the loan originator directly from the consumer for purposes of § 226.36(d)(2).◄

►*36(d)(3) Affiliates.*

1. For purposes of § 226.36(d), affiliated entities are treated as a single ''person.'' For example, assume a parent company has two mortgage lending subsidiaries. Under § 226.36(d)(1), subsidiary ''A'' could not pay a loan originator greater compensation for a loan with an interest rate of 8 percent than it would pay for a loan with an interest rate of 7 percent. If the loan originator may deliver loans to both subsidiaries, they must compensate the loan originator in the same manner. Accordingly, if the loan originator delivers the loan to subsidiary ''B'' and the interest rate is 8 percent, the originator must receive the same compensation that would have been paid by subsidiary A for a loan with a rate of either 7 or 8 percent.◄

COMMENTS 36(e)–1, 36(e)(1)–1 THROUGH 36(e)(1)–3, 36(e)(2)–1 AND 36(e)(2)–2, and 36(e)(3)–1 THROUGH 36(e)(3)–4, TO ACCOMPANY OPTIONAL PROPOSAL—PARAGRAPH (e).

►*36(e) Prohibition on steering.*

1. *Compensation.* See comment 36(d)(1)–1 for guidance on compensation that is subject to § 226.36(e).

Paragraph 36(e)(1).

1. *Steering.* For purposes of § 226.36(e), directing or ''steering'' a consumer to a particular credit transaction means advising, counseling, or otherwise influencing a consumer to accept that transaction. For such actions to constitute steering, the consumer must actually consummate the transaction in question. Thus § 226.36(e)(1) does not address the actions of a loan originator if the consumer does not actually obtain a loan through that originator.

2. *Prohibited conduct.* Under § 226.36(e)(1), a loan originator may not direct or steer a consumer to a loan to increase the amount of compensation that the originator will receive for the transaction unless the loan is in the consumer's interest.

i. In determining whether a consummated transaction is in the consumer's interest, that transaction must be compared to other possible loan offers available through the originator, and for which the consumer was likely to qualify, at the time the consummated transaction was offered to the consumer. Possible loan offers are available through the loan originator if they could be obtained from a creditor with which the loan originator regularly does business. Section 226.36(e)(1) does not require a loan originator to establish a business relationship with any creditor with which the loan originator does not already do business. To be considered a ''possible loan offer,'' an offer need not be extended by the creditor; it need only be an offer that the creditor likely would extend upon receiving an application from a qualified applicant, based on the creditor's current rate sheets or other, similar means of communicating its current credit terms to the loan originator. An originator need not inform the consumer about a possible loan offer if the originator is able to make a good faith determination that the consumer is not likely to qualify for the loan.

ii. Section 226.36(e)(1) does not require a loan originator to direct a consumer to the transaction that will result in a creditor paying the least amount of compensation to the originator. However, if the loan originator reviews possible loan offers available from a significant number of the creditors with which the originator regularly does business, and the originator directs the consumer to the transaction that will result in the least amount of creditor-paid compensation for the loan originator, the requirements of § 226.36(e)(1) are deemed to be satisfied. A loan originator who is an employee of the creditor may not obtain compensation that is based on the transaction's terms or conditions pursuant to § 226.36(d)(1), and compliance with that provision by such a loan originator also satisfies the requirements of § 226.36(e)(1).

iii. See the commentary under § 226.36(e)(3) for additional guidance on what constitutes a ''significant number of creditors with which a loan originator regularly does business'' and guidance on the determination about transactions for which ''the consumer likely qualifies.''

3. *Examples.* Assume the originator determines that a consumer likely qualifies for a loan from Creditor A that has a fixed interest rate of 7.00 percent, but the loan originator directs the consumer to a loan from Creditor B having a rate of 7.50 percent. If the loan originator receives more in compensation from Creditor B than the amount that would have been paid by Creditor A, the prohibition in § 226.36(e) is violated unless the higher-rate loan is in the consumer's interest. For example, a higher rate loan might be in the consumer's interest if the lower rate loan has a prepayment penalty, or if the lower rate loan requires the consumer to pay more in up-front charges that the consumer is unable or unwilling to pay or finance as part of the loan amount.

36(e)(2) Permissible transactions.

1. *Safe harbors.* A loan originator that complies with § 226.36(e)(2) is deemed to comply with § 226.36(e)(1). A loan originator that does not comply with § 226.36(e)(2) is not subject to any presumption regarding the originator's compliance or noncompliance with § 226.36(e)(1).

2. *Minimum number of loan options.* To obtain the safe harbor, § 226.36(e)(2)

requires that the loan originator present at least three loan options for each type of transaction in which the consumer expressed an interest. As required by § 226.36(e)(3)(ii), the loan originator must have a good faith belief that the options presented are loans for which the consumer likely qualifies. If the loan originator is not able to form such a good faith belief for at least three options for a given type of transaction, the loan originator may satisfy the minimum number of loan options set forth in § 226.36(e)(2) by presenting all loan options for which the consumer likely qualifies and that meet the other requirements of § 226.36(e)(3).

36(e)(3) Loan options presented.

1. *Significant number of creditors.* A significant number of the creditors with which a loan originator regularly does business is three or more of those creditors. If the loan originator regularly does business with fewer than three creditors, the originator is deemed to comply by obtaining loan options from all the creditors with which it regularly does business. Under § 226.36(e)(3)(i), the loan originator must obtain loan options from a significant number of creditors with which the loan originator regularly does business, but the loan originator need not present loan options from all such creditors to the consumer to satisfy § 226.36(e)(2). For example, if three loan options available from one of the creditors with which the loan originator regularly does business satisfy § 226.36(e)(3)(i), presenting those and no options from any other creditor satisfies § 226.36(e)(2).

2. *Creditors with which loan originator regularly does business.* To qualify for the safe harbor in § 226.36(e)(2), the loan originator must obtain and review loan options from a significant number of the creditors with which the loan originator regularly does business. For this purpose, a loan originator regularly does business with a creditor if:

i. There is a written agreement between the originator and the creditor governing the originator's submission of mortgage loan applications to the creditor;

ii. The creditor has extended credit secured by real property or a dwelling to one or more consumers during the current or previous calendar month based on an application submitted by the loan originator; or

iii. The creditor has extended credit secured by real property or a dwelling 25 or more times during the previous twelve calendar months based on applications submitted by the loan originator. For this purpose the previous twelve calendar months begins with the calendar month that precedes the month in which the loan originator accepted the consumer's application.

3. *Lowest interest rate.* To qualify under the safe harbor in § 226.36(e)(2), for each type of transaction in which the consumer has expressed an interest, the loan originator must present the consumer with at least three loans that include the loan with the lowest interest rate, the loan with the second lowest rate, and the loan with the lowest total dollar amount for discount points and origination points. To determine the loan with the lowest interest rate, for any loan that has an initial rate that is fixed for at least five years, the loan originator shall use the initial rate that would be in effect at consummation. For a loan with an initial rate that is not fixed for at least five years:

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

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

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

►*Section 226.37—Special Disclosure Requirements for Closed-End Mortgages*

37(a) Form of disclosures.

1. *Controlling standard.* Transactions subject to this part are also subject to the clear and conspicuous standard under § 226.17(a)(1). In some instances, § 226.17(a)(1) provides creditors more flexibility in meeting the clear and conspicuous standard. For example, disclosures for transactions subject only to § 226.17(a)(1) may be grouped together and segregated in a variety of ways and need not be given in a particular type size. In contrast, disclosures required for transactions secured by real property or a dwelling, and therefore, also subject to § 226.37, must be segregated from all other material and be provided in a minimum 10-point font. For such disclosures, creditors must use the standards set forth under § 226.37(a) through (d).

37(a)(1) General.

1. *Clear and conspicuous standard.* The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer.

2. *Clear and conspicuous standard—readily noticeable.* To meet the readily noticeable standard, disclosures required by §§ 226.19, 226.20(c), 226.20(d), and 226.38 must be given in a minimum 10-point font.

3. *Location.* The disclosures required under §§ 226.19 or 226.38 must appear on a document separate from all other material. The disclosures required under §§ 226.19, 226.20(c), 226.20(d) or 226.38 may be made on more than one page, continued from one page to another, and made on the front or back side of a page, except as otherwise specifically required.

37(a)(2) Grouped and Segregated.

1. *Segregation of disclosures.* The disclosures required by §§ 226.19, 226.20(c), 226.20(d) or 226.38 must be segregated from other information. The disclosures under § 226.38 may be grouped together, in accordance with the requirements under § 226.38(a)–(j), and segregated from other required disclosures under § 226.38

i. By outlining them in a box.

ii. By bold print dividing lines.

iii. By a different color background.

iv. By a different type style.

2. *Content of segregated disclosures.* Section 226.37(a)(2)(i)–(ii) contains exceptions to the requirement that the disclosures required under § 226.38 be grouped together and segregated from material that is not directly related to those disclosures. Section 226.37(a)(2)(i) lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Section 226.37(a)(2)(ii) lists the items required under § 226.38 that may be deleted from the segregated disclosures and appear elsewhere. Any of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures.

3. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. The

following is directly related information:

i. The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.

ii. An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, '' 'You' refers to the customer and 'we' refers to the creditor.''

iii. A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as ''Federal Truth in Lending Disclosures'' or a descriptive title such as ''Real Estate Loan Disclosures.''

4. *Balloon payment financing with leasing characteristics.* See comment 17(a)(1)–7.

37(c) Terminology.

1. *Consistent Terminology.* Language used in disclosures required by §§ 226.19, 226.20(c), 226.20(d), and 226.38 must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical, unless the use of specific terminology is required.

2. *Combining terminology.* Where the amounts of several numerical disclosures are the same, creditors may combine the terms, so long as it is done in a clear and conspicuous manner and in accordance with the requirements under § 226.38. For example, in a transaction in which the amount financed equals the total payments, the creditor may disclose a single dollar amount together with the descriptive statement required for total payments under § 226.38(e)(5)(i) and an explanation that the figure represents both the total payments and the amount financed, and is used to calculate the annual percentage rate. However, if the terms are required to be disclosed separately, both disclosures must be completed even though the same amount is entered into each space.

3. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the annual percentage rate for the loan transaction, when disclosed with the term *annual percentage rate,* be shown more conspicuously:

i. the annual percentage rate, expressed as a percentage, must be more conspicuous only in relation to other required disclosures under § 226.38.

ii. the annual percentage rate, expressed as a percentage, need not be more conspicuous except as part of the annual percentage rate disclosure required under §§ 226.37(c)(2) and 226.38(b)(1).

iii. the term ''annual percentage rate'' must not be more conspicuous than the annual percentage rate, expressed as a percentage and disclosed as required under §§ 226.37(c)(2) and 226.38(b)(1).

iv. the creditor's identity under § 226.38(g)(1) may, but need not, be more prominently displayed than the annual percentage rate.

4. *Making disclosures more conspicuous.* The annual percentage rate for the loan transaction, expressed as a percentage, may be made more conspicuous in any way that highlights it in relation to the other required disclosures. For example, it may be:

i. Printed in bold print or different type face; or

ii. Underlined.

37(d) Specific Formats.

1. *Prominent Location.* Disclosures meet the prominent location standard if located on the first page and on the front side of the disclosure statement.

2. *Close Proximity.* If the required disclosures are located immediately next to or directly above or below each other, without any intervening text or graphical displays, the disclosures are deemed to be in close proximity.

Section 226.38—Content of Disclosures for Closed-End Mortgages

1. *As applicable.* The disclosures required by this section should be provided only as applicable. Any provision not relevant to a particular transaction should not be disclosed, except as otherwise required under § 226.38(d)(1).

2. *Format.* See the commentary to §§ 226.17(a)(1) and 226.37 for a discussion of the format to be used in making these disclosures, as well as acceptable modifications.

38(a) Loan summary.

38(a)(3) Loan type and features.

1. *General.* The disclosure of loan type and features should reflect the terms of the legal obligation between the parties.

38(a)(3)(i) Loan type.

1. *General.* Creditors must identify the loan type as required in § 226.38(a)(3)(i). Only one loan type may be disclosed. The categories used in § 226.38(a)(3)(i) are different from the categories in § 226.18(f) and commentary to § 226.17(c)(1).

38(a)(3)(i)(A) Adjustable-rate mortgages.

1. *General.* A transaction is an adjustable-rate mortgage for the purposes of this section if the annual percentage rate may increase after consummation. However, a transaction in which the annual percentage rate may change after consummation solely because of a shared-equity or shared-appreciation feature is not an adjustable-rate mortgage for the purposes of this section. *See* § 226.38(d)(2)(vi). Also, a step-rate mortgage is not an adjustable-rate mortgage for purposes of this section unless the interest rate or the applicable period for each interest rate can change other than as specified in the terms of the legal obligation between the parties. *See* § 226.38(a)(3)(i)(B). A fixed interest rate loan with a renewable balloon payment is not an adjustable-rate mortgage for purposes of this section. See comment 38(a)(3)(i)(C)–1(v).

2. *Examples.* The following transactions, for which the interest rate is variable, are examples of adjustable-rate mortgages for purposes of this section.

i. the seller or a 3rd party pays an amount either to the creditor or to the consumer to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)–1, regardless of whether the disclosures take the buydown into account.

ii. the consumer pays an amount to the creditor to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)–2.

iii. a third party (such as a seller) and a consumer both pay an amount to the creditor to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)–4.

iv. a rate reduction option permits the consumer to adjust the existing variable interest rate to a lower variable interest rate under certain conditions, in accordance with the terms of the legal obligation between the parties.

v. the renewable balloon-payment option permits the consumer to renew the loan as described in comment 17(c)(1)(iii)–4(i).

vi. the terms of the legal obligation provide that the rate will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, as described in comment 17(c)(1)(iii)–4(ii).

vii. the terms of the legal obligation provide for periodic adjustments to payments and the loan balance, such as ''price-level-adjusted mortgages'' or other indexed mortgages that have a variable rate of interest and provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation, as described in comment 17(c)(1)(iii)–4(iii).

viii. if the interest rate or the applicable period for each interest rate can change other than as specified in

the terms of the legal obligation between the parties, such as certain step-rate mortgages, as described in comment 38(a)(3)(i)(B)–1.

ix. the terms of the legal obligation provide for scheduled adjustments in payment amounts during the loan term, such as certain graduated-payment adjustable-rate mortgages, as described in comment 17(c)(1)(iii)–6.

x. the terms of the legal obligation give the consumer an option to convert the variable interest rate into a fixed interest rate at a designated time or upon satisfaction of certain conditions.

38(a)(3)(i)(B) Step-rate mortgages.

1. *General.* A step-rate mortgage is a transaction for which the annual percentage rate will change after consummation, and all of the interest rates that will apply throughout the term of the loan, including the applicable period for each interest rate, are specified in the terms of the legal obligation between the parties. As discussed in comment 38(a)(3)(i)(A)–1, if the interest rate or the applicable period for each interest rate can change other than as specified in the terms of the legal obligation between the parties, such mortgage is considered an adjustable-rate mortgage and not a step-rate mortgage for purposes of this section.

2. *Exclusion.* Preferred-rate loans where the terms of the legal obligation provide that the initial interest rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, as described in comment 17(c)(1)(iii)–4, are considered *fixed-rate* mortgages and not *step-rate mortgages* for purposes of this section. See comment 38(a)(3)(i)(C)–1(vi).

38(a)(3)(i)(C) Fixed-rate mortgages.

1. *Examples.* The following transactions, for which the interest rate is fixed, are examples of fixed-rate mortgages for purposes of this section.

i. the seller or a third party pays an amount either to the creditor or to the consumer to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)–1, regardless of whether the disclosures take the buydown into account.

ii. the consumer pays an amount to the creditor to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)–2.

iii. a third party (such as a seller) and a consumer both pay an amount to the creditor to buy down the interest rate for all or a portion of the credit term as described in comment 17(c)(1)(i)–4.

iv. a rate reduction option permits the consumer to adjust the existing fixed interest rate to a lower fixed interest rate under certain conditions, in accordance with the terms of the legal obligation between the parties.

v. the renewable balloon-payment option permits the consumer to renew the loan as described in comment 17(c)(1)(iii)–4(i).

vi. the terms of the legal obligation provide that the rate will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, as described in comment 17(c)(1)(iii)–4(ii).

vii. the terms of the legal obligation provide for periodic adjustments to payments and the loan balance, such as ''price-level-adjusted mortgages'' or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation, as described in comment 17(c)(1)(iii)–4(iii).

38(a)(3)(ii) Loan features.

1. *General.* Creditors must indicate whether a loan has the features specified in § 226.38(a)(3)(ii). Under § 226.38(a)(3)(ii), a creditor should disclose no more than two features for a single loan. A loan may have both a ''step-payment'' feature in § 226.38(a)(3)(ii)(A) and one of the features in § 226.38(a)(3)(ii)(B)–(D).

38(a)(3)(ii)(A) Step-payments.

1. *General.* If, under the terms of the legal obligation, a periodic monthly payment may increase by a set amount for a specified amount of time, the creditor must disclose that the loan has a ''step-payment'' feature. For instance, if the consumer is offered a fixed-rate mortgage with 24 monthly payments at $1,000 that will later increase to $1,200 and remain at that level for a specified period of time, and the loan amortizes fully over the loan term, the creditor would disclose ''Fixed-rate mortgage, step-payments'' for the loan type in the loan summary. See comment 17(c)(1)(iii)–5 clarifying that graduated-payment mortgages and step-rate transactions without an adjustable-rate mortgage feature are not considered adjustable-rate mortgage transactions. However, if the consumer is offered an adjustable-rate mortgage loan with scheduled variations in payment amounts during the loan term, the creditor would disclose ''Adjustable-rate mortgage, step-payments.'' See comment 17(c)(1)(iii)–6 for a discussion of graduated-payment adjustable-rate mortgages. Also see comment 38(a)(3)(ii)–2 regarding loans with multiple features.

Paragraphs 38(a)(3)(ii)(B) and (C)

1. *''Payment option'' and ''negative amortization'' features—loans with negative amortization.*

i. Negative amortization occurs when one or more regular periodic payments is not sufficient to cover interest accrued and the unpaid interest is added to the loan balance. For purposes of the loan feature disclosure in § 226.38(a)(3)(ii), features that result in negative amortization are divided into two types:

A. ''Payment option'' features, in which the terms of the legal obligation *permit* the consumer to make payments that result in negative amortization and other types of payments; and

B. ''Negative amortization'' features, in which the terms of the legal obligation require the consumer to make payments that result in negative amortization—that is, the legal obligation does not permit the consumer to make payments that would cover all interest accrued or all interest accrued and principal.

ii. Under § 226.38(a)(3)(ii)(B) and (C), a creditor should disclose the loan feature as either ''payment option'' or ''negative amortization'' but not both. Under § 226.38(a)(3)(ii)(A), however, a loan may have both a ''step-payment'' feature and either a ''payment option'' or a ''negative amortization'' feature.

2. *Consumer's choice.* For a loan to have a ''payment option'' feature, all periodic payment choices must be specified in the legal obligation and must include a choice to make payments that may result in negative amortization. For example, if the consumer is offered a loan with minimum monthly payments that will not reduce the loan balance to remain the same (i.e., interest-only payments), but the terms of the legal obligation do not prevent the consumer from making payments that will decrease the loan balance, such a loan would be disclosed as having an ''interest-only'' feature and not a ''payment option'' feature for purposes of this section.

Paragraph 38(a)(3)(ii)(D)

1. *Interest-only feature.* The creditor must disclose an ''interest-only'' feature if the terms of the legal obligation permit or require the consumer to make one or more regular periodic payments of interest accrued and no principal, and the legal obligation does not require or permit any payments that would result in negative amortization. Thus, a creditor should not disclose both an ''interest-only'' feature and a ''payment option'' feature or ''negative amortization'' feature in a single

transaction. Under § 226.38(a)(3)(ii)(A), however, a loan may have both an ''interest-only'' feature and a ''step-payment'' feature.

38(a)(4) Total settlement charges.

1. *Disclosure required.* For the good faith estimate required by § 226.19(a)(1)(i), the creditor must disclose the amount of the ''Total Estimated Settlement Charges'' as disclosed on the Good Faith Estimate under Regulation X, 12 CFR part 3500, Appendix C. For the final disclosure required by § 226.19(a)(2)(ii), the creditor must disclose the sum of the final settlement charges. For the final disclosure, the creditor may use the sum of the ''Charges That Cannot Increase,'' ''Charges That In Total Cannot Increase By More Than 10%,'' and ''Charges That Can Change'' as would be disclosed in the column entitled ''HUD–1'' on page three of the HUD–1 or on page two of the HUD–1A settlement statement under Regulation X, 12 CFR part 3500, Appendix A. Alternatively, for the final disclosure, the creditor may provide the consumer with the final HUD–1 or HUD–1A settlement statement. For transactions in which a Good Faith Estimate, HUD–1 or HUD–1A are not required, the creditor may look to such documents for guidance on how to comply with the requirements of this section.

38(a)(5) Prepayment penalty.

1. *Coverage.* Section 226.38 (a)(5) applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily.

2. *Penalty.* The term ''penalty'' as used in § 226.38(a)(5) encompasses only those charges that are assessed solely because of the prepayment in full of a transaction in which the interest calculation takes account of all scheduled reductions in principal. Charges which are penalties include, for example:

i. Charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such ''balance.''

ii. A minimum finance charge in a simple-interest transaction.

iii. Fees, such as loan closing costs, that are waived unless the consumer prepays the obligation.

3. *Fees that are not prepayment penalties.* Charges which are not penalties include, for example:

i. Loan guarantee fees.

ii. Fees imposed for preparing and providing documents in connection with prepayment, such as a loan payoff statement, a reconveyance, or other document releasing the creditor's security interest in the property securing the loan.

4. *As applicable.* When the legal obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance and no penalty may be imposed, disclosures made under § 226.38(a)(5) need not be made. In such a case, however, § 226.38(d)(1)(iii) requires the creditor to indicate whether or not the legal obligation permits the creditor to impose a prepayment penalty.

5. *Content of disclosure.* Section 226.38(a)(5) requires creditors to disclose the amount of the maximum penalty, the circumstances under which the creditor may impose the penalty, and the period during which the creditor may impose the penalty. The creditor must state the maximum penalty as a dollar numerical amount. *See* § 226.2(b)(5) and comment 2(b)(5)–2.

6. *Basis of disclosure.* The creditor should assume that the consumer prepays at a time when the prepayment penalty may be charged. For example, if the prepayment penalty on a negatively amortizing loan equals 2% of the amount prepaid during the first two years after loan origination, the creditor should disclose the maximum penalty using the maximum loan balance during those years even if the loan balance, and thus the amount prepaid, may increase thereafter. If more than one type of prepayment penalty applies, the creditor should include the maximum amount of each type of prepayment penalty in the maximum penalty disclosed.

i. If the legal obligation permits the creditor to treat the loan balance as outstanding for a period after prepayment in full and charge amounts determined by applying the interest rate to the ''balance'' deemed outstanding during that period, the maximum the creditor should include is the maximum such charges in calculating the maximum prepayment penalty.

ii. If a minimum finance charge applies, the creditor should include the minimum finance charge in calculating the maximum prepayment penalty.

iii. If a prepayment penalty is determined by applying to the loan balance at the time of prepayment a rate that does not change, the prepayment penalty amount should be calculated assuming the highest balance possible. For amortizing loans and interest-only loans, the balance is highest at consummation, assuming the consumer makes timely payments in full. However, for loans with negative amortization, the loan's balance may be higher after consummation. For example, assume the principal balance of a negatively amortizing loan is $200,000 at consummation. The terms of the legal obligation allow the creditor to impose a fee equal to 3% of the amount prepaid if the consumer prepays during the first three years after consummation. The legal obligation provides that the interest rate for the loan is 1.50% for the first month, the maximum interest rate is 10.50%, and there are no limitations on how much the interest rate can increase on any adjustment date. Initial minimum payment amounts are based on the 1.5% initial rate. Payment amounts are adjusted yearly, but payments may not increase by more than 7.5% on any adjustment date, except that the consumer must make fully amortizing payments starting with the period in which the principal balance reaches 115% of the original principal balance. Assuming that the interest rate increases to 10.50% in the second month and remains at that rate and that the consumer makes minimum payments, the highest principal balance is $229,243, reached in the twenty-eighth month following origination. For purposes of this disclosure, the creditor should assume the consumer prepays in the 28th month, and the maximum prepayment penalty is $6,877.29.

iv. In some cases, the legal obligation may allow the creditor to determine the penalty using a penalty rate that may change over time (such as where a prepayment penalty on an adjustable-rate loan equals six months' interest payments.) In such cases, the creditor should disclose (1) the penalty charged when the penalty rate is the highest possible or (2) the penalty charged when the balance is the highest possible, whichever is greater. For example, assume that the interest rate for an adjustable-rate mortgage will remain fixed for the first 3 years after consummation and will adjust annually thereafter. The principal balance will be $200,000 at consummation and the loan amortizes. The initial interest rate on the loan is 5.625% and the maximum amount the interest rate can increase upon any rate adjustment is 2 percentage points. The terms of the legal obligation permit the creditor to impose a fee equal to 6 months' interest if the consumer prepays within the first 4 years. To determine the maximum prepayment penalty, the creditor must disclose (1) the penalty when the balance is highest or (2) the penalty when the penalty rate is highest, whichever is greater. The balance would

be highest at consummation because the loan amortizes. The interest due the 1st month after consummation is $937.50. Six times the interest due in the first month is $5,625.00. The penalty rate would be highest in the 37th month after consummation, the first time the interest rate may increase during the period in which a prepayment penalty may be charged. Assuming the interest rate increased as much as possible, by 2 percentage points, the monthly interest due in the 37th month is $1,218.69. Six times the interest due in the 37th month is $7,312.14. The maximum penalty is the maximum penalty when the balance is highest, or $7,312.14, which is greater than the maximum penalty when the penalty rate is highest, or $5,625.00.

7. *Timely payment assumed.* The creditor may assume that the consumer makes payments on time and in the amount required by the terms of the legal obligation and may disregard any possible differences resulting from the consumer's payment patterns. *See* comment 17(c)(2)(i)–3. Where the terms of the obligation require a periodic payment that is not a fully amortizing payment, such as an interest only payment or a minimum payment that causes the loan balance to increase, the creditor must base disclosures on the required periodic payment and may not assume that the consumer will make payments that exceed the required payment.

8. *Rebate-penalty disclosure.* A single transaction may involve both a finance charge computed by application of a rate to the unpaid balance and a finance charge that is precomputed or otherwise does not take into account each reduction in the principal balance (for example, mortgages with mortgage-guarantee insurance for which premiums are calculated on an annual basis and do not take into account monthly declines in the principal balance). *See* comment 36(j)(6)–1. In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H–15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary, and associated commentary explains the assumptions used in generating the sample.

38(b) Annual percentage rate.

Paragraph 38(b)(1).

1. *Disclosure required.* The creditor must disclose the cost of the credit as an annual rate, expressed as a percentage and using the term ''annual percentage rate,'' plus a brief descriptive phrase as required under § 226.38(b)(1). Under § 226.37(c)(2), the annual rate, expressed as a percentage, must be more conspicuous than the other required disclosures and in at least 16 point font.

Paragraph 38(b)(3).

1. *Applicable average prime offer rate and higher-priced loan threshold.* Creditors must disclose the APR on the loan offered, the average prime offer rate for a comparable transaction, and the higher priced loan threshold, for the week in which the creditor provides the disclosure. The higher-priced loan threshold is 1.5 percentage points above the comparable average prime offer rate for first lien loans, and 3.5 percentage points above the comparable average prime offer rate for subordinate lien loans. The Board publishes a table at least weekly with average prime offer rates by transaction type and loan term. Creditors should follow the guidance on how to determine the average prime offer rate and the higher-priced loan threshold in § 226.35(a)(2) and comments 35(a)(2)–1 through –4.

Paragraph 38(b)(4).

1. *Average per-period saving for 1 percentage-point reduction in the APR.* Section 226.38(b)(4) requires creditors to disclose the average per-period savings of a 1 percentage-point reduction in the APR disclosed in paragraph (b)(1). The creditor should base this disclosure on the terms of the legal obligation, except that the creditor must reduce the interest rate by one percentage point. If the legal obligation requires monthly payments, the creditor should identify the savings as the ''average per-month'' savings.

2. *Examples.* In both examples, assume the loan amount is $200,000 and the loan has a 30 year term with a total of 360 payments due monthly.

i. *Fixed-rate interest-only mortgage.* Assume that the loan is a fixed-rate mortgage with the option to make interest-only payments for the first 10 years of the loan. The interest rate is 6.5 percent. The total of payments disclosed under § 226.38(e)(5)(i) is $588,313.89. To calculate the average per-month savings, the creditor would reduce the interest rate to 5.5 percent for the full 30 year term of the loan and calculate a hypothetical total of payments of $540,627.21. The difference between the total of payments disclosed under § 226.38(e)(5)(i) and the hypothetical total of payments is $47,686.68. The creditor would divide $47,686.68 by the number of periods (360) and disclose an average per-month savings of $132.

ii. *Adjustable-rate mortgage.* Assume the loan is an ARM with a three-year introductory rate of 5.625 percent; the fully-indexed rate is 7.75 percent. At the end of the three year period, the interest rate will adjust, subject to a 2 percent rate cap. Thus, the interest rate in effect for year 4 is 7.625 percent. In year 5 the rate adjusts to the fully-indexed rate of 7.75 percent. The creditor should assume that the rate does not increase after it reaches the fully-indexed rate. The total of payments disclosed under § 226.38(e)(5)(i) is $585,778.09. To calculate the average per-month savings, the creditor would assume interest rates of 4.625 percent for the first 3 years; 6.625 percent for year 4; and 6.75 percent for the remainder of the loan. Thus, the rates are reduced by 1 percentage point, but the margin, periodic caps and other loan terms remain the same. The hypothetical total of payments is $537,087.61. The difference between the total of payments disclosed under § 226.38(e)(5)(i) and the hypothetical total of payments is $48,690.48. The creditor would divide $48,690.48 by the number of periods (360) and disclose an average per-month savings of $135.

38(c) Interest rate and payment summary.

1. *In general.* Section 226.38(c) prescribes format and content for disclosure of interest rates and monthly payments. The information in paragraph (c)(2)–(4) is required to be in the form of a table, except as provided otherwise. The required format and content of the table vary depending primarily on whether the loan has negative amortization. In all cases, however, the table should have no more than five vertical columns, showing applicable interest rates; payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of § 226.38(c) in § 226.38(c)(7).

2. *Amortizing loans.* Loans described as amortizing in § 226.38(c)(2)(i) and 226.38(c)(3) include loans with interest-only features that do not also have negative amortization features. (For rules relating to loans with balloon payments, *see* § 226.38(c)(5)). If an amortizing loan is an adjustable-rate mortgage with an introductory rate (less than the fully-indexed rate), creditors must provide a special explanation of introductory rates. See § 226.38(c)(2)(iii).

3. *Negative amortization.* For loans with negative amortization, creditors should follow the rules in §§ 226.38(c)(2)(ii) and 226.38(c)(4) in disclosing interest rates and monthly payments. Loans with negative amortization also require special explanatory disclosures about rates and payments. See § 226.38(c)(6). Loans with negative amortization include ''payment option'' loans, in which the consumer is permitted to make minimum payments that will cover only

some of the interest accruing each month. *See also* comment 17(c)(1)(iii)–6, regarding graduated-payment adjustable-rate mortgages.

38(c)(2) Interest rates.

38(c)(2)(i) Amortizing loans.

Paragraph 38(c)(2)(i)(A).

1. *Fixed rate loans—payment increases.* Although the interest rate will not change after consummation for a fixed-rate loan, some fixed-rate loans may have periodic payments that increase after consummation. For example, the terms of the legal obligation may permit the consumer to make interest-only payments for a specified period such as the first five years after consummation. In such cases, the creditor must include the increased payment under § 226.38(c)(4)(ii)(B) in the payment row, and must show the interest rate in the column for that payment, even though the rate has not changed since consummation. *See also* comment 17(c)(1)(iii)–7, regarding growth equity mortgages.

Paragraph 38(c)(2)(i)(B).

1. *ARMs and step-rate mortgages.* Creditors must disclose more than one interest rate for ARMs and step-rate mortgages, in accordance with paragraph (c)(2)(i)(B). Creditors must assume that interest rates rise after consummation, taking into account the terms of the legal obligation.

2. *Maximum interest rate at first adjustment—adjustable-rate mortgages and step-rate mortgages.* The creditor must disclose the maximum possible rate that could apply at the first scheduled adjustment in the interest rate. If there are no interest rate caps other than the maximum possible rate required under § 226.30, then the creditor should disclose only the rate at consummation and the maximum possible rate. Such a table would only have two columns.

i. For an adjustable rate mortgage, the creditor must take into account any interest rate caps when disclosing the maximum interest rate at the first adjustment. The creditor must also disclose the date on which the first scheduled adjustment occurs.

ii. If the transaction is a step-rate mortgage, the creditor should disclose the rate that will apply after consummation. For example, the legal obligation may provide that the rate is 6 percent for the first two years following consummation, and then increases to 7 percent. The creditor should disclose the rate at first adjustment as 7 percent and the date on which the rate is scheduled to increase to 7 percent.

3. *Maximum interest rate at any time.* The creditor must disclose the maximum rate that could apply at any time during the term of the loan and the earliest date on which the maximum interest rate could apply.

i. For an adjustable-rate mortgage, the creditor must take into account any interest rate caps in disclosing the maximum possible interest rate. For example, if the legal obligation provides that at each annual adjustment the rate may increase by no more than 2 percentage points, the creditor must take this limit into account in determining the earliest date on which the maximum possible rate may be reached.

ii. For a step-rate loan, the creditor should disclose the highest rate that could apply under the terms of the legal obligation.

Paragraph 38(c)(2)(i)(C).

1. *Payment increases.* For some loans, the payment may increase following consummation for reasons unrelated to an interest rate adjustment. For example, an adjustable-rate mortgage may have an introductory fixed-rate for the first five years following consummation, and permit the borrower to make interest-only payments for the first three years. Under § 26.38(c)(3)(ii)(B), the creditor must disclose the first payment of principal and interest. In such a case, the creditor must also disclose the interest rate that corresponds to the first payment of principal and interest, even though the interest rate will not adjust after consummation. The table would show, from left to right: the interest rate and payment at consummation with the payment itemized to show that the payment is being applied to interest only; the interest rate and payment when the interest-only option ends; the maximum interest rate and payment at first adjustment; and the maximum possible interest rate and payment.

38(c)(2)(ii) Loans with negative amortization.

1. *Rate at consummation.* In all cases the interest rate in effect at consummation must be disclosed, even if it will apply only for a short period such as one month.

2. *Rates for adjustable rate mortgages.* The creditor must assume that interest rates rise as quickly as possible after consummation, in accordance with any interest rate caps under the legal obligation. For ARMs with no interest rate caps except a maximum possible rate cap, creditors must assume that the interest rate reaches the maximum possible interest rate at first adjustment. For example, assume that the legal obligation provides for an interest rate at consummation of 1.5 percent. One month after consummation, the interest rate adjusts and will adjust monthly thereafter, according to changes in the index. The consumer may make payments that cover only part of the interest accruing each month, until the date the principal balance reaches 115 percent of its original balance, or until the 5th year after consummation, whichever comes first. The maximum possible rate is 10.5 percent. No other limits on interest rate changes apply. The minimum required payment adjusts each year, and may increase by no more than 7.5 percent over the previous year's payment. The creditor should disclose the transaction as follows. The creditor should disclose the following rates and the dates when they are scheduled to occur: a rate of 1.5 percent for the first month following consummation and the minimum payment; a rate of 10.5 percent, and the corresponding minimum payment taking into account the 7.5 percent limit, at the beginning of the second year; the rate of 10.5 percent and the corresponding minimum payment taking into account the 7.5 percent limit, at the beginning of the third year. The creditor must also disclose the rate of 10.5 percent, the fully amortizing payment, and the date on which the consumer must first make such a payment under the terms of the legal obligation.

Paragraph 38(c)(2)(iii).

1. *Introductory rate.* In some adjustable-rate mortgages, creditors may set an initial interest rate that is lower than the fully-indexed rate at consummation. For amortizing loans with an introductory rate, creditors must disclose the information required in 226.38(c)(2)(iii) directly below the table.

38(c)(3) Payments for amortizing loans.

1. *Payments corresponding to interest rates.* Creditors must disclose a payment that corresponds to each interest rate disclosed under § 226.38(c)(2)(i)(A)–(C). Balloon payments, however, must be disclosed as provided in § 226.38(c)(5).

2. *Principal and interest payment amounts; examples.*

i. For fixed-rate interest-only transactions, § 226.38(c)(3)(ii)(B) requires scheduled increases in the regular periodic payment amounts to be disclosed along with the date of the increase. For example, in a fixed rate interest-only loan, a scheduled increase in the payment amount from an interest-only payment to a fully amortizing payment must be disclosed. Similarly, in a fixed-rate balloon loan, the balloon payment must be disclosed in accordance with § 226.38(c)(5).

ii. For adjustable-rate mortgage transactions, § 226.38(c)(3)(i)(A) requires that for each interest rate required to be disclosed under § 226.38(c)(2)(i) (the interest rate at consummation, the maximum rate at the first adjustment, and the maximum possible rate) a corresponding payment amount must be disclosed.

iii. The format of the payment disclosure varies depending on whether all regular periodic payment amounts will include principal and interest, and whether there will be an escrow account for taxes and insurance.

38(c)(3)(i)(C) Estimated amounts for taxes and insurance.

1. *Taxes and insurance.* An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. The payment amount must include estimated amounts for property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.

2. *Mortgage insurance.* Payment amounts under § 226.38(c)(3)(i) should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment amount must reflect the terms of the legal obligation, as determined by applicable State or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, payment amounts disclosed up to the 130th payment should reflect premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, payments disclosed up to the 128th payment should reflect premium payments.

Paragraph 38(c)(3)(i)(D).

1. *Total monthly payment.* For amortizing loans, each column should add up to a total estimated payment. The total estimated payment amount should be labeled. If periodic payments are not due monthly, the creditor should use the appropriate term such as ''quarterly'' or ''annually.''

38(c)(4) Payments for negative amortization loans.

1. *Table.* Section 226.38(c)(1) provides that tables shall include only the information required in paragraph (c)(2)–(4). Thus, a table for a negative amortization loan must contain no more than two horizontal rows of payments and no more than five vertical columns of interest rates.

Paragraph 38(c)(4)(i).

1. *Minimum required payments.* In one row of the table, the creditor must show the minimum required payment in each column, for each interest rate or adjustment required in § 226.38(c)(2)(ii), except that under the last column the fully amortizing payment must be shown and must be identified as the ''full payment.'' The payments in this row must be calculated based on an assumption that the consumer makes the minimum required payment for as long as possible under the terms of the legal obligation. This row should be identified as the minimum payment option, and the statement required by § 226.38(c)(4)(i)(C) should be included in the heading for the row.

Paragraph 38(c)(4)(iii).

1. *Fully amortizing payments.* In one row of the table, the creditor must show the fully amortizing payment for every interest rate required in § 226.38(c)(2)(ii). The creditor must assume, for purposes of calculating the amounts in this row that the consumer makes only fully amortizing payments.

38(c)(5) Balloon payment.

1. *General.* A balloon payment is one that is more than two times the regular periodic payment. A balloon payment must be disclosed in a row under the table, unless the balloon payment coincides with an interest rate adjustment or a scheduled payment increase. In those cases, the balloon payment must be disclosed in the table.

38(d) Key Questions About Risk.

38(d)(1) Required disclosures.

1. *Disclosure of first rate or payment increase.* Under § 226.38(d)(1)(i) and (ii), the creditor must disclose the calendar month and year in which the first interest rate or payment increase may occur.

38(d)(1)(iii) Prepayment penalty.

1. *Coverage.* See comment 38(a)(5)–1 to determine whether there is a prepayment penalty.

2. *Penalty.* See comment 38(a)(5)–2 for examples of charges that are prepayment penalties.

3. *Not penalty.* See comment 38(a)(5)–3 for examples of charges that are not prepayment penalties.

4. *Basis of disclosure.* Creditors may rely on comment 38(a)(5)–6 in determining the maximum prepayment penalty.

5. *Timely payment assumed.* In accordance with comment 38(a)(5)–7, creditors may disregard any possible differences resulting from the consumer's payment patterns and may base disclosures on the required payment and not an amortizing payment, if the loan has a negative amortization feature.

38(d)(2) Additional disclosures.

1. *As applicable.* The disclosures required by § 226.38(d)(2) need only be made as applicable. Any disclosure not relevant to the loan may be omitted.

3*8(d)(2)(iii) Balloon payment.*

1. The creditor must make the balloon payment disclosure if the loan program includes a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

38(d)(2)(iv) Demand feature.

1. *Disclosure requirements.* The disclosure requirements of § 226.38(d)(2)(iv) apply not only to transactions payable on demand from the outset, but also to transactions that convert to a demand status after a stated period.

2. *Covered demand features.* See comment 18(i)–2 for examples of covered demand features.

38(e) Information about payments.

38(e)(1) Rate calculation.

1. *Calculation.* If the interest rate will be calculated based on an index, an identification of the index to which the rate is tied, the amount of any margin that will be added to the index, and any conditions or events on which the increase is contingent must be disclosed. When no specific index is used, the factors used to determine any rate increase must be disclosed. When the increase in the rate is discretionary, the fact that any increase is within the creditor's discretion must be disclosed. When the index is internally defined (for example, by that creditor's prime rate), the creditor may comply with this requirement by providing either a brief description of that index or a statement that any increase is in the discretion of the creditor.

38(e)(2) Rate and payment change limits.

1. *Limitations on interest rate increases.* Limitations include any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the loan's term to maturity.

2. *Limitations on payment increases; negatively amortizing loans.* Limitations include any limit imposed on the change of a minimum payment amount whether or not the change is

accompanied by an adjustment to the interest rate. Any conditions on the limitation on payment increases must also be disclosed. For example, some loan programs provide that the minimum payment will not increase by more than a certain percentage, regardless of the corresponding increase in the interest rate. However, there may be exceptions to the limitation on the payment increase, such as if the consumer's principal balance reaches a certain threshold, or if the legal obligation sets out a scheduled time when payment increases will not be limited.

38(e)(5)(i) Total payments.

1. *Calculation of total payments scheduled.* Creditors should use the rules under § 226.18(g) and associated commentary, and comments 17(c)(1)(iii)–1 and –3 for adjustable-rate transactions, to calculate the total payments amount, except that the calculation of the total payments amount must include any amount required to be disclosed under § 226.38(c)(3)(i)(C).

2. *Number of payments.* See comment 18(g)–3.

3. *Demand obligations.* In demand obligations with no alternate maturity date, the creditor must make disclosure of total payments scheduled described in § 226.17(c)(5).

38(e)(5)(ii) Interest and settlement charges.

1. *Calculation of interest and settlement charges.* The interest and settlement charges disclosure is identical to the finance charge, as calculated under § 226.4.

2. *Disclosure required.* The creditor must disclose the interest and settlement charges as a dollar amount, using the term *interest and settlement charges,* together with a brief statement as required by § 226.38(e)(5)(ii). The interest and settlement charges must be disclosed only as a total amount; the components of the interest and settlement charges amount may not be itemized in the segregated disclosures, except as permitted under § 226.38(a)(4), although the regulation does not prohibit itemization elsewhere.

38(e)(5)(iii) Amount financed.

1. *Principal loan amount.* In a mortgage transaction subject to § 226.38, the principal loan amount is the same as the loan amount disclosed under § 226.38(a)(1). As provided in that section, the loan amount is the principal amount the consumer will borrow reflected in the loan contract. Thus the principal loan amount includes all amounts financed as part of the transaction, whether they are finance charges or not.

2. *Loan premiums and buydowns.* In a mortgage transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, a third party, such as a real estate developer or other seller, may offer to pay some portion of the consumer's costs of the credit transaction or to pay the creditor to ''buy down'' the consumer's interest rate. Such premiums and buydowns must be reflected in accordance with the terms of the legal obligation between the creditor and consumer. *See* § 226.17(c)(1) and comments 17(c)(1)–1, –2 and 17(c)(1)(i)–1 through –4. Thus, if the creditor is legally obligated by the terms of the credit obligation to charge a reduced interest rate or reduced costs as a consequence of the premium or buydown, regardless of its source, the disclosures, including the amount financed, should reflect those credit terms. Otherwise, the disclosures should be calculated without regard to any such premium or buydown.

3. *Disclosure required.* The net amount of credit extended must be disclosed using the term ''amount financed'' together with a descriptive statement as required by § 226.38(e)(5)(iii).

38(f)(4) Tax deductibility.

1. *Example.* The creditor can use the following language to satisfy the requirements of this section: ''If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.''

2. *Applicability.* If the creditor is not certain at the time of application whether the credit extended may exceed the fair market value of the dwelling, the creditor may, at its discretion, provide the disclosure required by this section in connection with all applications for closed-end credit secured by a dwelling or real property.

38(g) Identification of loan originator and creditor.

38(g)(1) Creditor.

1. *Identification of creditor.* The creditor making the disclosures must be identified. Use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

38(g)(2) Loan originator.

1. *Multiple loan originators.* In transactions with multiple loan originators, each loan originator's unique identifier must be disclosed. For example, in a transaction where a mortgage broker meets the definition of a loan originator under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Section 1503(3), 12 U.S.C. 5102(3), the identifiers for the broker and for its employee originator meeting that definition must be disclosed.

38(h) Credit insurance and debt cancellation and debt suspension coverage.

1. *Location.* This disclosure may, at the creditor's option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by State law, or other information. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

Paragraph 38(h)(5).

1. *Compliance.* If, based on the creditor's review of the consumer's age and/or employment status at the time of enrollment in the product, the consumer would not be eligible to receive the benefits of the product, then providing the disclosure required under § 226.38(h)(5) would not comply with this provision. That is, if the consumer does not meet the age and/or employment eligibility criteria, then the creditor cannot state that the consumer may be eligible to receive benefits and cannot comply with this requirement. If the creditor offers a bundled product (such as credit life insurance combined with credit involuntary unemployment insurance) and the consumer is not eligible for all of the bundled products, then providing the disclosure required under § 226.38(h)(5) would not comply with this provision. However, the disclosure still satisfies the requirements of this section if an event subsequent to enrollment, such as the consumer passing the age limit of the product, makes the consumer ineligible for the product based on the product's age or employment eligibility restrictions.

2. *Reasonably reliable evidence.* A disclosure under § 226.38(h)(5) shall be deemed to comply with this section if the creditor used reasonably reliable evidence to determine whether the consumer met the age or employment eligibility criteria of the product. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include a consumer's statement on a credit

application form, an Internal Revenue Service Form W–2, tax returns, payroll receipts, or other written evidence such as a letter or e-mail from the consumer or the consumer's employer.

38(i) Required deposit.

1. *Disclosure required.* The creditor must inform the consumer of the existence of a required deposit. (Appendix H provides a model clause that may be used in making that disclosure.) Section 226.38(i)(1) and (2) describe two types of deposits that need not be considered required deposits. Use of the phrase ''need not'' permits creditors to include the disclosure even in cases where there is doubt as to whether the deposit constitutes a required deposit.

2. *Pledged-account mortgages.* In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from that account to supplement the consumer's periodic payments. Creditors may treat these pledged accounts as required deposits or they may treat them as consumer buydowns in accordance with the commentary to § 226.17(c)(1).

3. *Escrow accounts.* The escrow exception in § 226.38(i) applies, for example, to accounts for such items as maintenance fees, repairs, or improvements. (See the commentary to § 226.17(c)(1) regarding the use of escrow accounts in consumer buydown transactions.)

4. *Interest-bearing accounts.* When a deposit earns at least 5 percent interest per year, no disclosure is required. This exception applies whether the deposit is held by the creditor or by a third party.

5. *Examples of amounts excluded.* The following are among the types of deposits that need not be treated as required deposits:

i. Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.

ii. Required property insurance escrow on a mobile home transaction.

iii. Refund of interest when the obligation is paid in full.

iv. Deposits that are immediately available to the consumer.

v. Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.

vi. Escrow of condominium fees.

vii. Escrow of loan proceeds to be released when the repairs are completed.

38(j) Separate disclosures.

38(j)(1) Itemization of amount financed.

1. *Compliance alternatives.* The creditor has three alternatives in complying with § 226.38(j)(1). Under all three alternatives, the itemization (or its substitute) must be provided at the same time as the other disclosures required by § 226.38, although separate from those disclosures. The three alternatives are as follows:

i. The creditor may provide an itemization as a matter of course, without notifying the consumer of the right to receive the itemization.

ii. The creditor may inform the consumer, as part of the segregated disclosures, that a written itemization of the amount financed will be provided on request, furnishing the itemization only if the consumer in fact requests it.

iii. The creditor may substitute the GFE or HUD–1 settlement statement for the itemization. See comment 38(j)(1)(iii)–1 for additional guidance on this alternative.

Paragraph 38(j)(1)(i).

1. *Additional information.* Section 226.38(j)(1)(i) establishes a minimum standard for the information to be included in the itemization of the amount financed. Creditors have considerable flexibility in revising or supplementing the information listed in § 226.38(j)(1)(i). The creditor may, for example, do one or more of the following:

i. Include amounts that reflect payments not part of the amount financed. For example, costs of the transaction that the consumer pays directly, rather than out of loan proceeds, may be included.

ii. Organize the categories in any order. For example, the creditor may rearrange the terms in a mathematical progression that depicts the arithmetic relationship of the terms.

iii. Further itemize each category. For example, the amount paid directly to the consumer may be subdivided into the amount given by check and the amount credited to the consumer's savings account.

iv. Label categories with different language from that shown in § 226.38(j)(1)(i). For example, an amount paid on the consumer's account may be revised to identify the account specifically as ''your existing mortgage loan with us.''

v. Delete, leave blank, mark ''N/A,'' or otherwise note inapplicable categories in the itemization. For example, in a mortgage transaction to finance the purchase of a dwelling with no proceeds distributed directly to the consumer or amount credited to the consumer's account with the creditor, the amount financed may consist of only the amounts paid to others and the prepaid finance charge. In this case, the itemization may be composed of only those categories, and the other categories may be eliminated.

2. *Amounts appropriate to more than one category.* When an amount may appropriately be placed in any of several categories and the creditor does not wish to revise the categories shown in § 226.38(j)(1)(i), the creditor has considerable flexibility in determining where to reflect the amount. For example, in a mortgage transaction to refinance an existing mortgage held by the same creditor with additional proceeds paid to the consumer, the portion of the proceeds used to pay off the existing mortgage debt may be treated as either an amount paid to the consumer or an amount paid on the consumer's account. If the existing mortgage is held by another creditor, the portion of the proceeds used to pay it off may be treated as either an amount paid to the consumer or an amount paid to others on the consumer's behalf.

Paragraph 38(j)(1)(i)(A).

1. *Amounts paid to consumer.* This category encompasses funds given to the consumer in the form of cash or a check, including joint proceeds checks, as well as funds placed in an asset account. It may include money in an interest-bearing account even if that amount is considered a required deposit under § 226.38(i). For example, in a transaction with total loan proceeds of $50,000, assume the consumer receives a check for $30,000 and $20,000 is required by the creditor to be put into an interest-bearing account. Whether or not the $20,000 is a required deposit, it is part of the amount financed. At the creditor's option, it may be broken out and labeled in the itemization of the amount financed.

Paragraph 38(j)(1)(i)(B).

1. *Amounts credited to consumer's account.* The term *consumer's account* refers to an account in the nature of a debt with that creditor. It may include, for example, an unpaid balance on a prior loan or other amounts owing to that creditor. It does not include asset accounts of the consumer such as savings or checking accounts.

Paragraph 38(j)(1)(i)(C).

1. *Amounts paid to others.* This category includes, for example, title fees; amounts paid to insurance companies for insurance premiums; security interest fees; and amounts paid to credit bureaus, appraisers, and public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled ''insurance'' or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of

insurance premiums paid to different companies. Except for insurance companies and other categories noted in § 226.38(j)(1)(i)(C), third parties must be identified by name.

Paragraph 38(j)(1)(i)(D).

1. *Prepaid finance charge.* Prepaid finance charges that are subtracted from the loan amount to calculate the amount financed, under § 226.38(e)(5)(iii), must be disclosed under § 226.38(j)(1)(i)(D). The prepaid finance charges must be shown as a total amount but, at the creditor's option, also may be further itemized and described. All amounts must be reflected in this total, even if portions of the prepaid finance charge are also reflected elsewhere. For example, if at consummation the creditor collects interim interest of $30 and an underwriting fee of $100, a total prepaid finance charge of $130 must be shown. At the creditor's option, the underwriting fee paid to a third party also may be shown elsewhere as an amount included in § 226.38(j)(1)(i)(C). The creditor also may further describe the two components of the prepaid finance charge, although no itemization of this element is required by § 226.38(j)(1)(i)(D).

2. *Prepaid finance charges placed in escrow.* RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are payments into an escrow account for items that are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amounts listed on the respective lines of the settlement statement for each of those items, without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for such items disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.

Paragraph 38(j)(1)(iii).

1. *RESPA disclosures.* RESPA requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. For transactions subject to § 226.38, whether or not they are subject to RESPA, the creditor can satisfy § 226.38(j)(1) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content of the good faith estimate and HUD–1 settlement statement under RESPA differs from the requirements of § 226.38(j)(1)(i). If a creditor chooses to substitute RESPA's settlement statement for the itemization when redisclosure is required under § 226.19(a)(2), however, the statement must be provided to the consumer at the time required by that section.

38(j)(2) Rebate.

1. *Disclosure required.* The creditor must give a definitive statement of whether or not a rebate will be given. If a refund is possible for one type of prepayment, even though not for all, a positive disclosure is required. This applies to any type of prepayment, whether voluntary or involuntary as in the case of prepayments resulting from acceleration.

2. *Rebate-penalty disclosure.* Creditors may rely on comment 38(a)(5)–8 in determining how to disclose both a prepayment penalty and a rebate in a single transaction. Sample form H–15 in Appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

3. *Prepaid finance charge.* The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure under § 226.38(j)(2). A prepaid finance charge is not considered a rebate under § 226.38(j)(2). At its option, however, a creditor may consider a prepaid finance charge to be a rebate under § 226.38(j)(2). If a disclosure is made under § 226.38(j)(2) with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower ''will not be entitled to a refund of the prepaid finance charge'' or some other term that describes the finance charge.

4. *Rebate of finance charge.* This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation.

i. This category includes, for example:

A. Precomputed finance charges such as add-on charges.

B. Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.

ii. No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under this section.

38(j)(3) Late payment.

1. *Definition.* This paragraph requires a disclosure only if charges are added to individual delinquent installments by a creditor who otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

i. The right of acceleration.

ii. Fees imposed for actual collection costs, such as repossession charges or attorney's fees.

iii. Deferral and extension charges.

iv. The continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate is a late payment charge to the extent of the increase.

2. *Content of disclosure.* Many State laws authorize the calculation of late charges on the basis of either a percentage or a specified dollar amount, and permit imposition of the lesser or greater of the 2 charges. The disclosure made under § 226.38(j)(3) may reflect this alternative. For example, stating that the charge in the event of a late payment is 5% of the late amount, not to exceed $5.00, is sufficient.

38(j)(5) Contract reference.

1. *Content.* Creditors may substitute, for the phrase ''loan contract,'' a reference to specific transaction documents in which the additional information is found, such as ''promissory note.'' A creditor may, at its option, delete inapplicable items in the contract reference.

38(j)(6) Assumption policy.

1. *Policy statement.* In many mortgages, the creditor cannot determine, at the time disclosure must be made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors such as the creditworthiness of the subsequent borrower, the potential for impairment of the lender's security, and execution of an assumption agreement by the subsequent borrower. In cases where uncertainty exists as to the future assumability of a mortgage, the disclosure under § 226.38(j)(6) should reflect that fact. In making disclosures in such cases, the creditor may use phrases such as ''subject to conditions,'' ''under certain circumstances,'' or ''depending on future conditions.'' The creditor may provide a brief reference to more specific criteria such as a due-on-sale clause, although a complete explanation of all conditions is not appropriate. For example, the disclosure may state, ''If you sell your home after you take out this loan, we may permit the new buyer to take over the payments on your mortgage, subject to certain conditions, such as payment of an assumption fee.'' See comment 17(a)(1)–5 for an example of a reference to a due-on-sale clause.

2. *Original terms.* The phrase ''original terms'' for purposes of section

226.38(j)(6) does not preclude the imposition of an assumption fee, but a modification of the basic credit agreement, such as a change in the contract interest rate, represents different terms.

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible Changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability►.◄[, except] ►However,◄ formatting changes may not be made to ►to the following◄ model forms►, model clauses,◄ and samples► in Appendices G and H:◄ G–2[(A)], G–3[(A)], G–4[(A)], G–10(A)–(E), ►G–14(A)–(E), G–15(A)–(D),◄ G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, [and]G–21►, G–22(A)–(B), G–23(A)–(B), G–24(A) (except as permitted pursuant to § 226.7(a)(2)), G–25, and G–26; and H–4(B) through H–4(L), H–17(A) through (D), H–19(A)–(I), and H–20 through H–22.◄ The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using ''borrower'' and ''creditor'' instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state ''plain English'' requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms ►for transactions not secured by real property or a dwelling◄.)

[vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.]

2. *Debt cancellation coverage.* This regulation does not authorize creditors to characterize debt cancellation ►or debt suspension◄ fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation ►or debt suspension◄ coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation ►or debt suspension◄ coverage constitutes insurance under State law.

* * * * *

Appendix H—Closed-End Model Forms and Clauses

1. *Models H–1 and H–2.* Creditors may make several types of changes to closed-end model forms H–1 (credit sale) and H–2 (loan) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. Permissible changes include the addition of the information permitted by [footnote 37 to] section 226.17 and ''directly related'' information as set forth in the commentary to section 226.17(a).

The creditor may also delete, or on multi-purpose forms, indicate inapplicable disclosures, such as:

- The itemization of the amount financed option (See sample[s] H–12[through H–15].)
- The credit [life and disability] insurance► or debt cancellation or debt suspension coverage◄ disclosures (See ►model clauses and◄ samples H-[11]►17(A) and H–17(C)◄ and H-[12]►17(B) and H–17(D)◄.)
- The property insurance disclosures (See ►model clause H–18, and ◄samples H–10 through H–12[, and H–14].)
- The ''filing fees'' and ''nonfiling insurance'' disclosures (See samples H–11 and H–12.)
- The prepayment penalty or rebate disclosures (See sample[s] H–12[and H–14].)
- The total sale price (See samples H–11 through H-[15]►12◄.)

Other permissible changes include:

- Adding the creditor's address or telephone number. (See the commentary to § 226.18(a).)
- Combining required terms where several numerical disclosures are the same, for instance, if the ''total of payments'' equals the ''total sale price.'' (See the commentary to § 226.18.)
- Rearranging the sequence or location of the disclosures—for instance, by placing the descriptive phrases outside the boxes containing the corresponding disclosures, or by grouping the descriptors together as a glossary of terms in a separate section of the segregated disclosures; by placing the payment schedule at the top of the form; or by changing the order of the disclosures in the boxes, including the annual percentage rate and finance charge boxes.
- Using brackets, instead of checkboxes, to indicate inapplicable disclosures.
- Using a line for the consumer to initial, rather than a checkbox, to indicate an election to receive an itemization of the amount financed.
- Deleting captions for disclosures.
- Using a symbol, such as an asterisk, for estimated disclosures, instead of an ''e.''
- Adding a signature line to the insurance disclosures to reflect joint policies.
- Separately itemizing the filing fees.
- Revising the late charge disclosure in accordance with the commentary to § 226.18(l).

2. *Model H–3.* ►Except as otherwise specifically provided,◄[C]►c◄reditors have considerable flexibility in filling out model H–3 (itemization of the amount financed). Appropriate revisions, such as those set out in the commentary to section 226.18(c)►, or section 226.38(j)(1) for transactions secured by real property or a dwelling◄, may be made to this form without loss of protection from civil liability for proper use of the model forms.

3. *Models H–4►(A)◄[through]►, H–4(C), H–4(H), H–5,◄ H–7►, H–16, H–17(A), H–17(C), H–18, and H–20 through H–23◄.* The model clauses are not included in the model forms although they are mandatory for certain transactions. Creditors using the model clauses when applicable to a transaction are deemed to be in compliance with the regulation with regard to that disclosure.

4. *Model H–4(A).* This model contains the variable-rate model clauses applicable to transactions subject to section 226.18(f)[(1)] and is intended to give creditors considerable flexibility in structuring variable-rate disclosures to fit individual plans. The information about circumstances, limitations, and effects of an increase may be given in terms of the contract interest rate or the annual percentage rate. Clauses are shown for hypothetical examples based on the specific amount of the transaction and based on a representative amount. Creditors may preprint the variable-rate disclosures based on a representative amount for similar types of transactions, instead of constructing an individualized example for each transaction. In both representative examples and transaction-specific examples, creditors may refer either to the incremental change in rate, payment amount, or number of payments, or to the resulting rate, payment amount, or number of payments. For example, creditors may state that the rate will increase by 2 percent, with a corresponding $150 increase in the payment, or creditors may state that the rate will increase to 16 percent, with a corresponding payment of $850.

5. *Model H–4(B)► and Samples H–4(D) through (F)◄.* [This model clause illustrates the variable-rate disclosure required under section 226.18(f)(2), which would alert consumers to the fact that the transaction contains a variable-rate feature and that disclosures were provided earlier]►Model H–4(B) illustrates, in the tabular format, the disclosures required under section 226.19(b) for adjustable-rate transactions secured by real property or a dwelling. The model form alerts consumers to risky features of the specific adjustable-rate mortgage program, and includes information on how the interest rate is determined and how it can change over time. The model form also directs the consumer to a Web site to obtain additional information on adjustable-rate programs or to

find a list of licensed housing counselors. Samples H–4(D) through (F) illustrate how to adapt the model form and clauses contained in appendix H–4(B) and H–4(C) to the creditor's own particular adjustable-rate program. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Model H–4(B). *See* comment app. H–18 regarding formatting details for samples H–4(D) through H–4(F).◄

6. *Model H–4(C).* Th[is]►e◄ model clause►s◄ illustrate[s] ►certain◄[the] early disclosures required generally under 226.19(b). [It]►They◄ include[s] information on how the consumer's interest rate is determined and how it can change over the term of the loan► when there is carryover interest, a conversion feature, or a preferred rate◄[, and explains changes that may occur in the borrower's monthly payment. It contains an example of how to disclose historical changes in the index or formula values used to compute interest rates for the preceding 15 years. The model clause also illustrates the disclosure of the initial and maximum interest rates and payments based on an initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure and illustrates how to provide consumers with a method for calculating the monthly payment for the loan amount to be borrowed].

7. *Model►s◄ H–4[D]►(G), (H), and (K), and Samples H–4(I) and (J)◄.* [This model]►Model H–4(G), and◄ model clause►s contained in H–4(H),◄ illustrate[s]►, in the tabular format, the disclosures◄ [the adjustment notice] required under section 226.20(c) [and provides] ►regarding interest rate adjustment notices for adjustable rate transactions secured by real property or a dwelling. Model H–4(K) illustrates an annual notice of interest rate change without any corresponding change to payment. Samples H–4(I) and (J) provide◄ examples of payment-change notices [and annual notices of interest-rate changes]► for an interest-only, adjustable rate transaction and a hybrid adjustable rate transaction, respectively. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Models H–4(G) or H–4(K).◄

8. *Model H–5.* This contains the demand feature clause.

9. *Model H–6.* [This contains the assumption clause.]►Reserved◄

10. *Model H–7.* This contains the required deposit clause.

11. *Models H–8 and H–9.* These models contain the rescission notices for a typical closed-end transaction and a refinancing, respectively. The last paragraph of each model form contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, where the notice or material disclosures are delivered late or where the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional. See the commentary to section 226.2(a)(25) regarding the specificity of the security interest disclosure for model form H–9. The prior version of model form H–9 is substantially similar to the current version and creditors may continue to use it, as appropriate. Creditors are encouraged, however, to use the current version when reordering or reprinting forms.

12. *Sample forms.* [The sample forms]►Samples◄ [(]►H–4(D) through H-(F), H4(I) and H–4(J),◄H–10 through H-[15]►12, H–17(B) and H–17(D), and H–19(D) through (I)◄[)] serve a different purpose than the model forms► and model clauses◄. The samples illustrate various ways of adapting the model forms to the individual transactions described in the commentary to appendix H. The deletions and rearrangements shown relate only to the specific transactions described. As a result, the samples do not provide the general protection from civil liability provided by the model forms and clauses.

13. *Sample H–10.* This sample illustrates an automobile credit sale. The cash price is $7,500 with a downpayment of $1,500. There is an 8% add-on interest rate and a term of 3 years, with 36 equal monthly payments. The credit life insurance premium and the filing fees are financed by the creditor. There is a $25 credit report fee paid by the consumer before consummation, which is a prepaid finance charge.

14. *Sample H–11.* This sample illustrates an installment loan. The amount of the loan is $5,000. There is a 12% simple interest rate and a term of 2 years. The date of the transaction is expected to be April 15, 1981, with the first payment due on June 1, 1981. The first payment amount is labelled as an estimate since the transaction date is uncertain. The odd days' interest ($26.67) is collected with the first payment. The remaining 23 monthly payments are equal.

15. *Sample H–12.* This sample illustrates a refinancing and consolidation loan. The amount of the loan is $5,000. There is a 15% simple interest rate and a term of 3 years. The date of the transaction is April 1, 1981, with the first payment due on May 1, 1981. The first 35 monthly payments are equal, with an odd final payment. The credit disability insurance premium is financed. In calculating the annual percentage rate, the U.S. Rule has been used. Since an itemization of the amount financed is included with the disclosures, the statement regarding the consumer's option to receive an itemization is deleted.

16. *Samples H–[13]►19(D)◄ through H–[15]►19(I)◄.* These samples illustrate various mortgage transactions. They assume that the mortgages are subject to the Real Estate Settlement Procedures Act (RESPA). As a result, no option regarding the itemization of the amount financed has been included in the samples, because providing the good faith estimates of settlement costs required by RESPA satisfies Truth in Lending's amount financed itemization requirement. (See [footnote 39 to § 226.18(c)]►§ 226.38(j)(1)(iii)◄.)

17. *Sample H–[13]►16◄.* ►This sample illustrates the disclosures required under § 226.32(c)(1) through (5). The sample illustrates► notices,◄ the amount borrowed►,◄ and the disclosures about optional insurance that are required for mortgage refinancings under § 226.32(c)(5). The sample also includes disclosures required under § 226.32(c)(3) when the legal obligation includes a balloon payment.◄[This sample illustrates a mortgage with a demand feature. The loan amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. The 15 days of interim interest ($294.34) is collected as a prepaid finance charge at the time of consummation of the loan (April 15, 1981). In calculating the disclosure amounts, the minor irregularities provision in § 226.17(c)(4) has been used. The property insurance premiums are not included in the payment schedule. This disclosure statement could be used for notes with the 7-year call option required by the Federal National Mortgage Association (FNMA) in states where due-on-sale clauses are prohibited.]

18. *[Sample H–14]►Models H–19(A) through H–19(C)◄.* ►i. These model forms illustrate, in the tabular format, the disclosures required generally under § 226.38(a) through 226.38(j) for transactions secured by real property or a dwelling. Creditors can use model H–19(A) for fixed-rate mortgage loans subject to § 226.38; model H–19(B) for adjustable-rate mortgages subject to § 226.38; and model H–19(C) for mortgages that are negatively amortizing and subject to § 226.38.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms H–19(A) through (C), as applicable.

iii. Although creditors are not required to use a certain paper size in disclosing the §§ 226.19(b), 226.20(c), 226.20(d) or 226.38 disclosures, samples H–4(D) through H–(F), and H–19(D) through H–19(I) are designed to be printed on an $8 \times 11\frac{1}{2}$ sheet of paper. In addition, the following formatting techniques were used in presenting the information in the sample forms to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style, except for the annual percentage rate which is shown in 16-point type);

B. Sufficient spacing between lines of the text;

C. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type, except the headings in the tabular format used to provide the interest rate and payment disclosures required under § 226.38(c), which are shown in 9-point type;

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text;

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

iv. The Board is not requiring creditors to use the above formatting techniques in presenting information in the tabular format or scaled graph (except for the 10-point and 16-point minimum font requirements);

however, the Board encourages creditors to consider these techniques when disclosing information in the table or scaled graph to ensure that the information is presented in a readable format.◄[This sample disclosure form illustrates the disclosures under § 226.19(b) for a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year. The sample form shows a creditor how to adapt the model clauses in appendix H–4(C) to the creditor's own particular variable-rate program. The sample disclosure form describes the features of a specific variable-rate mortgage program and alerts the consumer to the fact that information on the creditor's other closed-end variable-rate programs is available upon request. It includes information on how the interest rate is determined and how it can change over time. Section 226.19(b)(2)(viii) permits creditors the option to provide either a historical example or an initial and maximum interest rates and payments disclosure; both are illustrated in the sample disclosure. The historical example explains how the monthly payment can change based on a $10,000 loan amount, payable in 360 monthly installments, based on historical changes in the values for the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. Index values are measured for 15 years, as of the first week ending in July. This reflects the requirement that the index history be based on values for the same date or period each year in the example. The sample disclosure also illustrates the alternative disclosure under § 226.19(b)(2)(viii)(B) that the initial and the maximum interest rates and payments be shown for a $10,000 loan originated at an initial interest rate of 12.41 percent (which was in effect July 1996) and to have 2 percentage point annual (and 5 percentage point overall) interest rate limitations or caps. Thus, the maximum amount that the interest rate could rise under this program is 5 percentage points higher than the 12.41 percent initial rate to 17.41 percent, and the monthly payment could rise from $106.03 to a maximum of $145.34. The loan would not reach the maximum interest rate until its fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed reflects the amortization of the loan during that period. The sample form also illustrates how to provide consumers with a method for calculating their actual monthly payment for a loan amount other than $10,000.]

19. *Sample H–[15]*►*19(D)*◄. ►This sample illustrates the disclosures under § 226.38 for a fixed rate mortgage with a shared-equity feature. The loan amount is $210,000, payable in 36 monthly installments at a simple interest rate of 5.50%. The date of the transaction is March 26, 2009, and the sample assumes the average prime offer rate for the week of March 23, 2009 is 5.66%. There is a balloon payment of $202,217.84 due in March 2012. The taxes and property insurance premiums are not escrowed, and therefore, are shown as not included in the interest rate and payment summary table required under § 226.38(c).◄[This sample illustrates a graduated payment mortgage with a 5-year graduation period and a 7½ percent yearly increase in payments. The loan amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. Two points ($898), as well as an initial mortgage guarantee insurance premium of $225.00, are included in the prepaid finance charge. The mortgage guarantee insurance premiums are calculated on the basis of ¼ of 1% of the outstanding principal balance under an annual reduction plan. The abbreviated disclosure permitted under § 226.18(g)(2) is used for the payment schedule for years 6 through 30. The prepayment disclosure refers to both penalties and rebates because information about penalties is required for the simple interest portion of the obligation and information about rebates is required for the mortgage insurance portion of the obligation.]

20. *Sample H–[16]*►*19(E)*◄. ►This sample illustrates the disclosures under § 226.38 for a fixed rate mortgage with interest-only payments for the first 10 years. The loan amount is $200,000, payable in 360 monthly installments, at a simple interest rate of 6.50%. The date of the transaction is February 26, 2009, and the sample assumes the average prime offer rate for the week of February 23, 2009 is 6.19%. The taxes and property insurance premiums are escrowed, and therefore, are shown as included in the total estimated monthly payment in the interest rate and payment summary table required under § 226.38(c).◄[This sample illustrates the disclosures required under § 226.32(c). The sample illustrates the amount borrowed and the disclosures about optional insurance that are required for mortgage refinancings under § 226.32(c)(5). Creditors may, at their option, include these disclosures for all loans subject to § 226.32. The sample also includes disclosures required under § 226.32(c)(3) when the legal obligation includes a balloon payment].

►21. *Sample H–19(F).* This sample illustrates the disclosures under § 226.38 for a step-payment mortgage with a seven-year step period and a 4 percent annual payment cap. This sample does not offer payment options. The consumer is required to make minimum payments for the first seven years; the minimum payments cover no principal and only some interest for the first two years and therefore, the mortgage has a negative amortization feature. Fully amortizing payments begin in year eight. The loan amount is $200,000, payable in 360 monthly installments at a simple interest rate of 6.50%. The date of the transaction is February 4, 2009, and the sample assumes the average prime offer rate for the week of February 2, 2009 is 5.75%. The taxes and property insurance are escrowed, and therefore, a statement of the amount of estimated taxes and insurance is included in the interest rate and payment summary disclosure required under § 226.38(c)(6)(i).

22. *Sample H–19(G).* This sample illustrates the disclosures under § 226.38 for a hybrid adjustable rate mortgage with a prepayment penalty that is in effect for the first 2 years. The loan amount is $200,000, payable in 360 monthly installments, with an initial discounted rate of 5.625% that is fixed for the first 3 years. The date of the transaction is February 26, 2009, and the sample assumes the average prime offer rate for the week of February 23, 2009 is 6.50%. The taxes and property insurance premiums are escrowed, and therefore, are shown as included in the total estimated monthly payment in interest rate and payment summary table required under § 226.38(c).

23. *Sample H–19(H).* This sample illustrates the disclosures under § 226.38 for a hybrid adjustable rate mortgage. The loan has an interest only payment option for the first 5 years, and a prepayment penalty that is in effect for the first 2 years. The loan amount is $200,000, payable in 360 monthly installments, with an initial discounted rate of 6.875% that is fixed for the first 5 years. The date of the transaction is February 26, 2009, and the sample assumes the average prime offer rate for the week of February 23, 2009 is 4.00%. The taxes, property insurance and private mortgage insurance premiums are escrowed, and therefore, are included in the interest rate and payment summary table required under § 226.38(c).

24. *Sample H–19(I).* This sample illustrates the disclosures under § 226.38 for an adjustable-rate mortgage with payment options. The loan amount is $200,000 and payable in 360 monthly installments. The loan has an initial 1-month introductory rate of 1.5% that adjusts to the maximum of 10.5% in the second month of the loan. The date of the transaction is February 4, 2009, and the sample assumes the average prime offer rate for the week of February 2, 2009 is 4.75%. The minimum payment option has an annual payment cap of 7.5% and can be made until the loan recasts at 115% of the original loan amount. This sample assumes only minimum payments are made until the loan recasts in June 2011, when fully amortizing payments of $2,402.54 would be required. The taxes and property insurance are escrowed, and therefore, a statement of the amount of estimated taxes and insurance is included in the interest rate and payment summary disclosure required under § 226.38(c)(6)(i).

25. *Model H–20.* This contains the balloon payment clause.

26. *Model H–21.* This contains the introductory rate clause.

27. *Model H–22.* These model clauses illustrate, in the tabular format, the disclosures required generally under § 226.38(d)(2) regarding key questions about risk for transactions secured by real property or a dwelling. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms H–19(A)–(C).

28. *Model H–23.* These model clauses illustrate the following disclosures required generally under § 226.38(j)(2)–(6) for transactions secured by real property or a dwelling: rebate; late payment; property insurance; contract reference; and assumption.◄

[21]►29◄. *HRSA–500–1 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all Health Education Assistance Loans (HEAL) with a

variable interest rate that are interim student credit extensions as defined in Regulation Z.

[22]►30◄. *HRSA–500–2 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate that are interim student credit extensions as defined in Regulation Z.

[23]►31◄. *HRSA–502–1 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

[24]►32◄. *HRSA–502–2 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

By order of the Board of Governors of the Federal Reserve System, July 24, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

Note: The following attachments A and B will not appear in the Code of Federal Regulations.

BILLING CODE 6210–01–P

Attachment A

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Key Questions to Ask About Your Mortgage

When you are shopping for a loan, ask each lender the questions below. Some loans have risky features that could make it difficult for you to make payments in the future. Make sure you understand the terms of your loan. If you are not comfortable with the risks, ask your lender about other loan products. **The only way to make sure you get the best possible loan terms is to talk to several lenders.**

Shop. Compare. Negotiate.

For more information about risky loan features, read *Shop Wisely: Understanding Your Mortgage Choices*, available at: www.federalreserve.gov.

1	**Can my interest rate increase?** If you have an adjustable rate mortgage (ARM), your interest rate can go up or down after a short period. This means that your monthly payments could increase.
2	**Can my monthly payment increase?** With some loans, your monthly payment could increase after a period of time, often by hundreds of dollars. This increase could be because you have a lower introductory interest rate, your property taxes or insurance premiums increase, or because in the beginning your monthly payment only covers the interest on the loan, and not the principal owed.
3	**Will my monthly payments reduce my loan balance?** Some loans let you pay only the interest on your loan each month. These payments do not pay down the amount you borrowed. As a result, if you have this type of loan, you may not build any equity in your home.
4	**Even if I make my monthly payments, can my loan balance increase?** Some loans let you choose to pay even less than the interest owed each month. The unpaid interest is added to your loan balance and increases the total amount that you owe. This could cause you to lose equity in your home over time.
5	**Could I owe a prepayment penalty?** Some loans charge you a large fee if you pay off your loan, refinance it, or sell your home within the first few years of the loan. This penalty fee could be thousands of dollars.
6	**Will I owe a balloon payment?** Some loans require a very large payment at the end of the loan—sometimes tens of thousands of dollars. If interest rates go up or if the value of your property drops, you may not be able to refinance your loan before you have to make this large payment.
7	**Will I have to document my employment, income, and assets to get this loan?** Sometimes a lender will make a loan without requiring you to show that you are employed and have the income or assets to repay the loan. These no-documentation ("no-doc") or low-documentation ("low-doc") loans usually have higher interest rates or higher fees than other loans.

Attachment B

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Fixed vs. Adjustable Rate Mortgages

What Type of Mortgage is Right for You?

A traditional fixed rate mortgage is a safe choice for many borrowers, but in some circumstances an adjustable rate mortgage (ARM) might make sense for you. If you are considering an ARM, be sure you understand the tradeoffs.

Fixed Rate Mortgages	ARMs
With a fixed rate mortgage, the interest rate and monthly payment stay the same for the entire loan term.	With an ARM, the interest rate and monthly payment often start out lower than with a fixed rate mortgage. However, both the rate and payment can increase very quickly.
Consider a Fixed Rate Mortgage if:	*Consider an ARM if:*
• You would prefer predictable payments or have difficulty managing monthly payments that increase; or • You plan to stay in your home for a long period of time.	• You are confident that you could afford increases in your monthly payment, even at the maximum amount (sometimes as much as double your initial payment amount); or • You plan to sell your home within a short period of time.

If you are considering an ARM, don't count on being able to refinance before your interest rate and monthly payments increase. You might not qualify for refinancing if the market value of your home goes down, or your financial situation changes due to job loss, illness, or other large debts.

Where to Find Help

For more information about how to choose the right loan for you, or for a list of licensed housing counselors in your area that could help you make this decision, visit www.federalreserve.gov.

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Federal Register

Wednesday,
August 26, 2009

Part III

Federal Reserve System

12 CFR Part 226

Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1367]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

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

The Board proposes changes to the format, timing, and content requirements for the four main types of HELOC disclosures required by Regulation Z: disclosures at application; disclosures at account opening; periodic statements; and change-in-terms notices. The Board proposes to replace disclosures required at the time that a consumer applies for a HELOC with a one-page, Board-published summary of basic information and risks regarding HELOCs. The Board also proposes to move the timing of disclosures regarding a creditor's HELOC plan from the time of application to within three business days after application, and to require the disclosures to include significant transaction-specific rates and terms.

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

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

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

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

FOR FURTHER INFORMATION CONTACT: Lorna M. Neill, Attorney; John Wood or Krista Ayoub, Counsel; or Jelena McWilliams, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

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

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

I. Background

A. TILA and Regulation Z

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

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

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

In 1989, the Board revised Regulation Z to implement the Home Equity Loan Consumer Protection Act of 1988 (Home Equity Loan Act) (Pub. L. 100–709, enacted on Nov. 23, 1988). *See* 15 U.S.C. 1637a, 1647, implemented by 54 FR 24670 (June 9, 1989) (1989 HELOC Final

Rule). The 1989 revisions required creditors to disclose extensive information about HELOCs to consumers at the time of application and again when consumers open a HELOC plan. They also imposed substantive limitations on HELOC creditors—principally by prohibiting changing the interest rate and other terms except under very limited circumstances. Since 1989, the Board has revised the HELOC provisions in the regulation and staff commentary from time to time as necessary, although the disclosure requirements and substantive limitations have remained substantially the same. *See, e.g.,* 56 FR 13751 (April 4, 1991); 60 FR 15463 (March 24, 1995); 63 FR 16669 (April 6, 1998); 66 FR 17329 (March 30, 2001); 72 FR 63462 (November 9, 2007).

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

C. HELOC Market Trends

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

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

The recent economic downturn, a central component of which has been declining property values, has dampened the availability of HELOCs and reversed some of the overall trends in the HELOC market. The Board believes, however, that a resurgence of these trends may occur once property values stabilize. The Board expects that factors such as the flexibility HELOC borrowers have to draw on a line as needed and the tax deductibility of interest on home-secured debt should continue to make HELOCs appealing to consumers over the long term.

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

II. Summary of Major Proposed Changes

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

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

- Eliminating the requirement to provide a multiple-page disclosure of generic rates and terms of the creditor's HELOC products, as well as the requirement to provide the Board-published brochure explaining HELOC products and risks entitled, ''What You Should Know about Home Equity Lines of Credit.'' (HELOC brochure)
- Requiring creditors to provide a new one-page Board publication summarizing basic information and risks regarding HELOCs entitled, ''Key Questions to Ask about Home Equity Lines of Credit.''
- Replacing the application disclosure of generic rates and terms with a transaction-specific disclosure that must be given *within three days after application.* This disclosure would:
- Provide information about rates and fees, payments, and risks in a tabular format.
- Highlight whether the consumer will be responsible for a balloon payment.
- Present payment examples based on both the current rate available and the maximum possible rate for the HELOC.

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

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

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

[3] *Id.*

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

[5] *Id.*

[6] *Supra* note 2.

[7] *Id.*

[8] *Id.*

[9] *Id.*

disclosure to be provided within three business days after application.

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

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

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

- Expanding the circumstances under which advance written notice of a rate change is required.
- Increasing advance notice of a change in a HELOC term from 15 to 45 days in advance of the effective date of the change.

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

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

- Establishing a new safe harbor for suspending or reducing a line of credit based on a ''significant'' decline in property value. For HELOCs with a combined loan-to-value ratio at origination of 90 percent or higher, a five percent decline in the property value would be ''significant.''
- Providing additional guidance regarding the information on which a creditor may rely to take action based on a material change in the consumer's financial circumstances, such as the type of credit report information that would be appropriate to consider.

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

- Requiring additional information in notices of suspension or reduction about consumers' ongoing right to request reinstatement and creditors' obligation to investigate this request.
- Requiring creditors to complete an investigation of a request for reinstatement within 30 days of receiving a request for reinstatement and to give a notice of the investigation results to consumers whose lines will not be reinstated.

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

A. Advance Notices of Proposed Rulemakings

December 2004 ANPR. The Board's current review of Regulation Z's open-end credit rules was initiated in December 2004 with an advance notice of proposed rulemaking.[10] 69 FR 70925 (December 8, 2004). At that time, the Board announced its intent to conduct its review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit card plans. The December 2004 ANPR sought public comment on a variety of specific issues relating to three broad categories: the format of open-end credit disclosures, the content of those disclosures, and the substantive protections provided for open-end credit under the regulation. The December 2004 ANPR solicited comment on the scope of the Board's review, and also requested commenters to identify other issues that the Board should address in the review.

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

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

B. Notices of Proposed Rulemakings

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

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

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

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

C. Final Rulemakings

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

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

D. Consumer Testing

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

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

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

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

- A Board publication to be provided at application, entitled ''Key Questions to Ask about Home Equity Lines of Credit'';
- A transaction-specific TILA disclosure to be provided within three business days of application, but no later than at account-opening; and
- A transaction-specific TILA disclosure to be provided at the time the consumer opens the account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thus, under the proposal, a table summarizing the change would have to appear on the periodic statement, where consumers are more likely to notice the changes.

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

E. Other Outreach and Research

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

F. Reviewing Regulation Z in Stages

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

G. Implementation Period

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

IV. The Board's Rulemaking Authority

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

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).
- Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).
- Require additional disclosures for HELOC plans. 15 U.S.C. 1637(a)(8), 1637a(a)(14).

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

V. Discussion of Major Proposed Revisions

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

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

A. Disclosures at Application

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

Summary of Proposed Revisions

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

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

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

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

B. Disclosures Within Three Days After Application

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

Summary of Proposed Revisions

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

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

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

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

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

C. Disclosures at Account Opening

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

Summary of Proposed Revisions

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

Account-opening summary table. The proposal seeks to make the cost disclosures provided at account opening more conspicuous and easier to read. Accordingly, the proposal identifies specific costs and terms that creditors would be required to summarize in a table. This account opening table would be substantially similar to the early HELOC disclosure table that would be provided within three business days after application, with two major exceptions. First, the account-opening

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

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

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

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

D. Periodic Statements

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

Summary of Proposed Revisions

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

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

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

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

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

Based on this consumer testing and other factors, the Board proposes to eliminate the requirement to disclose the effective APR. Under this proposal, creditors offering HELOCs would be required to disclose interest and fees in a manner that is more readily understandable and comparable across

institutions. The Board believes that this approach can more effectively further the goals of consumer protection and the informed use of credit for HELOCs.

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

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

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

E. Change-in-Terms Notices

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

Summary of Proposed Revisions

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

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

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

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

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

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

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

The Board therefore proposes that if a changed term is one that must be provided in the account-opening summary table, creditors must also provide that change in a summary table to enhance the effectiveness of the change-in-terms notice. Further, if a notice enclosed with a periodic statement discusses a change to a term that must be disclosed in the account-opening summary table, or announces

that a default rate will be imposed on the account, a table summarizing the impending change would have to appear on the periodic statement. The Board intends to conduct consumer testing of change-in-terms notices with a tabular format during the comment period for this proposal.

F. Additional Protections

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

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

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

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

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

- First, for plans with a CLTV at origination of 90 percent or higher, a five (5) percent reduction in the property value on which the HELOC terms were based would constitute a significant decline in value.
- Second, for plans with a CLTV at origination of under 90 percent, the existing safe harbor would be retained, under which a decline in the value of the property securing the plan is significant if, as a result of the decline, the creditor's equity cushion is reduced by 50 percent.

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

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

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

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

- Requiring additional information in notices of suspension or reduction about consumers' ongoing right to request reinstatement and creditors' obligation to investigate this request.
- Requiring creditors to complete an investigation of a request within 30 days of receiving the request and to provide notice of the results to consumers whose credit privileges will not be restored.
- Requiring creditors to cover the costs associated with investigating the first reinstatement request by the consumer.

VI. Section-by-Section Analysis

Other than in the section-by-section analysis of § 226.5b, unless otherwise

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

Section 226.2 Definitions and Rules of Construction

2(a)(6) Definition of Business Day

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

Section 226.4 Finance Charge

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

Charges for Credit Insurance or Debt Cancellation or Suspension Coverage

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

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

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

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

Insurance or coverage sold after opening of an account. One of the revisions made in the January 2009 Regulation Z Rule affecting only open-end (not home-secured) credit involves the meaning of the phrase ''written in connection with a credit transaction.'' Prior to the January 2009 rule, credit insurance or debt cancellation or suspension coverage sold after consummation of a closed-end credit transaction or after the opening of an open-end plan and upon a consumer's request was considered not to be ''written in connection with the credit transaction,'' and, therefore, a charge for such insurance or coverage was not a finance charge. *See* comment 4(b)(7) and (8)–2. The Board stated in its 2007 proposal for open-end (not home-secured) credit (72 FR 32945 (June 14, 2007) (June 2007 Regulation Z Proposal) that it believed this approach remained sound for closed-end transactions, which typically consist of a single transaction with a single advance of funds. However, in an open-end plan, where consumers can engage in credit transactions after the opening of the plan, a creditor may have a greater opportunity to influence a consumer's decision whether or not to purchase credit insurance or debt cancellation or suspension coverage than in the case of closed-end credit. Accordingly, the

disclosure and consent requirements are important in open-end plans, even after the opening of the plan, to ensure that the consumer is fully informed about the offer of insurance or coverage and that the decision to purchase it is voluntary. Therefore, the Board adopted in the January 2009 Regulation Z Rule amendments to comment 4(b)(7) and (8)–2, to state that insurance purchased after an open-end (not home-secured) plan is opened is considered to be written ''in connection with a credit transaction.'' New comment 4(b)(10)–2 provides the same treatment to purchases of debt cancellation or suspension coverage. Therefore, purchases of voluntary insurance or debt cancellation or suspension coverage after account opening trigger disclosure and consent requirements. This amendment does not apply to HELOCs; the Board stated that it intended to consider this issue when the home-equity credit plan rules are reviewed in the future.

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

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

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

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

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

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

elsewhere in the **Federal Register**, would apply to HELOCs as well as closed-end mortgage loans.

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

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

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

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

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

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

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

Section 226.5 General Disclosure Requirements

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

In addition to the proposed changes to the specific rules for disclosures, the Board proposes to adopt a new comment 5–1 that would provide guidance in situations where a creditor is uncertain whether an open-end credit plan is covered by the § 226.5b rules for HELOCs or the rules for open-end (not home-secured) credit. The Board understands that there is uncertainty for

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

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

5(a) Form of Disclosures

5(a)(1) General

Paragraph 5(a)(1)(i)

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

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

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

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

Paragraph 5(a)(1)(ii)

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

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

The Board believes that the same reasoning underlying the exception to the written disclosure requirement for certain open-end (not home-secured) plan disclosures applies to home-equity plan disclosures. As discussed in the January 2009 Regulation Z Rule, in permitting certain charges in open-end (not home-secured) credit to be disclosed either orally or in writing (and after account opening, as discussed further under § 226.5(b)(1)(ii) below), the Board's goal was to better ensure that consumers receive disclosures at a time and in a manner in which they would be likely to notice them. At account opening, both for open-end (not home-secured) plans and for HELOCs, written disclosure has obvious merit because account opening is a time when a consumer must assimilate information that may influence major decisions by

the consumer about how, or even whether, to use the account. During the life of an account, however, a consumer may sometimes need to decide whether to purchase a single service from the creditor that may not be central to the consumer's use of the account, such as an expedited telephone payment service. The consumer may have become accustomed to purchasing similar services by telephone for other financial products, such as credit cards, and expect to receive an oral disclosure of the charge for the service during the same telephone call. Permitting oral disclosure of charges that are not central to the consumer's use of the account would be consistent with consumer expectations and with the business practices of creditors.

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

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

Paragraph 5(a)(1)(ii)(B)

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

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

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

Paragraph 5(a)(1)(iii)

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

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

This exception would not be extended to the disclosures that would be provided within three business days after application under proposed § 226.5b(b). The credit shopping process takes place primarily when a consumer reviews applications and associated disclosures and decides whether to

submit an application. Three business days after the consumer has submitted an application, the consumer may have completed the credit shopping process. Requiring compliance with the E-Sign Act's notice and consent procedures for disclosures at this point would not likely hinder credit shopping, and would ensure that the consumer is able and willing to receive disclosures in electronic form. In addition, compliance with the E-Sign Act for disclosures provided within three business days after application should not be unduly burdensome, because the time between application and three days later should be sufficient for the creditor to carry out the E-Sign Act notice and consent procedures.

5(a)(2) Terminology

Paragraph 5(a)(2)(ii)

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

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

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

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

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

Paragraph 5(a)(2)(iii)

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

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

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

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

HELOC rates are generally variable, and would not be marketed as ''fixed.''

5(a)(3) Specific Formats

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

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

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

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

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

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

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

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

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

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

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

5(b)(2) Periodic Statements

Paragraph 5(b)(2)(ii)

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

final rule, § 226.5(b)(2)(ii) will reflect the amendments made to implement the Credit Card Act.

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

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

Section 226.5b Requirements for Home-Equity Plans

Summary of Proposed Disclosure Requirements

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

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

The Board proposes to replace the application disclosures with transaction-specific HELOC disclosures (''early HELOC disclosures'') that must be given within three business days after application (but no later than account opening). Under the proposal, the information required to be disclosed in the early HELOC disclosures would differ from the information required to be disclosed as part of the current application disclosures. For example, the Board proposes to require creditors to include several additional disclosures in the early HELOC disclosures that are not currently required to be disclosed as part of the application disclosures, such as the credit limit and the APRs being offered to the consumer. In addition, the Board proposes not to require creditors to provide certain disclosures in the early HELOC disclosures that are currently required to be disclosed as part of the application disclosures. For example, creditors generally would not be required to disclose as part of the early HELOC disclosures certain information related to variable rates currently required in the application disclosures under § 226.5b(d)(12), such as the historical payment example table. Moreover, the Board proposes to revise the disclosure requirements for other information currently required to be disclosed in the application disclosures and included in the proposed early HELOC disclosures. For example, the application disclosures currently must include several payment examples based on a $10,000 outstanding balance. Under the proposal, the Board would require payment examples in the early HELOC disclosures, but would revise the payment examples to assume the consumer borrowed the full credit line offered to the consumer (as disclosed in the early HELOC disclosures) at the beginning of the draw period and drew no additional advances.

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

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

Current Comments 5b–2 and 5b–3

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

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

Current comment 5b–3 provides that the requirements of § 226.5b do not apply to HELOC plans *entered into before November 7, 1989.* The requirements of § 226.5b also do not

apply if the original consumer, on or after November 7, 1989, renews a plan entered into prior to that date (with or without changes to the terms). If, on or after November 7, 1989, a security interest in the consumer's dwelling is added to a line of credit entered into before that date, the substantive restrictions of § 226.5b apply for the remainder of the plan, but no new disclosures are required under § 226.5b. The Board proposes to delete this comment as obsolete.

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

5b(a)(1) General

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

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

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

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

HELOC applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker. Under footnote 10a, which implements TILA Section 127A(b)(1)(A), the application disclosures and HELOC brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application that was in a magazine or other publication, or when the application is received by telephone or through an intermediary agent or broker. 15 U.S.C. 1637a(b)(1)(A). Current comment 5b(b)–6 provides a cross reference to comment 19(b)–3 for guidance on determining whether or not an application involves an ''intermediary agent or broker.'' Current comment 19(b)–3 provides that an example of an ''intermediary agent or broker'' is a broker who (1) customarily within a brief time after receiving an application inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them; and (2) is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, the broker might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area). (In the proposal issued by the Board on closed-end mortgages published elsewhere in today's **Federal Register**, the Board proposes to move current comment 19(b)–3 to proposed comment 19(d)(3)–3.)

The Board proposes to revise and move the contents of footnote 10a related to telephone applications and applications received through

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

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

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

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

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

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

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

Response cards. Current comment 5b(b)–4 states that sometimes a creditor may solicit consumers for its HELOC plan by mailing a response card which the consumer returns to the creditor to indicate interest in the plan. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the application disclosures and the HELOC brochure with the response card. The

Board proposes to move this comment to proposed comment 5b(a)(1)–4 and to apply this comment to disclosure of the ''Key Questions'' document. Specifically, proposed comment 5b(a)(1)–4 provides that a creditor is not required to send the ''Key Questions'' document with a response card if the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan. If the creditor sends the consumer an application form in response to receiving a response card, proposed comment 5b(a)(1)–1 provides that a creditor must provide the ''Key Questions'' document with the application form. In addition, if a creditor calls the consumer in response to receiving a response card and an application is taken over the phone, proposed comment 5b(a)(1)–1 provides that the ''Key Questions'' document must be delivered or mailed within three business days of taking the application (but not later than account opening).

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

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

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

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

5b(a)(2) Electronic Disclosures

Current § 226.5b(a)(3) provides that for an application accessed by the

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

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

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

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

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

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

Under proposed § 226.5b(a)(3), third parties would not be required to provide the ''Key Questions'' document with respect to telephone applications. Proposed comment 5b(a)(3)–3 clarifies that for telephone applications taken by a third party, the creditor would have the duty to provide the ''Key Questions'' document within three days following receipt of the consumer's application by the creditor (but not later than account opening). The Board believes that imposing a separate duty on a third

party to provide the ''Key Questions'' document for telephone applications is unnecessary, because the creditor would be required under proposed § 226.5b(a)(1) to provide the ''Key Questions'' document and the early HELOC disclosures (as discussed in more detail in the section-by-section analysis to proposed § 226.5b(b)(1)) within three days after the application has been received by the creditor (but not later than account opening).

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

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

5b(b)(1) Timing

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

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

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

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

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

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

The Board believes that providing disclosures that would be transaction-specific, based on the amount of an initial draw, or on expected amounts of draws and payments over the life of the plan, would not be practicable. In addition, the Board believes that requiring the account-opening HELOC disclosures to be provided some period, such as three or seven business days, in

advance of account opening could unnecessarily delay the process of opening a HELOC in some cases and thus could disadvantage some consumers.[13]

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

Consumer testing conducted by the Board on HELOC disclosures supports this proposed approach. In the first two rounds of testing, some participants reviewing a disclosure based on the current requirements for the application disclosures either tried to find an interest rate applicable to their plan and were surprised to learn that such a rate is not contained in the disclosure, or incorrectly assumed that one of the rates shown in the disclosure (which are hypothetical, not actual, rates) was the rate that was being offered to them. In subsequent testing of a disclosure form with more transaction-specific information (including the APR and credit limit for which the consumer qualified), participants indicated they would prefer to receive a transaction-specific disclosure, as opposed to a more generic disclosure at application (such as the one provided under the current regulation), even if this choice meant that the consumer would not receive any disclosure of HELOC plan terms at the time of application. Participants indicated that the APR and the credit limit offered on a HELOC plan are two of the most important pieces of information that they want to know in deciding whether to open a HELOC. The participants said that they would still prefer to receive transaction-specific disclosures soon after application rather than generic disclosures at application even if they were required to pay an application fee before receiving the later, more transaction-specific disclosure.[14] These findings are consistent with the findings in the Board's testing of closed-end mortgage disclosures, as discussed in the proposal issued by the Board on closed-end mortgages published elsewhere in today's **Federal Register**.

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

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

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

The Board solicits comment on whether, and if so in what circumstances, creditors should be permitted to substitute the account-opening summary table for the table containing the early HELOC disclosures in situations where the early HELOC disclosures are required to be given at the time the account is opened (because

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

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

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

account opening occurs within three business days after application). For example, the regulation could provide that, because the account-opening summary table shows only one HELOC payment plan, the account-opening summary table would be permitted to be used in place of the early HELOC disclosures only if the creditor offers only one payment plan or the consumer had already chosen a plan before account opening. The Board also requests comment on how frequently account opening for HELOCs occurs within three business days after application.

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

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

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

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

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

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

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

As discussed above, creditors typically provide the application disclosures in a narrative form, consistent with the model forms for the

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

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

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

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

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

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

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

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

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

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

The Board proposes to place the ''Risks'' section at the bottom of the table on page two of the early HELOC disclosures. The information contained in the ''Risks'' section may not be as useful to the consumers as other information contained in the table for

comparing one HELOC to another, such as the APRs and credit limit offered on the plan, because the information about risks is likely to be the same among all creditors. The Board seeks comment on this aspect of the proposal.

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

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

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

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

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

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

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

be required to disclose this same information in bold text in providing the table.

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

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

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

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

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

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

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

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

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

In addition, as discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(9)(ii), a creditor would not be allowed to provide separate early HELOC disclosures for each payment option offered on the HELOC. Specifically, if a creditor offers two or more payment plans on the HELOC plan (excluding the fixed-rate

and -term payment plans described above unless those are the only payment plans offered during the draw period), a creditor may not provide separate early HELOC disclosures for each payment plan, but instead must disclose only two payment plans in the table, in accordance with the requirements in proposed § 226.5b(c)(9)(ii)(B). (Under the proposal, a creditor would be required to disclose to a consumer other payment plans offered by the creditor upon request of the consumer. *See* proposed comments 5b(c)(9)(ii)–5 and 5b(c)(18)–2.)

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

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

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

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

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

5b(c) Content of Disclosures

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

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

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

feature. 15 U.S.C. 1637a(a)(1), (a)(2), (a)(3), and (a)(8).

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

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

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

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

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

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

Disclosures given as applicable. Current comment 5b(d)–1 provides that a creditor may provide the application disclosures described in current § 226.5b(d) as applicable. For example, if negative amortization cannot occur in a HELOC plan, a reference to it need not be made under current § 226.5b(d)(9). The Board proposes to move this comment to proposed 5b(c)–1 and revise the comment to refer to the following proposed exceptions to the general rule that a creditor is only required to include a disclosure required under proposed § 226.5b(c) as applicable: specifically, proposed 5b(c)–1 cross references proposed

§ 226.5b(c)(9)(ii)(B)(*3*) and (c)(9)(iii)(C)(*4*), which provide that a creditor in certain circumstances must state that a balloon payment will not result for plans in which no balloon payment would occur; in addition, proposed comment 5b(c)–1 cross references proposed § 226.5b(c)(10)(i)(A)(*5*), which provides that if there are no annual or other periodic limitations on changes in the APR, a creditor must state that no annual limitation exists.

5b(c)(1) Identification Information

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

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

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

To facilitate the use of the Nationwide Mortgage Licensing System and Registry and promote the informed use of credit, pursuant to the Board's authority under TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes in new § 226.5b(c)(1) to require that a loan originator to disclose as part of the early HELOC disclosures his or her unique identifier, as defined by the SAFE Act. 15 U.S.C. 1637a(a)(14). Proposed comment 5b(c)(1)–2 clarifies that in transactions with multiple loan originators, each loan originator's unique identifier must be listed on the early HELOC disclosures. For example, in a transaction where a mortgage broker meets the SAFE Act definition of loan originator, the identifiers for the broker and for its employee loan originator meeting that definition would need to be listed on the early HELOC disclosures.

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

Statement About Retaining a Copy of the Disclosures

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

5b(c)(2) No Obligation Statement

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

As discussed in the proposal issued by the Board on closed-end mortgages published elsewhere in today's **Federal**

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

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

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

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

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

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

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

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

Proposal. The Board proposes to move the provisions in current § 226.5b(d)(2) to proposed § 226.5b(c)(4) and to revise those provisions. Specifically, because the early HELOC disclosures would be given after the application has been submitted by the consumer, the Board proposes to delete as obsolete (1) the requirement in current § 226.5b(d)(2), which implements TILA Section 127A(a)(6)(A), that a creditor provide a statement of the time by which the consumer must submit an application to obtain specific terms disclosed in the application disclosures, and (2) guidance for providing that statement in current comment 5b(d)(2)(i)–2. 15 U.S.C. 1637a(a)(6)(A). The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

Under current § 226.5b(d)(4)(ii), which implements TILA Section 127a(a)(7)(B), a creditor must disclose as part of the application disclosures a statement that the consumer may receive, upon request, information about the conditions under which a creditor may take certain actions, such as terminating the plan, as discussed above. 15 U.S.C. 1637a(a)(7)(B). Current § 226.5b(d)(4)(iii) provides a creditor may provide a disclosure of the conditions in lieu of the statement that

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

a consumer may receive that information upon request.[17]

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

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

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

5b(c)(8) Tax Implications

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

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

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

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

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

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

For these reasons, the likelihood is higher with HELOCs than closed-end home-equity loans that the consumer may exceed the fair market value of the dwelling with subsequent draws.

5b(c)(9) Payment Terms

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

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

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

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

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

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

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

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

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

In the consumer testing, the Board also tested versions of the early HELOC disclosures developed by the Board where the length of the plan was 20 years, and the length of the draw and repayment periods was 10 years each. In these tested versions of the early HELOC disclosures, the length of the plan was disclosed as 20 years, along with a

statement indicating that this period is divided into two periods. The length of the draw period was then disclosed as ''Years (1–10)'' and the length of the repayment period was disclosed as ''Years (11–20),'' to indicate that those periods would run consecutively and not concurrently. In addition, the length of the draw period and the length of the repayment period were included as part of the headings ''Borrowing Period'' (for the draw period) and ''Repayment Period'' (for the repayment period), respectively, each time those headings were used. In the consumer testing, the Board found that including the length of the plan in the table and using the above format for presenting the length of the plan, the length of the draw period and the length of the repayment period effectively helped participants understand the timing of the two periods.

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

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

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

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

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

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

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

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

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

Draw period renewal provisions. Current comment 5b(d)(5)(i)–2 provides that if, under the credit agreement, a creditor retains the right to review a line at the end of the draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension—regardless of its likelihood—should be ignored for the application disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be

considered five years. The Board proposes to move this comment to proposed comment 5b(c)(9)(i)–2, and apply it to the early HELOC disclosures.

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

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

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

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

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

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

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

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

Proposed § 226.5b(c)(9)(ii)(B) also provides that if a creditor offers one or more payment plans (excluding fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period) where a consumer would repay all of the

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

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

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

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

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

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

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

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

consumers will either not read the disclosure or not understand or retain the information they do read.

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

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

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

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

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

Proposed § 226.5b(c)(9)(iii) also requires additional disclosures as part of the proposed payment examples. Specifically, a creditor would be required to disclose the following information: (1) A statement that the payment examples show the first periodic payments at the current and maximum APRs if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money; (2) a statement that the payment examples are not the consumer's actual payments and that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period; (3) if a creditor is disclosing two payment plans in the

table, the creditor must identify which plan results in the least amount of interest, and which plan results in the most amount of interest, based on the assumptions used to calculate the payment examples described above; and (4) if a consumer may pay a balloon payment under a payment plan disclosed in the table, the creditor must disclose that fact, and the amount of the balloon payment based on the assumptions used to calculate the payment examples described above. If a creditor is disclosing two payment plans in the table, one in which a balloon payment would occur and one in which it would not, a creditor must disclose that a balloon payment will not result for the plan in which no balloon payment would occur. The Board also proposes in new § 226.5b(c)(9)(iii)(D) to require a creditor to provide the new payment examples and the other related information in a tabular format substantially similar to the format used in any of the applicable tables found in Samples G–14(C), G–14(D) and G–14(E) in Appendix G.

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

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

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

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

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

Current § 226.5(d)(5)(iii) also requires that a creditor disclose the time it would take to repay a $10,000 advance that is taken at the beginning of the draw period at a recent rate and is reduced according to the terms of the plan. The Board proposes not to include the ''time to repay'' disclosure in the early HELOC disclosures. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers'

[18] Brian Bucks, *et al.,* Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 2009).

ability to compare credit terms and helping consumers avoid the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). In consumer testing conducted by the Board on HELOC disclosures, the Board tested versions of the early HELOC disclosures that contained two payment options. In disclosing the payment examples for each payment option, the forms contained a disclosure of the time it would take to repay the hypothetical balance if the consumer only made minimum periodic payments. Although a few participants cited the ''time to repay'' as a reason to choose one payment plan over another, the Board is concerned that if a creditor discloses two payment options in the table, the time to repay each plan would not always be an accurate measure of which payment plan is better for consumers. The Board believes requiring the ''time to repay'' disclosure in the table may distract consumers from considering other information in the table that may be more useful in comparing the two payment plans—namely the disclosures of which payment plan results in the least amount of interest and whether a plan has a balloon payment.

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

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

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

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

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

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

In disclosing the payment examples, a creditor would be required to assume that the consumer borrows the full credit line (as disclosed in the early HELOC disclosures) at the beginning of the draw period and that this advance is reduced according to the terms of the plan. The proposed comment provides that a creditor must not assume that an additional advance is taken at any time, including at the beginning of any repayment period. The examples also would be required to reflect the payment comprised only of principal and interest. The proposed sample payments in the table showing the first minimum periodic payment for the draw period and any repayment period, as well as the balance outstanding at the beginning of any repayment period, must be rounded to the nearest whole

dollar. The proposed comment provides that creditors may assume that all months have an equal number of days, that payments are collected in whole cents, and that payments will fall on a business day even though they may be due on a non-business day. A creditor would be required to assume that the APR used to calculate each payment example required by § 226.5b(c)(9)(iii) would remain the same during the draw period and any repayment period as specified in proposed § 226.5b(c)(9)(iii)(A)(*3*) even if that APR is a variable rate under the plan.

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

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

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

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

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

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

Finally, consistent with current comment 5b(d)(5)(ii)–3, proposed comment 5b(c)(9)–1 specifies that, in disclosing a balloon payment under § 226.5b(c)(9)(ii) and (iii), a creditor must disclose that a balloon payment ''may'' result if a balloon payment under

a payment plan is possible, even if such a payment is uncertain or unlikely; a creditor must disclose a balloon payment ''will'' result if a balloon payment will occur under a payment plan, such as a payment plan with interest-only payments during the draw period and no repayment period.

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

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

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

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

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

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

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

Reverse mortgages. Current comment 5b(d)(5)(iii)–4 provides guidance on disclosing terms of reverse mortgages, also known as reverse annuity or home-equity conversion mortgages, as part of the application disclosures. The Board proposes to move current comment 5b(d)(5)(iii)–4 to proposed comment 5b(d)(9)(ii)–6, and to make technical revisions to conform this guidance to proposed revisions in proposed

§ 226.5b(c). The Board requests comment on whether additional guidance is needed by creditors offering reverse mortgages on how to meet the disclosure requirements in proposed § 226.5b(c).

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

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

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

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

5b(c)(10) Annual Percentage Rate

TILA Section 127A(a)(1) provides that a creditor must disclose as part of the application disclosures each APR imposed in connection with the HELOC plan. 15 U.S.C. 1637a(a)(1). Regulation Z currently interprets TILA Section 127A(a)(1) to mean that for fixed-rate payment plans, a creditor must disclose as part of the application disclosures a recent APR imposed under the plan. *See* current § 226.5b(d)(6). Current footnote 10c provides that a recent APR for fixed-rate plans is a rate that has been in effect under the plan within the 12 months preceding the date that disclosures are provided to the consumer. For variable rate plans, current § 226.5b(d)(12), which implements TILA Section 127A(a)(2), requires a creditor to disclose the index that will be used to determine the variable rate. 15 U.S.C. 1637a(a)(2). In addition, current § 226.5b(d)(12) sets forth a number of other disclosures about variable rates that must be included as part of the application disclosures, such as a statement that the consumer should ask about the current index value, margin, discount or premium, and APR. A creditor is not required to disclose in the application disclosures the current APRs that are offered to the consumer on the HELOC plan.

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

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

Nonetheless, under the proposal, a creditor would be required to disclose the APRs applicable to other payment plans when disclosing those payment plans to a consumer upon request prior

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

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

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

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

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

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

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

APRs on the account (or an introductory rate and the rate that would otherwise apply after the introductory rate expires) would highlight for consumers the rates that will be most relevant for them at account opening. The Board believes that requiring all of the APRs disclosed in the table to be in 16-point font could create ''information overload'' for consumers.

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

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

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

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

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

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

Consistent with current § 226.5b(d)(12)(iii) and (iv), proposed § 226.5b(c)(9)(i)(A)(*2*) requires a creditor to disclose in the table as part of the early HELOC disclosures an explanation of how the APR will be determined. Consistent with current § 226.5b(d)(12)(iii), under the proposal, a creditor would be required to disclose in the table the type of index used in making rate adjustments to the variable APR, such as indicating the current APR is based on the ''prime rate.'' Unlike current § 226.5b(d)(12)(iv), under the proposal, a creditor also would be required to disclose in the table the value of the margin. In consumer testing conducted on HELOC disclosures, the Board tested some versions of the early HELOC disclosures that did not contain the current value of the margin, but instead included only a statement that the APR ''would vary monthly with the Prime Rate.'' The Board also tested other versions of the early HELOC disclosures that included the value of the margin, such as by stating that the APR will be ''a variable rate that will change monthly based on the Prime Rate plus 1.00%.'' Participants in consumer testing consistently indicated that they preferred to be shown the value of the margin, so that they would have detailed information about how their APR would be determined over time.

Thus, under proposed § 226.5b(10)(i)(A)(*2*), a creditor would be required to disclose in the table the type of index used in making rate adjustments (such as the prime rate) and the value of the margin. Current comment 5b(d)(12)(iv)–1 would be deleted as obsolete. Under the proposal, Samples G–14(C), G–14(D) and G–14(E) would provide guidance to creditors on how to disclose the fact that the applicable rate varies and how it is determined. *See* proposed comment 5b(c)(10)(i)–2.

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

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

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

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

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

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

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

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

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

APR that are longer than a year—such as rate caps that would apply every two years.

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

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

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

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

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

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

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

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

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

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

the variable rate on the HELOC plan in the past 15 years.

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

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

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

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

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

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

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

The Board proposes not to require a creditor to disclose in the table as part of the early HELOC disclosures a statement that the APRs applicable to the HELOC plan do not include costs other than interest, pursuant to the Board's exception and exemption authorities under TILA Section 105(a) and 105(f), as discussed above. Based on consumer testing, the Board believes that this disclosure may not provide meaningful information to consumers,

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

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

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

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

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

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

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

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

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

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

Current § 226.5b(d)(7), which implements TILA Section 127A(a)(3), provides that a creditor must disclose as part of the application disclosures an itemization of any fees imposed by the

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

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

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

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

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

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

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

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

Current comment 5b(d)(7)–1 provides guidance on what types of fees would be considered fees imposed by the creditor to open the plan required to be

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

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

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

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

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

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

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

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

Other fees to maintain or use the plan that would currently be disclosed in the application disclosures under current § 226.5b(d)(7), such as transactions fees, would not be required to be disclosed in the table as part of the early HELOC disclosures under the proposal. Nonetheless, as discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(14), a creditor would be required to disclose in the table a statement that that other fees will

apply and a reference to penalty fees and transaction fees as examples of those fees, as applicable. In addition, a creditor would be required to disclose in the table either (1) a statement that the consumer may receive, upon request, additional information about fees applicable to the plan, or (2) if the additional information about fees is provided with the table, a reference where that information is located outside the table. The Board believes that this approach of highlighting in the table the fees on the HELOC plan that would be most important to consumers in deciding whether to open a HELOC plan and allowing consumers to receive information about additional fees upon request appropriately informs consumers about important fees applicable to the HELOC plan in the early HELOC disclosures, without creating ''information overload'' that discourages consumers from reading disclosures at all, distract them from key information, or prevent retention and understanding of information.

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

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

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

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

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

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

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

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

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

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

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

5b(c)(15) Negative Amortization

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

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

5b(c)(16) Transaction Requirements

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

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

5b(c)(17) Credit Limit

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

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

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

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

this payment feature (if a creditor chose not to provide additional information about this feature outside of the table).

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

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

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

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

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

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

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

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

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

Pursuant to the Board's authority in TILA Section 127A(a)(14) to require additional disclosures for HELOC plans, the Board proposes in new § 226.5b(c)(22) to require a creditor to disclose as part of the early HELOC disclosures a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan and a cross reference to the ''Fees'' section in the table. Under the proposal, a creditor would be required to disclose these statements directly below the table, in a format substantially similar to any of the applicable tables found in proposed G–14(C), G–14(D) and G–14(E) in Appendix G. *See* proposed § 226.5b(b)(2)(iv).

As discussed in the section-by-section analysis to proposed § 226.5b(c)(4) and (c)(5), under the proposal, a creditor would be required to disclose in the early HELOC disclosures table circumstances in which a consumer could receive a refund of all fees paid if the consumer decides not open the HELOC plan offered to the consumer. In particular, a creditor must disclose in the table that a consumer has the right to receive a refund of all fees paid if the consumer notifies the creditor that the consumer does not want to open the HELOC plan (1) for any reasons within three business days after the consumer receives the early HELOC disclosures; and (2) any time before the HELOC account is opened if any terms disclosed in the early HELOC disclosures change (except for the APR). In addition, under the proposal, a creditor would be required to disclose an indication of which terms disclosed in the early HELOC disclosures table are subject to change prior to account opening.

As discussed in the section-by-section to proposed § 226.5b(b)(2), the Board tested with consumers versions of the early HELOC disclosures with the right to a refund of fees disclosures located near a statement that terms disclosed in the early HELOC disclosures are subject to change prior to account opening as one of the rights to a refund of fees relates to changes in terms offered on the HELOC prior to account opening.

The Board also tested other versions of the early HELOC disclosures with these disclosures in the ''Fees'' section of the table. These tested disclosure forms also included next to the statement about which terms in the table may change prior to account opening, a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan and a cross reference to the ''Fees'' section in the table provided as part of the early HELOC disclosures.

The Board found through this testing that participants were more likely to notice and understand information about the refundability of fees when it was included in the ''Fees'' section of the table. Thus, under the proposal, the Board proposes to require that the information about the refundability of fees be disclosed in the ''Fees'' section of the table. In addition, the Board proposes in new § 226.5b(c)(22) to require a creditor to disclose as part of the early HELOC disclosures a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan and a cross reference to the ''Fees'' section in the table provided as part of the early HELOC disclosures. This statement and cross reference would be disclosed below the table, grouped together with other global statements that generally relate to the terms being disclosed in the table such as an indication of which terms disclosed in the table may change prior to account opening.

5b(d) Refund of Fees

The proposal would redesignate paragraph 5b(g) as paragraph 5b(d) and comments 5b(g)–1, –2, –3, –4 as comments 5b(d)–1, –2, –3, and –4, and revise these provisions. Current paragraph 5b(g), which implements TILA Section 137(d), requires a creditor to refund fees paid ''in connection with an application'' if any term required to be disclosed under current section 226.5b(d) changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result of the change, the consumer elects not to open the plan. *See* 15 U.S.C. 1647(d). Comment 5b(g)–1 explains that all fees paid must be refunded, including credit-report fees and appraisal fees, whether they are paid to the creditor or directly to third parties. Comment 5b(g)–3 specifies that when a term is changed that was disclosed as a range (as permitted under § 226.5b(d)) and the resulting term falls within the disclosed range, the consumer is not entitled to a refund of fees. Similarly, if the creditor discloses a third-party fee as an estimate (as permitted under § 226.5b(d)) and those fees change, the consumer is not entitled to a refund of fees.

Under the proposal, the phrase ''in connection with the application'' would be deleted from both new § 226.5b(d) and comment 5b(d)–1. The Board views this phrase as unnecessary to describe the fees that must be refunded under this paragraph. As indicated in current comment 5b(g)–1, the Board has long interpreted this phrase, when modifying the term ''fees'' in both the statute and regulation, to mean any fees that the consumer has paid to the creditor or a third party related in any way to obtaining a HELOC with the creditor.

The proposal also would eliminate from the provisions in new § 226.5b(d) and accompanying commentary any references to the consumer's being entitled to a refund of fees only if the consumer decides not to obtain a HELOC because of a change in terms. The proposal would instead provide that a refund is required if a disclosed term changes before account opening and the consumer decides not to enter into the plan. Pursuant to the Board's authority in TILA Section 105(a) to make adjustments to the requirements in TILA necessary to effectuate the purposes of TILA, the Board proposes to eliminate the requirement that the consumer's reason for deciding not to enter into the plan must be that a term has changed. The Board believes that requiring consumers to prove their intent for deciding not to enter a plan, the initially disclosed terms of which have changed, and requiring creditors to discern consumer intent, are not practicable. In addition, the Board believes that when terms change, most consumers who decide not to enter into the plan will decide not to do so because of the changed term.

Comment 5b(d)–3 would be revised to reflect that under the proposal, disclosing a range for the maximum rate would no longer be permitted in the early HELOC disclosure table, nor would disclosing an estimate for a third-party account-opening fee, in contrast to the current rule on third-party fees reflected in current comment 5b(g)–3. *See* proposed § 226.5b(c)(10). Disclosing an account-opening fee as a range, however, would be permitted if the dollar amount of the fee is not known at the time the disclosures under § 226.5b(b) are delivered or mailed. *See* proposed § 226.5b(c)(11).

The proposal also would make conforming changes to reflect re-numbered provisions in the proposal.

5b(e) Imposition of Nonrefundable Fees

The proposal would redesignate paragraph 5b(h) as paragraph 5b(e) and comments 5b(h)–1, –2, and –3 as comments 5b(e)–1, –2, and –3, and would revise these provisions. Current paragraph 5b(h), which implements TILA Section 137(e), obligates a creditor to refund any fee imposed within three business days of the consumer receiving the application disclosures and brochure required under existing § 226.5b if, within that time period, the consumer decides not to enter into the HELOC agreement. *See* 15 U.S.C. 1647(e). Comment 5b(h)–1 provides that if the creditor collects a fee after the consumer receives the application disclosures and the HELOC brochure and before the expiration of three business days, the creditor must notify the consumer—clearly and conspicuously and in writing—that the fee is refundable for three business days. This comment also provides that if disclosures are mailed to the consumer, a nonrefundable fee may not be imposed until six business days after mailing, because footnote 10d to the regulation provides that if the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

Proposed comment 5b(e)–1 retains these requirements, but with technical changes, including changes to reflect that, under the proposal, notice of the consumer's right to receive a refund must be included in the early HELOC disclosure table required under proposed § 226.5b(b), and may not be provided as an attachment to the early HELOC disclosures. Further discussion of this requirement is in the section-by-section analysis of § 226.5b(c)(5). In addition, footnote 10d is moved into the main text of § 226.5b(e).

Proposed comment 5b(e)–4 provides that, for purposes of § 226.5b(e), the term ''business day'' has the more precise definition used for rescission and for other purposes, meaning all calendar days except Sundays and the federal holidays referred to in § 226.2(a)(6). For example, if the creditor were to place the disclosures in the mail on Thursday, June 4, the disclosures would be considered received on Monday, June 8. The Board proposes to use the more precise definition of ''business day'' for determining receipt of disclosures for purposes of § 226.5b(e) to conform to the Board's rules for determining receipt of disclosures for other dwelling-secured transactions under §§ 226.19(a)(1)(ii) and 226.31(c), as well

as to the Board's recently adopted rules under § 226.19(a)(2). *See* 74 FR 23289 (May 19, 2009).

Under the proposal, the phrase ''in connection with the application'' would be deleted from new § 226.5b(e). The Board views this phrase as unnecessary to describe the fees that must be refunded under this paragraph. As indicated in current comment 5b(g)–1, the Board has long interpreted this phrase, when modifying the term ''fees'' in both the statute and regulation, to mean any fees that the consumer has paid to the creditor or a third party related in any way to obtaining a HELOC with the creditor.

The proposal also would make conforming changes to reflect proposed disclosure requirements and re-numbered provisions, and to indicate that ''three days'' means, as indicated in the corresponding regulation text, ''three business days.''

5b(f) Limitations on Home-Equity Plans

TILA Section 137, implemented in § 226.5b(f), limits the changes that creditors may make to HELOCs subject to § 226.5b. The proposal would amend and clarify these limitations by revising § 226.5b and accompanying Official Staff Commentary, and adding a new § 226.5b(g).

The proposal includes a number of significant changes to the rules restricting changes that creditors may make to HELOCs subject to § 226.5b. First, the proposal would amend § 226.5b(f)(2)(ii), which permits creditors to terminate and accelerate a HELOC if ''the consumer fails to meet the repayment terms of the agreement,'' to prohibit creditors from terminating and accelerating an account or taking lesser action permitted under comment 5b(f)(2)–2, unless the consumer has failed to make a required minimum periodic payment within a specified time period after the due date for that payment. As discussed in more detail below, the Board is specifically proposing that account action under § 226.5b(f)(2)(ii) be prohibited unless the consumer has failed to make a required minimum periodic payment within 30 days of the due date. The Board is requesting comment on the appropriateness of this timeframe, or whether some other time period is more appropriate.

Second, the proposal would amend § 226.5b(f)(2)(iv) to permit creditors to terminate and accelerate a home-equity plan if a federal law requires the creditor to do so. Similarly, the proposal would add a new § 226.5b(f)(3)(vi)(G) to permit creditors to suspend advances or reduce the credit limit if a federal law requires the creditor to do so.

Third, in a new comment 5b(f)(3)–3, the proposal would clarify that Regulation Z's general limitation on changing terms does not prohibit a creditor from passing on to consumers bona fide and reasonable costs incurred by the creditor for collection activity after default, to protect the creditor's interest in the property securing the plan, or to foreclose on the securing property.

Fourth, the proposal would add to comment 5b(f)(3)(v)–2 an example of a change that would be considered insignificant under this provision: a creditor may eliminate a method of accessing a HELOC, such as by credit card, as long as at least one means of access that was available at account opening remains available to the consumer on the original terms.

Finally, the proposal would provide additional guidance and amend the rules in three major areas related to when a creditor may temporarily suspend advances on a home-equity plan or reduce the credit limit: (1) Rules regarding when a creditor may suspend or reduce an account based on a significant decline in the property value (§ 226.5b(f)(3)(vi)(A) and existing comment 5b(f)(3)(vi)–6); (2) rules regarding when a creditor may suspend or reduce an account based on a material change in the consumer's financial circumstances (§ 226.5b(f)(3)(vi)(B) and existing comment 5b(f)(3)(vi)–7); and (3) rules regarding reinstatement of accounts that have been suspended or reduced (proposed § 226.5b(g) and existing comments 5b(f)(3)(vi)–2, –3, and –4).

5b(f)(2)(ii) Limitations on Action Taken for Failure To Meet the Repayment Terms

Background

Section 226.5b(f)(2)(ii) permits a creditor to terminate a HELOC and accelerate the balance if the consumer has ''fail[ed] to meet the repayment terms of the agreement for any outstanding balance.'' The corresponding statutory provision reads similarly: ''A creditor may not unilaterally terminate any account * * * except in the case of * * * (2) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance.'' 15 U.S.C. 1647(b)(2). Comment 5b(f)(2)(ii)–1 clarifies that a creditor may terminate and accelerate a plan under this provision ''only if the consumer actually fails to make payments.'' Thus, an account may not be terminated for a minor payment infraction, such as when a consumer sends a payment to the wrong address. Comment 5b(f)(2)–2 interprets this provision to allow creditors to take an action short of terminating the plan and accelerating the balance, such as temporarily or permanently suspending advances, reducing the credit limit, changing the payment terms, or requiring the consumer to pay a fee. A creditor may also provide in its agreement that a higher rate or fee will apply in circumstances under which it could otherwise terminate the plan and accelerate the balance.

Proposal

The proposal would interpret the statute to mean that creditors may not, for payment-related reasons, terminate the plan and accelerate the balance or take certain actions short of termination and acceleration permitted under comment 5b(f)(2)–2, unless the consumer has failed to make a required minimum periodic payment within 30 days after the due date for that payment. The Board is specifically proposing that account action under § 226.5b(f)(2)(ii) be prohibited unless the consumer has failed to make a required minimum periodic payment within 30 days of the due date, and requesting comment on whether this timeframe is appropriate, or whether some other time period is more appropriate. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to issue provisions and make adjustments to the requirements of TILA that are necessary or proper to effectuate the statute's purposes. *See* 15 U.S.C. 1604(a).

The Board believes that specifying the type of payment infraction required to take action under this provision is necessary to effectuate the purposes of TILA and Congress in enacting the Home Equity Loan Act (cited above). According to section-by-section clarifications in the Home Equity Loan Act, this provision specifically ''deals with the failure of the borrower to actually make payments. *It does not encompass minor transgressions* such as inadvertently sending the payment to the wrong branch.'' [19] Creditors and consumer groups have expressed uncertainty about when an account may be terminated or other action taken under this provision, as well as concerns that creditor practices in this regard vary widely. In particular, concerns have been raised about ''hair-

[19] Section-by-Section Clarifications to H.R. 3011, the Home Equity Loan Consumer Protection Act of 1988, Pub. L. 100–709, enacted on Nov. 23, 1988 (inserted by Rep. David Price), Congr. Rec., H4474 (June 20, 1988) (emphasis added).

trigger'' terminations and other actions being taken on accounts due to minor late payments.[20] Some have pointed out that the plain language of this provision—the consumer ''fails to meet the repayment terms of the agreement''—arguably allows creditors to take an action that seems disproportionate to the consumer's actions, such as account termination due to as little as a single-day delinquency.

The Board believes that the proposed interpretation of the relevant statutory and regulatory provisions better carries out the legislative intent to protect consumers against (1) creditor practices that are unexpected and harmful,[21] and (2) actions based on ''minor'' payment infractions.[22] The Board believes, for example, that terminating a line based on a payment that was late but made within a contractual late fee ''courtesy'' period is arguably unexpected and harmful; a consumer may have a reasonable expectation that no penalty will be imposed for a payment made within a certain number of days after the due date where a late fee courtesy period has consistently been applied to an account. In addition, the proposal acknowledges that payments may be late for reasons out of the consumer's control, such as postal delays or automated funds disbursement errors. A delinquency threshold for taking action on the account of more than 30 days would give consumers time to discover and correct the error. Finally, a consumer who is more than 30 days delinquent will, in most cases, have missed at least two due dates—and thus will have wholly failed to make a payment. *See* existing comment 5b(f)(2)(ii)–1 (prohibiting termination and acceleration of an account unless the consumer ''actually fails to make payments'').[23]

Overall, the proposal is intended to strike a more equitable balance between creditors' need to protect themselves against risk (and, for depositories, to ensure their safety and soundness), and effective protection of HELOC consumers from constraints on their credit privileges that do not correspond with reasonable expectations. Consumer protection would be enhanced by eliminating the opportunity for hair-trigger terminations and certain lesser actions for nominal delinquencies. In addition, the Board believes that a consumer would be more likely to expect serious consequences for a delinquency of more than 30 days on a debt secured by the consumer's home than on an unsecured credit card account. These protections arguably offset the risk to consumers that creditors now terminating lines of credit based on delinquencies of 30 days or less (or that rarely terminate lines) will begin terminating accounts based on the proposed over-30-days delinquency rule.

At the same time, creditors would retain options to protect themselves from losses prior to a payment becoming more than 30 days delinquent. Specifically, a creditor could impose late payment fees specified in the HELOC agreement. Creditors also could temporarily suspend or reduce accounts for a ''default of a material obligation'' under § 226.5b(f)(3)(vi)(C), as payment obligations are commonly considered material obligations. In effect, whether a line can be terminated due to failure to meet a payment obligation as permitted under TILA depends on the extent of the default (*i.e.,* is a payment late by more than 30 days?); whereas whether a line can be temporarily suspended or reduced depends on the nature of the obligation on which the consumer defaulted (*i.e.,* is the obligation itself ''material''?).

The Board requests comment on whether a failure to make a payment within 30 days is appropriate or whether some other time period is more appropriate for permitting action under this provision. In this regard, the Board notes that the 2009 Credit Card Act (cited above) has suggested considering a delinquency threshold of more than 60 days. Specifically, the Credit Card Act adds a new section 171 to TILA (15 U.S.C. 1666j) to prohibit increasing the APR on existing credit card balances unless the creditor has not received a minimum payment within 60 days after the due date for the payment. *See* Credit Card Act, § 101(b). However, the Credit Card Act does not require that a consumer must be 60 or even 30 days late before a creditor may terminate a credit card account; the Credit Card Act deals with when a credit card creditor may reprice balances on an account.

The Board also requests comment on whether the Board should consider any other payment infractions to be sufficient grounds for termination and acceleration (and permitted lesser actions).

5b(f)(2)(iv) Terminations Required by Federal Law

Existing § 226.5b(f)(2)(iv) permits a depository institution to terminate and accelerate a HELOC plan if ''compliance with federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand.'' The Board narrowly tailored this additional provision permitting termination in light of Section 22(g) of the Federal Reserve Act (implemented by Regulation O, 12 CFR Part 215) and Section 309 of the Federal Deposit Insurance Corporation Improvement Act. *See* 57 FR 34676 (August 6, 1992).

The proposal would amend § 226.5b(f)(2)(iv) to permit creditors to terminate and accelerate home-equity plans if a federal law requires the creditor to do so, expanding this provision to cover other federal laws that may require a creditor to terminate and accelerate a plan. ''Federal law'' under this provision is limited to any federal statute, its implementing regulation, and official interpretations issued by the regulatory agency with authority to implement such statute and regulation.

With this revision, the Board intends to prevent the need to issue separate revisions to Regulation Z to account for any new federal law requiring creditors to terminate and accelerate plans under particular circumstances. Further discussion of the reasons for this proposal and requests for comment are found in the explanation below of a similar proposal designated as new § 226.5b(3)(vi)(G).

[20] Board staff discussions with creditors revealed that creditors terminate HELOC accounts due to a consumer's ''fail[ure] to meet the repayment terms of the agreement'' for payment delinquencies ranging from 16 to 90 days. In addition to creditor practices, Board staff have also considered court decisions such *Cunningham* v. *Nat'l City,* C.A. 1–08–CV–10936–RGS (Dist. Mass., Jan. 7, 2009), in which the court held that termination of an account was permitted based on a seven-day delinquency, even though the consumer paid within the contractual late fee courtesy period. Standard HELOC agreements reviewed by the Board typically incorporate the regulatory language allowing a creditor to terminate and accelerate an account or take certain lesser actions due to a consumer's ''fail[ure] to meet the repayment terms of the agreement,'' without specifying the number of days late a consumer's payment may be before the account will be terminated or other action taken under § 226.5b(f)(2)(ii).

[21] *See, e.g.,* Remarks of Rep. St. Germain, Chair, House Committee on Banking, Finance and Urban Affairs on H.R. 3011, the Home Equity Loan Consumer Protection Act of 1988, Public Law 100–709, enacted on Nov. 23, 1988, Congr. Rec., H4471 (June 20, 1988) (The Home-equity Loan Act was intended to ensure that creditors could impose ''no hidden fees, no hidden terms * * * on unsuspecting homeowners''); Remarks of Rep. Schumer on H.R. 3011, Congr. Rec., H4475 (June 20, 1988) (''Home-equity loans have several potential pitfalls if a consumer is not completely aware * * *'').

[22] Section-by-Section Clarifications to H.R. 3011, the Home Equity Loan Consumer Protection Act of 1988, Public Law 100–709, enacted on Nov. 23, 1988 (inserted by Rep. David Price), Congr. Rec., H4474 (June 20, 1988).

[23] *See also id.*

Regarding this proposed provision, the Board requests comment on what additional examples of conflicts between Regulation Z's restrictions on account termination and other laws the Board should consider, if any. The Board also requests comment on whether the definition of ''federal law'' should be broadened to include, for example, an order or directive of a federal agency.

5b(f)(3) Limitations on Changes in Terms

Section 226.5b(f)(3) generally prohibits a creditor from changing the terms of a HELOC plan after it is opened. Comment 5b(f)(3)–1 states that, for example, a creditor may not increase any fee or impose a new fee once the plan has been opened, even if the fee is charged by a third party. This comment also provides that the change-in-terms prohibition applies to ''all features of a plan,'' even if the features are not required to be disclosed under § 226.5b (*i.e.,* on the application disclosures). Comment 5b(f)(3)–2, however, lists three charges that may be changed: (1) Increases in taxes; (2) increases in premiums for property insurance (if excluded from the finance charge under § 226.4(d)(2)); and (3) increases in premiums for credit insurance (if excluded from the finance charge under § 226.4(d)(2)).

The proposal would first revise comment 5b(f)(3)–1 to remove the example of a charge that is not required to be disclosed—specifically, a late-payment fee. Under the proposal, a late-payment fee would not be required to be disclosed in the early HELOC disclosure table under § 226.5b(b) (*see* proposed § 226.5b(c)(11), (c)(12) and (c)(13)), but it would be required to be disclosed on the account-opening table under proposed § 226.6(a)(2)(x), along with several other types of fees. Further discussion of these proposed rules is included in the section-by-section analysis for proposed § 226.6(a)(2).

Second, proposed comment 5b(f)(3)–3 clarifies that creditors may pass on to consumers costs in the limited categories of debt collection, collateral protection and foreclosure under Regulation Z, but only if certain conditions are present. First, the costs must ''bona fide and reasonable,'' meaning that the creditor may pass on to the consumer only costs that the creditor actually incurs in taking these actions on a particular plan, and that the amount of any costs passed on to the consumer must be reasonably related to any services related to debt collection, collateral protection or foreclosure incurred by the creditor. These costs might include attorneys' fees, court costs, property repairs, payment of overdue taxes, or paying sums secured by a lien with priority over the lien securing the HELOC. Second, the need for the creditor's actions must arise due to the consumer's default of an obligation under the agreement.

During outreach to prepare this proposal, the Board received requests to clarify whether creditors may pass on to consumers bona fide and reasonable costs incurred by the creditor for collection activity after default, to protect the creditor's interest in the property securing the plan, and to foreclose on the securing property. Creditors have expressed uncertainty about whether a creditor may pass these types of costs on to consumers under Regulation Z. As noted, § 226.5b(f)(3) prohibits creditors from changing the terms of a home-equity plan except in specified circumstances. Existing comment 5b(f)(3)–2 lists only three types of fees that are not covered by this section. Thus, it could be argued that creditors may not pass certain costs on to consumers unless they disclose in the agreement the specific fees and amounts associated with actions required for debt collection, collateral protection and foreclosure. The Board understands that the specific amount of costs required for a creditor to collect unpaid amounts, protect its collateral or execute foreclosure can rarely be known at the outset of a home-equity plan. Events giving rise to the need for a creditor to take action for debt collection, collateral protection or foreclosure may occur several years after the opening of a plan, and the specific actions required for collateral protection or foreclosure, for example, may vary widely depending on the circumstances, such as the nature of the consumer's action or inaction giving rise to the need for the creditor to take affirmative action protect its collateral, or the rules of the jurisdiction governing the foreclosure proceeding. The Board recognizes that for closed-end home-secured credit, creditors have more certainty than do HELOC creditors that these costs may be passed on to the consumer without specific upfront disclosure of their amounts, and that this uncertainty for HELOCs creates compliance challenges.

Also, other sections of the existing commentary reflect the Board's longstanding recognition that specific disclosure of these items and the amount of the charge for each may be difficult. For example, comment 5b(d)(4)–1 (redesignated in the proposal as comment 5b(c)(7)(i)–1) excludes from the requirement to disclose termination fees at application ''fees associated with collection of the debt, such as attorneys' fees and court costs.'' In addition, longstanding comment 6(b)–2.ii (incorporated with changes into proposed § 226.6(a)(3)(ii)(B)) excludes from disclosure in the § 226.6 account-opening statement ''[a]mounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; [and] post-judgment interest rates imposed by law,'' among others. As discussed in more detail in the section-by-section analysis under proposed § 226.6(a)(3), one category of ''charges imposed as part of a home-equity plan'' would be ''charges resulting from the consumer's failure to use the plan as agreed, *except* amounts payable for collection activity after default; costs for protection of the creditor's interest in the collateral for the plan due to default; attorney's fees whether or not automatically imposed; foreclosure costs; and post-judgment interest rates imposed by law'' (emphasis added). Proposed § 226.6(a)(3) generally parallels § 226.6(b)(3)(ii)(B) applicable to open-end (not home-secured) plans finalized in the January 2009 Regulation Z Rule and incorporates, as noted, longstanding comment 6(b)–2.ii.

The Board is mindful of concerns that consumers may be charged a wide array of fees upon default without adequate notice or explanation. For these reasons, the Board requests comment on the appropriateness of this proposed clarification. The Board also requests comment on whether, if the proposal is adopted, the Board should clarify requirements regarding disclosure of these costs in the initial agreement beyond stating that specific amounts need not be disclosed. For example, would it be sufficient for the creditor to disclose simply the possibility that costs under the three categories contemplated in the proposal—debt collection, collateral protection and foreclosure upon default—may be charged? Or should the creditor be required to itemize in whole or in part the types of costs under each category that could be charged?

5b(f)(3)(i) Changes Provided for in Agreement

Section 226.5b(f)(3)(i) provides exceptions from the general prohibition on changes in terms of home-equity plans. One of these ''exceptions'' is that a creditor may provide in the initial agreement that a specified change will take place if a specified event occurs. The section gives an example that the agreement may provide that the APR may increase by a specified amount if the consumer leaves the creditor's

employment. Comment 5b(f)(3)(i)–1 clarifies that both the triggering event and the resulting change in terms must be stated in the agreement with specificity. The comment also restates the employee preferred-rate example, and gives other examples, including a stepped-rate provision in the agreement, under which specified changes in the rate may take place after specified periods of time. This section and accompanying comment are consistent with the general principle stated in comment 5b(f)(1)–3 that rate changes specifically set forth in the agreement are not prohibited.

The Board proposes to revise comment 5b(f)(3)(i)–1 to clarify that rate increases are also permissible upon the occurrence of special circumstances other than those set forth in the existing comment, as long as they are specifically set forth in the agreement and do not conflict with other substantive limitations on rate changes in the regulation. The Board intends this clarification to provide consistency between comment 5b(f)(1)–3 and comment 5b(f)(3)(i)–1. The proposal also would limit the amount by which a rate could be increased once circumstances qualifying the consumer for a preferred rate no longer apply. Specifically, a creditor could not raise the rate to be higher than it would have been had the consumer never qualified for a preferred rate. If a preferred rate of five percent is available to a consumer who is an employee of the creditor, for example, and the rate applicable if the consumer were not a creditor employee were seven percent, the creditor could not raise the rate above seven percent once the consumer is no longer the creditor's employee. The Board believes that such an increased rate would constitute a penalty rate imposed for reasons not permitted under Regulation Z. *See* § 226.5b(f)(2) and comment 5b(f)(2)–2; *see also* 15 U.S.C. § 1647(a); § 226.5b(f)(1).

The revised comment would clarify that the creditor could not impose a penalty rate for a reason other than those specified in § 226.5b(f)(2) (allowing termination and acceleration and certain lesser actions only under particular circumstances). The Board believes that permitting agreements to provide for the application of penalty rates upon the occurrence of any triggering event would be inconsistent with the restrictions on rate increases under the statute and regulation. *See* 15 U.S.C. § 1647(a); § 226.5b(f)(1). Thus, the proposed comment would state that the creditor would be permitted to increase the rate to a penalty rate level only if the triggering event is a circumstance that would permit the rate to be increased under the commentary to § 226.5b(f)(2), such as fraud or material misrepresentation by the consumer (§ 226.5b(f)(2)(i)), failure to make a required payment within 30 days of the due date for that payment (proposed § 226.5b(f)(2)(ii)), or action or inaction by the consumer that adversely affects the creditor's security interest for the plan (§ 226.5b(f)(2)(iii)). The Board believes, however, that a rate increased from a preferred rate to the rate available to consumers generally, when the condition for the preferred rate is no longer met, would be consistent with the statutory provision. A consumer who has a preferred rate is likely to be aware of the conditions for the rate, and thus if the conditions are no longer met, the rate increase would not come as an undue surprise.

5b(f)(3)(iv) Beneficial Changes

Section 226.5b(f)(3)(iv) permits a creditor to change a term of a home-equity plan if the change ''will unequivocally benefit the consumer throughout the remainder of the plan.'' Comment 5b(f)(3)(iv)–1 gives several examples of beneficial changes, including a temporary reduction in the rate or fees charged during the plan. In this case, however, the comment indicates that a creditor ''may'' be required to give a change-in-terms notice required under § 226.9(c) (see proposed § 226.9(c)(1)) when the rate or fees return to their original level.

The proposal would clarify in comment 5b(f)(3)(iv)–1 that a change-in-terms notice ''would,'' rather than ''may,'' be required to be provided to the consumer under § 226.9(c) (proposed § 226.9(c)(1)) when the temporarily reduced rate or fees are returned to their original level, if these reductions and subsequent increases were not disclosed in the account agreement. The revised comment also would clarify that including notice of the increased rate or fee with the notice to the consumer that the rate or fee is being reduced would constitute appropriate notice of the increase, as long as this notice is provided 45 days before the effective date of the increase.

Comment 9(c)(1)(ii)–2 (redesignated in the proposal as comment 9(c)(1)(iv)–2) states that a creditor may offer temporary reductions in finance charges without giving notice when the charges return to their original level—as long as this feature is disclosed in the account-opening disclosures required under § 226.6 (including an explanation of the terms upon resumption).[24] The ''beneficial changes'' provision, however, permits the creditor temporarily to reduce finance charges such as rates and fees without disclosing these possible reductions in the account agreement (assuming the change is ''unequivocally'' beneficial). When a creditor relies on this provision to raise the rate or fees after the reduction period has ended, however, the Board believes that the consumer should be given notice of when these charges will return to their original level in accordance with the proposed 45 days advance notice rule under proposed § 226.9(c)(1). This would ensure that the consumer is given sufficient notice of the change to make any financial adjustments necessary.

5b(f)(3)(v) Insignificant Changes

Background

Section 226.5b(f)(3)(v) permits a creditor to make ''insignificant'' changes to a home-equity plan's terms. Existing comment 5b(f)(3)(v)–1 explains that this provision is intended to ''accommodate[] operational and similar problems, such as changing the address of the creditor for purposes of sending payments.'' Under this comment, a creditor may not change a term such as a late-payment fee. Comment 5b(f)(3)(v)–2 gives several examples of changes in terms considered ''insignificant.'' These include ''minor changes'' to the billing cycle date, the payment-due date, and the day of the month on which index values are measured; changes to the creditor's rounding practices for the APR; and changes to the balance computation method used. The comment also provides that these changes will not in all cases be considered ''insignificant.'' For example, a change to the payment-due date would be insignificant only if this change would not diminish the grace period, if any, during which finance charges and late fees are not applied to new transactions. A change in the creditor's rounding practices for disclosing the APR would be

[24] This provision also states that temporary reductions in payments disclosed in the account-opening statement are subject to the notice exemption. *See* comment 9(c)(1)(ii)–2 (proposed comment 9(c)(1)(iv)–2). Temporary payment reductions might also be considered beneficial changes permitted under § 226.5b(f)(3)(iv). *See* comment 5b(f)(3)(iv)–1. However, in the Supplementary Information to the final rule implementing § 226.5b(f)(3)(iv), the Board noted that ''reducing the amount of the minimum payment would not be unequivocally beneficial since it may result in less principal being repaid over the term of the plan and may result in a higher total amount of finance charges.'' 54 FR 3063 (Jan. 23, 1989).

insignificant only if the change is within the tolerances prescribed by § 226.14(a). A change to the balance computation method would be insignificant only if any resulting difference in the finance charge paid by the consumer is ''insignificant.''

A number of creditors have expressed concerns to the Board about difficulties arising when the servicing of a HELOC is transferred and the new servicer's platform is not programmed to allow for previously available terms. Creditors are concerned that changing the terms of a HELOC in this circumstance may not be permitted due to § 226.5b(f)(3)'s limitations on term changes. Creditors have reported that, as a result, they sometimes have to use multiple servicers or servicing systems to support all the terms of the various HELOCs they acquire. These servicers and servicing systems may be of widely varying quality, which could mean that consumers do not receive optimal service on their HELOCs. Some creditors have reported that a portfolio acquisition may not occur at all if the acquirer's servicing system cannot support the terms of the HELOCs offered, and that this may also harm consumers if, for example, the proposed acquisition was necessitated in part by challenges facing the current servicer. Differences between servicing systems cited by creditors may impact, among other terms, rate indices, minimum payment and late fee calculations, or the availability of certain payment options or access devices such as credit cards.

Proposal

The Board proposes to add to comment 5b(f)(3)(v)–2 an example of a change that would be considered insignificant under this provision: a creditor may eliminate a method of accessing the line, such as a credit card, as long as at least one means of access that was available at account opening remains available to the consumer on the original terms. The Board also proposes to clarify that changes to the original terms on which a means of access was originally available—such as any fees for using the access method—would not be considered insignificant, but might be permitted as ''beneficial'' changes under § 226.5b(f)(3)(iv) if the change met the requirements of comment 5b(f)(3)(iv)–1.

The Board believes that a general rule permitting changes in terms due to servicing transfers would not sufficiently protect consumers, and thus would undermine the purpose of the change-in-terms restrictions mandated by TILA. Such a rule would allow creditors to change terms as a result of a servicer change that are, in practical effect, significant. Changes to minimum payment calculations, for example, could increase the overall costs to the consumer of the HELOC, or materially increase the consumer's payments in the short or long term. Changes to late fee calculations could be confusing to consumers and cause undue surprise related to the amount or timing of the late-payment fee; in addition, longstanding Board policy prohibits changing fees charged for late payments. *See* comment 5b(f)(3)(v)–1.

The Board also considered setting a general standard for changes that would be considered insignificant, such as allowing changes to be deemed insignificant that result in the same or substantially similar payments (including periodic payments and the total of payments), rates, fees, and overall loan costs. One concern about establishing a general standard is that confusion among creditors and consumers, and possibly increased litigation, may result, particularly concerning the meaning of terms such as ''substantially similar.'' The Board requests comment on whether setting a general standard for term changes that would be considered insignificant is desirable. In this regard, the Board also requests comment on whether prescribing specific tolerances for resulting payments, costs, and fees would be helpful, and what appropriate tolerances might be.

Servicing transfers, while sometimes beneficial to consumers, are neither initiated nor controlled by consumers. Thus, the Board believes that consumers should not in general be subjected to changes in their HELOC terms when their servicing is transferred. The current regulation provides several exceptions allowing creditors to change HELOC terms in keeping with the consumer protection purpose of TILA and Regulation Z—such as changes by written agreement (§ 226.5b(f) (3)(iii)), beneficial changes (§ 226.5b(f)(3)(iv)), and insignificant changes (§ 226.5b(f)(3)(v)). Regarding insignificant changes, current comment 5b(f)(3)(v)–2, as noted, clarifies in its examples that, in effect, a change cannot be considered insignificant if it diminishes or eliminates a financial benefit to the consumer, such as a grace period, or if it causes the consumer to pay a finance charge that is more than nominally higher than the finance charge that would have applied under the original terms.

Rather than make a broad revision such as permitting all term changes related to servicing transfers or setting a general standard for determining whether a change in terms is ''insignificant,'' the Board is proposing to clarify that an access device such as a credit card may be eliminated as long as previously available access devices remain available. Creditors indicated that significant problems can arise where credit card access, for example, was available on the plan but a new servicer cannot support this; the creditor may be unable to transfer the servicing or may have to make individual arrangements with each consumer. The Board requests comment on the appropriateness of this additional example of an insignificant change. In addition, the Board requests comment on whether this example, if adopted, should be modified, broadened, or narrowed.

5b(f)(3)(vi) Temporary Suspension of Credit or Reduction of Credit Limit

Introduction

Section 226.5b(f)(3)(vi) lists several circumstances under which a creditor may temporarily suspend advances on a home-equity plan or reduce the credit limit. As discussed below, the Board proposes revisions to this section in three major areas: (1) Rules regarding when a creditor may suspend or reduce an account based on a significant decline in the property value (§ 226.5b(f)(3)(vi)(A) and existing comment 5b(f)(3)(vi)–6); (2) rules regarding when a creditor may suspend or reduce an account based on a material change in the consumer's financial circumstances (§ 226.5b(f)(3)(vi)(B) and existing comment 5b(f)(3)(vi)–7); and (3) rules regarding reinstatement of accounts that have been suspended or reduced (existing comments 5b(f)(3)(vi)–2, –3, and –4). As also discussed below, the proposal would permit a creditor to suspend or reduce an account temporarily if required to do so by federal law. Certain technical amendments are proposed to § 226.5b(f) and accompanying commentary as well.

Changes and Requests for Comment Related to § 226.5b(f)(3)(vi) Generally

No changes are proposed to existing comment 5b(f)(3)(vi)–1, which provides that a creditor may temporarily suspend advances on an account or reduce the credit limit only under circumstances specified in § 226.5b(f)(3)(vi), § 226.5b(f)(3)(i) when the maximum annual percentage is reached, or § 226.5b(f)(2), permitting suspension of advances or reduction of the credit limit in lieu of terminating and accelerating the account. *See* comment 5b(f)(2)–2. The Board requests comment, however,

on the portion of this comment providing that the creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment. Specifically, the Board requests whether other limitations on the amount by which a home-equity line may be reduced may be appropriate. For example, should the amount by which a credit line may be reduced for a significant decline in the property value under § 226.5b(f)(3)(vi)(A) (discussed below) be limited to: (1) No more than the dollar amount of the property value decline; (2) no more than the amount needed to restore the creditor's equity cushion at origination (and whether, in this case, the relevant equity cushion should be the dollar amount or the percentage of the home value not encumbered by debt); or (3) some other measure? A related request for comment is whether a creditor should be prohibited from temporarily suspending advances on the line until, for example, the property value declines by the full amount of the credit line.

The proposal would redesignate comment 5b(f)(3)(vi)–5 as comment 5b(f)(3)(vi)–2 and make certain technical revisions. Current comment 5b(f)(3)(vi)–5 permits a creditor to honor a specific request by a consumer to suspend credit privileges. If two or more consumers are obligated under a plan and each can take advances, comment 5b(f)(3)(vi)–5 permits creditors to provide that any of the consumers may direct the creditor not to make further advances. This comment also permits a creditor to require that all persons obligated under a home-equity plan request reinstatement.

Proposed comment 5b(f)(3)(vi)–2 would add that consumers may request not only suspended advances but reduction of the credit limit. It also clarifies that when a consumer later requests reinstatement, but a condition permitting suspension or reduction exists (under §§ 226.5b(f)(2) or (f)(3)(i) or (f)(3)(vi)), a creditor that therefore does not re-open the plan must provide the disclosure of the specific reasons for the action taken under § 226.9(j)(1) (for temporary suspensions and reductions under §§ 226.5b(f)(3)(i) or (f)(3)(vi)) or (j)(3) (for termination or permitted lesser actions under § 226.5b(f)(2)), as applicable. Concerns were expressed to the Board during outreach for this proposal that under some circumstances, a person with an ownership interest in the property securing the line, but who is not obligated on the plan, may wish to request suspension of advances. The Board has not proposed a change to this provision to address these concerns, but invites comment on the issue.

Under longstanding Board policy, rate changes for reasons permitting suspension of advances or credit limit reductions under § 226.5b(f)(3)(i) and (f)(3)(vi) have been prohibited. *See* comment 5b(f)(3)(i)–2. Based on issues raised during the Board's outreach to prepare this proposal, the Board also requests comment on whether and under what circumstances it might be appropriate for Regulation Z to permit actions other than temporary suspension of advances or credit limit reductions under § 226.5b(f)(3)(i) and (f)(3)(vi).

Finally, as discussed in more detail under the section-by-section analysis for proposed § 226.5b(g), the proposal moves comments 5b(f)(3)(vi)–2, –3, and –4 regarding reinstatement of accounts to proposed § 226.5b(g) and accompanying commentary, and revises them.

5b(f)(3)(vi)(A) Suspensions and Credit Limit Reductions Based on a Significant Decline in the Property Value

Background

Section 226.5b(f)(3)(vi)(A), which implements TILA Section 137(c)(2)(B), permits a creditor temporarily to suspend advances or reduce a credit line on a HELOC if ''the value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan.'' 15 U.S.C. 1647(c)(2)(B). Comment 226.5b(f)(3)(vi)–6 states that whether a decline in value is significant under this provision ''will vary according to individual circumstances.'' The comment goes on to provide a ''safe harbor'' standard for determining whether a decline is significant. Specifically, a decline in value would be considered significant if it results in the initial difference between the credit limit and the available equity (the ''equity cushion'') diminishing by 50 percent or more.

Concerns have been expressed to the Board that the existing safe harbor may not be a viable standard for the higher combined loan-to-value (CLTV) HELOCs made in recent years. For loans nearing or exceeding 100 percent CLTV when originated, for example, a decline in value of a few dollars could result in more than a 50 percent decline in the creditor's equity cushion because the equity cushion was zero or close to zero at origination. For these higher CLTV loans in particular, creditors have indicated uncertainty about how to determine whether a decline in value is ''significant.'' For their part, consumer advocates have expressed concerns that the lack of guidance on the proper application of the safe harbor gives creditors too much authority to take action based on nominal declines in value. Finally, noting that appraisals are not required to take action under this provision (*see* comment 5b(f)(3)(vi)–6), creditors have also asked the Board for guidance on appropriate property valuation methods for assessing property values under this provision.

Proposal

The proposal would eliminate references to the ''appraised'' value in both the regulation and commentary, to reflect that appraisals are not required to originate many HELOCs,[25] nor are they required to establish a basis for taking action under this provision. *See* existing comment 5b(f)(3)(vi)–6. Beyond this technical change, the proposal would revise the commentary interpreting § 226.5b(f)(3)(vi)(A) in two principal ways. First, the commentary would delineate two ''safe harbors'' on which creditors could rely to determine that a decline in property value is ''significant'' under this section. Second, the commentary would provide additional guidance regarding the appropriate valuation tools for creditors to use in valuing property under this section.

Proposed comment 5b(f)(3)(vi)–4 confirms existing guidance stating that whether a decline is ''significant'' under § 226.5b(f)(3)(vi)(A) depends on the individual circumstances of a particular HELOC secured by a property whose value has declined. Thus, in all cases the creditor must make an individualized assessment of whether a property value decline is significant, and may not solely consider general property value trends.

Safe harbors. To facilitate compliance, the Board proposes two standards under which a property value decline would be deemed significant under this section.

[25] *See, e.g.*, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, ''Interagency Appraisal and Evaluation Guidelines,'' SR Letter 94–55 (Oct. 28, 1994); *see also* 12 CFR 225.63 (FRB); 12 CFR 34.43 (OCC); 12 CFR 323.3 (FDIC); 12 CFR 564.3 (OTS). ''Appraisal'' is defined in federal banking agency regulations relating to appraisal standards as ''a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.'' 12 CFR 225.62(a) (FRB); 12 CFR 34.42(a) (OCC); 12 CFR 323.2(a) (FDIC); 12 CFR 564.2(a) (OTS).

• First, for plans with a CLTV at origination of 90 percent or higher, a five percent reduction in the property value on which the HELOC terms were based would constitute a significant decline in value for purposes of § 226.5b(f)(3)(vi)(A).

• Second, for plans with a CLTV at origination of under 90 percent, the Board proposes to retain the existing safe harbor, under which a decline in the value of the property securing the plan is significant if, as a result of the decline, the initial difference between the credit limit and the available equity (based on the property's value for purposes of the plan) is reduced by 50 percent.

Five percent decline for HELOCs with a CLTV at origination of 90 percent or higher. The current commentary allows creditors to assume that a decline in property value is ''significant'' if the decline results in a 50 percent decline in the creditor's equity cushion. *See* comment 5b(f)(3)(vi)–6. The Board proposes to modify this ''safe harbor'' for loans with a CLTV at origination of 90 percent or higher: For these loans, the creditor could assume that a decline in the property value is significant if the property value declines at least 5 percent from its value when the HELOC was originated.

The Board proposes this new safe harbor for several reasons. First, the current safe harbor, which allows action on a HELOC when the creditor's equity cushion falls by 50 percent, establishes an inappropriate metric for measuring whether a value decline on higher CLTV loans is ''significant.'' As worded, this provision arguably permits action based on nominal property value declines. Specifically, the statute permits suspension of advances or reduction of the credit limit when the value of property securing the HELOC ''is significantly less than'' the value of the property when the HELOC was originated. 15 U.S.C. 1647(c)(2)(B). The Board's proposal would interpret this statutory language to mean that, at minimum, the actual decline in value must be more than nominal. The 5 percent safe harbor thus is intended to protect consumers with higher CLTV HELOCs from having their lines suspended or reduced based on property value declines that are only slightly less than the value of the property at origination.

Second, the new proposed safe harbor standard would be consistent with the existing safe harbor. Arithmetically, a five percent decline on loans with an originating CLTV of 90 percent or higher results in at least a 50 percent decline in the equity cushion. By contrast, a five percent property value decline on loans with an originating CLTV of under 90 percent would not reduce the creditor's equity cushion by 50 percent.

Third, the proposed CLTV threshold of 90 percent or higher for applying a five percent value decline safe harbor would be consistent with a CLTV threshold already established by the Board. Specifically, Board risk management guidance defines a ''high [C]LTV loan'' [26] generally as a loan with a CLTV of 90 percent or higher, unless the loan has credit enhancements such as mortgage insurance to mitigate the risk of loss.[27] Research validates that loans in this category have a higher probability of default and yield greater losses upon default than loans of lower CLTVs.[28]

Retention of existing safe harbor for HELOCs with a CLTV at origination of lower than 90 percent. For loans with an originating CLTV of less than 90 percent, the Board proposes to retain the existing the safe harbor, under which a value decline is significant if the decline results in the creditor's equity cushion contracting by 50 percent. Comment 5b(f)(3)(vi)–4 clarifies that in determining whether a decline results in a 50 percent equity cushion reduction, the creditor may, but does not have to, consider any changes in available equity based on the status of the first mortgage.

The Board proposes to retain the existing safe harbor for several reasons. First, no parties during Board outreach to prepare this proposal objected to the general principal that a property value decline resulting in a 50 percent reduction of the equity cushion can reasonably be considered ''significant'' under this provision.

Second, applying this safe harbor to loans with CLTVs of under 90 percent does not depart significantly from the assumption on which the original safe harbor example was based. *See* comment § 226.5b(f)(3)(vi)–6. The commentary illustrates the existing safe harbor with a HELOC at a starting CLTV of 80 percent; thus, the illustration indicates that a 50 percent equity cushion reduction would be significant for loans originated with a CLTV of 80 percent. The proposal clarifies that a property value decline resulting in a 50 percent equity cushion reduction is significant for loans with a CLTV of only somewhat higher than 80 percent—under 90 percent.

Finally, there is an arithmetical basis for applying the existing safe harbor, rather than the proposed flat five percent decline safe harbor, to HELOCs with an originating CLTV of under 90 percent: a five percent decline in the value of the property for lines with a starting CLTV lower than 90 percent would not yield an equity cushion decline of 50 percent or more.

Among other alternatives, the Board considered proposing a safe harbor that applied a flat percentage property value decline to all HELOCs, regardless of the originating CLTV, but determined that defining an single metric appropriate for all loans was not possible. A safe harbor of a 10 percent decline, for example, may impair creditors' flexibility to take action where reasonable arguments could be made, as for higher CLTV loans such those discussed above, that adequate risk mitigation requires action based on a lesser decline. At the same time, a 10 percent decline may be inappropriate for loans with lower CLTVs, such as 50 percent. For these loans, a 10 percent property value decline would still leave the creditor with a significant equity cushion. By contrast, even on lower CLTV loans, the current safe harbor of a 50 percent reduction in the creditor's equity cushion might reasonably be deemed a sufficient change in the creditor's original risk level to justify action on the line, such as temporarily reducing the credit limit.

Significant declines outside of the safe harbors. The Board recognizes that not all property value declines that might reasonably be considered ''significant'' for taking action under this provision will fall into one of the two safe harbors. Thus, the Board

[26] Relevant guidance uses the term ''LTV'' (loan-to-value ratio) to mean what is often referred to as ''CLTV'' (*combined* loan-to-value ratio); in other words, all liens on the property are considered: ''[A] high LTV residential real estate loan is defined as any loan, line of credit, or combination of credits secured by *liens on or interests in* owner-occupied 1- to 4-family residential property that equals or exceeds 90 percent of the real estate's appraised value, unless the loan has appropriate credit support.'' Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, ''Interagency Guidance on High LTV Residential Real Estate Lending,'' SR Letter 99–26 (Oct. 12, 1999) (emphasis added).

[27] 12 CFR part 208, subpart E, app. C (providing that, if a loan's LTV is equal to or exceeds 90 percent, the creditor must add other credit enhancements (such as mortgage insurance) or the loan will be considered to exceed the supervisory LTV ratios and be deemed a ''high LTV loan,'' to which additional rules apply). *See also* Board of Governors of the Federal Reserve System, SR Letter 99–26 (Oct. 12, 1999).

[28] *See, e.g.,* Kristopher Gerardi, Federal Reserve Bank of Atlanta, Andreas Lehnert and Shane M. Sherlund, Board of Governors of the Federal Reserve System, and Paul Willen, Federal Reserve Bank of Boston, ''Making Sense of the Subprime Crisis,'' Brookings Papers on Economic Activity (Fall 2008). *See also,* Min Qi and Xiaolong Yang, Office of the Comptroller of the Currency, ''Loss Given Default of High Loan-to-Value Residential Mortgages,'' Economics and Policy Analysis Working Paper 2007–4 (August 2007).

requests comment on whether and what guidance regarding other factors that creditors might consider in determining whether a decline is significant is desirable. Specific comment is requested on whether the Board should provide guidance clarifying that the creditor may (but does not have to) consider any changes in available equity based on how much the consumer owes on a mortgage with a lien superior to that of the HELOC. On a second-lien HELOC where the first-lien mortgage is negatively amortizing, or was negatively amortizing during any part of the HELOC term, for example, the CLTV will decline more and faster than if the first mortgage were fully or partially amortizing, concomitantly reducing the HELOC creditor's equity cushion. The actual property value decline alone may not reduce the creditor's equity cushion by 50 percent, but a 50 percent reduction in the equity cushion may nonetheless occur if the first mortgage loan is negatively amortizing.

The Board also requests comment on whether and under what circumstances it may be appropriate to permit consideration of a clear and consistent trend of declining property values in the market area in which the securing property is located. The Board understands that creditors commonly rely on general market data to validate findings for a property-specific valuation; used in this way, general market data may be a valuable quality control tool contributing to sound portfolio management. (Depending on comments received, the Board would not anticipate that consideration of this factor would be permissible unless the creditor first completed a property valuation that accounts for specific characteristics of the subject property and meets other guidelines proposed in comment 5b(f)(3)(vi)–5.) In addition, the Board solicits comment on the type of market data that would be appropriate, such as data based on publicly available, empirically-based research, as well as on whether a more specific definition of ''market area'' would be needed and, if so, what definition would be appropriate.

Finally, as discussed above under the section-by-section analysis on § 5b(f)(3)(vi) (specifically concerning comment 5b(f)(3)(vi)–1), the Board requests comment on what, if any, restrictions on the amount by which a credit line may be reduced for a significant decline in value may be appropriate.

Property valuation methods. Existing comment 5b(f)(3)(vi)–6 states that § 226.5b(f)(3)(vi)(A) does not require a creditor to obtain an appraisal before suspending credit privileges or reducing the credit limit based on a significant decline in value, although a significant decline must have occurred. This means that the creditor must be able to demonstrate that a significant value decline in value has occurred, even if an appraisal is not obtained. To establish this basis when the creditor does not obtain an appraisal, the creditor would have to rely on a property value generated by a valuation method other than an appraisal. Proposed comment 5b(f)(3)(vi)–5 reaffirms that an appraisal is not required to take action under this provision, but provides additional guidance about the valuation tools that may be appropriate and the standards that should apply to using these tools.

Proposed comment 5b(f)(3)(vi)–5 would clarify that appropriate property valuation methods under § 226.5b(f)(3)(vi)(A) may include, but are not limited to, automated valuation models (AVMs),[29] tax assessment valuations (TAVs),[30] and broker price opinions (BPOs).[31] These examples of appropriate valuation tools are illustrative; the Board recognizes that the methods named in the commentary may in the future commonly be referred to by other names, and that new valuation methods that may be appropriate could be developed over time. Creditors would not be able to use any valuation method if state or other applicable law prohibits using that method for determining whether to suspend or reduce credit lines. For example, some state laws permit real estate brokers or salespersons to perform BPOs only as part of the real estate sales or listing process.[32]

Under proposed comment 5b(f)(3)(vi)–5, any property valuation method on which the creditor relies to take action under this section must consider specific property characteristics of the underlying collateral. Methods that use only indices measuring property values generally in a particular geographic area would not be appropriate. Thus, AVMs known as ''hedonic'' or ''hybrid'' (also referred to as ''blended'') models that account for specific property characteristics and location to produce a value would generally be appropriate, whereas AVMs known as ''repeat sales index'' or ''home price index'' models that do not account for property characteristics specific to the underlying collateral would not be appropriate.[33]

5b(f)(3)(vi)(B) Suspensions and Credit Limit Reductions Based on a Material Change in the Consumer's Financial Circumstances

Background

Section 226.5b(f)(3)(vi)(B), which implements TILA Section 137(c)(2)(C), permits a creditor to suspend advances or reduce the credit limit of a HELOC when ''the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations of the plan because of a material change in the consumer's financial circumstances.'' 15 U.S.C. 1647(c)(2)(C).

In the Board's discussions with creditor representatives and others, concerns have been raised that the phrase ''unable to meet'' the repayment obligations is inappropriate in the modern credit market, in which credit decisions generally involve ranking consumers by their likelihood of repaying, not on whether they can or cannot repay. The Board understands that, in effect, a creditor may decide not to extend credit because a consumer's likelihood of default is calculated to be, for example, 15 percent over a given period. A 15 percent likelihood of default, however, does not necessarily show that the consumer is ''unable'' to repay the HELOC on the agreed terms. The Board also recognizes that credit availability may be reduced if the circumstances under which creditors may take action under this provision are ambiguous. One creditor expressed to the Board that uncertainty about how to fulfill the requirements of this provision contributed to the creditor's decision to stop offering HELOCs altogether. In sum, many creditors have requested more detailed guidance about when action is permissible under this provision, including the extent to which they may rely on declines in credit scores.

Consumer advocates expressed dissatisfaction with the guidance on

[29] An automated valuation model or ''AVM'' is a computer program that analyzes data to determine a property's market value. ''Hedonic'' models use property characteristics (such as square footage, room count) on the subject and comparable properties to determine a value. ''Index'' models determine value based on repeat sales in the marketplace rather than property characteristic data. ''Blended or hybrid'' models use elements of both hedonic and index models.

[30] A tax assessment valuation or ''TAV'' determines the value of the subject property based on the value established for property tax purposes.

[31] A broker price opinion or ''BPO'' is an estimate of value of the subject property prepared by a real estate broker, agent or sales person that details the probable listing price of the subject property and provides varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales. A BPO does not include use of an AVM.

[32] *See, e.g.,* Ark. Code Ann. § 17–14–104, Conn. Gen. Stat. § 20–526, Minn. Stat. § 82B.035, R.I. Gen. Laws § 5–20.7–3, Tex. Occ. Code § 1103.004.

[33] *See supra* note 29, regarding ''hedonic,'' ''hybrid,'' and ''index'' AVMs.

§ 226.5b(f)(3)(vi)(B) as well, voicing concerns that the lack of clear guidelines results in some creditors taking action on accounts of consumers who are fully capable of meeting their repayment obligations or whose financial circumstances in fact have not changed in a manner truly supporting a reasonable belief that the consumer will be unable to meet these obligations.

Proposal

As an initial matter, the Board is not proposing to eliminate the phrase ''unable to meet'' the repayment terms from the regulatory text, in part because the statute itself stipulates that the creditor must have ''reason to believe that the consumer will be *unable* to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances.'' 15 U.S.C. § 1647(c)(2)(C) (emphasis added). Legislative history does not explain Congress's decision to set this standard; the Board interprets the statute's ''unable'' to pay standard as evincing a legislative intent to promote creditor restraint in taking action under this provision. At the same time, the Board, as did Congress, recognizes the need for creditors to be able to protect themselves against losses on home-equity lines; [34] TILA and Regulation Z therefore permit creditors to take action on accounts in certain circumstances before the creditor begins to incur losses on those accounts. *See* 15 U.S.C. 1647(c)(2)(B)–(E); § 226.5b(f)(3)(vi)(A)–(F).

Thus, the Board requests comment on whether the Board should consider expressly interpreting the ''unable'' to pay standard to mean, for example, that the change in the consumer's financial circumstances resulted in the consumer's likelihood of default ''substantially'' increasing. Another possible interpretation on which the Board requests comment is that the ''unable'' to pay standard requires that, as a result in a change in the consumer's financial circumstances, the consumer moved into a higher default risk category than at origination (based on the statistical likelihood of default), such that the creditor would not have made the loan or would have made the loan on materially less favorable terms and conditions.

[34] *See* Remarks of Rep. David Price (primary sponsor of the H.R. 3011, the Home Equity Loan Consumer Protection Act of 1988, Pub. L. 100–709, enacted on Nov. 23, 1988, Congr. Rec., H4473 (June 20, 1988) (''[T]hese provisions protect the consumer without hindering the ability of lenders to operate successfully equity credit plans.'').

Overall, the proposed revisions to guidance in the commentary on § 226.5b(f)(3)(vi)(B) is intended to protect consumers by ensuring that creditors exercise prudent judgment in relying on this provision, while providing certain limited clarifications regarding the requirements of this provision to guide creditors. To ensure that before taking action, creditors carefully consider the consumer's financial circumstances and the likely impact of these circumstances on the account, the proposed commentary retains the existing two-part test for justifying account suspensions or credit limit reductions under § 226.5b(f)(3)(vi)(B). The creditor must first examine the consumer's financial circumstances and determine whether a ''material'' change has occurred. The Board interprets the word ''material'' in this part of the test to mean that the change has some bearing on the consumer's ability to pay his or her financial obligations. The creditor must then establish that this change supports the creditor's reasonable belief that the consumer will be unable to meet the repayment obligations of the HELOC. The proposal would revise the commentary interpreting § 226.5b(f)(3)(vi)(B) to include additional examples of how creditors may demonstrate that both parts of the test are met, as discussed below.

For the first part of the test, under proposed comment 5b(f)(3)(vi)–6 (based on existing comment 5b(f)(3)(vi)–7 with revisions), evidence of a significant change in financial circumstances includes, but is not limited to, a significant decrease in the consumer's income, or credit report information showing late payments or nonpayments on the part of the consumer, such as delinquencies, defaults, or derogatory collections or public records related to the consumer's failure to pay other obligations. The Board proposes to require that these payment failures must have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance. A safe harbor for determining whether a payment failure occurred within a reasonable time from the date of the creditor's review would be one that occurred within six months of the creditor's suspending advances or reducing the credit limit. In addition, the consumer cannot have brought the account on which the payment failure occurred current as of the time of the creditor's review. The Board believes that this six-month safe harbor appropriately observes the statutory and regulatory rule that action can be taken only ''during any period in which'' the consumer's financial circumstances have materially worsened from those on which the credit terms were based. *See* 15 U.S.C. 1647(c)(2)(C); § 226.5b(f)(3)(vi)(B). The Board solicits comment on this approach.

Meeting the second part of the test requires that the change in financial circumstances support the creditor's reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. For this part of the test, the proposal retains the existing commentary's safe harbor—namely, that the creditor may rely on evidence of the consumer's failure to pay other debts other than the HELOC to support a reasonable belief that the consumer will not be able to meet the HELOC's repayment obligations. Proposed comment 5b(f)(3)(vi)–6 adds that these payment failures must have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance, with the six-month safe harbor discussed above.

Proposed comment 5b(f)(3)(vi)–6 also specifies that for the second prong of the test, the payment failures on which the creditor relies may not be solely late payments of 30 days or fewer. The Board does not believe that a late payment of 30 days or fewer is adequate evidence of a failure to pay a debt. For example, the consumer's payment may not have reached the creditor due to errors of which the consumer has not yet had an opportunity to become aware, such as mail delivery or electronic funds transfer errors.

Reliance on Credit Score Declines

Several industry representatives requested clarity on whether creditors could rely on credit score declines to satisfy the requirements of § 226.5b(f)(3)(vi)(B). The Board believes that credit score declines may be an appropriate screening tool for determining which consumers to examine more closely for potential action based on this provision. However, the Board is concerned about whether credit score declines alone can meet the required statutory showing. For reasons discussed below, the proposal neither endorses nor prohibits reliance on credit score declines alone to meet the requirements of this provision, but solicits comment on this issue.

Permitting reliance on credit scores alone to satisfy the requirements of this provision raises several concerns. First, a Board study has observed that credit scores can drop for reasons unrelated to the consumer's actual failure to pay

obligations,[35] which suggests that a credit score decline alone might be an insufficient basis to satisfy the two-part test. Credit scores sometimes drop, for example, due to increases in a consumer's utilization rate on her credit cards or because a consumer closes one or more credit card accounts. But an increased utilization rate may occur because a credit card creditor decides to reduce the credit limit for reasons out of the consumer's control, not because the consumer is relying more heavily on credit card credit. Similarly, if the consumer closes accounts because the consumer has consolidated these debts into a single, lower interest loan, the consumer may have freed up more income to repay the HELOC; here, the consumer's credit score drop in fact corresponds with improvement in the consumer's ability to pay.

Second, standard credit scores do not show a consumer's actual default or delinquency probability—they reflect only a consumer's likelihood of falling delinquent or defaulting relative to other consumers. For example, a consumer with a score of 700 is less likely to default than a consumer with a score of 600—but these scores by themselves do not indicate the actual probability that either consumer will default.

Third, the Board also recognizes the challenge of defining how much of a decline is sufficient to satisfy the standard. Applying a single metric such as a 40 point decline to all consumers is especially problematic, because a consumer whose score declines from 800 to 760 is still much more likely to be able to pay than, for example, a consumer whose score decreases from 600 to 560. In addition, different scoring models use different score ranges, so a decline of 40 points on one model would not have the same meaning as a 40-point decline in another model.

Fourth, any expected future debt performance associated with consumers having a given credit score (relative to consumers with different scores) can change over time based on macroeconomic conditions. For example, a consumer with a credit score of 700 in Year One may have better future debt performance than a consumer with a score of 700 in Year Three, if the macroeconomic conditions have worsened from Year One to Year Three. This is because all consumers will have lower average debt performance levels in Year Three. But again, credit scores show only a credit performance *rank* of one consumer compared to other consumers, not an actual default probability. Thus, to rely on credit score declines alone to meet the requirements of this exception, creditors may also have to account for macroeconomic changes.

In sum, without additional sophisticated empirical analysis, a creditor could not show that a particular consumer's credit score decline corresponds to an increased default probability that would meet either prong of the two-part test.

At the same time, the Board does not believe that expressly prohibiting reliance on credit scores alone under this provision is desirable. A black-and-white rule prohibiting reliance on credit scores to take action under this provision could be overly restrictive for at least two reasons. First, the Board understands that some creditors may have a strong empirical basis for relying on credit scores for a particular HELOC portfolio. The Board recognizes that creditors may be able to show that a particular level of drop is always associated with significant negative payment history, for example. Second, the Board's prohibition could become outdated or unnecessarily constraining on creditors in using innovative credit scoring tools developed in the future. Credit scoring methods may change over time in a manner that makes them more decisively indicative of default probability than today.

For these reasons, the proposal neither expressly permits nor prohibits reliance on credit scores alone to determine that action is justified under this provision. The Board requests comment on the appropriateness of this approach, as well as whether and why the Board should consider expressly permitting or prohibiting reliance on credit scores to meet the requirements of § 226.5b(f)(3)(vi)(B).

In addition, the Board requests comment on the following questions: What compliance challenges are posed by the proposed standards for meeting each prong of the test? What further guidance for compliance with this provision, including examples of well-defined, reasonably reliable indicators of compliance with each prong of the test, should the Board consider? For example, should reliance on factors not related to past credit performance, but that may indicate poor future performance, be sufficient grounds for taking action under this provision? In this regard, the Board recognizes that, notwithstanding the discussion above, factors such as increases in the consumer's utilization rate and the number of new accounts opened have been shown to correspond to a reduced capacity of the consumer to repay his or her financial obligations.[36]

5b(f)(3)(vi)(C) Default of a Material Obligation

Under § 226.5b(f)(3)(vi)(C), which implements TILA Section 137(c)(2)(D), a creditor may temporarily suspend or reduce an account if ''the consumer is in default of a material obligation under the agreement.'' 15 U.S.C. 1647(c)(2)(D). Proposed comment 5b(f)(3)(vi)–7 would clarify that a creditor ''must,'' rather than ''may,'' specify which consumer obligations are ''material'' for purposes of this provision, if any. This clarification is intended to ensure that Regulation Z is interpreted to reflect the statutory requirement, found in TILA Section 137(c)(3), that the consumer must be given upon the consumer's request and at the time of account opening a list of the contract obligations that are considered ''material'' for purposes of TILA Section 137(c)(2)(D), which is the statutory provision permitting a creditor to suspend or reduce a line of credit ''during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement.'' *See* 15 U.S.C. 1647(c)(3) (cross-referencing 15 U.S.C. 1647(c)(2)(D)).

5b(f)(3)(vi)(G) Suspensions and Credit Limit Reductions Required by Federal Law

Background

During outreach conducted by the Board in preparing the proposal, creditors pointed out that the federal Internet gambling law (the Unlawful Internet Gambling Enforcement Act of 2006 or the ''Internet Gambling Act''), 31 U.S.C. 5361–5367, and implementing regulations,[37] require non-exempt financial institutions and other participants in payment systems to have and comply with policies and procedures that, among other things, ''identify and block restricted transactions.'' [38] Rules administered by the Office of Foreign Assets Control (''OFAC'') also require creditors to block accounts under certain circumstances.[39] Creditor representatives raised concerns

[35] Board of Governors of the Federal Reserve System, ''Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit'' (August 2007).

[36] *Id.*

[37] 12 CFR. Part 233 (Board of Governors of the Federal Reserve System); 31 CFR part 132 (U.S. Department of Treasury).

[38] 31 U.S.C. 5362(7) (defining ''restricted transaction''). *See also* 31 U.S.C. § 5364; 12 CFR 233.5; 31 CFR 132.5 (requiring institutions to establish policies and procedures under the Internet Gambling Act).

[39] *See* 31 CFR 500.201, .202, .203.

about the potential for claims against creditors that prohibit draws to comply with the Internet Gambling Act or other federal laws, because TILA and Regulation Z do not expressly permit creditors to refuse to grant credit in those circumstances.

Proposal

Similar to the proposed amendments to § 226.5b(f)(2)(iv), discussed above, proposed § 226.5b(f)(3)(vi)(G) would permit creditors to suspend advances or reduce the credit limit if a federal law other than TILA requires the creditor to do so. Proposed § 226.5b(f)(3)(vi)(G) is intended to resolve the conflict between Regulation Z and federal laws that require creditors to block HELOC advances or reduce credit limits under circumstances not otherwise permitted under Regulation Z. Proposed comment 5b(f)(3)(vi)–9 would clarify that this rule permits creditors to prohibit either a single advance or multiple advances, depending on what the applicable federal law requires. By covering federal laws generally, this proposed section is intended to prevent the need for the Board to issue separate revisions to Regulation Z to account for any new federal law requiring creditors to suspend advances or reduce credit limits under particular circumstances.

The Board believes that this proposal is consistent with longstanding policy expressed in provisions that permit creditors to suspend an account or reduce the credit limit temporarily due to government action. *See* 15 U.S.C. 1647(c)(2)(E); § 226.5b(f)(3)(vi)(D) and (E). Specifically, TILA and Regulation Z allow creditors to take these actions when the government precludes them from imposing the contractual APR or when government action adversely affects the priority of the creditor's security interest such that the creditor's secured interest in the property is less than 120 percent of the credit limit on the account. 15 U.S.C. 1647(c)(2)(E); § 226.5b(f)(3)(vi)(D) and (E).

Regarding this proposed section, the Board requests comment on what additional examples of conflicts between Regulation Z's restrictions on account action and other laws the Board should consider, if any. The Board also requests comment on whether the definition of ''federal law'' should be broadened to include, for example, an order or directive of a federal agency.

5b(g) Reinstatement of Credit Privileges

Background

Section 226.5b(f)(3)(i) and (f)(3)(vi) permit creditors to suspend advances on an account or reduce the credit limit only ''during any period in which'' designated circumstances exist. *See also* 15 U.S.C. 1647(c)(2)(B)–(E). The Board has long interpreted this language to indicate that reinstatement of credit privileges is required once no circumstances permitting a freeze or credit limit reduction under the statute or regulation exist. To facilitate compliance, the Board provided guidance on appropriate reinstatement practices in the Official Staff Commentary on this provision. *See* comments 5b(f)(3)(vi)–2, –3, –4.

Recently, due to declining property values and for other reasons, HELOCs have been suspended and credit limits reduced more often than in the past. Consumer groups and other federal agencies have raised concerns about whether consumers are properly informed about the creditor's obligation to reinstate credit lines and consumers' rights to request reinstatement. The Board has also examined the reinstatement practices of several creditors and determined that additional guidance is appropriate.

Proposal

The proposal would revise several provisions regarding reinstatement of credit privileges currently in comments 5b(f)(3)(vi)–2, –3 and –4, and move them to proposed § 226.5b(g) and comments 5b(g)–1, 5b(g)(1)–1, 5b(g)(2)(i)–1, and 5b(g)(2)(ii)–1. Proposed explanatory guidance regarding the reinstatement rules is found in proposed commentary on § 226.5b(g).

Proposed § 226.5b(g) and comment 5b(g)–1 (adopted from existing comment 5b(f)(3)(vi)–2 with revisions) confirm that line suspensions and credit limit reductions under both § 226.5b(f)(3)(i) and (f)(3)(vi) must be temporary and that, accordingly, the creditor is obligated to restore the consumer's credit privileges as soon as reasonably possible once no condition permitting the creditor's action exists, such as reaching the maximum APR or a significant decline in the value of the property securing the line. *See* comments 5b(f)(3)(vi)–1 and –2 and proposed comment 5b(g)–1. This new paragraph and comment 5b(g)–1 are also intended to clarify that the creditor is not obligated to restore credit privileges if the original condition permitting the action no longer exists but another condition permitting the creditor to freeze the line or reduce the credit limit exists.

Proposed comment 5b(g)–2 is adopted from existing comment 5b(f)(3)(vi)–3, with certain technical revisions. The proposed comment retains the existing prohibition on charging a fee to reinstate an account, and specifies that this fee prohibition applies when no condition permitting an account freeze or reduction exists.

5b(g)(1) Methods of Meeting the Obligation To Reinstate Accounts

Proposed § 226.5b(g)(1) and comment 5b(g)(1)–1 are adopted from existing comment 5b(f)(3)(vi)–4, with revisions. Proposed § 226.5b(g)(1) retains the existing two options for a creditor to fulfill its obligation to ensure that the consumer's credit privileges are restored as soon as reasonably possible after no circumstance permitting a freeze or credit limit reduction exists. First, a creditor may monitor the line on an ongoing basis to determine whether the condition permitting the freeze or credit line reduction continues to exist or another condition exists. Proposed comment 5b(g)(1)–1 requires creditors choosing this option to investigate the HELOC often enough to be certain that a condition permitting the action exists. How often a creditor must investigate depends on the individual circumstances of a particular situation. For example, in a market with long-term property value declines that publicly available, independently verifiable data show are continuing, a creditor might reasonably decide not to investigate the property value as often as might be reasonable if the trend of property values begins increasing.

The second compliance option permits creditors to forego ongoing monitoring and instead require the consumer to request reinstatement. This option is available only if the creditor complies with the provisions of § 226.5b(g)(2), described below. During outreach for this proposal, the Board was asked to consider requiring ongoing monitoring in all cases, rather than allowing creditors to shift the burden to consumers to request reinstatement. Proposals to strengthen requirements on creditors that require consumers to request reinstatement, as discussed below, were intended in part to address concerns about allowing creditors to require consumers to request reinstatement. The Board requests comment on requiring ongoing monitoring in all cases, including specific information about potential benefits and burdens of this approach.

5b(g)(2) Obligations of Creditors That Require the Consumer To Request Reinstatement

Proposed § 226.5b(g)(2)(i), adopted from existing comment 5b(f)(3)(vi)–4, requires that if the creditor requires the consumer to request reinstatement, the

creditor must disclose this requirement on the notice of action taken required under § 226.9(j)(1). As does existing § 226.9(c)(1)(iii) and comment 9(c)(1)(iii)–1, proposed § 226.9(j)(1) requires the creditor to disclose, among other things, the method by which the consumer must request reinstatement, such as whether the request must be in writing and the address to which a written request must be submitted.

Under § 226.5b(g)(2)(ii), as under the existing commentary (*see* comment 5b(f)(3)(vi)–4), the creditor's receipt of a reinstatement request triggers the creditor's obligation investigate whether the condition permitting the freeze or credit line reduction exists. *See* comment 5b(f)(3)(vi)–4. Proposed § 226.5b(g)(3)(ii), however, would require the creditor to complete the investigation within 30 days of receiving the reinstatement request. The Board is proposing a 30-day investigation rule to conform to the longstanding policy requiring creditors to investigate reinstatement requests ''promptly'' upon receiving a request. *See* comment 5b(f)(3)(vi)–4. Based on information on creditor practices, the Board believes that the time required to complete a reinstatement investigation may vary. If a new property valuation is the primary element of the investigation, creditors may be able to complete the investigation in as little as a few days. If the creditor must depend on financial information requested from the consumer to complete an investigation, the investigation may take longer, although the Board also believes that once a creditor receives the financial information necessary to determine whether the original finding regarding a consumer's financial circumstances continues to exist, most creditors should be able to evaluate this information in a few days. In sum, the Board understands that a reinstatement investigation typically will not take more than two to three weeks to complete.

The Board therefore proposes to require that the creditor complete the investigation and mail a notice of reinstatement results (see proposed § 226.5b(g)(2)(v), discussed in the section-by-section analysis below) within 30 days of receiving the consumer's reinstatement request. The Board requests comment on whether this timeframe is appropriate and whether the Board should consider additional guidance for creditors when consumers do not provide needed information to complete the investigation in a timely manner. Such guidance might, for example, require that the creditor request the information within a reasonable period of time after receiving the reinstatement request, and permit the creditor to delay sending the notice until a reasonable period of time after receipt of the requested information.

Proposed comment 5b(g)(2)(ii)–1 also provides guidance on investigating a reinstatement request. Specifically, the investigation should involve verifying that the information on which the creditor relied to take action in fact pertained to the specific property securing the affected line (as with a property valuation) or to the specific consumer (as with a credit report). In addition, to investigate whether a significant decline in property value exists under § 226.5b(f)(3)(vi)(A), the creditor should reassess the value of the property securing the line based on an updated property valuation meeting the guidance in proposed comment 5b(f)(3)(vi)–5, discussed above. To investigate whether a material change in the consumer's financial circumstances exists under § 226.5b(f)(3)(vi)(B), the creditor should obtain and evaluate financial information sufficient to validate the original finding on which the action was based.

Clarification on Fees. Current comment 5b(f)(3)(vi)–3, ''Imposition of fees,'' states that, if not prohibited by state law, a creditor may collect bona fide and reasonable appraisal and credit report fees actually incurred in investigating whether the condition permitting the freeze continues to exist. The proposal would move this part of the comment to § 226.5b(g)(2)(iii) and (g)(2)(iv) and revise it. (The general prohibition in existing comment 5b(f)(3)(vi)–3 on imposing a fee to reinstate an account once a condition permitting a freeze or reduction no longer exists would be incorporated into the proposal at comment 5b(g)–2.)

First, proposed § 226.5b(g)(2)(iii) and (iv) would use the term ''property valuation'' rather than ''appraisal,'' reflecting that an appraisal will not necessarily be the valuation method used to investigate a reinstatement request. Beyond this technical change, proposed § 226.5b(g)(2)(iii) would grant the consumer one reinstatement request investigation free of charge. That is, for consumers required by the creditor to request reinstatement, the regulation would prohibit a creditor from charging the consumer any fees for investigating the consumer's first reinstatement request after each time the line is frozen or reduced. Proposed § 226.5b(g)(2)(iv) would permit a creditor to charge bona fide and reasonable property valuation and credit report fees only for investigations of reinstatement requests other than the consumer's initial request after a line is suspended or reduced.

The Board proposes these rules pursuant to its authority in TILA Section 105(a) to issue provisions and make adjustments to the requirements of TILA necessary or proper to effectuate the statute's purposes. *See* 15 U.S.C. 1604(a). This proposal is intended to ensure that consumers have a meaningful opportunity to exercise their right to request reinstatement and to have this request investigated. Assessing an appraisal fee, for example, before the creditor will investigate the request may be a hardship for some consumers; in effect, up-front charges for the initial reinstatement investigation may discourage those consumers who are potentially the most in need of their HELOC funds from requesting reinstatement. The proposal is also intended to protect consumers for whom the original reason for the account freeze or credit limit reduction turned out to have been incorrect from having to pay extra costs for their HELOCs, and from the potential burden of having to pay expenses upfront.

This proposal is based in part on information about creditor practices suggesting that investigation costs may not be particularly burdensome for creditors. The Board understands that credit reports and many valuation methods may be available to a creditor at low cost, particularly when the creditor can take advantage of bulk rates for these services. Further, the Board believes that potential burdens on creditors of the above proposal are adequately offset by proposed § 226.5b(g)(2)(iv), which would permit creditors to charge reasonable and bona fide property valuation and credit report fees associated with investigations triggered by reinstatement requests after the consumer's first request. The Board is proposing this approach to address concerns about the time and expense associated with having to investigate multiple reinstatement requests made by a consumer in a period of time insufficiently long to support a reasonable expectation that the condition justifying the line action has changed. At the same time, the consumer's right to request reinstatement as many times as desired is retained, as are existing limits on the types of investigation fees that creditors may charge.

The Board requests comment on this approach, including whether consumers should have to pay reinstatement investigation costs for any reinstatement request. The Board also requests comment on whether, if the first reinstatement request is free but fees

may be charged for subsequent requests, a consumer should be required to pay investigation costs for a subsequent reinstatement request made a significant time period after the first request, such as six months, one year, or other appropriate time period commenters might suggest. Finally, the Board requests comment on whether the Board should consider requiring that the amount of the fees be disclosed along with the notice that the consumer must request reinstatement, and the burdens and benefits of this requirement.

Notice of Reinstatement Results. Proposed § 226.5b(g)(2)(v) would require creditors that choose to have the consumer request reinstatement under § 226.5b(g)(1)(ii) to disclose to the consumer the results of the investigation of the consumer's reinstatement request. This notice requirement would apply only for investigations conducted in response to a consumer's request for reinstatement and only when the investigation results show that reinstatement is not warranted, either because the condition permitting the freeze or credit limit reduction continues to exist, another condition permitting a freeze or credit line reduction under Regulation Z exists, or both. The notice must be in writing, and must include the results of the investigation, as well as the information required in the § 226.9(j)(1) notice, such as the specific reasons for the continued freeze or credit limit reduction and information about the consumer's ongoing right to request reinstatement. To facilitate compliance with this provision, the Board is proposing Model Clauses in G–22(A) and G–22(B) of Appendix G to Regulation Z.

The Board proposes this rule pursuant to its authority in TILA Section 105(a) to issue provisions and make adjustments to the requirements of TILA necessary or proper to effectuate the statute's purposes. *See* 15 U.S.C. 1604(a). The Board recognizes that this new notice requirement will present a compliance cost on creditors who do not already have a policy of disclosing reinstatement results to their consumers. The Board believes, however, that the benefits of this notice requirement outweigh the burden. First, the Board believes that this provision upholds the consumer protection purpose of TILA by ensuring that consumers are adequately informed about the status of their HELOC accounts and responds to concerns expressed to the Board that currently many consumers are not. With this notice, consumers would be better equipped to take appropriate action, such as working to improve their credit or making alternative financial plans. In addition, the Board anticipates that this notice requirement may reduce consumer requests and complaints, because transparent investigation results will help consumers better understand the reasons for continued freezes or reductions and assure consumers that their reinstatement requests were considered.

The Board requests comment on this disclosure requirement, and on whether creditors also should be required to provide notice of reinstatement results to consumers whose accounts will be reinstated, but with the option to provide notice orally to these consumers.

5b(g)(3) Obligation To Make Document Supporting Property Valuation Available to the Consumer

Proposed § 226.5b(g)(2) would require a creditor, upon the consumer's request, to provide to the consumer a copy of the documentation supporting the property value on which the creditor relied to freeze or reduce a line, or to continue an existing line freeze or reduction, based on a significant decline in the property value under § 226.5b(f)(vi)(A). Proposed comment 5b(g)(2)1 would explain that the appropriate documentation under this provision would include a copy of a report for the valuation method used, such as an appraisal report, or any written evidence of another valuation method used (such as an AVM, TAV, or BPO) that clearly and conspicuously shows the property value specific to the subject property and factors considered to obtain the value.

The Board believes that consumers should have access to information about the property value on which action was relied because a line suspension or reduction may result in serious financial consequences to consumers. In light of the significance of the impact on the consumer of the creditor's actions, the consumer should be fully equipped with necessary information to challenge the finding or otherwise request reinstatement.

The Board requests comment on the appropriateness of this requirement, as well as the operational practicality for creditors of obtaining and providing the required documentation.

5b(g)(4) Reinstatement Rules for Action Taken Under § 226.5b(f)(2)

Proposed paragraph (g)(4) of § 226.5b would clarify that, when a creditor has a justification for terminating and accelerating a home-equity plan under § 226.5b(f)(2), but opts to suspend or reduce the line instead, the creditor is not obligated to comply with the reinstatement rules of proposed § 226.5b(g). This provision is intended to respond to questions posed to the Board about whether, when a creditor has a justification for terminating and accelerating a home-equity plan under § 226.5b(f)(2), but opts to suspend or reduce the line instead, the creditor is obligated to comply with the reinstatement rules of proposed § 226.5b(g). The Board believes that this clarification is consistent with the existing reinstatement scheme.

First, reinstatement guidance is in the commentary only for § 226.5b(f)(3)(vi), the provision permitting a creditor temporarily to suspend advances or reduce the credit limit, reflecting longstanding Board policy that it applies only when action is taken under § 226.5b(f)(3)(vi) (or under (f)(3)(i); *see* comments 5b(f)(3)(vi)–1 and –2). Second, the Board believes that applying the reinstatement rules to suspensions or line reductions taken when the creditor could terminate and accelerate a line may harm consumers; a creditor may be discouraged from choosing the lesser action of temporarily suspending advances or reducing the credit limit if additional rules apply to those actions. Third, the Board believes that compliance confusion may arise, as well as enforcement challenges, in determining to which line suspensions and reductions under § 226.5b(f)(2) the reinstatement rules should apply. Existing commentary on § 226.5b(f)(2) gives the creditor the right to suspend or reduce an account ''temporarily or permanently.'' *See* comment 5b(f)(2)–2 (retained in the proposal). Logically, the reinstatement rules could only apply when the creditor chooses to take temporary action, but both creditors and examiners may have difficulty determining and documenting which line actions are intended to be temporary (and thus subject to the reinstatement rules) and which permanent. Again, creditors may be inclined simply to make all suspensions and reductions under this provision permanent, potentially harming consumers to whom creditors might otherwise have given an opportunity to restore their credit privileges.

Section 226.6 Account-Opening Disclosures

TILA Section 127(a), implemented in § 226.6, requires creditors to provide information about key credit terms before an open-end plan is opened, such as rates and fees that may be assessed on the account. Consumers' rights and responsibilities in the case of unauthorized use or billing disputes are

also explained. 15 U.S.C. 1637(a). *See also* Model Forms G–2 and G–3 in Appendix G to part 226.

6(a) Rules Affecting Home-Equity Plans

Summary of Proposed Disclosure Requirements

Account-opening disclosure and format requirements for HELOCs subject to § 226.5b generally were unaffected by the January 2009 Regulation Z Rule, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a future rulemaking. To facilitate compliance, the Board in the January 2009 Regulation Z Rule grouped the requirements applicable to HELOCs together in § 226.6(a) (moved from former § 226.6(a) through (e)).

This proposal contains two significant proposed revisions to account-opening disclosures for HELOCs subject to § 226.5b, which are set forth in proposed § 226.6(a). The proposed revisions (1) would require a tabular summary of key terms to be provided before an account is opened (*see* proposed § 226.6(a)(1) and (a)(2)), and (2) would reform how and when cost disclosures must be made (*see* proposed § 226.6(a)(3) for content, proposed § 226.5(b) and proposed § 226.9(c) for timing).

Proposed Comments 6(a)–1 and 6(a)–2

Fixed-rate and -term payment plans during draw period. As discussed in the section-by-section analysis to proposed § 226.5b(c), HELOC plans typically offer the ability to obtain advances that must be repaid based on a variable interest rate that applies to all outstanding balances. Some HELOC plans, however, also offer a fixed-rate and -term payment feature, where a consumer is permitted to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. The Board understands that for most HELOC plans, consumers must take active steps to access the fixed-rate and -term payment feature; this feature is not automatically accessed when a consumer obtains advances from the HELOC plan. Current § 226.6(a) requires a creditor to disclose information related to fixed-rate and -term payment features. For example, a creditor would be required to disclose the rates applicable to the fixed-rate and -term feature under current § 226.6(a)(1), any fees that are finance charges under current § 226.6(a)(1), any fees that are other charges under current § 226.6(a)(2), and payment terms and other information required under current § 226.6(a)(3).

Under the proposal, the Board would continue to require that a creditor disclose information applicable to the fixed-rate and -term feature under proposed § 226.6. Generally, under the proposal, limited information about the fixed-rate and -term feature would be included in the account-opening table, and more detailed information would be included outside the table. Specifically, for the reasons discussed in the section-by-section analysis to proposed § 226.5b(c), if a HELOC plan offers a variable-rate feature and a fixed-rate and -term feature during the draw period, a creditor generally must only disclose limited information in the account-opening table about the fixed-rate and -term feature. *See* proposed § 226.6(a)(2). Instead of requiring that all the details of the fixed-rate and -term feature be disclosed in the table, the Board proposes to require a creditor offering this payment feature (in addition to a variable-rate feature) to disclose in the account-opening table the following: (1) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate; (2) the amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term; and (3) a statement that information about the fixed-rate and -term payment plan is included in the account-opening disclosures or agreement, as applicable. *See* proposed § 226.6(a)(2)(xix). However, if a HELOC plan does not offer a variable-rate feature during the draw period, but only offers a fixed-rate and -term feature during that period, a creditor must disclose in the account-opening table information related to the fixed-rate and -term feature when making the disclosures required by proposed § 226.6(a)(2). *See* proposed comment 6(a)–1.

Even though a creditor generally may not disclose the terms of fixed-rate and -term payment plans in the account-opening table, the creditor must disclose additional information about these payment plans in disclosures required by proposed § 226.6(a)(3), (a)(4) and (a)(5). For example, a creditor must disclose fees and rate information related to these features under proposed § 226.6(a)(3) and (a)(4), and information about payment terms and other terms related to these features under proposed § 226.6(a)(5)(v).

Disclosures for the repayment period. Current comment 6(a)(3)–4 provides that a creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under § 226.6. To the extent the required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases. The Board proposes to move current comment 6(a)(3)–4 to proposed comment 6(a)–2 and make technical revisions.

6(a)(1) Format for Home-Equity Plan Account Disclosures

As provided by Regulation Z, creditors may, and typically do, include account-opening disclosures for HELOC plans as a part of an account agreement document that also contains other contract terms and state law disclosures. The agreement typically is in a narrative form, and is lengthy and in small print.

The Board proposes in new § 226.6(a)(1) to impose format requirements for account-opening disclosures for HELOCs subject to § 226.5b, similar to proposed format requirements for the proposed early HELOC disclosures discussed in the section-by-section analysis to proposed § 226.5b(b)(2). The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Specifically, under the proposal, a creditor would be required to disclose to a consumer key terms relating to the HELOC plan in a tabular format at account opening. As discussed in more detail below, the proposed account-opening table would contain disclosures that are similar to the ones disclosed in the proposed early HELOC disclosures table required by proposed § 226.5b(b). A creditor would be required to disclose certain identification disclosures, such as the borrower's name and address, directly above the account-opening table. In addition, a creditor would be required to disclose other information, such as a statement that the consumer should confirm that the terms disclosed in the table are the same terms for which the consumer applied, below the account-opening table. Under the proposal, not all disclosures that a creditor would be required to provide to a consumer at account opening would be included in the account-opening table (or directly above or below the table). For account-opening disclosures that are not specifically required to be in the account-opening table (or directly above or below the table), a creditor would be able to include these disclosures as part of the account agreement.

The Board did not directly test whether providing account-opening

disclosures in a narrative form as part of the account agreement is an effective way to communicate those disclosures to consumers. Nonetheless, in the consumer testing conducted by the Board on HELOC disclosures, the Board tested application disclosures in a narrative form. Participants in consumer testing found this form difficult to read and understand, and their responses to follow-up questions showed that they also had difficulty identifying specific information in the text. Participants who saw forms that were structured in a tabular format, on the other hand, commented that the information was easier to understand and had more success answering comprehension questions. These results regarding the benefit of disclosing information in a tabular format are consistent with the results of research that the Board conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule. (*See* §§ 226.5a(a)(2), 226.6(b)(1), 226.9(b)(3), 226.9(c)(2)(iii)(B) and 226.9(g)(3)(iii) for certain disclosures applicable to open-end (not home-secured) credit that must be disclosed in a tabular format.) The Board also believes that providing key terms in a table at account opening, which would be similar to the proposed early HELOC disclosures table required by proposed § 226.5b(b), would allow consumers to compare more easily the account-opening terms to those terms that were disclosed earlier to the consumer. For these reasons, the Board proposes to require that certain account-opening disclosures must be provided in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in proposed G–15 in Appendix G. *See* proposed § 226.6(a)(1). Proposed comment 6(a)(1)–3 clarifies that § 226.6(a)(1)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in G–15 to Appendix G.

Comparison to early HELOC disclosures table. TILA Section 127(a)(8) provides that any disclosures required to be disclosed as part of the early HELOC disclosures required under TILA Section 127A(a) also must be disclosed as part of the account-opening disclosures. 15 U.S.C. 1637(a)(8). Thus, as discussed in more detail below, most of the disclosures required to be disclosed in the proposed early HELOC disclosures table described in proposed § 226.5b(b) also would be included in the account-opening table described in proposed § 226.6(a)(1) and (a)(2). Nonetheless, while these two proposed tables would be similar, they would not be identical. For example, the table containing the early HELOC disclosures would show and compare two payment options offered on the HELOC (unless a creditor offers only one), while the account-opening disclosures would show only the payment plan chosen by the consumer. Proposed comment 6(a)–1 provides guidance on how the proposed early HELOC disclosures table described in proposed § 226.5b(b) differs from the proposed account-opening table in proposed § 226.6(a)(1) and (a)(2). Proposed comment 6(a)(1)–1 specifically notes which rules in proposed § 226.5b applicable to the early HELOC disclosures table described in proposed § 226.5b(b) would not apply to the proposed account-opening table.

Clear and conspicuous standard. As discussed in the section-by-section analysis to proposed § 226.5(a), the Board proposes a clear and conspicuous standard applicable to § 226.6 disclosures. Proposed comment 6(a)(1)–2 provides a cross reference to the clear and conspicuous standard applicable to proposed § 226.6(a) set forth in proposed comment 5(a)(1)–1.

Terminology. As discussed in the section-by-section analysis to proposed § 226.5(a), the Board proposes that creditors offering HELOCs subject to § 226.5b must use certain terminology when disclosing the draw period, any repayment period, and certain other terms in the account-opening table. *See* proposed § 226.5(a)(2). Proposed comment 6(a)(1)–3 provides a cross reference to the terminology requirements set forth in proposed § 226.5(a)(2).

6(a)(2) Required Disclosures for Account-Opening Table for Home-Equity Plans

Fees. Current § 226.6(a)(1) and (a)(2), which implements TILA Section 127(a)(3) and (a)(5), require a creditor to disclose in the account-opening disclosures any finance charges or other charges imposed on the HELOC plan. 15 U.S.C. 1637(a)(3) and (a)(5). As discussed in more detail below, the Board proposed in new § 226.6(a)(2) that certain fees must be disclosed in the account-opening table described in proposed § 226.6(a)(1) and (a)(2). Under the proposal, creditors would have more flexibility regarding disclosure of other charges imposed as part of a HELOC plan. *See* proposed § 226.6(a)(3) for content, proposed § 226.5(b) and proposed § 226.9(c) for timing.

Pursuant to TILA Section 127(a)(8) and for the reasons discussed in the section-by-section analysis to proposed § 226.5b(c), the Board proposes that a creditor must disclose in the account-opening table the following fees that also must be disclosed in the early HELOC disclosures table described in proposed § 226.5b(b): (1) a total of the one-time fees imposed by the creditor or third parties to open the HELOC plan and an itemization of those fees; (2) fees imposed by the creditor for the availability of the HELOC plan; (3) fees imposed by the creditor for early termination of the plan by the consumer; and (4) fees imposed for required insurance, debt cancellation or suspension coverage. *See* proposed § 226.6(a)(2)(vii), (viii), (ix) and (xx). In addition, the Board proposes that the account-opening table also contain the following additional fees that are not required to be disclosed in the early HELOC disclosures table described in proposed § 226.5b(b): (1) Late-payment fees; (2) over-the-limit fees; (3) transaction charges; (4) returned-payment fees; and (5) fees for failure to comply with transaction limitations described under proposed § 226.6(a)(2)(xvii). *See* proposed § 226.6(a)(2)(x), (xi), (xii), (xiii), and (xiv).

The Board intends that the proposed list of fees and categories of fees that would be included in the account-opening table be exclusive, for two reasons. The Board believes that only allowing an exclusive list of fees to be disclosed in the account-opening table would benefit consumers. Based on consumer testing conducted by the Board on HELOC disclosures, the Board believes the fees listed above to be the most important fees, at least in the current marketplace, for consumers to know about before they start to use a HELOC account. Participants in this testing who were shown an account-opening table which contained the fees listed above indicated that they found this list sufficient, and could not identify any additional types of fees that they would want disclosed to them at account opening.

The fees listed above include charges that a consumer could incur and which a creditor likely would not otherwise be able to disclose in advance of the consumer engaging in the behavior that triggers the cost, such as fees triggered by a consumer's use of a cash advance check or by a consumer's late payment. The proposed list is manageable and focuses on key information rather than attempting to be comprehensive. Since consumers must be informed of all fees imposed as part of the plan before the cost is incurred, the Board believes that not all fees need to be included in the

account-opening table provided at account opening.

The Board believes an exclusive list also would ease compliance and reduce the risk of litigation for creditors; creditors would have the certainty of knowing that as new services (and associated fees) develop, fees not required to be disclosed in the summary table under the proposed rule need not be included in the account-opening summary unless and until the Board requires their disclosure after notice and public comment. In addition, as discussed in the section-by-section analysis to proposed § 226.5(a)(1) and (b)(1), charges required to be included in the proposed account-opening table would be required to be provided in a written and retainable form before the first transaction, and a subsequent written notice is required if one of these fees increases or if these fees are newly introduced during the life of the plan (but only as permitted under § 226.5b(f)). Under the proposal, creditors would have more flexibility regarding disclosure of other charges imposed as part of a HELOC plan.

6(a)(2)(i) Identification Information

Pursuant to TILA Section 127(a)(8) and for the reasons discussed in the section-by-section analysis to proposed § 226.5b(c)(1), the Board proposes in new § 226.6(a)(2)(i) that a creditor must disclose above the account-opening table the following identification information that also must be disclosed above the early HELOC disclosures table described in proposed § 226.5b(b): (1) The consumer's name and address; (2) the identity of the creditor making the disclosures; (3) the date the disclosure was prepared; and (4) the loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (''SAFE Act'') Sections 1503(3) and (12). 12 U.S.C. 5102(3) and (12); 15 U.S.C. 1637(a)(8). In addition, the Board proposes also that the creditor also disclose the account number as part of the identification information that would be disclosed above the account-opening table. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board believes that including the account number above the account-opening table may allow a consumer in the future (after account opening) to connect better the account-opening table with the account to which the disclosures apply.

6(a)(2)(ii) Security Interest and Risk to Home

Current § 226.6(a)(4), which implements TILA Section 127(a)(6), provides that a creditor must disclose as part of the account-opening disclosures the fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type. 15 U.S.C. 1637(a)(6). The Board proposes in new § 226.6(a)(2)(ii) to require that a creditor must disclose in the account-opening table a statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default. This same statement would be required to be disclosed as part of the proposed early HELOC disclosures table described in proposed § 226.5b(b). *See* proposed § 226.5b(c)(6).

6(a)(2)(iii) Possible Actions by Creditor

As discussed in the section-by-section analysis to proposed § 226.5b(c), the Board proposes to require a creditor to disclose in the early HELOC disclosures table a statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and implement changes in the plan. Pursuant to TILA Section 127(a)(8), the Board also proposes in new § 226.6(a)(2)(iii) to require a creditor to disclose the above statement in the account-opening table. 15 U.S.C. 1637(a)(8). In addition, under the proposal, a creditor also would be required to disclose in the account-opening table a statement that information about the circumstances under which the creditor may take these actions is provided in the account-opening disclosures or agreement, as applicable. Current § 226.6(a)(3)(i) requires a creditor to disclose as part of the account-opening disclosures the circumstances under which the creditor may take the above actions on the HELOC plan. The Board proposed to move current § 226.6(a)(3)(i) to proposed § 226.6(a)(5)(iv) and make technical revisions. Under the proposal, a creditor would be required to disclose the information about the circumstances under which the creditor may take the above actions on the HELOC plan outside of the account-opening table under proposed § 226.6(a)(5)(iv).

6(a)(2)(iv) Tax Implications

Current § 226.6(a)(3)(v), which implements TILA Section 127(a)(8), requires that a creditor must disclose in the account-opening disclosures a statement that the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges. The Board proposed to move this provision in current § 226.6(a)(3)(v) to proposed § 226.6(a)(2)(iv). Under the proposal, a creditor would be required to include this statement about consulting a tax adviser in the account-opening table.

In addition, as discussed in the section-by-section analysis to proposed § 226.5b(c)(8), in implementing Section 1302 of the Bankruptcy Act, the Board proposes to require a creditor to disclose in the early HELOC disclosures table a statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes. Pursuant to TILA Section 127(a)(8), the Board also proposes that a creditor be required to disclose this statement in the account-opening table. 15 U.S.C. 1637(a)(8).

6(a)(2)(v) Payment Terms

Current § 226.6(a)(3)(ii), which implements TILA Section 127(a)(8), requires a creditor to disclose as part of the account-opening disclosures certain information related to payment terms on the HELOC plan that is currently required to be disclosed as part of the application disclosures, as discussed in the section-by-section analysis to proposed § 226.5b(c)(9). 15 U.S.C. 1637(a)(8). For example, current § 226.6(a)(3)(ii) requires a creditor to disclose in the account-opening disclosures the following information: (1) The length of the draw period and any repayment period; (2) an explanation of how the minimum periodic payment will be determined and the timing of the payments; and (3) if paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result. In addition, current § 226.6(a)(3)(vii) requires a creditor to disclose as part of the account-opening disclosures payment examples that are currently required to be disclosed as part of the application disclosures, unless the application disclosures were in a form the consumer could keep and included representative payment examples for the category of the payment option chosen

by the consumer. The Board proposes to move these provisions in current § 226.6(a)(3)(ii) and (a)(4)(iv) to proposed § 226.6(a)(2)(v) and make revisions.

The proposal. Consistent with TILA Section 127(a)(8), the Board proposes to require a creditor to disclose the same disclosures relating to payment terms in the account-opening table that a creditor would be required to disclose in the early HELOC disclosures table described in proposed § 226.5b(b) (as discussed in the section-by-section analysis to proposed § 226.5b(c)(9)), with one exception. 15 U.S.C. 1637(a)(8). The table containing the early HELOC disclosures would show and compare two payment options offered on the HELOC (unless a creditor offers only one), while the account-opening disclosures would show only the payment plan chosen by the consumer. Specifically, proposed § 226.6(a)(2)(v) requires a creditor to disclose in the account-opening table certain payment terms of the plan that will apply to the consumer at account opening. Under the proposal, the creditor would be required to distinguish payment terms applicable to the draw period and the repayment period, by using the applicable heading ''Borrowing Period'' for the draw period and ''Repayment Period'' for the repayment period, in a format substantially similar to the format used in any of the applicable tables found in proposed Samples G–15(B) and G–15(D) in Appendix G.

Under the proposal, a creditor would be required to disclose in the account-opening table the length of the plan, the length of the draw period and the length of any repayment period. When the length of the plan is definite, a creditor would be required to disclose the length of the plan, the length of the draw period and the length of any repayment period in a format substantially similar to the format used in any of the applicable tables found in proposed Samples G–15(B) and G–15(C) in Appendix G. If there is no repayment period on the plan, the creditor would be required to disclose a statement that after the draw period ends, the consumer must repay the remaining balance in full. In addition, under the proposal, a creditor would be required to disclose in the account-opening table an explanation of how the minimum periodic payment will be determined and the timing of the payments.

Also, under the proposal, a creditor would be required to disclose in the account-opening table payment examples based on the assumptions that the consumer borrows the full credit line at account opening, and does not obtain any additional extensions of credit; the consumer makes only minimum periodic payments during the draw period and any repayment period; and the APRs (as described below) used to calculate the payment examples will remain the same during the draw period and any repayment period. A creditor would be required to provide payment examples for two APRs: (1) The current APR for the plan, except that if an introductory APR applies, the creditor would be required to use the rate that would otherwise apply to the plan after the introductory rate expires, as described in proposed § 226.6(a)(2)(vi)(B); and (2) the maximum APR applicable to the payment plan described in the table, as described in proposed § 226.6(a)(2)(vi)(A)(*1*)(*v*). A creditor also would be required to disclose other information along with the payment examples, such as a statement that the sample payments are not the consumer's actual payments. Under the proposal, a creditor would be required to disclose the proposed payment examples, and related information, in a format that is substantially similar to the format used in any of the applicable tables found in proposed Samples G–15(B), G–15(C) and G–15(D) in Appendix G.

Moreover, under the proposal, if under the payment plan disclosed in the account-opening table a consumer may pay a balloon payment, a creditor would be required to disclose information about the balloon payment twice in the account-opening table: at the beginning of the information about payment terms, and as part of the payment examples. Specifically, proposed § 226.6(a)(2)(v)(B) provides that if under the payment plan disclosed in the table, paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the HELOC plan, the creditor must disclose a statement of this fact in the account-opening table, as well as a statement that a balloon payment may result. The ''Balloon Payment'' row in the ''Borrowing and Repayment Terms'' section of proposed Samples G–15(B) and G–15(C) in Appendix G provides guidance on how to comply with the requirements in proposed § 226.6(a)(2)(v)(B).

In addition, regarding disclosure of the amount of the balloon payment in the proposed payment examples, proposed § 226.6(a)(2)(v)(C)(*3*)(*iii*) provides that if a consumer may pay a balloon payment under the payment plan disclosed in the account-opening table, a creditor would be required to disclose that fact when disclosing the proposed payment examples, as well as disclose the amount of the balloon payment based on the assumptions used the calculate the payment examples as described in proposed § 226.6(a)(2)(v)(C). The first paragraph of the ''Sample Payments'' section of proposed Samples G–15(B) and G–15(C) in Appendix G provides guidance on how to comply with the requirements in proposed § 226.6(a)(2)(v)(C)(*3*)(*iii*).

Under the proposal, a creditor would be required to disclose in the account-opening table a statement that the consumer can borrow money during the draw period. In addition, if a repayment period is provided, a creditor would be required to disclose in the account-opening table a statement that the consumer cannot borrow money during the repayment period. Under the proposal, a creditor also would be required to disclose in the account-opening table a statement indicating whether minimum payments are due in the draw period and any repayment period.

Choosing payment plan at account opening. The Board understands that some creditors currently do not require consumers to choose a payment plan until account opening. Under the proposal, even if a creditor does not require a consumer to choose a payment plan until account opening, a creditor would still be required to disclose in the account-opening table only the payment plan chosen by the consumer. Thus, a creditor that allows a consumer to choose a payment plan at account opening would need to prepare account-opening tables for each payment plan offered on the HELOC plan from which a consumer may choose (except for fixed-rate and -term payment plans unless those are the only plans offered during the draw period) and take steps to ensure that the proper account-opening table is provided to the consumer depending on which payment plan is chosen by the consumer.

6(a)(2)(vi) Annual Percentage Rate

Current § 226.6(a)(1), which implements TILA Section 127(a)(1) and (a)(4), sets forth disclosure requirements for rates that would apply to HELOC accounts. 15 U.S.C. 1637(a)(1) and (a)(4). The Board proposes to require a creditor to disclose in the account-opening table the same disclosures relating to APRs that a creditor would be required to disclose in the early HELOC disclosures table described in proposed § 226.5b(b) (as discussed in the section-by-section analysis to proposed § 226.5b(c)(10)). For example, under the proposal, a creditor would be required to disclose in the account-

opening table each APR applicable to the payment plan disclosed in the table, except a creditor must not disclose any penalty rate set forth in the initial agreement that may be imposed in lieu of termination of the plan. *See* proposed § 226.6(a)(2)(vi). Under the proposal, a creditor also would be required to disclose certain information about any variable rates disclosed in the account-opening table, such as the fact that the APR may change due to the variable-rate feature. *See* proposed § 226.6(a)(2)(vi)(A). In addition, under the proposal, a creditor would be required to disclose in the account-opening table any introductory rate that applies to the payment plan disclosed in the table, as well as the time period during which the introductory rate will remain in effect and the rate that will apply after the introductory rate expires. *See* proposed § 226.6(a)(2)(vi)(B).

Under the proposal, a creditor would be required to disclose other rate information under proposed § 226.6(a)(3) and (a)(4). For example, periodic rates would not be permitted to be disclosed in the account-opening table. Nonetheless, under the proposal, the Board proposes to require creditors to disclose periodic rates, as a cost imposed as part of the plan, before the consumer agrees to pay or becomes obligated to pay for the charge, and these disclosures could be provided in the credit agreement or other disclosure, as is likely currently the case.

6(a)(2)(vii) Fees Imposed by the Creditor and Third Parties To Open the Plan

Current § 226.6(a)(1) and (a)(2) require a creditor to disclose in the account-opening disclosures any finance charges or other charges imposed on the HELOC plan. As discussed above, the Board proposes in new § 226.6(a)(2)(vii) to require that a creditor disclose in the account-opening table a total of the one-time fees imposed by the creditor or third parties to open the HELOC plan and an itemization of those fees. Under the proposal, the disclosure of these fees in the account-opening table might differ from how these fees may have been disclosed in the early HELOC disclosures table. As discussed in the section-by-section analysis to proposed § 226.5b(c)(11), with respect to disclosing the itemization of the one-time account-opening fees in the proposed early HELOC disclosures table, if the dollar amount of a fee is not known at the time the early HELOC disclosures are delivered or mailed, a creditor would be allowed to provide a range for such fee. *See* proposed § 226.5b(c)(11). With respect to disclosure of the total of one-time account-opening fees in the proposed early HELOC disclosures table, if the exact total of one-time fees for account opening is not known at the time the early HELOC disclosures are delivered or mailed, a creditor would be required to disclose in the table as part of the early HELOC disclosures the highest total of one-time account opening fees possible for the plan with a indication that the one-time account opening costs may be ''up to'' that amount. *See* proposed § 226.5b(c)(11). Nonetheless, in the account-opening table, a creditor would be required to disclose in the account-opening table an itemization of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose a range for those fees, as otherwise allowed under proposed § 226.5b(c)(11) for the proposed early HELOC disclosures table. *See* proposed comment 6(a)(2)(vii)–1. In addition, in the account-opening table, a creditor would be required to disclose in the account-opening table the total of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose the highest amount of possible fees as allowed under proposed § 226.5b(c)(11) for the proposed early HELOC disclosures table. *See* proposed comment 6(a)(2)(vii)–1. At the time the creditor is disclosing the account-opening table, a creditor would know the exact amount of the one-time fees that will be imposed by the creditor and any third parties to open the HELOC account, and thus would be able to disclose the exact total of these one-time fees and an exact itemization of these fees.

Unlike the proposed early HELOC disclosures table, in the account-opening table, the itemization of the one-time fees to open the account would not be disclosed with the total of these one-time fees but instead the itemization of the fees would be disclosed on the second page of the table with penalty fees and transactions fees. Thus, under the proposal, a creditor would be required to include in the account-opening table a cross reference near the disclosure of the total of one-time fees for opening an account, indicating that the itemization of the fees is located elsewhere in the table.

6(a)(2)(x) Late-Payment Fee

As discussed above, under the proposal, a creditor would be required to disclose in the account-opening table any fee imposed for a late payment. *See* proposed § 226.6(a)(2)(x) Proposed comment 6(a)(2)(x)–1 provides that the disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. This proposed comment cross references commentary to § 226.4(c)(2) for additional guidance on late-payment fees. In addition, this proposed comment notes that Samples G–15(B), G–15(C) and G–15(D) provide guidance to creditors on how to disclose clearly and conspicuously the late-payment fee in the account-opening table.

6(a)(2)(xi) Over-the-Limit Fee

As discussed above, under the proposal, a creditor would be required to disclose in the account-opening table any fee imposed for exceeding a credit limit. *See* proposed § 226.6(a)(2)(xi). Proposed comment 6(a)(2)(xi)–1 provides that the disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure would be required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. In addition, this proposed comment notes that Samples G–15(B), G–15(C) and G–15(D) provide guidance to creditors on how to disclose clearly and conspicuously the over-the-limit fee.

6(a)(2)(xii) Transaction Charges

As discussed above, under the proposal, a creditor would be required to disclose in the account-opening table any transaction charge imposed by the creditor for use of the HELOC plan. *See* proposed § 226.6(a)(2)(xii). Proposed comment 6(a)(2)(xii)–1 provides that charges imposed by a third party, such as a seller of goods, must not be disclosed in the account-opening table. This proposed comment also notes that the third party would be responsible for disclosing the charge under § 226.9(d)(1).

In addition, proposed comment 6(a)(2)(xii)–2 provides that a transaction charge imposed by the creditor for use of the HELOC plan includes any fee imposed by the creditor for transactions in a foreign currency or that take place outside the United States or with a foreign merchant. This proposed comment cross references comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the creditor. This proposed comment also notes that Sample G–15(D) provide guidance to creditors on how to disclose a foreign transaction fee for use of a credit card where the same foreign transaction fee applies for purchases and cash advances in a foreign currency,

or that take place outside the United States or with a foreign merchant.

6(a)(2)(xv) Statement About Other Fees

As discussed above, under the proposal, a creditor would not be required to disclose all the fees that apply to a HELOC plan in the account-opening table. Under the proposal, creditors would be provided with flexibility in disclosing fees that would be required to be disclosed under the regulation but not in the account-opening table. As discussed in more detail in the section-by-section analysis to proposed § 226.5(a)(1) and (b)(1), under the proposal, a creditor would be permitted to disclose charges that are not required to be disclosed in the account-opening table either before the first transaction or later, so long as they are disclosed before the cost is imposed. Despite this flexibility to disclose certain charges after account opening, the Board expects that creditors would continue to disclose some of these charges in the account-opening disclosures or account agreement because of contract law or other reasons. Thus, the Board proposes in new § 226.6(a)(2)(xv) to require a creditor to disclose in the account-opening table a statement that information about other fees is included in the account-opening disclosures or agreement, as applicable. In addition, because certain fees disclosed in the account-opening table would be disclosed on the first page of the table, and other fees disclosed in the table would be included on the second page of the table, the Board proposes to require a creditor to disclose in the account-opening table near the disclosure of fees on the first page of the table a statement that other fees are located elsewhere in the table.

6(a)(2)(xvi) Negative Amortization

Current § 226.6(a)(3)(iii), which implements TILA Section 127(a)(8), provides that a creditor must disclose in the account-opening disclosures a statement that negative amortization may occur as described in current § 226.5b(d)(9). 15 U.S.C. 127(a)(8). The Board proposes to move current § 226.6(a)(3)(iii) to proposed 226.6(a)(2)(xvi) and make revisions. Specifically, under the proposal, a creditor would be required to disclose in the account-opening table, as applicable, a statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling. This same disclosure would be required as part of the early HELOC disclosures table required under proposed § 226.5b(b). *See* proposed § 226.5b(c)(15).

6(a)(2)(xvii) Transaction Requirements

Current § 226.6(a)(3)(iv), which implements TILA Section 127(a)(8), provides that a creditor must disclose in the account-opening disclosures a statement of any transaction requirements as described in current § 226.5b(d)(10). The Board proposes to move current § 226.6(a)(3)(iv) to proposed § 226.6(a)(2)(xvii) and make revisions. Specifically, under the proposal, a creditor would be required to disclose in the account-opening table any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements. This same disclosure would be required as part of the early HELOC disclosures table required under proposed § 226.5b(b). *See* proposed § 226.5b(c)16).

6(a)(2)(xviii) Credit Limit

Currently, a creditor is not required to disclose in the account-opening disclosures the credit limit applicable to the HELOC plan. As discussed in the section-by-section analysis to proposed § 226.5b(c)(17), the Board proposes to require a creditor to disclose the credit limit applicable to the HELOC plan in the early HELOC disclosures table required under proposed § 226.5b(b). Pursuant to TILA Section 127(a)(8) and for the reasons set forth in the section-by-section analysis to proposed § 226.5b(c)(17), the Board proposes that this disclosure also be required in the account-opening table. 15 U.S.C. 1637(a)(8).

6(a)(2)(xix) Statements About Fixed-Rate and -Term Payment Plan

As discussed above, the Board proposes that if a HELOC plan offers a variable-rate feature and a fixed-rate and -term feature during the draw period, a creditor generally would not be allowed to disclose in the account-opening table all the terms applicable to the fixed-rate and -term feature. *See* proposed § 226.6(a)(2). Instead, the Board proposes to require a creditor offering this payment feature (in addition to a variable-rate feature) to disclose in the account-opening table the following: (1) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate; (2) the amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term; and (3) a statement that information about the fixed-rate and -term payment plan is included in the account-opening disclosures or agreement, as applicable. *See* proposed § 226.6(a)(2)(xix). The Board proposes a similar disclosure in the proposed early HELOC disclosures table described in proposed § 226.5b(b). *See* proposed § 226.5b(c)(18).

6(a)(2)(xx) Required Insurance, Debt Cancellation or Debt Suspension Coverage

Current § 226.6(a)(1) and (a)(2) require a creditor to disclose in the account-opening disclosures any finance charges or other charges imposed on the HELOC plan. As discussed in the section-by-section analysis to proposed § 226.5b(c)(19), in the event that a creditor requires the insurance or debt cancellation or debt suspension coverage (to the extent permitted by state or other applicable law), the Board proposes to require a creditor to disclose in the early HELOC disclosures table any fee for this coverage. *See* proposed § 226.5b(c)(19). In addition, proposed § 226.5a(b)(19) require that a creditor also disclose in the early HELOC disclosures table a cross reference to where the consumer may find more information about the insurance or debt cancellation or debt suspension coverage, if additional information is included outside the early HELOC disclosures table. For the reasons set forth in the section-by-section analysis to proposed § 226.5b(c)(19), the Board also proposes to require that a creditor make these same disclosures in the account-opening table.

6(a)(2)(xxi) Grace Period

Current § 226.6(a)(1)(i), which implements TILA Section 127(a)(1), provides that a creditor must disclose as part of the account-opening disclosures a statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. 15 U.S.C. 1637(a)(1). Under the proposal, the Board proposes to require that a creditor disclose below the account-opening table the date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, a creditor would be required to disclose that fact below the account-opening table. If the length of the grace period varies, the creditor would be allowed to disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as

a range, minimum, or average. In disclosing a grace period that applies to all features on the account, under the proposal, a creditor would be required to use the phrase ''How to Avoid Paying Interest'' as the heading for the information below the table describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact below the table, a creditor would be required to use the phrase ''Paying Interest'' as the heading for this information.

Proposed comment 6(a)(2)(xxi)–1 provides that a creditor that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet the requirements in proposed § 226.6(a)(2)(xxi) by providing the following disclosure, as applicable: ''Your due date is [at least] __ days after the close of each billing cycle. We will not charge you interest on your account if you pay your entire balance by the due date each month.'' Proposed comment 6(a)(2)(xxi)–2 provides that a creditor may use the following language to describe below the account-opening table that no grace period is offered, as applicable: ''We will begin charging interest on [applicable transactions] on the date the transaction is posted to your account.''

The Board understands that most creditors currently do not offer a grace period on any transactions on the HELOC plan. Thus, in most cases, creditors would include below the account-opening table a statement that the creditor will begin charging interest on the transactions on the HELOC plan on the date the transaction is posted to the account. The Board believes that requiring a creditor to disclose this statement below the account-opening table would be an effective way to inform a consumer that he or she cannot avoid paying interest on transactions on the HELOC plan.

6(a)(2)(xxii) Balance Computation Method

Current § 226.6(a)(1)(iii), which implements TILA Section 127(a)(2), provides that creditors must explain as part of the account-opening disclosures the method used to determine the balance to which rates are applied. 15 U.S.C. 1637(a)(2). Under the proposal, a creditor would be required to disclose below the account-opening table the name of the balance computation method used by the creditor for each feature of the account, along with a statement that an explanation of the method(s) is provided in the account agreement or disclosure statement. *See* proposed § 226.6(a)(2)(xxii). To determine the name of the balance computation method to be disclosed, a creditor would be required to refer to § 226.5a(g) for a list of commonly-used methods; if the method used is not among those identified, creditors would be required to provide a brief explanation in place of the name. In determining which balance computation method to disclose, the creditor would be required to assume that credit extended will not be repaid within any grace period, if any. The Board believes that the proposed approach of disclosing the name of the balance computation method below the table, with a more detailed explanation of the method in the account-opening disclosures or account agreement, would provide an effective way to communicate information about the balance computation method used on a HELOC plan to consumers, while not distracting from other information included in the account-opening table.

Proposed comment 6(a)(2)(xxii)–1 provides that in cases where the creditor uses a balance computation method that is identified by name in the regulation, the creditor must disclose below the table only the name of the method. In cases where the creditor uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance computation methods in § 226.5a(g). The explanation would not need to be as detailed as that required for the disclosures under proposed § 226.6(a)(4)(i)(D), as discussed below. Proposed comment 6(a)(2)(xxii)–2 notes that proposed Samples G–15(B), G–15(C) and G–15(D) would provide guidance to creditors on how to disclose the balance computation method where the same method is used for all features on the account.

6(a)(2)(xxiii) Billing Error Rights Reference

Current § 226.6(a)(6), which implements TILA Section 127(a)(7), provides that creditors offering HELOC accounts subject to § 226.5b must provide notices of billing rights at account opening. This information is important, but lengthy. The Board proposes in new § 226.6(a)(2)(xxiii) to draw consumers' attention to the notices by requiring a creditor to disclose below the account-opening table a statement that information about billing rights and how to exercise them is provided in the account-opening disclosures or account agreement, as applicable. As discussed in the section-by-section analysis to proposed § 226.6(a)(5), under the proposal, a creditor would be required to provide information about billing rights in the account-opening disclosures or account agreement, as applicable. *See* proposed § 226.6(a)(5)(iii).

6(a)(2)(xxiv) No Obligation Statement

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(2), the Board proposes in new § 226.5b(c)(2) to require a creditor to disclose below the early HELOC disclosures table a statement that the consumer has no obligation to accept the terms disclosed in the table. In addition, under proposed § 226.5b(c)(2), if a creditor provides space for the consumer to sign or initial the early HELOC disclosures, the creditor would be required to include a statement that a signature by the consumer only confirms receipt of the disclosure statement.

Pursuant to TILA Section 127(a)(8) and for the same reasons discussed in the section-by-section analysis to proposed § 226.5b(c)(2), the Board proposes in new § 226.6(a)(2)(xxiv) to require these same statements below the account-opening table. 15 U.S.C. 1637(a)(8). In addition, the Board also proposes to require a creditor to disclose below the account-opening table a statement that the consumer should confirm that the terms disclosed in the table are the same terms for which the consumer applied. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board believes this statement would be a helpful reminder to consumers to check that the terms disclosed in the account-opening table are the terms that the consumer expects to apply to the HELOC plan based on the terms disclosed in the early HELOC disclosures table.

6(a)(2)(xxv) Statement About Asking Questions

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(20), the Board proposes in new § 226.5b(c)(20) to require a creditor to disclose below the early HELOC

disclosures table a statement that if the consumer does not understand any disclosure in the table the consumer should ask questions. Pursuant to TILA Section 127(a)(8) and for the same reasons discussed in the section-by-section analysis to proposed § 226.5b(c)(20), the Board proposes in new § 226.6(a)(2)(xxv) to require that a creditor disclose this same statement below the account-opening table. 15 U.S.C. 1637(a)(8).

6(a)(2)(xxvi) Statement About Board's Web Site

As discussed in more detail in the section-by-section analysis to proposed § 226.5b(c)(21), the Board proposes in new § 226.5b(c)(21) to required a creditor to disclose below the early HELOC disclosures table a statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board, and a reference to that Web site. Pursuant to TILA Section 127(a)(8), the Board proposes in new § 226.5b to require a creditor to provide these same statements below the account-opening table. 15 U.S.C. 1637(a)(8). Although it is hard to predict how many consumers might use the Board's Web site, and recognizing that not all consumers have access to the Internet, the Board believes that this Web site may be helpful to some consumers as they use their HELOC plan.

6(a)(3) Disclosure of Charges Imposed as Part of Home-Equity Plans

The current rules for disclosing costs related to open-end plans create two categories of charges covered by TILA: finance charges (former § 226.6(a)) and ''other charges'' (former § 226.6(b)). The terms ''finance charge'' and ''other charge'' are given broad and flexible meanings in the current regulation and commentary. This ensures that TILA adapts to changing conditions, but it also creates uncertainty. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. Examples of charges that are included or excluded charges are in the regulation and commentary, but they cannot provide definitive guidance in all cases. As creditors develop new kinds of services, some creditors find it difficult to determine whether associated charges for the new services meet the standard for a ''finance charge'' or ''other charge'' or are not covered by TILA at all. This uncertainty can pose legal risks for creditors that act in good faith to classify fees.

To address this problem, the January 2009 Regulation Z Rule created a single category of ''charges imposed as part of open-end (not home-secured) plans,'' specified in § 226.6(b)(3). These charges include finance charges under § 226.4(a) and (b), penalty charges, taxes, and charges for voluntary credit insurance, debt cancellation or debt suspension coverage. In addition, charges to be disclosed include any charge the payment or nonpayment of which affects the consumer's access to the plan, duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment. Charges imposed for terminating a plan are also included.

Three examples of types of charges that are not imposed as part of the plan are listed in § 226.6(b)(3)(iii). These examples include charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM; charges for a package of services that includes an open-end credit feature, if the charges would be required whether or not the open-end credit feature were included and the non-credit services are not merely incidental to the credit feature; and charges under § 226.4(e).

The Board proposes to apply the same approach to disclosure of charges under HELOC plans subject to § 226.5b, for the same reasons as for open-end (not home-secured) plans. Accordingly, proposed § 226.6(a)(3) would set forth a single category of ''charges imposed as part of home-equity plans.'' The disclosures included, as specified in proposed § 226.6(a)(3)(i) and (ii), would generally parallel those included for open-end (not home-secured) plans in § 226.6(b)(3)(i) and (ii). Similarly, proposed § 226.6(a)(3)(iii) would list types of charges not considered to be charges imposed as part of a home-equity plan, generally paralleling § 226.6(b)(3)(iii), which specifies types of charges not included as charges imposed as part of an open-end (not home-secured) plan.

As the Board acknowledged in the June 2007 Regulation Z Proposal and the January 2009 Regulation Z Rule, this proposed approach does not completely eliminate ambiguity about what charges are subject to TILA disclosure requirements. However, the proposed commentary provides examples to ease compliance. In addition, to further mitigate ambiguity, the proposed rule would provide a complete list in § 226.6(a)(2), as discussed above, of which charges must be disclosed in tabular format in writing at account opening. Under the proposal, any charges covered by § 226.6(a)(3), but not identified in § 226.6(a)(2), would *not* be required to be disclosed in writing at account opening. However, if they are not disclosed in writing at account opening, a creditor would be required to disclose these other charges imposed as part of a HELOC plan in writing or orally at a time and in a manner such that a consumer would be likely to notice them before the consumer agrees to or becomes obligated to pay the charge. This proposed approach is intended in part to reduce creditor burden. For example, when a consumer orders a service by telephone, creditors presumably disclose fees related to that service at that time for business reasons and to comply with other state and federal laws.

Moreover, compared to the approach reflected in the current regulation, the Board believes that the broad application of the statutory standard of fees ''imposed as part of the plan'' would make it easier for a creditor to determine whether a fee is a charge covered by TILA, and reduce litigation and liability risks. Proposed comment 6(a)(3)(ii)–3 would be added to provide that if a creditor is unsure whether a particular charge is a cost imposed as part of the plan, the creditor may, at its option, consider such charges as a cost imposed as part of the plan for Truth in Lending purposes. In addition, this proposed approach will help ensure that consumers receive the information they need when it would be most helpful to them.

Under proposed § 226.6(a)(3)(ii)(B), one of the categories of charges included in charges imposed as part of a home-equity plan would be ''charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default; costs for protection of the creditor's interest in the collateral for the plan due to default; attorney's fees whether or not automatically imposed; foreclosure costs; and post-judgment interest rates imposed by law.'' This provision generally parallels § 226.6(b)(3)(ii)(B) applicable to open-end (not home-secured) plans under the January 2009 Regulation Z Rule, as well as longstanding comment 6(b)–2.ii. in the current regulation. Two of the excepted charges, ''costs for protection of the creditor's interest in the collateral due to default'' and ''foreclosure costs,'' do not appear in § 226.6(b)(3)(ii)(B); ''foreclosure costs'' appears in current comment 6(b)–2.ii. These types of charges could occur in HELOC accounts, and would most likely not occur in the case of open-end (not home-secured) credit; they are similar to the other excepted types of charges in that all would likely occur in the

context of default or foreclosure. It would likely be impracticable for creditors to disclose, at the time an account is opened, charges related to default or foreclosure, since the amount of such charges may not be known at that time. Therefore, the Board believes it would be appropriate to include these two types of charges in the list of exceptions in proposed § 226.6(a)(3)(ii)(B).

Proposed comment 6(a)(3)(ii)–2 would give examples of fees that affect the consumer's access to the plan (and thus are included as charges that must be disclosed since they are considered charges imposed as part of the plan). This proposed comment generally parallels comment 6(b)(3)(ii)–2 for open-end (not home-secured) credit; however, proposed comment 6(a)(3)(ii)–2 would refer to ''fees to obtain additional checks or credit cards'' and ''fees to expedite delivery of checks or credit cards,'' as examples of charges affecting access to the plan, rather than only referring to fees to obtain or expedite delivery of credit cards, since HELOC plans are typically accessed by checks as well as, in some cases, credit cards.

Proposed § 226.6(a)(3)(iii) would list types of charges not considered to be charges imposed as part of a home-equity plan. As in the case of open-end (not home-secured) credit under § 226.6(b)(3)(iii), these charges would include charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM; charges for a package of services that includes an open-end credit feature, if the charges would be required whether or not the open-end credit feature were included and the non-credit services are not merely incidental to the credit feature; and charges under § 226.4(e) (generally, taxes and fees prescribed by law and related to security instruments). In proposed comment 6(a)(3)(iii)(B)–1, discussing charges for a package of services including an open-end credit feature, ''credit'' is substituted for ''a credit card,'' because HELOCs may not offer credit card access.

The Board also proposes new comment 6(a)(3)–1, which would cross-reference comment 6(a)–1 for guidance on disclosing information related to fixed-rate and -term payment options; there is no parallel comment under § 226.6(b)(3), because open-end (not home-secured) credit plans generally do not offer such options. Proposed comments 6(a)(3)–2 and –3 discuss requirements for disclosing grace periods, and would generally parallel comments 6(b)(3)–1 and –2, respectively, applying to open-end (not home-secured) credit as adopted in the January 2009 Regulation Z Rule. Proposed comment 6(a)(3)–4 discusses circumstances where no finance charge is imposed when the outstanding balance is less than a certain amount, and would generally parallel comment 6(b)(3)–3 as adopted in the January 2009 Regulation Z Rule.

6(a)(4) Disclosure of Rates for Home-Equity Plans

The January 2009 Regulation Z Rule reorganizes and consolidates rules for disclosing interest rates in open-end (not home-secured) credit in § 226.6(b)(4). The Board proposes to follow the same approach for HELOCs; thus, rules for disclosing interest rates for HELOCs would appear in proposed § 226.6(a)(4). Proposed § 226.6(a)(4) would generally parallel § 226.6(b)(4). The proposed commentary to § 226.6(a)(4) also would generally parallel the commentary to § 226.6(b)(4), with adjustments in certain comments to address matters in which HELOCs differ from credit card accounts and other open-end (not home-secured) credit, as well as differences between the rules applicable to HELOCs and those applicable to open-end (not home-secured) credit (see, for example, proposed comments 6(a)(4)(ii)–1, –2, and –3 and 6(a)(4)(iii)–1 and –2). In addition, the Board proposes new comment 6(a)(4)–1, which would cross-reference comment 6(a)–1 for guidance on disclosing information related to fixed-rate and -term payment options.

6(a)(4)(i)(D) Balance Computation Method

Proposed § 226.6(a)(4)(i)(D) would require creditors to explain the method used to determine the balance to which rates apply. In addition to disclosing the name of the balance computation method with the account-opening summary table, as discussed under § 226.6(a)(2) above, creditors would be required, as in the current regulation, to explain the balance computation method in the account-opening agreement or other disclosure statement. Under the proposal, a creditor would be required to disclose under the account-opening summary table a reference to where the explanation is found, along with the name of the balance computation method.

Model clauses that explain commonly used balance computation methods, such as the average daily balance method, are in Model Clauses G–1 and G–1(A) in Appendix G. In the January 2009 Regulation Z Rule, the Board adopted new Model Clause G–1(A) containing balance computation method model clauses for open-end (not home-secured) credit, while retaining existing Model Clause G–1 to continue to provide the existing model clauses for HELOCs. The Board is now proposing to eliminate existing Model Clause G–1 and redesignate Model Clause G–1(A) as G–1; all creditors offering open-end credit would use the same model clauses for explanations of balance computation methods. *See* the discussion under Appendix G below.

6(a)(4)(ii) Variable-Rate Accounts

Proposed § 226.6(a)(4)(ii) would set forth the rules for variable-rate disclosures, parallel to § 226.6(b)(4)(ii) for open-end (not home-secured) credit as adopted in the January 2009 Regulation Z Rule and contained in footnote 12 to § 226.6(a)(1)(ii) in the regulation currently in effect. Guidance on the accuracy of variable rates provided at account opening would be moved from the commentary to the regulation and revised. Currently, comment 6(a)(1)(ii)–3 provides that creditors in disclosing a variable-rate in the account-opening disclosures may provide the current rate, a rate as of a specified date if the rate is updated from time to time, or an estimated rate under § 226.5(c). In the January 2009 Regulation Z Rule, the Board adopted an accuracy standard for variable rates disclosed at account opening for open-end (not home-secured) credit; the rate disclosed was deemed accurate if it was in effect as of a specified date within 30 days before the disclosures were provided. Creditors' option to provide an estimated rate as the rate in effect for a variable-rate account was eliminated. In adopting this accuracy standard, the Board stated its belief that 30 days provides sufficient flexibility to creditors and reasonably current information to consumers. *See* § 226.6(b)(4)(ii)(G). The Board proposed a further technical clarification to the accuracy standard in the May 2009 Regulation Z Proposal. Proposed § 226.6(a)(4)(ii)(G) provides that a variable rate on HELOC plans disclosed in the account-opening disclosures is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided. This proposed accuracy standard reflects the proposed technical clarification that the Board proposed to § 226.6(b)(4)(ii)(G) in May 2009.

6(a)(5) Additional Disclosures for Home-Equity Plans

Section 226.6(b)(5) of the January 2009 Regulation Z Rule contains rules for additional disclosures relating to open-end (not home-secured) credit,

including: The disclosures required under § 226.4(d) that, if provided, entitle the creditor to exclude voluntary credit insurance or debt cancellation or suspension coverage from the finance charge (§ 226.6(b)(5)(i)); the disclosure of security interests (§ 226.6(b)(5)(ii)); and the statement about consumers' billing rights under TILA (§ 226.6(b)(5)(iii)). Proposed § 226.6(a)(5) would set forth the parallel disclosures for HELOCs, in § 226.6(a)(5)(i), (ii), and (iii), respectively.

Proposed comment 6(a)(5)(i)–1 (similar to comment 6(b)(5)(i)–1 for open-end (not home-secured) credit) would provide that creditors comply with § 226.6(a)(5)(i) if they provide disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge in accordance with § 226.4(d) before the consumer agrees to the purchase of the insurance or coverage. For example, if the § 226.4(d) disclosures are given at application, creditors need not repeat those disclosures at account opening.

Model forms for the billing rights statement under proposed § 226.6(a)(5)(iii) are in Appendices G–3 and G–3(A). In the January 2009 Regulation Z Rule, the Board adopted new Appendix G–3(A) for open-end (not home-secured) credit for improved readability, while retaining existing Appendix G–3 to give HELOC creditors the option of providing the existing model billing rights statement form. The Board proposes to eliminate existing Appendix G–3 and redesignate Appendix G–3(A) as G–3; thus, all creditors offering open-end credit would use the same model form for the billing rights statement. *See* the discussion under Appendix G below.

Proposed commentary for § 226.6(a)(5)(i), (ii), and (iii) would parallel the commentary to § 226.6(b)(5)(i), (ii), and (iii), respectively, with adjustments to address differences between HELOCs and open-end (not home-secured) credit and between the rules applicable to each. For example, in proposed comment 6(a)(5)(ii)–2, a reference to ''your home'' (as the collateral for the credit) would be substituted for ''motor vehicle or household appliances.'' Comments 6(b)(5)(ii)–4 and –5 for open-end (not home-secured) credit do not appear relevant to HELOCs, and therefore parallel comments under § 226.6(a)(5)(ii) are not proposed and current comments 6(a)(4)–4 and –5, which state these interpretations for HELOCs, would be deleted. Comment 6(b)(5)(ii)–4 (and comment 6(a)(4)–4) addresses the situation where collateral will be required only when the outstanding balance reaches a certain amount; HELOCs generally require that the consumer's home secure the line of credit from the outset. Comment 6(b)(5)(ii)–5 (and comment 6(a)(4)–5) discusses circumstances in which the collateral is owned by someone other than the consumer liable for the credit extended; this would generally not be the case with HELOCs. However, the Board requests comment on whether, and how often, the situations addressed by these two comments might occur in HELOC accounts, and accordingly whether these two comments should be retained for HELOCs.

Proposed § 226.6(a)(5) would contain two additional paragraphs without counterparts in § 226.6(b)(5). Section 226.6(a)(5)(iv) would require a disclosure of the conditions under which the creditor in a HELOC may take certain actions, such as terminating the plan or changing its terms. The account-opening table required under proposed § 226.6(a)(2), as discussed above, would require a statement of the actions the creditor may take, such as terminating and accelerating a HELOC, reducing the credit limit, suspending further advances, or changing other terms, but would not require or permit setting forth the conditions under which the creditor is permitted, under § 226.5b(f), to take such actions. Instead, the account-opening table would have to contain a reference to the disclosure or credit agreement in which the conditions would be disclosed. *See also* discussion under § 226.6(a)(2)(iii), above.

Proposed § 226.6(a)(5)(v) would require disclosure of additional information about any fixed-rate and -term payment option offered under the HELOC plan. Under current Regulation Z, guidance on disclosing fixed-rate and -term payment options is contained only in the commentary (comment 5b(d)(5)(ii)–2). To provide clearer guidance, the Board proposes to state the rules about disclosure of such options in § 226.6(a)(5)(v).

The account-opening table required under proposed § 226.6(a)(2), as discussed above, would require a brief statement about a fixed-rate and -term payment option, including a statement that the consumer has the option during the draw period to borrow at a fixed interest rate, the amount of credit available under the option, and a statement that details about this option are included in the credit agreement or other document, as applicable. *See* the discussion under § 226.6(a)(2)(xix), above. Proposed § 226.6(a)(5)(v) would require that a creditor disclose at account opening, but outside of the table prescribed in § 226.6(a)(2), the following additional information about the option: The period during which the option may be exercised (§ 226.6(a)(5)(v)(A)), the length of time over which repayment can occur (§ 226.6(a)(5)(v)(B)), an explanation of how the minimum periodic payment for the option will be determined (§ 226.6(a)(5)(v)(C)), and any limitations on the number or total amount of loans that can be obtained under the option, as well as any minimum outstanding balance or minimum draw requirements (§ 226.6(a)(5)(v)(D)). Proposed comment 6(a)(5)(v)–1 would refer to proposed comment 6(a)–1 for further guidance on disclosing information related to fixed-rate and -term payment options.

Section 226.7 Periodic Statement

TILA Section 127(b), implemented in § 226.7, identifies information about an open-end account that must be disclosed when a creditor is required to provide periodic statements. *See* 15 U.S.C. 1637(b).

Periodic statement disclosure and format requirements for HELOCs subject to § 226.5b generally were unaffected by the January 2009 Regulation Z Rule, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a future rulemaking. To facilitate compliance, the Board in the January 2009 Regulation Z Rule grouped the requirements applicable to HELOCs together in § 226.7(a) (moved from former § 226.7(a) through (k)).

This proposal contains a number of significant revisions to periodic statement disclosures currently applicable to creditors offering HELOCs subject to § 226.5b. Except as discussed below, these proposed revisions are substantially similar to revisions adopted for open-end (not home-secured) credit plans in the January 2009 Regulation Z Rule, and as proposed to be revised in the May 2009 Regulation Z Proposal. First, the Board proposes to eliminate the requirement to disclose the effective APR for HELOC accounts subject to § 226.5b. Second, the proposal contains several formatting requirements for periodic statement disclosures for HELOC accounts subject to § 226.5b. For example, interest charges and fees imposed as part of the plan must be grouped together and totals disclosed for the statement period and year to date. In addition, if an advance notice of a change in rates or terms is provided on or with a periodic statement, the proposal requires that a summary of the change appear on the front of the periodic statement. To

facilitate compliance, sample forms are proposed to illustrate the revisions. *See* proposed Samples G–24(A), G–24(B) and G–24(C) of Appendix G to part 226.

Effective Annual Percentage Rate

Background on effective APR. TILA Section 127(b)(6) requires disclosure of an APR calculated as the quotient of the total finance charge for the period to which the charge relates divided by the amount on which the finance charge is based, multiplied by the number of periods in the year. *See* 15 U.S.C. 1637(b)(6) (implemented by § 226.7(a)(7) for HELOCs subject to § 226.5b). This rate has come to be known as the ''historical APR'' or ''effective APR.'' A creditor does not have to disclose an effective APR when the total finance charge is 50 cents or less for a monthly or longer billing cycle, or the *pro rata* share of 50 cents for a shorter cycle. *See* 15 U.S.C. 1637(b)(6). In such a case, the creditor must disclose only the periodic rate and the annualized rate that corresponds to the periodic rate (the ''corresponding APR''). *See* 15 U.S.C. 1637(b)(5).

The effective APR and corresponding APR for any given plan feature are the same when the finance charge in a period arises only from applying the periodic rate to the applicable balance (the balance calculated according to the creditor's chosen method, such as average daily balance method). When the two APRs are the same, Regulation Z requires that the APR be stated just once. The effective and corresponding APRs diverge when the finance charge in a period arises (at least in part) from a charge not determined by application of a periodic rate and the total finance charge exceeds 50 cents. When they diverge, Regulation Z currently requires that both be stated. *See* § 226.7(a)(4) and (a)(7).

The statutory requirement of an effective APR is intended to provide the consumer with an annual rate that reflects the total finance charge, including both the finance charge due to application of a periodic rate (interest) and finance charges that take the form of fees. This rate, like other APRs required by TILA, presumably was intended to provide consumers information about the cost of credit that would help consumers compare credit costs and make informed credit decisions and, more broadly, strengthen competition in the market for consumer credit. *See* 15 U.S.C. 1601(a). There is, however, a longstanding controversy about whether the requirement to disclose an effective APR advances TILA's purposes or, as some argue, actually undermines them.

Industry and consumer groups disagree as to whether the effective APR conveys meaningful information for open-end plans. Creditors argue that the cost of a transaction is rarely, if ever, as high as the effective APR makes it appear, and that this tendency of the rate to exaggerate the cost of credit makes this APR misleading. Industry representatives also claim that the effective APR imposes direct costs on creditors that consumers pay indirectly. They represent that the effective APR raises compliance costs when they introduce new services, including costs of: (1) Conducting legal analysis of Regulation Z to determine whether the fee for the new service is a finance charge and must be included in the effective APR; (2) reprogramming software if the fee must be included; and (3) responding to telephone inquiries from confused customers and accommodating them (*e.g.*, with fee waivers or rebates).

Consumer groups contend that the information the rate provides about the cost of credit, even if limited, is meaningful. The effective APR for a specific transaction or set of transactions in a given cycle may provide the consumer a rough indication that the cost of repeating such transactions is high in some sense or, at least, higher than the corresponding APR alone conveys. Consumer advocates and industry representatives also disagree as to whether the effective APR promotes credit shopping. Industry and consumer group representatives find some common ground in their observations that consumers do not understand the effective APR well.

Consumer research on credit card disclosures conducted by the Board. In relation to the January 2009 Regulation Z Rule, the Board undertook research through a third-party consultant on consumer awareness and understanding of the effective APR, and on whether changes to the presentation of the disclosure could increase awareness and understanding. The consultant used one-on-one cognitive interviews with consumers; consumers were provided mock disclosures of periodic statements for credit card accounts that included effective APRs and asked questions about the disclosure designed to elicit their understanding of the rate. The Board tested effective APR disclosures with different versions of explanatory text in seven rounds of one-on-one interviews with consumers. In the first round the statements were copied from examples in disclosures currently used in the market. For subsequent testing rounds, the language and design of the statements were modified to better convey how the effective APR differs from the corresponding APR. Several different approaches and many variations on those approaches were tested. For example, in later rounds of testing, the effective APR was labeled the ''Fee-Inclusive APR.''

In all but one round of testing, a minority of participants correctly explained that the effective APR for cash advances was higher than the corresponding APR for cash advances because the effective APR included a cash advance fee that had been imposed. A smaller minority correctly explained that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee had been imposed on purchases. A majority offered incorrect explanations or did not offer any explanation. In addition, the inclusion of the effective APR disclosure on the statement was often confusing to participants; in each round some participants mistook the effective APR for the corresponding APR.

In addition, in September 2008 the Board conducted additional consumer research using quantitative methods for the purpose of validating the qualitative research (one-on-one interviews) conducted previously. The quantitative consumer research conducted by the Board validated the results of the qualitative testing; it shows that most consumers do not understand the effective APR, and that for some consumers the effective APR is confusing and detracts from the effectiveness of other disclosures. The quantitative consumer research involved surveys of around 1,000 consumers at shopping malls in seven locations around the country. Two research questions were investigated. The first was designed to determine what percentage of consumers understand the significance of the effective APR. The interviewer pointed out the effective APR disclosure for a month in which a cash advance occurred, triggering a transaction fee and thus making the effective APR higher than the corresponding APR (interest rate). The interviewer then asked what the effective APR would be in the next month, in which the cash advance balance was not paid off but no new cash advances occurred. A very small percentage of respondents gave the correct answer (that the effective APR would be the same as the corresponding APR). Some consumers stated that the effective APR would be the same in the next month as in the current month, others indicated that

they did not know, and the remainder gave other incorrect answers.

The second research question was designed to determine whether the disclosure of the effective APR adversely affects consumers' ability to identify correctly the current corresponding APR on cash advances. Some consumers were shown a periodic statement disclosing an effective APR, while other consumers were shown a statement without an effective APR disclosure. Consumers were then asked to identify the corresponding APR on cash advances. A greater percentage of consumers who were shown a statement without an effective APR than of those shown a statement with an effective APR correctly identified the corresponding APR on cash advances. This finding was statistically significant, as discussed in the December 2008 Macro Report on Quantitative Testing. Some of the consumers who did not correctly identify the corresponding APR on cash advances instead mistakenly identified the effective APR as that rate.

Proposal. After considering the results of the consumer testing and other factors mentioned in the background discussion of the effective APR, the Board is proposing that creditors offering HELOCs subject to § 226.5b no longer be required to disclose the effective APR on periodic statements. (An identical exemption was adopted for open-end (not home-secured) plans in the January 2009 Regulation Z Rule.) The Board proposes this rule pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. *See* 15 U.S.C. 1604(f)(1). The Board must make this determination in light of specific factors. *See* 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes that the proposed exemption is appropriate. Consumer testing conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule shows that consumers find the current disclosure of an APR that combines rates and fees to be confusing. Based on this consumer testing, the Board believes that consumers are likely confused by the effective APR disclosure on HELOC accounts. Under this proposal, creditors offering HELOCs subject to § 226.5b would be required to disclose interest and fees in a manner that is more readily understandable and comparable across institutions. The Board believes that this approach can more effectively further the goals of consumer protection and the informed use of credit for all types of open-end credit.

The Board also considered whether there were potentially competing considerations that would suggest retention of the requirement to disclose an effective APR. First, the Board considered the extent to which ''sticker shock'' from the effective APR benefits consumers, even if the disclosure does not enable consumers to compare costs meaningfully from month to month or for different products. A second consideration was whether the effective APR may be a hedge against fee-intensive pricing by creditors, and if so, the extent to which it promotes transparency. On balance, however, the Board believes that the benefits of eliminating the requirement to disclose the effective APR outweigh these considerations.

The consumer testing conducted for the Board supports this determination. Again, with the exception of one round of one-on-one testing, the overall results of the testing demonstrated that most consumers do not correctly understand the effective APR. Some consumers in the testing offered no explanation of the difference between the corresponding and effective APR, and others appeared to have an incorrect understanding.

Even if some consumers have some understanding of the effective APR, the Board believes that sound reasons support eliminating the requirement to disclose it. Disclosure of the effective APR on periodic statements does not significantly assist consumers in credit shopping, because the effective APR disclosed on a periodic statement for a HELOC account cannot be compared to the corresponding APR disclosed in early disclosures given pursuant to § 226.5b. In addition, even within the same account, the effective APR for a given cycle is unlikely to indicate accurately the cost of credit in a future cycle, because if any of several factors (such as the timing of transactions and payments and the amount carried over from the prior cycle) is different in the future cycle, the effective APR will be different even if the amounts of the transaction and the fee are the same in both cycles.

As to contentions that the effective APR for a particular billing cycle provides the consumer a rough indication that the cost of repeating transactions triggering transaction fees is high in some sense, the Board believes the proposed requirements to disclose interest and fee totals for the cycle and year to date will better serve that purpose. In addition, the proposed interest and fee total disclosure requirements would ensure that creditors must clearly disclose all costs; this should address concerns that eliminating the effective APR would remove disincentives for creditors to adopt fee-intensive pricing on HELOC accounts.

7(a) Rules Affecting Home-Equity Plans

In the January 2009 Regulation Z Rule, the Board provided in § 226.7(a) that at their option, creditors offering HELOCs subject to § 226.5b may comply with the periodic statement requirements of § 226.7(b) applicable to creditors offering open-end (not home-secured) credit, instead of the requirements in § 226.7(a). The Board provided this flexibility because some creditors may use a single processing system to generate periodic statements for all open-end products they offer, including HELOCs. These creditors would have the option to generate statements according to a single set of rules, until the Board completed its review of Regulation Z's disclosure rules for home-secured credit. In this proposal, the Board proposes to remove the option for creditors offering HELOCs to comply with the periodic statement requirements of § 226.7(b) applicable to creditors offering open-end (not home-secured) credit. Instead, creditors offering HELOCs subject to § 226.5b would have to comply with the requirements in § 226.7(a). Nonetheless, the proposed periodic statement requirements in § 226.7(a) applicable to

HELOC creditors are substantially similar to the requirements in § 226.7(b) applicable to open-end (not home-secured) plans, except for provisions related to the itemization of interest charges in § 226.7(a)(6), and certain late-payment disclosures, minimum payment disclosures and formatting requirements related to those disclosures, as discussed in more detail below. The Board requests comment on whether creditors that currently use a single processing system to generate periodic statements for all open-end products they offer would be able to continue to do so under the proposal.

7(a)(1) Previous Balance

Section 226.7(a)(1), which implements TILA Section 127(b)(1), requires a creditor offering HELOCs subject to § 226.5b to disclose on the periodic statement the account balance outstanding at the beginning of the billing cycle. 15 U.S.C. 1637(b)(1). The Board proposes no changes to these disclosure requirements.

7(a)(2) Identification of Transactions

Section 226.7(a)(2), which implements TILA Section 127(b)(2), requires creditors offering HELOCs subject to § 226.5b to identify on the periodic statement transactions according to the rules in § 226.8. 15 U.S.C. 1637(b)(2). Some HELOC plans involve different features, such as a variable-rate feature and optional fixed-rate features. Comment 7(a)(2)–1 currently provides that in identifying transactions under § 226.7(a)(2) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature or in some other clear manner, such as by arranging the transactions in chronological order. The Board proposes technical revisions to this comment, without substantive change, to conform this comment to a similar comment applicable to open-end (not home-secured) credit plans. *See* comment 7(b)(2)–1. Specifically, the Board proposes to revise comment 7(a)(2)–1 to specify that creditors may, but are not required to, arrange transactions by feature. Thus, creditors offering HELOCs subject to § 226.5b would still be permitted to list transactions chronologically or organize transactions in any other way that would be clear to consumers. The Board also proposes to revise this comment to clarify, consistent with proposed § 226.7(a)(6), that all fees and interest must be grouped together under separate headings and may not be interspersed with transactions.

7(a)(3) Credits

Section 226.7(a)(3), which implements TILA Section 127(b)(3), requires creditors offering HELOCs subject to § 226.5b to disclose any credits to the account during the billing cycle. 15 U.S.C. 1637(b)(3). Creditors typically disclose credits among other transactions. The Board proposes to revise comment 7(a)(3)–1 to clarify that credits may be distinguished from transactions in any way that is clear and conspicuous; for example, by use of debit and credit columns or by use of plus signs for credits and minus signs for debits.

7(a)(4) Periodic Rates

Rates that ''may be used.'' TILA Section 127(b)(5) requires creditors to disclose all periodic rates that may be used to compute the finance charge, and the APR that corresponds to the periodic rate multiplied by the number of periods in a year. *See* 15 U.S.C. 1637(b)(5); § 226.14(b). Prior to the January 2009 Regulation Z Rule, former comment 7(d)–1 interpreted the requirement to disclose all periodic rates that ''may be used'' to mean ''whether or not [the rate] is applied during the billing cycle.'' In the January 2009 Regulation Z Rule, the Board adopted for HELOCs a limited exception to TILA Section 127(b)(5) regarding promotional rates that were offered but not actually applied, to effectuate the purposes of TILA to require disclosures that are meaningful and to facilitate compliance. Specifically, creditors offering HELOCs subject to § 226.5b are required to disclose a promotional rate only if the rate actually applied during the billing period. *See* § 226.7(a)(4)(ii) and comment 7(a)(4)–1. The Board noted that interpreting TILA to require the disclosure of all promotional rates would be operationally burdensome for creditors and result in information overload for consumers. This proposal retains the exception in § 226.7(a)(4)(ii).

Periodic rates. In this proposal, the Board proposes to eliminate the requirement to disclose periodic rates on periodic statements for HELOCs subject to § 226.5b. *See* proposed § 226.7(a)(4) and accompanying commentary. Under the proposal, creditors would still be required to disclose an APR that corresponds to each periodic rate that may be used to compute the finance charge. For example, assume a monthly periodic rate of 1.5 percent applies to transactions on a HELOC account. The corresponding APR to this periodic rate would be 18 percent. Under the proposal, creditors would be required to disclose the 18 percent corresponding APR, but would not be required to disclose the 1.5 percent periodic rate.

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

For this proposal, the Board considered each of these factors carefully, and based on that review, determined that the proposed exemption is appropriate. In consumer testing conducted for the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule, consumers indicated they do not use periodic rates to verify interest charges. Based on this consumer testing, the Board believes consumers are not likely to use periodic rates to verify interest charges for HELOC accounts. Requiring periodic rates to be disclosed on periodic statements may detract from more important information on the statement, and contribute to information overload. Thus, eliminating periodic rates from the periodic statement has the potential to further the goals of consumer protection and the informed use of credit for HELOCs more effectively than if they are included.

The Board notes that under the proposal, creditors may continue to disclose the periodic rate, as long as the additional information is presented in a way that is consistent with creditors' duty to provide required disclosures clearly and conspicuously. *See* proposed comment app. G–15.

Labeling APRs. Currently creditors offering HELOCs subject to § 226.5b are provided with considerable flexibility in identifying the APR that corresponds to the periodic rate. Comment 7(a)(4)–4 permits labels such as ''corresponding annual percentage rate,'' ''nominal annual percentage rate,'' or ''corresponding nominal annual percentage rate.'' This proposal would amend § 226.7(a)(4) to require creditors offering HELOCs subject to § 226.5b to label the APR disclosed under § 226.7(a)(4) as the ''annual percentage rate.'' Comment 7(a)(4)–4 would be deleted. The proposal is intended to promote uniformity in how the ''interest only'' APR is described in HELOC disclosures. Under §§ 226.5b and 226.6, creditors must use the term ''annual percentage rate'' to describe the ''interest only'' APR(s) that must be disclosed in the tabular disclosures described in proposed § 226.5b(b) provided to a consumer within three business days after the consumer submits an application (but no later than account opening) and in the tabular disclosures described in proposed § 226.6(a)(1) provided at account opening. *See* proposed Model Forms G–14(A) and G–15(A).

Combining interest and other charges. Currently, creditors offering HELOCs subject to § 226.5b must disclose finance charges attributable to periodic rates. These costs are typically interest charges but may include other costs such as premiums for required credit insurance. If applied to the same balance, creditors may disclose each rate, or a combined rate. *See* comment 7(a)(4)–3. As discussed below, consumer testing for the Board conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule indicated that participants appeared to understand credit costs in terms of ''interest'' and ''fees.'' Because consumers tend to associate periodic rates with ''interest,'' it seems unhelpful to consumers' understanding to permit creditors to include periodic rate charges other than interest in the dollar cost disclosed for ''interest.'' Thus, the Board proposes to require creditors offering HELOCs subject to § 226.5b that impose finance charges attributable to periodic rates (other than interest) to disclose the amount of those charges in dollars as a ''fee.'' *See* section-by-section analysis to § 226.7(a)(6) below. This proposal would delete current guidance in comment 7(a)(4)–3, which permits periodic rates attributable to interest and other finance charges to be combined.

In addition, the Board proposes to add new comment 7(a)(4)–4 to provide guidance to creditors when a fee is imposed, remains unpaid, and interest accrues on the unpaid balance. The proposed comment provides that creditors disclosing fees in accordance with the format requirements of § 226.7(a)(6) need not separately disclose which periodic rate applies to the unpaid fee balance. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.

7(a)(5) Balance on Which Finance Charge Is Computed

Section 226.7(a)(5), which implements TILA Section 127(b)(7), currently requires creditors offering HELOCs subject to § 226.5b to disclose the amount of the balance to which a periodic rate was applied and an explanation of how the balance was determined. 15 U.S.C. 127(b)(7) The Board provides model clauses that creditors may use to explain common balance computation methods. *See* Model Clauses G–1. The staff commentary to § 226.7(a)(5) interprets how creditors may comply with TILA in disclosing the ''balance,'' which typically changes in amount throughout the cycle, on periodic statements.

Explanation of how finance charges may be verified. In disclosing the amount of the balance to which a periodic rate was applied, creditors offering HELOCs subject to § 226.5b that use a daily balance method are permitted to disclose an average daily balance for the period, so long as they explain that the amount of the finance charge can be verified by multiplying the average daily balance by the number of days in the statement period, and then applying the periodic rate. *See* comment 7(a)(5)–4. The Board proposes to revise comment 7(a)(5)–4 to permit creditors offering HELOCs subject to § 226.5b, at their option, not to include an explanation of how the finance charge may be verified for creditors that use a daily balance method. As a result, the Board proposes to retain the rule permitting creditors to disclose an average daily balance but eliminate the requirement to provide the explanation. Consumer testing conducted for the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule suggested that the explanation may not be used by consumers as an aid to calculate their interest charges. Participants suggested that if they had questions about how the balances were calculated or wanted to verify interest charges based on information on the periodic statement, they would call the creditor for assistance. Based on this consumer testing, the Board believes that the explanation may not be useful to consumers with HELOC accounts.

In addition, the Board proposes to require creditors offering HELOCs subject to § 226.5b to refer to the balance as ''balances subject to interest rate,'' to complement proposed revisions intended to further consumer understanding of interest charges, as distinguished from fees. *See* section-by-section analysis to § 226.7(b)(6). Proposed Samples G–24(B) and G–24(C) illustrate this format requirement.

Explanation of balance computation method. As discussed above, creditors offering HELOCs subject to § 226.5b currently must disclose the amount of the balance to which a periodic rate was applied and an explanation of how the balance was determined. This proposal contains an alternative to providing an explanation of how the balance was determined. Under proposed § 226.7(a)(5), a creditor that uses a balance computation method identified in § 226.5a(g) would have two options. The creditor could: (1) Provide an explanation, as the rule currently requires, or (2) identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain more information from the creditor about how the balance is computed and resulting interest charges are determined. If the creditor uses a balance computation method that is not identified in § 226.5a(g), the creditor would be required to provide a brief explanation of the method. Under the proposal, comment 7(a)(5)–6, which refers creditors to guidance in comment 6(a)(1)(ii)–1 about disclosing balance computation methods, would be deleted as unnecessary. The Board's proposal is guided by the following factors.

Calculating balances on open-end plans can be complex, and requires an understanding of how creditors allocate payments, assess fees, and record transactions as they occur during the cycle. Currently, neither TILA nor Regulation Z requires creditors to disclose on periodic statements all the information necessary to compute a

balance, and requiring that level of detail appears unwarranted. Although the Board's model clauses are intended to assist creditors in explaining common balance computation methods, consumers continue to find these explanations lengthy and complex. As stated earlier, consumer testing conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule indicates that consumers call the creditor for assistance when they have questions on how to calculate balances and verify interest charges.

7(a)(6) Charges Imposed

Section 227.7(a)(6)(i), which implements TILA Section 127(b)(4), requires creditors offering HELOC subject to § 226.5b to disclose on the periodic statement the amount of any finance charge added to the account during the period, itemized to show amounts due to the application of periodic rates and the amount imposed as a fixed or minimum charge. 15 U.S.C. 1637(b)(4). In addition, § 226.7(a)(6)(ii) requires these creditors to disclose on the periodic statement the amount, itemized and identified by type, of any ''other charges'' debited to the account during the billing cycle. Some charges do not fall with the ''finance charge'' and ''other charges'' categories and thus are not required to be disclosed on the periodic statement even if they are imposed in a particular billing cycle. *See* current comment 6(a)(2)–2.

As discussed in the section-by-section analysis to proposed § 226.6(a)(3), the Board proposes to create a single category of charges, namely ''charges imposed as part of home-equity plans.'' Consistent with proposed § 226.6(a)(3), proposed § 226.7(a)(6) requires creditors offering HELOCs subject to § 226.5b to disclose on the periodic statement the amount of any charge imposed as part of a HELOC plan, as stated in proposed § 226.6(a)(3), for the statement period. Charges imposed as part of a HELOC plan consist of two types of charges—interest and fees. Proposed § 226.7(a)(6)(ii) establishes periodic statement disclosure requirements for interest charges. If different periodic rates apply to different types of transactions, creditors offering HELOCs subject to § 226.5b would be required to itemize interest charges for the statement period by type of transaction or group of transactions subject to different periodic rates. The Board proposes that these itemized interest charges must be grouped together. In addition, the Board proposes to require a creditor to disclose a total of interest charges disclosed for the statement period and calendar year. *See* proposed § 226.7(a)(6)(ii). Proposed § 226.7(a)(iii) establishes periodic statement disclosure requirements for fees. The Board proposes that fee imposed during the statement period must be itemized and grouped together, and a total of fees disclosed for the statement period and calendar year to date. *See* proposed § 226.7(a)(6)(iii). In addition, the Board proposes that these disclosures regarding interest and fees must be grouped together in proximity to the transactions identified under § 226.7(a)(2), in a manner substantially similar to Sample G–24(A) in Appendix G to part 226. *See* proposed § 226.7(a)(6)(i).

Charges imposed as part of the plan. As discussed above, under the proposal, creditors would be required to disclose on the periodic statement the amount of any charges imposed as part of a HELOC plan, as stated in proposed § 226.6(a)(3), for the statement period. Guidance on which charges would be deemed to be imposed as part of the plan is in proposed § 226.6(a)(3)(ii) and accompanying commentary. As discussed in the section-by-section analysis to proposed § 226.6(a)(3), coverage of charges is broader under the proposed standard of ''charges imposed as part of the plan'' than under current standards for finance charges and other charges. While the Board understands that some creditors offering HELOCs subject to § 226.5b have been disclosing on the statement all charges debited to the account regardless of whether they are now defined as ''finance charges,'' ''other charges,'' or charges that do not fall into either category, other creditors currently do not disclose on periodic statements the charges that fall outside the current ''finance charge'' and ''other charge'' categories. Nonetheless, the Board believes that requiring creditors to disclose on the periodic statement all charges imposed as part of the HELOC plan that are charged during a particular billing cycle would help ensure that consumers are informed of these charges

Labeling costs imposed as part of the plan as interest or fees. For creditors offering HELOCs subject to § 226.5b, the Board proposes to delete the requirement in § 226.7(a)(6) to label finance charges as such. Consumer testing conducted for the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule indicated that most participants reviewing mock credit card periodic statements could not correctly explain the term ''finance charge.'' Consumers generally understand interest as the cost of borrowing money over time and view other costs—regardless of their characterization under TILA and Regulation Z—as fees. Based on this consumer testing, the Board proposes to amend § 226.7(a)(6) to label costs as either ''interest charge'' or ''fees'' rather than ''finance charge'' to align more closely with consumers' understanding.

Interest charges. TILA Section 127(b)(4) requires creditors to disclose on periodic statements the amount of any finance charge added to the account during the period, itemized to show amounts due to the application of periodic rates and the amount imposed as a fixed or minimum charge. *See* 15 U.S.C. 1637(b)(4). This current requirement with respect to creditors offering HELOCs subject to § 226.5b is implemented in § 226.7(a)(6)(i), which gives considerable flexibility regarding totaling or subtotaling finance charges attributable to periodic rates and other fees. *See* current § 226.7(a)(6)(i) and comments 7(a)(6)(i)–1, –2, –3, and –4. As discussed in more detail below, the Board proposes to amend § 226.7(a)(6) to require creditors offering HELOCs subject to § 226.5b to disclose total interest charges, for the statement period and year to date, labeled as such. In addition, if different periodic rates apply to different types of transactions, creditors offering HELOCs subject to § 226.5b would be required to itemize finance charges attributable to interest by type of transaction, or group of transactions subject to different periodic interest rates, labeled as such. Creditors offering HELOCs subject to § 226.5b, at their option, would be allowed to itemize interest charges by transaction type, even if the same periodic interest rates apply to those transactions. A creditor would be required to group all itemized interest charges on an account together, regardless of whether the interest charges are attributable to different authorized users or sub-accounts. *See* proposed § 226.7(a)(6)(ii). Under this proposal, finance charges attributable to periodic rates other than interest charges, such as required credit insurance premiums, would be required to be identified as fees and would not be permitted to be combined with interest costs. *See* proposed comments 7(a)(4)–3 and 7(a)(6)–3.

The Board understands that for most HELOCs subject to § 226.5b, the same variable rate on the account applies to most transactions on the account, regardless of the type of transactions (*e.g.,* purchases or cash advances) and regardless of whether these transactions are initiated by check, wire transfer or by a credit card device linked to the HELOC. In some cases, creditors may offer optional features on the HELOC at different periodic interest rates from the generally applicable variable rate

feature, such as fixed-rate features. Under the proposal, in this example, creditors offering HELOCs subject to § 226.5b would be required to itemize the interest charges applicable to the general variable-rate feature separate from the interest charges applicable to other features (such as fixed rate optional features) that are subject to different periodic interest rates. Proposed Sample G–24(A) in Appendix G to part 226 illustrates the proposal.

Although creditors offering HELOCs subject to § 226.5b are not currently required to itemize interest charges, these creditors often do so. For example, creditors may separately disclose the dollar interest costs associated with advances under the general variable-rate feature and advances under fixed-rate optional features. The Board believes that the breakdown of interest charges by features subject to different periodic interest rates enables consumers to better understand the cost of using each feature.

This proposal regarding itemization of interest charges differs from the provision for itemization of interest charges applicable to open-end (not home-secured) credit plans that the Board adopted in the January 2009 Regulation Z Rule. Specifically, creditors offering open-end (not home-secured) credit plans must itemize interest charges by transaction type, regardless of whether the same rate applies to the types of transactions. Unlike for open-end (not home-secured) credit, the Board is not proposing for HELOC accounts to require an itemization of interest charges by transaction type in all cases, even if the same rates apply to those types of transactions (although creditors are permitted to do so). The distinction between types of transactions (such as purchases and cash advances) is generally more important for open-end (not home-secured) credit plans—particularly unsecured credit card accounts—than for HELOCs. For unsecured credit card accounts, different rates, fees and other account terms typically apply to purchases and cash advances. The Board believes that requiring a breakdown of interest charges by transactions type in all cases for unsecured credit cards, even if a particular unsecured credit card does not apply different rates to purchases and cash advances, provides for uniformity in periodic statements and allows consumers to compare more easily one unsecured credit card account with other unsecured credit card accounts the consumer may have. As discussed above, most HELOC accounts do not charge different rates on purchases and cash advances.

Fees. For HELOC accounts, existing § 226.7(a)(6)(ii) requires the disclosure of ''other charges'' parallel to the requirement in TILA Section 127(a)(5) and § 226.6(b) to disclose such charges at account opening. *See* 15 U.S.C. 1637(a)(5). Consistent with current rules to disclose ''other charges,'' proposed § 226.7(a)(6)(iii) requires that charges other than interest be identified consistent with the feature (*e.g.,* cash advances or fixed-rate transactions) or type (*e.g.*, late-payment or over-the-limit), and itemized. The proposal differs from current requirements in the following respect: Fees would be required to be grouped together and a total of all fees for the statement period and year to date would be required, as discussed in more detail below.

In consumer testing conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule, the Board tested in the fall of 2008 consumers' ability to identify fees (1) on periodic statements where fees were grouped together and (2) on periodic statements where fees were interspersed with transactions, and the fees and transactions were listed in chronological order. Testing evidence showed that the periodic statement with grouped fees performed better among participants with respect to identifying fees.

Consumers' ability to match a transaction fee to the transaction giving rise to the fee was also tested. Among participants who correctly identified the transaction to which they were asked to find the corresponding fee, a larger percentage of consumers who saw a statement on which account activity was arranged chronologically were able to match the fee to the transaction than when the fees were grouped together; however, out of the participants who were able to identify the transaction to which they were asked to find the corresponding fee, the percentage of participants able to find the corresponding fee was very high for both types of listings.

The Board believes that the ability to identify all fees is important for consumers to assess their cost of credit. As discussed above, the Board would expect that the vast majority of consumers with HELOC accounts would not comprehend the effective APR; thus, the Board believes that highlighting fees and interest for consumers would more effectively inform consumers of their costs of credit on HELOC accounts. As also discussed above, the results of consumer testing on credit card disclosures indicated that grouping fees together on periodic statements for unsecured credit cards helped consumers find fees more easily. Based on this consumer testing, the Board proposes under § 226.7(a)(6)(iii) to require creditors offering HELOCs subject to § 226.5b to group fees together. The Board proposes this rule pursuant to its authority in TILA Section 105(a) to make adjustments and exceptions to the requirements in TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Under the proposal, a creditor would be required to group all fees assessed on the account during the billing cycle together under one heading even if fees may be attributable to different users of the account or to different sub-accounts.

The Board solicits comment on this aspect of the proposal. Specifically, the Board solicits comment on whether grouping fees together (and not allowing them to be interspersed with transactions) is necessary to help consumer find fees more easily on HELOC accounts. The Board understands that consumers may use unsecured credit cards differently than HELOC accounts, even where the HELOC is linked to a credit card device. For example, consumers may use unsecured credit cards to engage in a significant number of smaller transactions per billing cycle. On the other hand, consumers appear to use their HELOC accounts for only a small number of larger transactions each billing cycle, even if those HELOCs are linked to credit card devices. Consumers may have more difficulty identifying fees on unsecured credit cards when the fees are interspersed with transactions because of the large number of transactions shown on the periodic statement. The Board solicits comment on the typical number of transactions and fees shown on periodic statements for HELOC accounts. The Board also solicits comment on the burden on creditors and the benefit to consumers of requiring fees to be grouped together on periodic statements for HELOC accounts.

Cost totals for the statement period and year to date. Under this proposal, creditors offering HELOCs subject to § 226.5b would be required to disclose the total amount of interest charges and fees for the statement period and calendar year to date. *See* proposed § 226.7(a)(6)(ii) and (iii). The Board believes that providing consumers with the total of interest and fee costs, expressed in dollars, for the statement period and year to date would be a

significant enhancement to consumers' ability to understand the overall cost of credit for the account. The Board's consumer testing on credit card disclosures in relation to the January 2009 Regulation Z Rule indicates that consumers notice and understand credit costs expressed in dollars. In addition, year-to-date cost information enables consumers to evaluate how the use of an account may impact the amount of interest and fees charged over the year and thus promotes the informed use of credit.

Proposed comment 7(a)(6)–3 provides guidance on how creditors may disclose the year-to-date totals at the end of a calendar year on monthly and quarterly statements. Proposed comment 7(a)(6)–5 provides guidance on creditors' duty to reflect refunded fees or interest in year-to-date totals.

Proposed comments 7(a)–6 and –7 clarify a creditor's obligations under § 227.7(a)(6) when it acquires a HELOC account from another creditor or when a creditor replaces one HELOC account it has with a consumer with another HELOC account. The proposed comments would generally provide that the creditor must include the interest charges and fees incurred by the consumer prior to the account acquisition or replacement in the aggregate totals provided for the statement period and calendar year to date after the change. At the creditor's option, the creditor would be allowed to add the prior charges and fees to the disclosed totals following the change, or it may provide separate totals for each time period. Comment is requested regarding the operational issues associated with carrying over cost totals in the circumstances described in the proposed commentary.

Format requirements. Under proposed § 226.7(a)(6)(i), interest charges and fees must be grouped together and listed in proximity to transactions identified under § 226.7(a)(2), in a manner substantially similar to proposed Sample G–24(A) in Appendix G to part 226. In consumer testing conducted by the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule, consumers consistently reviewed transactions identified on their periodic statements and noticed fees and interest charges when they were grouped together, and disclosed in proximity to the transactions on the statement. The Board believes that similar results would exist with respect to HELOC accounts. Some HELOC creditors also disclose these costs in account summaries or in a progression of figures associated with disclosing finance charges attributable to periodic interest rates. This proposal does not affect creditors' flexibility to provide this information in these summaries. *See* proposed Samples G–24(B) and G–24(C), which illustrate, but do not require, these summaries. Nonetheless, creditors would be required to group interest charges and fees together and list them in proximity to transaction identified in § 226.7(a)(2), regardless of whether these creditors also provide information about interest and fees in the account summaries. The Board believes that TILA's purpose to promote the informed use of credit would be furthered significantly if consumers are uniformly provided basic cost information—interest and fees—in a location they routinely review.

7(a)(7) Change-in-Terms and Increased Penalty Rate Summary

For the reasons set forth in the section-by-section analysis to proposed § 226.9(c) and (i), the Board proposes to require creditors that provide a change-in-terms notice required by proposed § 226.9(c)(1), or a rate increase notice required by proposed § 226.9(i), on or with the periodic statement, to disclose the information in proposed § 226.9(c)(1)(iii)(A) or proposed § 226.9(i)(3) on the periodic statement in accordance with the format requirements in proposed § 226.9(c)(1)(iii)(B), and proposed § 226.9(i)(4).

7(a)(8) Grace Period

Section 226.7(a)(8), which implements TILA Section 127(b)(9), requires a creditor offering HELOCs subject to 226.5b to disclose on the periodic statement the date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. 15 U.S.C. 1637(b)(9). If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

Comment 7(a)(8)–1 provides that although the creditor is required under § 226.7(a)(8) to indicate on the periodic statement any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the account-opening disclosure statement.

The Board proposes to revise this comment to provide that in describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement and to cross reference proposed § 226.6(a)(2)(xxi) that contains required terminology that a creditor must use in describing a grace period beneath the account-opening table described in proposed § 226.6(a)(1). As discussed in the section-by-section analysis to proposed § 226.6(a)(2)(xxi), the Board proposes to require that a creditor disclose below the account-opening table the date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. In disclosing a grace period that applies to all features on the account, the Board proposes to require a creditor to use the phrase ''How to Avoid Paying Interest'' as the heading for the information below the table describing the grace period.

7(a)(9) Address for Notice of Billing Errors

Consumers who allege billing errors must do so in writing. *See* 15 U.S.C. 1666; § 226.13(b). Section 226.7(a)(9), which implements TILA Section 127(b)(10), requires creditors offering HELOCs subject to § 226.5b must provide on or with periodic statements an address for this purpose. 15 U.S.C. 1637(b)(10). Former comment 7(k)–1 provides that creditors may also provide a telephone number along with the mailing address as long as the creditor makes clear a telephone call to the creditor will not preserve consumers' billing error rights. In many cases, an inquiry or question can be resolved in a phone conversation, without requiring the consumer and creditor to engage in a formal error resolution procedure.

In the January 2009 Regulation Z Rule, the Board moved this comment to 7(a)(9)–2 and updated it to address notification by e-mail or via a Web site. Specifically, this comment states that the address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or via a Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning. (See also comment 13(b)–2, which addresses circumstances under which electronic notices are deemed to satisfy the written billing error requirement.) This rule gives consumers flexibility to attempt to resolve inquiries or questions about billing statements informally, while advising them that if the matter is not resolved in a telephone call or via e-

mail, the consumer must submit a written inquiry to preserve billing error rights. Under this proposal, the revised comment would be retained in 7(a)(9)–2.

7(a)(10) Closing Date of Billing Cycle; New Balance

Section 226.7(a)(10), which implements TILA Section 127(b)(8), requires creditors offering HELOCs subject to § 226.5b to disclose the closing date of the billing cycle and the account balance outstanding on that date. 15 U.S.C. 1637(b)(8). The Board proposes no changes to these disclosure requirements.

Late-Payment Disclosures

In 2005, the Bankruptcy Act amended TILA to add Section 127(b)(12), which required creditors that charge a late-payment fee to disclose on the periodic statement (1) the payment due date, or, if the due date differs from when a late-payment fee would be charged, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. *See* 15 U.S.C. 1637(b)(12). In the January 2009 Regulation Z Rule, the Board implemented this section of TILA for open-end (not home-secured) plans. In addition, in the **SUPPLEMENTARY INFORMATION** to the January 2009 Regulation Z Rule, the Board stated its intention to implement this section of TILA for HELOC accounts subject to § 226.5b as part of its review of rules affecting home-secured credit.

The Credit Card Act (cited above) was enacted in May 2009. Section 202 of the Credit Card Act amends TILA Section 127(b)(12) to provide that for a ''credit card account under an open-end consumer credit plan,'' a credit card issuer that charges a late-payment fee must disclose in a conspicuous location on the periodic statement (1) the payment due date, or, if the due date differs from when a late-payment fee would be charged, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. In addition, if a late payment may result in an increase in the APR applicable to the account, a credit card issuer also must provide on the periodic statement a disclosure of this fact, along with the applicable penalty APR. The disclosure related to the penalty APR must be placed in close proximity to the due-date disclosure discussed above. Finally, if a credit card issuer is a financial institution which maintains branches or offices at which payments on a credit card account under an open-end consumer credit plan are accepted from a cardholder in person, the date on which the cardholder makes a payment on the account at the branch or office must be considered to be the date on which the payment is made for determining whether a late-payment fee may be imposed due to the failure of the cardholder to make payment by the due date for such payment. These amendments to TILA Section 127(b)(12) become effective February 22, 2010. *See* Credit Card Act § 3.

The Board is interpreting the term ''credit card account under an open-end consumer credit plan,'' as that term is used in TILA Section 127(b)(12), not to include HELOC accounts subject to § 226.5b, even if those accounts may be accessed by a credit card device. Thus, the provisions in TILA Section 127(b)(12), as amended by the Credit Card Act, would not apply to HELOC accounts. The Board makes this interpretation pursuant to its authority in TILA Section 105(a) to prescribe regulations to carry out the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a).

In addition, the Board does not propose to use its authority in TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA to apply newly-revised TILA Section 127(b)(12) to HELOC accounts subject to § 226.5b. 15 U.S.C. 1604(a). The Board believes that the late-payment disclosures and the provision about crediting of payments made at a financial institution's branches or offices are not needed for HELOC accounts to effectuate the purposes of TILA. The consequences to a consumer of not making the minimum payment by the due date are less severe for HELOC accounts than for unsecured credit cards. As discussed in more detail below, unlike with unsecured credit cards, creditors offering HELOC accounts subject to § 226.5b typically do not impose a late-payment fee until 10–15 days after the payment is due. In addition, under the proposal, creditors offering HELOC accounts would be restricted from terminating and accelerating the account, permanently suspending the account or reducing the credit line, or imposing penalty rates or penalty fees (except for the contractual late-payment fee) for a consumer's failure to pay the minimum payment due on the account, unless the payment is more than 30 days late.

Late-payment fee. For HELOC accounts, the Board does not believe that disclosure of the late-payment fee is needed on the periodic statement to effectuate the purposes of TILA. The Board understands that creditors offering HELOCs subject to § 226.5b generally are restricted by state law, or the terms of the account agreement or both, from imposing a late-payment fee until a certain number of days have elapsed following a due date—typically 10–15 days after the due date. In contrast, most unsecured credit card issuers will impose a late-payment fee if the payment is not received by the due date. Some unsecured credit card issuers may provide informal ''courtesy periods'' that are not part of the legal agreement where the card issuer will not impose a late-payment fee if a cardholder's payment is received after the due date but before the end of the ''courtesy period.'' Nonetheless, these ''courtesy periods'' are typically only one to three days, not 10–15 days long.

In addition, some unsecured credit card issuers currently consider payment in person at their branches or offices to be non-conforming payments, and thus, under current Regulation Z, may delay crediting of these payments for up to five days after these payments are received at the branch or office. *See* current § 226.10(b). Under the Credit Card Act, unsecured credit card issuers must consider the date on which a person makes payment in person at the issuer's branches or offices as the date on which the payment is made for determining whether a late-payment fee may be imposed. By contrast, even if creditors offering HELOCs subject to § 226.5b treat payments in person at branches or offices as non-conforming payments and delay crediting of these payments for up to five days after the payments are received, this delay in crediting typically will not result in late-payment fees because, as discussed above, creditors for HELOC accounts typically do not impose late-payment fees until the account is 10–15 days past due.

Penalty rates and fees. Under the Credit Card Act, if a late payment may result in an increase in the APR applicable to the account, a credit card issuer offering an unsecured credit card account must provide on the periodic statement a disclosure that a late payment may result in a penalty APR, along with the applicable penalty APR. For unsecured credit card accounts, some credit card issuers currently increase the rates applicable to both existing balances and new transactions on a consumer's account to a penalty rate if a consumer does not pay by the due date just one time. Under Section 101 of the Credit Card Act, unsecured credit card issuers would be restricted from increasing a rate or fee during the

first year after an account is opened unless the consumer is more than 60 days late in making the minimum payment, in which case the creditor could apply the increase rate or fee to existing balances and new transactions. *See* Credit Card Act § 101(b). After the first year an account is opened, unsecured credit card issuers may increase rates or fees on new transactions for a late payment, even if the consumer is only one day late in making the minimum payment. If the consumer is more than 60 days late, an unsecured credit card issuer may increase the rates or fees on all transactions (including existing balances). Credit Card Act § 101(d). These provisions become effective February 22, 2010. *See* Credit Card Act § 3.

The Board does not believe that a disclosure of the penalty APR on the periodic statement is needed for HELOC accounts to effectuate the purposes of TILA. In this proposal, the Board proposes strict limits on when penalty rates or penalty fees may be imposed for HELOCs subject to § 226.5b. As discussed in the section-by-section analysis to § 226.5b(f), the Board proposes to restrict creditors offering HELOCs subject to § 226.5b from imposing a penalty rate or penalty fees (except for a contractual late-payment fee) on the account for a consumer's failure to pay the account when due, unless the consumer is more than 30 days late in paying the account. As discussed above, under the Credit Card Act, after the first year an account is opened, unsecured credit card issuers may increase rates or fees on new transactions for a late payment, even if the consumer is only one day late in making the minimum payment. Unlike with unsecured credit cards, even after the first year that the account is open, creditors offering HELOC accounts subject to § 226.5b could not impose penalty rates or penalty fees (except for a contractual late-payment fee) on new transactions for a consumer's failure to pay the minimum payment on the account, unless the consumer's payment is more than 30 days late.

Other actions. Under the proposal, HELOC creditors would not be restricted from temporarily suspending the account or reducing the line if a consumer does not pay by the due date (assuming that failure to pay by the due date is considered a default of a material obligation under the HELOC contract). *See* § 226.5b(f)(3)(vi)(C). Nonetheless, even though creditors may have the right under the HELOC contract to suspend temporarily the account or reduce the credit line if a consumer does not pay by the due date (*i.e.*, one day delinquent on the account), the Board understands that creditors typically do not temporarily suspend the account or reduce the credit line until the consumer's payment is at least 10–15 days late on the account, and oftentimes later.

For all the reasons discussed above, the Board does not propose to use its authority under TILA Section 105(a) to require creditors offering HELOC accounts subject to § 226.5b to provide the late-payment disclosures on periodic statements, or to comply with the provision about crediting of payments made at a financial institution's branches or offices, as set forth in the Credit Card Act. The Board solicits comment on this aspect of the proposal.

Minimum Payment Disclosures

The Bankruptcy Act added TILA Section 127(b)(11) to require creditors that extend open-end credit to provide a disclosure on the front of each periodic statement in a prominent location about the effects of making only minimum payments. 15 U.S.C. 1637(b)(11). This disclosure included: (1) A ''warning'' statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made; and (3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay his or her actual account balance.

In the January 2009 Regulation Z Rule, the Board implemented this section of TILA. In that rulemaking, the Board limited the minimum payment disclosures required by the Bankruptcy Act to credit card accounts, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The Board exempted all HELOC accounts from the minimum payment disclosures required by the Bankruptcy Act, even where the HELOC account could be accessed by a credit card device. In the **SUPPLEMENTARY INFORMATION** to the January 2009 Regulation Z Rule, the Board explained that the minimum payment disclosures would not appear to provide additional information to consumers that is not already disclosed to them with the application under § 226.5b(d)(5)(i) and at account opening under § 226.6(a)(3)(ii). Specifically, § 226.5b(d)(5)(i) requires a creditor to disclose with the application the length of the draw period and any repayment period. A creditor is also required to provide this information at account opening under § 226.6(a)(3)(ii). The Board stated that these disclosures appear to be sufficient for HELOC consumers because, unlike most unsecured credit card accounts, most HELOCs have a fixed repayment period determinable at the outset of the plan. In addition, the Board stated that the cost to creditors of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, appeared not to be justified by the limited benefit to consumers.

The Credit Card Act substantially revised this section of TILA. Specifically, Section 201 of the Credit Card Act amends TILA Section 127(b)(11) to provide that creditors that extend open-end credit must provide the following disclosures on each periodic statement: (1) A ''warning'' statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the number of months that it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and if no further advances are made; (3) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made; (4) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and (5) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services. *See* Credit Card Act § 201. These provisions become effective February 22, 2010. *See* Credit Card Act § 3.

The Board proposes that the minimum payment disclosures required by TILA Section 127(b)(11), as amended by the Credit Card Act, not apply to HELOC accounts, including HELOC accounts that can be accessed by a credit card device. The Board proposes this rule pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers'

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

The Board has considered each of these factors carefully, and based on that review, believes that the proposed exemption is appropriate. The Board believes that the minimum payment disclosures in the Credit Card Act would be of limited benefit to consumers for HELOC accounts and are not necessary to effectuate the purposes of TILA. As discussed above, the Board understands that most HELOCs have a fixed repayment period. Under the proposal, creditors offering HELOCs subject to § 226.5b would be required to disclose the length of the plan, the length of the draw period and the length of any repayment period in the disclosures that must be given within three business days after application (but not later than account opening). *See* proposed § 226.5b(d)(9)(i). In addition, this information also must be disclosed at account opening under proposed § 226.6(a)(2)(v)(A). Thus, for a HELOC account with a fixed repayment period, a consumer could learn from those disclosures the amount of time it would take to repay the HELOC account if the consumer only makes required minimum payments. The cost to creditors of providing this information a second time, including the costs to reprogram periodic statement systems, appears not to be justified by the limited benefit to consumers.

In addition, the Board does not believe that the disclosure about total cost to the consumer of paying that balance in full (if the consumer pays only the required minimum monthly payments and if no further advances are made) would be useful to consumers for HELOC accounts. The Board understands that HELOC consumers intend to finance the transactions made on the HELOC account over a number of years, and often will not have the ability to repay the balances on the HELOC account at the end of each billing cycle, or even within a few years. By contrast, consumers tend to use unsecured credit cards to engage in a significant number of small dollar transactions per billing cycle, and may not intend to finance these transactions for many years. HELOC consumers, however, tend to use HELOC accounts for larger transactions that they can finance at a lower interest rate than is offered on unsecured credit cards, and intend to repay these transactions over the life of the HELOC account. To illustrate, the Board's 2007 Survey of Consumer Finances data indicates that the median balance on HELOCs (for families that had a balance at the time of the interview) was $24,000, while the median balance on credit cards (for families that had a balance at the time of the interview) was $3,000.[40]

The nature of consumers' use of HELOCs also underlie the Board's belief that periodic disclosure of the monthly payment amount required for the consumer to eliminate the outstanding balance in 36 months, and the total cost to the consumer of paying that balance in full if the consumer pays the balance over 36 months, would not provide useful information to consumers for HELOC accounts.

For all these reasons, the Board proposes to exempt HELOC accounts (even when they are accessed by a credit card account) from the minimum payment disclosure requirements set forth in TILA Section 127(b)(11), as revised by the Credit Card Act.

Format Requirements Related to Late-Payment and Minimum Payment Disclosures

Under the January 2009 Regulation Z Rule, creditors offering open-end (not home-secured) plans are required to disclose the payment due date on the front side of the first page of the periodic statement. The amount of any late-payment fee and penalty APR that could be triggered by a late payment is required to be disclosed in close proximity to the due date. In addition, the ending balance and the minimum payment disclosures must be disclosed closely proximate to the minimum payment due. Also, the due date, late-payment fee, penalty APR, ending balance, minimum payment due, and the minimum payment disclosures must be grouped together. *See* § 226.7(b)(13). In the Supplementary Information to the January 2009 Regulation Z Rule, the Board stated that these formatting requirements were intended to fulfill Congress' intent to have the new late payment and minimum payment disclosures enhance consumers' understanding of the consequences of paying late or making only minimum payments. Because the Board proposes not to require the late-payment disclosures (*i.e.,* the due date, late-payment fee and penalty APR) and the minimum payment disclosures for HELOC accounts, the Board proposes not to require the format requirements described above for HELOC accounts.

Section 226.9 Subsequent Disclosure Requirements

Section 226.9 sets forth a number of disclosure requirements that apply after a HELOC subject to § 226.5b is opened, including a requirement to provide at least 15 days' advance notice whenever a term required to be disclosed in the account-opening disclosures is changed, and a requirement to provide notice of the action taken and specific reasons for the action when a HELOC creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(i) or (f)(3)(vi).

9(c) Change in Terms

Under § 226.9(c) of Regulation Z, a creditor must notify a consumer of certain changes to the terms of an open-end plan. The general rule has been that a change-in-terms notice must be given 15 days in advance of the effective date of the change, with some exceptions. Advance notice has not been required in all cases; for example, if an interest rate increases due to a consumer's default or delinquency, notice has been required, but not in advance of the rate increase. In addition, no notice (either advance or contemporaneous) has been required if the specific change is set forth in the account-opening disclosures.

In the January 2009 Regulation Z Rule, the Board adopted a number of revisions to the requirements for change-in-terms notices. The revisions are intended to improve consumers'

[40] Brian Bucks, *et al.,* Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 2009).

awareness about changes to their account terms or increased rates due to delinquency, default, or otherwise as a penalty, and to enhance consumers' ability to shop for alternative financing before the changes become effective. First, the revisions expand the circumstances in which consumers receive advance notice of changed terms, or of increased rates due to delinquency or default or otherwise as a penalty. Second, the revisions provide consumers with earlier notice. Third, the revisions introduce format requirements to make the disclosures about changes in terms, or of increased rates due to delinquency, default or otherwise as a penalty, more effective.

The January 2009 revisions to the change-in-terms notice rules do not affect HELOCs subject to § 226.5b; the revised rules for credit card and other open-end (not home-secured) credit appear in § 226.9(c)(2) and 226.9(g) (for increased rates due to delinquency, default or otherwise as a penalty), while the existing rules are preserved for HELOCs in § 226.9(c)(1). In the January 2009 Regulation Z Rule, the Board stated that the change-in-terms rules for HELOCs would be addressed in the review of open-end (home-secured) credit.

The Board is proposing to revise the change-in-terms rules for HELOCs to parallel generally the revisions adopted for open-end (not home-secured) credit, including with regard to the circumstances covered, timing, and format, although with some differences. The Board believes that the purposes underlying the revisions to the change-in-terms rules for open-end (not home-secured) credit—to improve consumers' awareness of changes in their account terms and to enhance consumers' ability to seek alternative sources of credit—are applicable to HELOC credit as well. The proposed revisions to § 226.9(c)(1) are explained in the section-by-section discussion below. The proposal regarding notice of increased rates due to delinquency, default or otherwise as a penalty would be set forth in new § 226.9(*i*) and is explained in the section-by-section discussion of that section. In addition to the substantive changes discussed below, other minor revisions would be made, such as to change cross-references as appropriate for new or renumbered provisions, substitute examples and other wording appropriate for HELOCs for wording appropriate for credit card accounts or other open-end (not home-secured) credit, or conform wording to the revised wording in § 226.9(c)(2) for open-end (not home-secured) credit.

9(c)(1) Rules Affecting Home-Equity Plans

Comment 9(c)(1)–1, which discusses changes that do not require notice because the specific change has been set forth in the account-opening disclosures, would be revised. First, the phrase ''Except as provided in § 226.9(*i*)'' would be added, referring to the fact that under proposed new § 226.9(*i*), notice of increased rates due to delinquency, default or otherwise as a penalty would be required under § 226.9(*i*) even though that change was set forth in the account-opening disclosures. Second, language referring to a rate increase occurring because a preferential rate ends (such as because the consumer is no longer employed by the creditor or because the consumer no longer maintains a certain balance in a deposit account with the creditor) would be deleted because rate increases triggered by these events would require notice under proposed § 226.9(*i*), discussed below, even though they would not require notice under § 226.9(c).

Comment 9(c)(1)–3 would be revised by deleting the phrase ''or increases the minimum payment'' as redundant, because the minimum payment is a required disclosure under § 226.6(a); the comment already requires notice of changes affecting any term required to be disclosed under § 226.6(a). This comment would also be revised to delete the example referring to a grace period because the Board understands that grace periods (in which interest does not accrue on an outstanding balance) are not typical in HELOCs.

9(c)(1)(i) Written Notice Required

The requirement for notice 15 days in advance of the effective date of a change would be changed to require notice 45 days in advance, for the same reasons the Board adopted this requirement for open-end (not home-secured) credit. As discussed in the January 2009 Regulation Z Rule, the Board believes that the shorter notice periods suggested by some commenters on the June 2007 Regulation Z Proposal, such as 30 days or one billing cycle, would not provide consumers with sufficient time to shop for and possibly obtain alternative financing. The 45-day advance notice requirement refers to when the change-in-terms notice must be sent, but as discussed in the June 2007 Regulation Z Proposal, it may take several days for the consumer to receive the notice. As a result, as stated in the January 2009 Regulation Z Rule, the Board believes that the 45-day advance notice requirement will give consumers, in most cases, at least one calendar month after receiving a change-in-terms notice to seek alternative financing or otherwise to mitigate the impact of an unexpected change in terms.

The Board solicits comment on whether 45 days is an appropriate period for the advance notice requirement for changes in terms of HELOCs. Commenters are asked to address, for example, whether it may be more difficult to seek alternative financing or otherwise mitigate the impact of a change in terms for HELOCs than for credit card accounts, as well as whether, because changes in terms are more narrowly restricted for HELOCs than for credit card accounts, the impact on consumers of term changes for HELOCs is likely to be less severe than for credit cards and thus the proposed time period is likely adequate.

In other changes to this paragraph, the phrase ''or the required minimum periodic payment is increased'' would be deleted as redundant because the minimum payment is a required disclosure under current § 226.6(a)(3) (redesignated as proposed § 226.6(a)(2)(v)(B)); the rule already requires notice of changes affecting any term required to be disclosed under § 226.6(a). A sentence would be added to clarify that an increase in the rate due to delinquency, default or otherwise as a penalty would require notice under proposed new § 226.9(*i*) rather than under § 226.9(c)(1).

Revisions would be made to comments 9(c)(1)(i)–1 through –4 to refer to the proposed requirement for notice 45 days in advance rather than 15 and to replace examples of changes appropriate for credit cards and other open-end (not home-secured) credit with examples more appropriate for HELOCs, or to replace examples that would not be permissible for HELOCs with examples that would be permissible. In comment 9(c)(1)(i)–3, language referring to a consumer's general acceptance of a creditor's contract reservation of the right to change terms, as well as other unilateral term changes, would be deleted, to avoid the possible inference that such changes in terms would be permissible under § 226.5b(f). In comment 9(c)(1)(i)–4, language would be added to clarify that a complete set of account-opening disclosures containing the changed term does not qualify as a change-in-terms notice if § 226.9(c)(1)(iii) applies. (Section 226.9(c)(1)(iii), as discussed below, would require that disclosures required to be in a tabular format in the account-opening disclosures also appear in a tabular format, and meet other formatting requirements, when the

disclosed terms change. However, changes in other disclosures, not required to be in a tabular format at account opening, would not be subject to these requirements.)

Comment 9(c)(1)(i)–5, which discusses changes involving addition of a security interest or addition or substitution of collateral, would be deleted because the Board believes it unlikely that any of these events would occur in the case of an existing HELOC. However, the Board solicits comment on whether the comment should be retained to cover the possibility of such an event occurring.

In comment 9(c)(1)(i)–6 (redesignated as proposed comment 9(c)(1)(i)–5), the limitation to plans entered into on or after November 7, 1989, would be deleted; it appears unlikely that any HELOCs opened before that date are still in existence.

9(c)(1)(ii) Charges Not Covered by Tabular Format Requirements of § 226.6(a)(2)

Current § 226.9(c)(1)(ii) would be renumbered § 226.9(c)(1)(iv), as discussed below. The Board proposes to add, as new § 226.9(c)(1)(ii), an exception to the requirement for written advance notice of changes in terms. The exception would apply to disclosures of charges not required to appear in a tabular format in the account-opening disclosures under § 226.6(a)(2), and would parallel a similar exception for credit cards and other open-end (not home-secured) credit in § 226.9(c)(2)(ii). Under the exception, if a creditor increases a charge, or introduces a new charge, required to be disclosed under § 226.6(a)(3) but not required to appear in the summary account-opening table under § 226.6(a)(2), the creditor may either provide advance written notice under § 226.9(c)(1)(i), or provide oral or written notice of the amount of the charge at a relevant time before the consumer agrees to or becomes obligated to pay the charge. Comment 9(c)(1)(ii)–1 would discuss a fee for expedited delivery of a credit card as an example of how this exception would operate. Of course, any increase in a charge, or addition of a new charge, would have to be permissible under § 226.5b(f).

9(c)(1)(iii) Disclosure Requirements

Current § 226.9(c)(1)(iii), regarding notices to restrict credit on HELOCs subject to § 226.5b, would be renumbered as § 226.9(j) and revised, as discussed below. The Board proposes to add, as new § 226.9(c)(1)(iii), a provision specifying the content and format of disclosures for certain changes in terms, similar to the new requirements for change-in-terms notices for open-end (not home-secured) credit set forth in § 226.9(c)(2)(iii). If any of the terms required to be provided at account opening in a tabular format under § 226.6(a)(2) changes, the creditor would have to provide a summary of the changes (as set forth in proposed § 226.9(c)(1)(iii)(A)(*1*), similar to § 226.9(c)(2)(iii)(A)(*1*) for open-end (not home-secured) credit), in a tabular format (as set forth in § 226.9(c)(1)(iii)(B)(*1*), similar to § 226.9(c)(2)(iii)(B)(*1*) for open-end (not home-secured) credit), with headings and format substantially similar to any of the account-opening tables in G–15 in Appendix G.

In addition, the notice would be required to contain a statement that changes are being made to the account, a statement indicating (if applicable) that the consumer has the right to opt out of the changes, the effective date of the changes, and a statement (if applicable) that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice. These disclosures are in proposed § 226.9(c)(1)(ii)(A)(*2*) through (*5*), similar to § 226.9(c)(2)(iii)(A)(*2*) through (*5*) for open-end (not home-secured) credit.

Two other disclosures required for open-end (not home-secured) credit, found in § 226.9(c)(2)(iii)(A)(*6*) and (*7*), would not be required for HELOCs subject to § 226.5b. Section 226.9(c)(2)(iii)(A)(*6*) applies if a creditor is changing a rate on an account other than the penalty rate, and requires a disclosure that if the penalty rate currently applies to the account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate. The Board believes that this situation is unlikely to occur for HELOCs subject to § 226.5b because of the restrictions on rate increases for these HELOCs. Section § 226.9(c)(2)(iii)(A)(*7*) applies if the change being disclosed is a rate increase, and requires a disclosure of the balances to which the increased rate will apply. Section 226.9(c)(1)(iii) is not an appropriate location for this disclosure, because in general rate increases for HELOCs subject to § 226.5b, where permissible at all, must occur only as specified in the credit agreement and therefore the notice of such an increase would be provided under § 226.9(*i*) rather than § 226.9(c)(1). A similar disclosure of the balances to which the increased rate would apply is proposed under § 226.9(*i*), as discussed below.

Under proposed § 226.9(c)(1)(iii)(B)(*2*) and (*3*), if the change-in-terms notice is included on or with a periodic statement, the tabular summary required under § 226.9(c)(1)(iii)(A)(*1*) must appear on the front of any page of the statement, immediately following the other items required to be disclosed (as specified in § 226.9(c)(1)(iii)(A)(*2*) through (*5*)). If the notice is not included on or with a periodic statement, the tabular summary must appear on the front of the first page of the notice or segregated on a separate page from other information given with the notice, immediately following the other items. These requirements would be similar to those applicable to open-end (not home-secured) credit, as set forth in § 226.9(c)(2)(iii)(B)(*2*) and (*3*).

The Board is proposing these content and format rules for the same reasons as for the new open-end (not home-secured) credit rules adopted in the January 2009 Regulation Z Rule. As discussed in the January 2009 Regulation Z Rule, consumer testing conducted on behalf of the Board suggests that consumers tend to set aside change-in-terms notices when they are presented as a separate pamphlet inserted in the periodic statement. In addition, testing prior to the June 2007 Regulation Z Proposal also revealed that consumers are more likely to identify the changes to their account correctly if the changes in terms are summarized in a tabular format. Quantitative consumer testing conducted in the fall of 2008 confirmed that disclosing a change in terms in a tabular summary on the statement (versus a disclosure on the statement indicating that changes were being made to the account and referring to a separate change-in-terms insert) led to a small increase in the percentage of consumers who were able to identify correctly the new rate that would apply to the account following the change. As stated in the January 2009 Regulation Z Rule, the Board believes that as consumers become more familiar with the new format for the change-in-terms summary, which was new to all testing participants, they may become better able to recognize and understand the information presented. The same could be expected to apply to the change-in-terms summary for HELOCs.

Although the Board has not yet conducted consumer testing of change-in-terms notices for HELOCs, consumer testing of disclosures provided at application and account-opening for HELOCs indicates, as discussed above, that consumers find disclosures

presented in a tabular format more useful and understandable than disclosures in the current format; thus the Board proposes to require such a format for the HELOC application and account-opening disclosures. A tabular format standard for change-in-terms notices for HELOCs would be consistent with this approach and could be expected to result in greater noticeability and consumer comprehension of HELOC change-in-terms notices. The Board intends to conduct consumer testing of tabular-format change-in-terms notices for HELOCs during the comment period on this proposal.

Proposed comments 9(c)(1)(iii)(A)–1 through –10 provide guidance on the change-in-terms disclosures required under § 226.9(c)(1)(iii)(A), and parallel comments 9(c)(2)(iii)(A)–1 through 10 applying to open-end (not home-secured) credit change-in-terms disclosures. The changes discussed in comments 9(c)(1)(iii)(A)–1 through –7 might or might not be permissible under § 226.5b(f) depending upon the circumstances; therefore, language would be included in each of these comments to refer to change in terms restrictions for HELOCs subject to § 226.5b, to avoid implying that the changes discussed would be permissible in all cases.

9(c)(1)(iv) Notice Not Required

Section 226.9(c)(1)(ii) in the current regulation (as modified by the January 2009 Regulation Z Rule) relates to changes for which a change-in-terms notice is not required (reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding), and would be renumbered § 226.9(c)(1)(iv). Language would be added to clarify that suspension of credit privileges, reduction of a credit limit, or termination of an account would not require notice under § 226.9(c)(1)(i), but must be disclosed pursuant to § 226.9(j), discussed below.

In comment 9(c)(1)(ii)–1 (renumbered comment 9(c)(1)(iv)–1), two examples of changes not requiring notice—paragraphs i. (change in the consumer's credit limit) and iv. (termination or suspension of credit privileges)—would be deleted, because such actions (assuming they were permissible under § 226.5b(f)) would require notice, although notice under § 226.9(j) rather than § 226.9(c)(1)(i). A new paragraph iv. would be added to clarify that suspension of credit privileges, reduction of a credit limit, or termination of an account would not require notice under § 226.9(c)(1)(i), but must be disclosed pursuant to § 226.9(j). In paragraph v. (changes arising merely by operation of law; renumbered paragraph iii.), the example given (the creditor's security interest in a consumer's car automatically extending to the proceeds when the consumer sells the car) would be deleted as unlikely to apply to HELOC accounts.

In comment 9(c)(1)(ii)–2 (renumbered comment 9(c)(1)(iv)–2), relating to skip features and temporary reductions in finance charges, language would be added to clarify that the actions discussed would be permissible as beneficial changes under § 226.5b(f)(3)(iv), and that a creditor offering a temporary reduction in an interest rate must provide a notice complying with the timing, content, and format requirements of § 226.9(c)(1) prior to resuming the original rate. The latter addition parallels a clarification to the comparable comment 9(c)(2)(iv)–2, applying to open-end (not home-secured) credit, proposed for comment in the May 2009 Regulation Z Proposal.

New comments 9(c)(1)(iv)–3 and –4, similar to comments 9(c)(2)(iv)–3 and –4 for open-end (not home-secured) credit, would be added. These comments would clarify that if a creditor changes a rate from a variable rate to a non-variable rate, or vice versa (assuming such action is permissible under § 226.5b(f)), a change-in-terms notice must be provided even if the immediate effect of the change is a lower rate.

9(i) Increase in Rates Due to Delinquency or Default or as a Penalty—Rules Affecting Home-Equity Plans

As discussed above under § 226.9(c)(1)(i), an increase in the rate due to delinquency, default, or as a penalty, pursuant to the contractual terms of the consumer's account, would not require notice under § 226.9(c)(1), but would require a notice under proposed new § 226.9(*i*). Under the previous version of Regulation Z for credit cards and other open-end (not home-secured) credit (and the current version for HELOCs), if the agreement between the consumer and the creditor specifically sets forth a change that will take place upon the occurrence of a specific triggering event, a change-in-terms notice is not required when the change occurs. This rule was changed in the January 2009 Regulation Z Rule for open-end (not home-secured) credit by the addition of new § 226.9(g).

In discussing § 226.9(g) in the June 2007 Regulation Z Proposal and the January 2009 Regulation Z Rule, the Board expressed concern that the imposition of penalty rates might come as a costly surprise to consumers who are not aware of, or do not understand, what behavior constitutes a default under the credit agreement, even though for credit card and other open-end (not home-secured) credit, the account-opening disclosures are required to set forth the penalty rate. The Board also stated that it believed that consumers would be the most likely to notice and be motivated to act to avoid the imposition of the penalty rate if they receive a specific notice alerting them of an imminent rate increase, rather than a general disclosure stating the circumstances when a rate might increase.

In the case of HELOCs subject to § 226.5b, the same reasoning could be expected to apply. In addition, because the proposed account-opening disclosures for HELOCs do not include a disclosure of the penalty rate, providing notice to a consumer at the time the penalty rate is imposed is even more important. Therefore, the Board proposes to add new § 226.9(*i*) applying to HELOCs, which would generally parallel § 226.9(g) applying to open-end (not home-secured) credit.

Section 226.9(*i*)(1) would require that a creditor must provide written notice to each consumer who may be affected when a rate is increased due to the consumer's delinquency or default or otherwise as a penalty for one or more events specified in the account agreement. Rate increases could only occur, of course, as permitted under § 226.5b(f). Section 226.9(*i*)(2) would require that the notice be provided at least 45 days before the effective date of the increase, and after the occurrence of the events that trigger the imposition of the increase.

Section 226.9(*i*)(3) would specify the content of the notice, which would include a statement that the delinquency or default rate, or other penalty rate, has been triggered (§ 226.9(*i*)(3)(i)); the date on which the increased rate will apply (§ 226.9(*i*)(3)(ii)); the circumstances under which the increased rate will cease to apply to the consumer's account, or that the increased rate will remain in effect for a potentially indefinite time period (§ 226.9(*i*)(3)(iii)); and a disclosure indicating to which balances the increased rate will apply (§ 226.9(*i*)(3)(iv)). These disclosures parallel disclosures under § 226.9(g)(3)(i). One other disclosure under § 226.9(g)(3)(i), however, would not be included in § 226.9(*i*)(3): A description of any balances to which the current rate will continue to apply (§ 226.9(g)(3)(i)(E)). For credit cards, under the Credit Card Act (cited above), in some circumstances increases in rates

may be permitted to apply only to future balances; in other cases rate increases may apply to all balances, including outstanding balances. *See* Credit Card Act § 101(b) and (d). In contrast, rate increases for HELOCs subject to § 226.5b, where permissible at all (*i.e.,* for a reason that would permit termination and acceleration of the plan under § 226.5b(f)(2)), would generally apply to all balances. Thus, the disclosure under § 226.9(g)(3)(i)(E) would not appear appropriate for HELOCs. However, the disclosure under § 226.9(*i*)(3)(i)(D) may be useful to indicate, for example, whether a rate increase would apply to balances under the regular variable-rate feature of a HELOC, while not applying to balances under a fixed-rate option. The Board solicits comment on the appropriateness of this disclosure.

Section 226.9(*i*)(4) would parallel § 226.9(g)(3)(ii) and would address format requirements. Section 226.9(*i*)(4)(i) would provide that if the notice is included on or with a periodic statement, it must be in the form of a table and must appear on the front of any page of the periodic statement. Section 226.9(*i*)(4)(ii) would provide that if the notice is not included on or with a periodic statement, the disclosures must be appear on the front of the first page of the notice.

Section 226.9(*i*)(5) would parallel § 226.9(g)(4)(i) and would provide an exception for workout and temporary hardship arrangements, where the rate increases due to completion of the arrangement, or for failure to comply with the terms of the arrangement, provided that the increased rate does not exceed the rate that applied before the start of the arrangement. Two other exceptions in § 226.9(g)(4) would not be included in § 226.9(*i*)(5): A rate increase where the credit limit is exceeded, and a rate increase applicable to outstanding balances where a notice had already been provided of a rate increase on future balances. The first situation would not arise for HELOCs subject to § 226.5b because, under § 226.5b(f), a creditor may not increase an interest rate based on the credit limit being exceeded. The second situation also likely would not arise for HELOCs subject to § 226.5b because, as discussed above, a rate increase for a HELOC, if permissible at all, would not apply to future balances differently than to outstanding balances.

Comments 9(*i*)–1 through –5 would be added to the commentary and would provide general guidance regarding notices of rate increases under § 226.9(*i*). The proposed comments would parallel comments 9(g)–2 through –6 under § 226.9(g). A comment would not be added to parallel comment 9(g)–1, because that comment addresses the relationship between the change-in-terms notice requirements (and notice of rate increase requirements) under Regulation Z and the requirements under Regulation AA (or similar law) regarding unfair or deceptive acts or practices in credit card accounts, which do not apply to HELOCs subject to § 226.5b.

9(j) Notices of Action Taken for Home-Equity Plans

As noted above, § 226.9(c)(1)(iii), regarding notices to restrict credit for HELOCs subject to § 226.5b, would be redesignated as § 226.9(j)(1) and revised. Proposed § 226.9(j)(1) would retain the existing requirement that a creditor provide the consumer with notice of temporary account suspension or credit limit reduction under § 226.5b(f)(3)(i) or (f)(3)(vi), but with certain clarifications and additions. The proposal also would eliminate the existing exemption from notice requirements for a creditor that suspends advances, reduces a credit limit, or terminates a plan under § 226.5b(f)(3). *See* comment 9(c)(1)(iii)–2. Under proposed § 226.9(j)(3), creditors taking action under § 226.5b(f)(2) would be required to provide the consumer with a notice of the action taken and specific reasons for the action. To facilitate compliance, model clauses are proposed to illustrate the requirements for these notices. *See* proposed Model Clauses G–23(A) and G–23(B) in Appendix G of part 226.

9(j)(1) Notice of Action Taken Under § 226.5b(f)(3)(i) or (f)(3)(vi)

Proposed § 226.9(j)(1) would retain the existing requirement that require a creditor taking action under § 226.5b(f)(3)(i) or (f)(3)(vi) must provide to any consumer who will be affected notice of the action taken and specific reasons for the action within three business days of the action. The proposed paragraph, however, would require the creditor to include a number of additional disclosures in the notice. The clarifications and additional disclosures discussed below are proposed in response to concerns expressed during outreach conducted by the Board that creditors are not certain how to comply with the current notice requirements and that notices provided often contain unclear or incomplete information about the reasons for the action taken and the consumer's reinstatement rights. The Board's independent review of notices of action taken currently used by creditors corroborated these concerns.

First, proposed § 226.9(j)(1)(i) and comment 9(j)(1)–1 clarify that, as part of the disclosure of the action taken, the creditor must include the following basic information that the HELOC consumer whose credit privileges have been restricted needs to make appropriate financial accommodations: (1) If the creditor reduced the credit limit, the new credit limit; and (2) the date as of which the account suspension or reduction took effect.

Second, proposed § 226.9(j)(1)(ii) requires disclosure of specific reasons for the action, and proposed comments 9(j)(1)–2, –3, –4, and –5 would provide additional guidance regarding what the creditor must disclose to comply with this requirement. Proposed comment 9(j)(1)–2 requires that a creditor provide the principal reasons for the action taken, and indicates that the principal reasons should include the reason permitting the action under § 226.5b(f)(3)(i) or (vi), such as that the maximum APR has been reached or the value of property securing the plan has significantly declined.

Proposed comment 9(j)(1)–3 sets forth information that, if disclosed, would constitute compliance with the requirement to disclose the specific reasons for the action taken when the reason for the action taken is a significant decline in the property value under § 226.5b(f)(3)(vi)(A). Specifically, compliance with the requirement would be met by disclosing the following information—

(i) The value of the property obtained by the creditor.

(ii) The type of valuation method used to obtain the property value.

(iii) A statement that the consumer has a right to a copy of documentation supporting the property value on which the action was based.

The Board believes that the property value on which the creditor relied to freeze or reduce a line, and access to information about the basis for that property value finding, are integral components of the ''specific reasons'' disclosure required when a creditor freezes or reduces a line due to a significant decline in the property value. This information is also necessary for the consumer to assess whether and when to challenge the finding and request reinstatement.

Proposed comment 9(j)(1)–4 sets forth information that, if disclosed, would constitute compliance with the requirement to disclose the specific reasons for the action taken when a creditor prohibits credit extensions or reduces a credit limit because the consumer's financial circumstances have materially changed such that the

creditor has a reasonable belief that the consumer will be unable to meet the repayment obligations of the plan under § 226.5b(f)(3)(vi)(B). Specifically, compliance with the provision would be met by disclosing the type of information concerning the consumer's financial circumstances on which the creditor relied, such as information about the consumer's income, credit report information, or some other indicia of the consumer's financial circumstances, as applicable.

The Board believes that more information than simply the regulatory reason for the action taken is an appropriate element of the ''specific reasons'' disclosure requirement when action is taken due to a material change in the consumer's financial circumstances under § 226.5b(f)(vi)(B). First, the type of financial information relied on (*i.e.,* income, credit report information) gives the consumer more ''specific'' reasons for the action taken than a disclosure simply stating that the line was frozen or reduced because the consumer's financial circumstances have changed. Second, the consumer is thereby better able to assess whether to request reinstatement and to address problems that the consumer may be able to correct, such as errors in the consumer's credit report, credit performance deficiencies, or inadequate or outdated income information.

Proposed comment 9(j)(1)–5 explains when a creditor takes action because the consumer defaulted on a material obligation under the agreement (see § 226.5b(f)(3)(vi)(C)), the creditor would comply with this provision if it specified the material obligation on which the consumer defaulted. The Board believes that the material obligation on which the consumer defaulted is a key element of ''specific reasons'' disclosure requirement when action is based on a consumer's default of a material obligation. With this information, the consumer would have an opportunity to correct a default or to dispute the creditor's determination that a default occurred. Either way, the consumer would be in a better position to exercise his or her reinstatement right and to have credit privileges restored.

Proposed comment 9(j)(1)–5 also addresses the specific reasons disclosure requirement for other reasons justifying temporary line suspension or reduction. This includes the following: (1) the creditor is precluded by government action from imposing the APR provided for in the agreement (§ 226.5b(f)(3)(vi)(D)); the priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line (§ 226.5b(f)(3)(vi)(E)); the creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice (§ 226.5b(f)(3)(vi)(F)); and federal law prohibits the creditor from extending credit under a plan or requires that the creditor reduce the credit limit for a plan (§ 226.5b(f)(3)(vi)(G)). For action based on these provisions, the Board believes that a statement of the regulatory reason for the action is sufficient to comply the ''specific reasons'' disclosure requirement. The principal reason for this proposed approach is that the consumer is not likely to be able to take any steps to change the circumstances justifying the suspension or reduction.

The Board requests comment on whether more or less information than the information proposed would be appropriate to require to meet the ''specific reasons'' disclosure requirement when action is taken for any of the reasons permitted under § 226.5b(f)(3)(i) and (f)(3)(vi). The Board requests comment in particular on whether more or less information would be appropriate to require to meet the ''specific reasons'' disclosure requirement when action is taken due to a material change in the consumer's financial circumstances under § 226.5b(f)(3)(vi)(B).

Disclosure of information regarding reinstatement. Proposed § 226.9(j)(1)(iii) requires the creditor to provide certain information when the creditor has opted to require that the consumer request reinstatement before the creditor will consider restoring credit privileges. As in the existing commentary, the proposal would require that the creditor disclose that the consumer must request reinstatement. Addressing concerns that creditors may provide inadequate information about reinstatement rights to consumers, the proposal would amplify existing requirements by requiring that the creditor inform the consumer of his or her right to request reinstatement of the account at any time, and that the creditor disclose the specific manner in which the consumer should request reinstatement, including the address or telephone number to which the creditor must submit requests. In addition, the creditor must disclose that the creditor will complete an investigation of the consumer's request within 30 days of receiving the request (as required under proposed § 226.5b(g)(2)(ii)). The purpose of these disclosures is to ensure that consumers understand their rights regarding an investigation.

The proposal also requires the creditor to disclose that, in accordance with proposed § 226.5b(g)(2)(iii) and (iv), the creditor may not charge the consumer for costs associated with the investigation of the consumer's first reinstatement request made after the creditor has suspended advances or reduced the credit limit, but may charge the consumer bona fide and reasonable costs for property valuations or credit reports associated with investigations of any requests that the consumer makes after the first request. This provision is intended to put the consumer on notice of the potential for additional costs when requesting reinstatement. The reasons for proposing the above rules regarding when creditors may charge consumers fees for investigating a reinstatement request are discussed in the section-by-section analysis to proposed § 226.5b(g)(2).

9(j)(2) Imposition of Fees

Proposed § 226.9(j)(2) provides that a creditor that reduces the credit limit on an account under § 226.5b(f)(3)(i) or (vi) may not charge the consumer fees for exceeding the credit limit until after the consumer has received notice of the action under § 226.9(j)(1). Similarly, after a creditor has suspended advances on an account, the creditor may not charge the consumer a fee for any advance that it denies until the consumer receives the § 226.9(j)(1) notice. Proposed § 226.9(j)(2) and comment 9(j)(2)–1 specify that in general only fees disclosed in the original agreement may be charged and that these would be subject to the notice waiting period. Imposing denied advance or over-the-limit fees not disclosed in the original agreement would be permitted only if an exception to the general limitations on changing home-equity plan terms under § 226.5b(f) applies.

The Board believes that imposition of denied advance or over-the-limit fees before the consumer has notice of the suspension on advances or credit limit reduction is inappropriate for at least two reasons. First, consumers who did not yet receive the notice of action taken under § 226.9(j)(1) presumably did not know of the credit limit reduction or suspension of advances and may have attempted to access their home-equity funds with the good faith expectation that these funds would be available to them. Second, in many cases, action taken under § 226.5b(f)(3)(i) or (f)(3)(vi) is based on circumstances beyond the consumer's control, such as the maximum rate being reached or a significant decline in the value of the consumer's dwelling. Prohibiting

creditors from imposing over-the-limit or denied advance fees until consumers have appropriate notice of a suspension or credit limit reduction is intended to strengthen the protection of consumers facing the financial challenge of a HELOC freeze or reduction.

Proposed comment 9(j)(2)–2 clarifies that, for purposes of determining when the consumer receives the notice, the more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) applies referred to in § 226.2(a)(6). *See* comment 2(a)(6)–2. For example, if the creditor were to place the disclosures in the mail on Thursday, June 4, under the proposal the disclosures would be considered received on Monday, June 8. The Board proposes that the more precise definition apply to determining when § 226.9(j)(1) notices are received by the consumer to conform to the Board's rules for determining receipt of disclosures for other dwelling-secured transactions under §§ 226.19(a)(1)(ii) and 226.31(c), as well as to the Board's recently adopted rules under § 226.19(a)(2). *See* 74 FR 23289 (May 19, 2009).

The Board requests comment on this proposed limitation on when denied advance and over-the-limit fees may be charged.

9(j)(3) Notice of Action Taken Under § 226.5b(f)(2)

Proposed § 226.9(j)(2) would require creditors to provide a notice to each consumer affected by the creditor's termination and acceleration of the account, suspension of advances on the account, or reduction of the credit limit under circumstances permitting these actions pursuant to § 226.5b(f)(2). This notice requirement is intended to remedy an inconsistency in the current rules—namely, that suspending or reducing lines under § 226.5b(f)(3)(i) and (f)(3)(vi) is required under § 226.9(c)(1)(iii) (redesignated and revised in the proposal as § 226.9(j)(1)), but no notice is required for any action taken under § 226.5b(f)(2). The Board believes that this new notice requirement for actions taken under § 226.5b(f)(2) will enhance consumer protection and education by ensuring that affected consumers will know why the action was taken. As with the current and proposed notice requirement for credit restrictions under § 226.5b(f)(3)(i) and (f)(3)(vi), the proposed notice for actions taken under § 226.5b(f)(2) is not required until three business days after the action is taken, rather than before the action is taken. The principal reason for this timing is that post-action notice protects creditors from the risk that consumer may immediately draw down the line once they receive advance notice of the action; concerns about this risk were confirmed through Board outreach in preparing this proposal. The Board's recognition of this risk is reflected in the longstanding policy of requiring notice for actions under § 226.5b(f)(3)(i) and (f)(3)(vi) three business days after the action taken.

As indicated in proposed comment 5b(f)(2)–2, the specific reasons that a creditor must disclose when taking action under § 226.5b(f)(2) will vary, because § 226.5b(f)(2) allows creditors to terminate and accelerate a home-equity plan or take a lesser action, such as suspending advances or reducing the credit limit, for four reasons: (1) ''Fraud or material misrepresentation on the part of the consumer in connection with the account'' (§ 226.5b(f)(2)(i)); (2) failure of the consumer ''to make a required minimum periodic payment within 30 days after the due date for that payment'' (proposed § 226.5b(f)(2)(ii)); (3) ''any other action or failure to act by the consumer which adversely affects the creditor's security for the account or any right of the creditor to such security'' (§ 226.5b(f)(2)(iii)); or, (4) ''compliance with federal law requires the creditor to terminate and demand repayment of the entire outstanding balance in advance of the original term'' (in which case, lesser action would not be appropriate) (proposed § 226.5b(f)(2)(iv)).

Thus, proposed comment 9(j)(2)–2 explains that when a creditor takes action under § 226.5b(f)(2)(i) for a consumer's fraud or misrepresentation related to the home-equity plan, the creditor need only disclose that the action was taken due to either, as applicable, fraud or misrepresentation by the consumer; the creditor is not required to specify in the notice the nature of the fraud or misrepresentation. During Board outreach, creditors expressed concerns that a requirement to disclose the specific nature of the fraud or misrepresentation could more readily expose them to claims of libel or slander, whether spurious or not, than a generic disclosure that the consumer's fraud or misrepresentation precipitated the creditor's action. Concerns were also expressed that, even if the consumer in fact committed fraud or misrepresentation, a court may penalize the creditor for the particular way in which it phrased the nature of the fraud or misrepresentation in the notice. The Board requests comment on whether the creditor should also be required to include on the notice a toll-free telephone number that the consumer may call to receive additional information about the action taken and other information on the notice, particularly when the reason for the action is stated simply as fraud or material misrepresentation.

Also under proposed comment 5b(f)(2)–2, when a creditor takes action under § 226.5b(f)(2)(iii) for a consumer's action or inaction affecting the creditor's security interest, the creditor must include in the notice the consumer's action or inaction that threatens creditor's interest in the property securing the account, such as failing to pay property taxes or allowing a new superior lien on the property.

9(j)(3) Notices Required When Action Other Than Termination, Suspension, or Credit Limit Reduction Is Taken Under § 226.5b(f)(2)

Proposed § 226.9(j)(3) would require a creditor that takes action other than account termination, suspension, or credit limit reduction under § 226.5b(f)(2), such as a rate increase or fee, to disclose these changes according to the 45-day advance notice requirements of § 226.9(c)(1) (for fee changes) or (*i*) (for rate changes), as applicable. The Board does not believe that advance notice for these actions jeopardizes the creditor's interest as in the case of account termination, suspension, or reduction, where a concern about the consumer drawing down the full line exists. By taking lesser action such as imposing a fee or rate increase, the creditor itself has determined that adequate risk management does not require taking away from the consumer full access to the account. The proposed provision is intended to enhance consumer protection and education for the reasons discussed in this section-by-section analysis under § 226.9(c)(1) and (*i*).

Section 226.14 Determination of Annual Percentage Rate

Section 226.14 contains rules for calculation of the APR for open-end credit. Section 226.14(a) states general rules for determination of the APR, including rules on accuracy and good faith errors in disclosure. Section 226.14(b) contains rules for calculation of the APR for disclosure at the time of application for open-end (not home-secured) credit under § 226.5a or a HELOC under § 226.5b, at account opening under § 226.6, in change-in-terms notices under § 226.9, in rescission notices under § 226.15, in advertising under § 226.16, and in oral disclosures under § 226.26. The APR is calculated for purposes of these disclosures, as stated in § 226.14(b), by

multiplying each periodic rate by the number of periods in a year.

Section 226.14(b) also states the rules for calculation of the APR for disclosure on periodic statements for open-end (not home-secured) plans under § 226.7(b)(4), and for disclosure of the corresponding APR for HELOCs subject to § 226.5b under § 226.7(a)(4). The calculation rules for the § 226.7(a)(4) and (b)(4) disclosures are the same as those stated above, *i.e.,* multiply each periodic rate by the number of periods in a year. For HELOCs, creditors have the option of disclosing, in addition to the corresponding APR, the effective APR under § 226.7(a)(7). The rules for calculation of the effective APR for optional disclosure for HELOCs are set forth in § 226.14(c) and (d).

As discussed above under § 226.7, in the January 2009 Regulation Z Rule, the Board eliminated the requirement to disclose the effective APR for open-end (not home-secured) credit, and made the disclosure of the effective APR optional for HELOCs subject to § 226.5b. As also discussed above under § 226.7, the Board is now proposing to eliminate the disclosure of the effective APR for HELOCs subject to § 226.5b. Accordingly, the Board proposes to delete § 226.14(c) and (d) and the accompanying staff commentary.

Section 226.14(b) would be revised by replacing a reference to disclosures under various sections of the regulation with a reference to disclosures under Subpart B, because with the elimination of the requirement to disclose the effective APR on periodic statements, § 226.14 would now provide rules for calculation of the APR for open-end disclosures generally. Comment 14(b)-1 would be revised similarly. Comment 14(b)–1 would also be revised by deleting a sentence referring to the ''corresponding annual percentage rate,'' because that term would now become obsolete; all disclosures of the annual percentage rate would use the term ''annual percentage rate'' or ''APR.''

Appendix F—Annual Percentage Rate Computations for Certain Open-End Credit Plans

Appendix F contains guidance on calculation of the effective APR under § 226.14(c)(3) when the finance charge imposed during the billing cycle includes a charge relating to a specific transaction. As discussed above under §§ 226.7 and 226.14, the Board is proposing to eliminate the disclosure of the effective APR on periodic statements, and therefore is also proposing to delete § 226.14(c) and (d), which contain the rules for calculation of the effective APR. If the effective APR disclosure is eliminated, Appendix F will have no further purpose. Accordingly, the Board proposes to remove and reserve Appendix F and the accompanying staff commentary.

Appendix G—Open-End Model Forms and Clauses

Appendix G to part 226 sets forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z for open-end credit. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures.

As discussed in detail below, the Board proposes to modify the model clauses applicable to balance computation method disclosures, notices of liability for unauthorized use, and notices of billing-error rights; to add new model and sample forms for HELOC early disclosures and account-opening disclosures; to add new model clauses for notices of results of reinstatement investigations and for notices of actions taken on accounts in HELOCs; and to add new sample forms for HELOC periodic statements, change-in-terms notices, and notices of rate increases. In addition, as discussed below, the Board is proposing to adopt, for both open-end and closed-end credit, new samples and models for disclosures relating to credit insurance, debt cancellation or debt suspension; for a detailed discussion of these proposed disclosures and the related proposed models and samples, refer to the notice of the Board's proposal regarding closed-end mortgage lending requirements under Regulation Z, published today elsewhere in this **Federal Register**.

The staff commentary to Appendices G and H contains comment App. G and H–1, which discusses permissible changes that creditors may make to the model forms and clauses without losing protection from liability for failure to comply with the regulation's disclosure requirements. Comment App. G and H–1 also lists the models to which formatting changes may not be made because the related disclosure requirements provide that the disclosures must be made in a form substantially similar to that in the models. The Board proposes to revise comment App. G and H–1 by adding a number of proposed new open-end and closed-end models to this list.

Model clauses for balance computation methods. Under various sections of the regulation, creditors are required to disclose the method of calculating the balance to which rates are applied. *See* §§ 226.5a(b)(6), 226.6(b)(2)(vi), 226.6(b)(4)(i)(D), and 226.7(b)(5), and proposed §§ 226.6(a)(2)(xxii), 226.6(a)(4)(i)(D), and 226.7(a)(5). Under some of these provisions, the creditor is permitted in some circumstances to identify the name of the balance calculation method, but under others the creditor must in either some or all cases provide an explanation of how the balance was calculated. Model Clauses that explain commonly used methods, such as the average daily balance method, are at Appendices G–1 and G–1(A) to part 226.

In the January 2009 Regulation Z Rule, Appendix G–1(A) was added for open-end (not home-secured) plans. The clauses in Appendix G–1(A) refer to ''interest charges'' rather than ''finance charges'' to explain balance computation methods. The consumer testing conducted by the Board prior to the June 2007 Regulation Z Proposal indicated that consumers generally had a better understanding of ''interest charge'' than ''finance charge,'' which is reflected in the Board's use of ''interest'' (rather than ''finance charge'') in account-opening samples and to describe costs other than fees on periodic statement samples and forms in the January 2009 Regulation Z Rule. For HELOCs subject to § 226.5b, the January 2009 Regulation Z Rule permits creditors to use the model clauses in either Appendix G–1 or G–1(A).

Consumer testing conducted for the Board during the development of this proposal for HELOCs confirms that consumers generally understand ''interest charge'' better than ''finance charge.'' As discussed above under §§ 226.5b, 226.6, and 226.7, the Board is accordingly proposing to require use of ''interest charge'' in HELOC disclosures. Therefore, the Board proposes to delete current Appendix G–1 and to redesignate Appendix G–1(A) as Appendix G–1 for use by all creditors offering open-end credit, both HELOCs and open-end (not home-secured) credit. In addition, the commentary would be revised to delete material that refers only to the existing version of Appendix G–1, or that indicates that HELOC creditors have the option to use either Appendix G–1 or G–1(A).

Model clauses for notice of liability for unauthorized use and billing-error rights. Appendix G contains Model Clauses G–2 and G–2(A), which provide models for the notice of liability for unauthorized use of a credit card. In the January 2009 Regulation Z Rule, the Board adopted Model Clause G–2(A) for open-end (not home-secured) plans. Model Clause G–2(A) does not differ in

substance from Model Clause G–2, but was revised to improve readability. In addition, Appendix G includes Model Forms G–3 and G–3(A), which contain models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement), and G–4 and G–4(A), which contain models for the alternative billing-error rights statement (for use with each periodic statement). As with Model Clause G–2, the Board adopted Model Forms G–3(A) and G–4(A) for open-end (not home-secured) plans, with revisions to improve readability. For HELOCs subject to § 226.5b, the January 2009 Regulation Z rule permits a creditor to use either the current forms (G–2, G–3, and G–4) or the revised forms (G–2(A), G–3(A), and G–4(A)), in order to avoid requiring HELOC creditors to make forms changes pending the completion of the Board's HELOC review.

Revised Model clauses and forms G–2(A), G–3(A), and G–4(A) adopted in the January 2009 Regulation Z Rule are fully applicable to HELOCs, and represent improvements on models G–2, G–3, and G–4 in terms of readability. Therefore, the Board proposes to delete current G–2, G–3, and G–4, and to redesignate G–2(A), G–3(A), and G–4(A) as G–2, G–3, and G–4, respectively, for use by all creditors offering open-end credit, both HELOCs and open-end (not home-secured) credit. A technical correction would be made in the titles of Model Forms G–3 and G–4 in the table of contents to Appendix G. In addition, the commentary would be revised to delete material that refers to existing versions of G–2, G–3, or G–4, or that indicates that HELOC creditors have the option to use either the old or the new versions.

Model and sample forms applicable to HELOC early disclosures and account-opening disclosures. Currently, Appendix G contains three sample and model forms and clauses related to the disclosures required by § 226.5b at the time a consumer submits an application for a HELOC: G–14A and G–14B, which are sample application disclosures, and G–15, which contains model clauses that may be used as applicable in a creditor's HELOC application disclosure. Appendix G does not currently contain any model or sample forms or clauses related to the account-opening disclosures required by § 226.6(a) at the time a consumer opens a HELOC.

As discussed above in the section-by-section analysis to § 226.5b, the Board is proposing to change disclosure timing so that the generic application disclosures required under the current regulation would be replaced with more transaction-specific disclosures to be provided within three business days after a consumer submits a HELOC application (the ''early disclosures''). In addition, as discussed above, the Board is proposing to substantially revise the format of the disclosures. The application disclosures currently required are subject to few formatting requirements and, in particular, are not required to be in a tabular format or in any minimum font size. Under the proposal, the early disclosures would have to be provided in a tabular format, in a minimum font size of 10 points, and would be subject to other format requirements.

Accordingly, the Board proposes to replace current Samples G–14A and G–14B and Model G–15 with new model and sample forms reflecting the proposed new format requirements. Proposed Models G–14(A) and G–14(B) and Samples G–14(C), G–14(D), and G–14(E) would illustrate, in the tabular format, the early disclosures proposed to be required under § 226.5b. Under proposed § 226.5b, the early disclosures would have to be given in the form of a table with headings, content, and format substantially similar to any of the applicable models.

Proposed Models G–14(A) and G–14(B) differ in that the former provides guidance for creditors that offer two or more HELOC plans, while the latter provides guidance for creditors that offer only one HELOC plan. Proposed Samples G–14(C), G–14(D), and G–14(E) differ in that they illustrate differing minimum payment terms, such as whether the HELOC has a repayment period, how the length of the repayment period is determined, whether a balloon payment will or may be due, and how the minimum payment amount is calculated during the draw and repayment periods. The proposed samples also differ in that Samples G–14(C) and G–14(E) illustrate plans with discounted introductory APRs, while Sample G–14(D) illustrates a plan without a discounted introductory APR.

As discussed above in the section-by-section analysis to § 226.6, the Board is also proposing to require that certain account-opening disclosures be provided in a tabular format, a minimum font size of 10 points, and subject to other format requirements, similar to the proposed requirements for the early disclosures under proposed § 226.5b. The disclosures that would be required to be provided in tabular format as set forth in proposed § 226.6(a)(2); account-opening disclosures set forth in proposed § 226.6(a)(3), (4), and (5), if not listed in proposed § 226.6(a)(2), would not have to be given in tabular format.

As mentioned above, Appendix G does not currently contain any model or sample forms or clauses for the account-opening disclosures. To provide guidance on the proposed new account-opening disclosure tabular format requirements, the Board proposes to adopt new Model G–15(A) and Samples G–15(B), G–15(C), and G–15(D), reflecting those requirements. Under proposed § 226.6(a)(1), specified account-opening disclosures would have to be given in the form of a table with headings, content, and format substantially similar to any of the applicable models.

The Board is proposing only one model form for the account-opening disclosures, rather than two forms as in the case of the early disclosures. When the early disclosures are provided soon after application, the consumer may not have chosen a particular HELOC plan, and thus if the creditor offers more than one plan, showing more than one in the disclosures would be helpful to the consumer and accordingly one of the early disclosure models shows two plans, as discussed above. In contrast, at the time the HELOC account is opened, the consumer will have chosen a particular plan and therefore a second model form is not needed.

Proposed Samples G–15(B), G–15(C), and G–15(D), similarly to proposed Samples G–14(C), G–14(D), and G–14(E), differ in that they illustrate differing minimum payment terms, such as whether the HELOC has a repayment period, how the length of the repayment period is determined, whether a balloon payment will or may be due, and how the minimum payment amount is calculated during the draw and repayment periods. The proposed samples also differ with regard to whether the illustrated plan has a discounted introductory APR.

Currently, the staff commentary to Appendix G does not contain any comments addressing the model and sample forms and clauses related to the HELOC disclosures. The Board proposes to add staff commentary to provide guidance on the proposed new model and sample forms for the early HELOC disclosures required under proposed § 226.5b(b), as well as on the proposed new model and sample forms for certain account-opening disclosures under proposed § 226.6(a)(2). The proposed commentary would provide guidance on how to use the model and sample forms and on how the various forms differ. In addition, the proposed commentary would provide details on the formatting

techniques used in presenting the information in the sample forms, such as on font style and size, spacing between lines of text, paragraphs, words, and characters, and sufficient contrast. The commentary would also state that, while the Board would not require creditors to use these formatting techniques (except for the font size requirements), the Board would encourage creditors to consider these techniques when deciding how to disclose information in the table, to ensure that the information is presented in a readable format. This portion of the proposed commentary would generally parallel the commentary to the model and sample forms and clauses for open-end (not home-secured) credit adopted in the January 2009 Regulation Z Rule.

Model clauses for notice of results of reinstatement investigation. Model clauses in proposed Models G–22(A) and G–22(B) illustrate the disclosures required under § 226.5b(g)(2)(v). They inform the consumer that the consumer's reinstatement request has been received and that the creditor has investigated the request. They contain sample language for explaining the results of a reinstatement investigation in which the creditor found that a reason for suspension of advances or reduction of the credit limit still exists. Clauses in Model G–22(A) illustrate how a notice may explain that the same reason or reasons originally supporting the suspension or reduction still exist. Clauses in Model G–22(B) illustrate how a creditor may explain that a new reason or reasons for account suspension or reduction exist.

Models G–22(A) and G–22(B) do not contain sample clauses for all reasons in which a creditor may temporarily suspend or reduce a home-equity plan; they illustrate only three of the reasons why a creditor may take these actions: (1) A significant decline in the value of the property securing the plan (§ 226.5b(f)(3)(vi)(A)); (2) a material change in the consumer's financial circumstances such that the creditor has a reasonable belief that the consumer will be unable to meet the repayment terms of the plan (§ 226.5b(f)(3)(vi)(B)); and (3) the consumer's default of a material obligation under the plan (§ 226.5b(f)(3)(vi)(C)). The Board chose to feature these three reasons for temporary suspension or reduction because Board outreach and research indicated that creditors rely on these reasons to take action more often than the reasons found in § 226.5b(f)(3)(vi)(D)–(F), and because they may present more challenges regarding the specificity required to comply with disclosure requirement.

Proposed comment 12 to Appendix G of part 226 is intended to affirm that the creditor has flexibility in complying with the disclosure requirement of § 226.5b(g)(2)(v). The creditor may comply by using language substantially similar to the language in the model clauses or by substituting applicable reasons for the action not represented in the model clauses, as long as the information required to be disclosed is clear and conspicuous.

Model clauses for notice of action taken on account. These model clauses illustrate the disclosures required under § 226.9(j)(1) and (j)(3). Clauses in Model G–23(A) contain information required under proposed § 226.9(j)(1) regarding the nature of the action taken on the account under § 226.5b(f)(3)(i) and (f)(3)(vi) and the specific reasons for the action taken. In particular, they illustrate language for a notice in which the creditor temporarily suspended advances or reduced a credit limit due to a significant decline in the value of the property securing the plan under § 226.5b(f)(3)(vi)(A); a material change in the consumer's financial circumstances such that the creditor has a reasonable belief that the consumer will be unable to meet the repayment terms of the plan under § 226.5b(f)(3)(vi)(B); and the consumer's default of a material obligation under the plan under § 226.5b(f)(3)(vi)(C). Again, the Board chose to feature these three reasons for temporary suspension or reduction because Board outreach and research indicated that creditors rely on these reasons to take action more often than the reasons found in § 226.5b(f)(3)(vi)(D)–(F), and because they may present more challenges regarding the specificity required to comply with the disclosure requirement. Model G–23(A) clauses also contain information regarding the consumer's rights when the creditor requires the consumer to request reinstatement under § 226.5b(g)(1)(ii).

Clauses in Model G–23(B) contain information required under proposed § 226.9(j)(3) regarding the nature of the action taken on the account under § 226.5b(f)(2) and the specific reasons for the action taken. In particular, they illustrate language for a notice in which the creditor takes action on an account due to the consumer's failure to make a required minimum periodic payment within 30 days of the due date under proposed § 226.5b(f)(2)(ii) and the consumer's action or inaction that adversely affected the creditor's interest in the property securing the plan under § 226.5b(f)(2)(iii). Model clauses for the notice when a creditor takes action due to a consumer's fraud or material misrepresentation under § 226.5b(f)(2)(i) are not included because, under proposed comment 9(j)(3)–2.ii, a creditor need disclose only that the consumer's fraud or misrepresentation is the reason for the action.

Proposed comment 13 to Appendix G is intended to affirm that a creditor has flexibility in complying with the disclosure requirements of § 226.9(j)(1) and (j)(3). The creditor may comply by using language substantially similar to the language in the model clauses or by substituting applicable reasons for the action not represented in the model clauses, as long as the information required to be disclosed is clear and conspicuous.

The Board developed the clauses in proposed Models G–22(A), G–22(B), G–23(A) and G–23(B) in consultation with ICF Macro, a third-party consumer research and testing firm contracted by the Board to assist with developing and testing disclosures for home-equity plans. The Board has not yet tested the clauses in proposed Models G–22(A), G–22(B), G–23(A) and G–23(B) with consumers. The Board requests comment on whether consumer testing of these clauses is necessary, whether the Board should develop model forms rather than model clauses for the disclosure requirements of § 226.5b(g)(2)(v) and § 226.9(j)(1) and (j)(3), and whether the Board should consider modifying, deleting, or adding any proposed clauses for these models.

Sample forms for periodic statements, change-in-terms notices, and notices of rate increases. As discussed above in the section-by-section analysis to proposed § 226.7(a), the Board is proposing to revise the requirements for disclosures on periodic statements for HELOC accounts. Periodic statements would be subject to certain content and formatting requirements, including a requirement to disclose a total of interest and a total of fees charged, both for the statement period and for year to date, in proximity to the list of transactions on the statement. To provide guidance on the proposed periodic statement requirements, the Board proposes to adopt new Samples G–24(A), G–24(B), and G–24(C). Under proposed § 226.7(a), the interest and fee disclosures would have to be made using a format substantially similar to the samples. Proposed Sample G–24(A) illustrates the disclosure of total interest and total fees for the period and year to date in proximity to transactions. Proposed Samples G–24(B) and G–24(C) show entire periodic statements, including the grouping shown in Sample G–24(A) as well as other elements of the statements.

As discussed above in the section-by-section analysis to proposed § 226.9(c)(1) and (*i*), the Board is also proposing to revise the requirements for providing change-in-terms notices for HELOCs, and to adopt a new requirement to provide a notice of rate increase. The notice would be subject to certain formatting requirements including the use of a tabular format, and if the notice is given with a periodic statement, would have to be disclosed on the front of any page of the statement. If the notice is not given with a periodic statement, the notice would have to be disclosed, at the creditor's option, on the front of the first page or segregated on a separate page from other information. The Board proposes to adopt new Sample G–25, illustrating a change-in-terms notice using the tabular format, and Sample G–26, showing a notice of rate increase using the tabular format. Proposed Sample G–24(C) illustrates a change-in-terms notice given on the front of a periodic statement using the tabular format, and proposed Sample G–24(B) provides the same guidance with regard to a notice of rate increase.

The Board also proposes to adopt staff commentary to provide guidance on the use of proposed Samples G–24(A), G–24(B), G–24(C), G–25, and G–26. The proposed commentary would discuss how the forms may be used and how they differ from each other. In addition, the commentary would make clear that the samples contain information that is not required by Regulation Z, and that they present information in additional formats that are not required by Regulation Z.

Model and sample forms for credit insurance, debt cancellation or debt suspension. As discussed in the notice of the Board's proposal regarding closed-end mortgage lending requirements under Regulation Z, published today elsewhere in this **Federal Register**, the Board is proposing certain additional disclosure requirements relating to credit insurance, debt cancellation or debt suspension. Generally, the proposed disclosures would enhance information provided to consumers about the optional nature of the insurance or coverage, the cost, and eligibility requirements. The Board is proposing to adopt new samples and models for these disclosures, designated G–16(C) and G–16(D) for open-end credit and H–17(C) and H–17(D) for closed-end credit. For the proposed text of the sample and model disclosures and for further discussion of them, refer to the Board's separate **Federal Register** notice published today elsewhere in this **Federal Register**.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months, § 226.25, for certain types of records.[41]

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Board that engage in consumer credit activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 734,127 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed in the preamble, the Board is proposing changes to format, timing, and content requirements for HELOC disclosures required by Regulation Z: (1) Educational information published by the Board provided at application; (2) transaction-specific disclosures provided within three days after application; (3) transaction-specific disclosures provided at account-opening; (4) periodic statements and notices of changes to the transaction's terms provided during the life of the plan; and (5) notices related to terminating, suspending, and reinstating accounts, and reducing the credit limit. The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 104,160 hours, from 734,127 to 838,287 hours. In addition, the Board estimates that, on a continuing basis, the proposed revisions to the rules would increase the total annual burden on a continuing basis from 734,127 to 1,323,049 hours.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Board expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. Furthermore, the burden estimate for this rulemaking does not include the burden of complying with proposed disclosure and timing requirements that apply to private educational lenders making private education loans as announced in a separate proposed rulemaking (Docket No. R–1353) or the proposed disclosure and timing requirements of the Board's separate

[41] See comments 25(a)–3 and –4.

notice published simultaneously with this proposal for closed-end mortgages.

The Board estimates that 651 respondents regulated by the Federal Reserve would take, on average, 160 hours (four business weeks) to update their systems, internal procedure manuals, and provide training for relevant staff to comply with the proposed disclosure requirements in § 226.5b(b). This one-time revision would increase the burden by 104,160 hours. On a continuing basis the Board estimates that 651 respondents regulated by the Federal Reserve would take, on average, 64 hours a month to comply with the all of the disclosure requirements for open-end credit plans secured by real property and would increase the ongoing burden from 15,532 hours to 500,294 hours. To ease the burden and cost of complying with the new and proposed requirements under Regulation Z the Board proposes to revise or add several model forms, model clauses and sample forms to Appendix G.

The other federal financial agencies: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15 U.S.C. 1607(a). These agencies may, but are not required to, use the Board's burden estimation methodology. Using the Board's method, the total current estimated annual burden for the approximately 17,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA would be approximately 13,568,725 hours. The proposed rule would impose a one-time increase in the estimated annual burden for such institutions by 2,752,000 hours to 16,320,725 hours. On a continuing basis the proposed rule would impose an increase in the estimated annual burden by 13,209,600 to 26,778,325 hours. The above estimates represent an average across all respondents; the Board expects variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VIII. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration, an entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions; and $7 million or less in revenues for non-depository lenders and loan originators.[42]

Based on its analysis and for the reasons stated below, the Board believes that the proposed rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the following areas.

A. Reasons for the Proposed Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. In this regard, the goal of the proposed amendments to Regulation Z is to improve the effectiveness of the disclosures that creditors provide to consumers beginning before application and throughout the life of a HELOC plan. Accordingly, the Board is proposing changes to format, timing, and content requirements for HELOC disclosures required by Regulation Z: (1) Educational information published by the Board provided with the application; (2) transaction-specific disclosures provided shortly after application; (3) transaction-specific disclosures provided at account-opening; (4) periodic statements and notices of changes to the transaction's terms provided during the life of the plan; and (5) notices related to terminating, suspending, and reinstating accounts, and reducing the credit limit.

Specifically, the proposed regulations would revise and enhance the content of HELOC disclosures currently required at application and account-opening, as well as periodic statements and change-in-terms notices. The Board's proposal also would require creditors to provide transaction-specific disclosures early enough in the process (*i.e.,* within three business days after application rather than at account-opening, as currently required) to enable consumers to make decisions based on credit terms that would be offered to them and not on general information that may not apply to a particular consumer. The Board's proposal also would revise notice of action taken requirements for accounts that are temporarily suspended or reduced; require a notice of action taken when a creditor takes any action for reasons that would allow the creditor to terminate the account; and require a notice of the results of a creditor's investigation of a consumer's request for reinstatement of credit privileges on accounts that have been temporarily suspended or reduced. These amendments are proposed in furtherance of the Board's responsibility to prescribe regulations to carry out the purposes of TILA, including promoting consumers' awareness of the cost of credit and their informed use of credit.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** contains information about objectives of and legal basis for the proposed rule. In summary, the proposed amendments to Regulation Z are designed to achieve

[42] 13 CFR 121.201.

two goals: (1) Revise content, timing and format of disclosures required for HELOCs at application, account-opening, and after the HELOC is opened; and (2) clarify and strengthen certain substantive restrictions on when creditors may change the terms of a HELOC plan, including when a creditor may terminate, suspend, or reduce a HELOC.

The legal basis for the proposed rule is in Sections 105(a), 105(f), 127(a)(8), 127A(a)(14) and 127A(e) of TILA. 15 U.S.C. 1604(a), 1604(f), 1637(a)(8), 1637a(a)(14), and 1637a(e). A more detailed discussion of the Board's rulemaking authority is set forth in part IV of the **SUPPLEMENTARY INFORMATION**.

C. Description of Small Entities to Which the Proposed Rule Would Apply

The proposed regulations would apply to all institutions and entities that engage in originating or extending HELOCs. The Board is not aware of a reliable source for the total number of small entities likely to be affected by the proposal; and the credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that originate, extend and service even small numbers of home-secured credit. *See* § 226.1(c)(1).[43] Thus, all small entities that originate, extend, or service HELOCs potentially could be subject to at least some aspects of the proposed rule.

The Board can, however, identify through data from Reports of Condition and Income (''call reports'') approximate numbers of small depository institutions that would be subject to the proposed rules if they originate or extend HELOCs. Based on December 2008 call report data, approximately 7,557 small institutions would be subject to the proposed rule. Approximately 16,345 depository institutions in the United States filed call report data, approximately 11,907 of which had total domestic assets of $175 million or less and thus were considered small entities for purposes of the Regulatory Flexibility Act. Of 4,231 banks, 565 thrifts and 7,111 credit unions that filed call report data and were considered small entities, 2,397 banks, 363 thrifts, and 4,797 credit unions, totaling 7,557 institutions, extended HELOCs. For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks.

The Board cannot identify with certainty the number of small non-depository institutions that would be subject to the proposed rule. Home Mortgage Disclosure Act (HMDA)[44] data indicate that 1,752 non-depository institutions filed HMDA reports in 2007.[45] Based on the small volume of lending activity reported by these institutions in general, most are likely to be small.[46]

Another aspect of the Board's proposal that would affect individuals and small entities that are non-depositories is the requirement that creditors disclose as part of the early HELOC disclosure the identity of the creditor making the disclosures and the loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (''SAFE Act'') Sections 1503(3) and (12), 12 U.S.C. 5102(3) and (12). 15 U.S.C. 1637a(a)(14). Currently, a creditor is not required to disclose identification information about the creditor and the borrower as part of the application disclosures. Loan originators other than brokers that would be affected by the proposal are employees of creditors (or of brokers) and, as such, are not business entities in their own right. In its 2008 proposed rule under HOEPA, 73 FR 1672, 1720 (Jan. 9, 2008), the Board noted that, according to the National Association of Mortgage Brokers (NAMB), in 2004 there were 53,000 brokerage companies that employed an estimated 418,700 people.[47] The Board estimated that most of these companies are small entities. In addition, a comment letter received from the U.S. Small Business Administration under the Board's 2008 HOEPA proposal cited the U.S. Census Bureau's 2002 Economic Census in stating that there were 15,195 small broker entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the proposed rules are described in parts II, V and VI of the **SUPPLEMENTARY INFORMATION**. The exact effect of the proposed revisions to Regulation Z on small entities is unknown. Some small entities would be required, among other things, to modify their HELOC disclosures and disclosure delivery process to comply with the revised rules. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and to administer and maintain accounts, the complexity of the terms of HELOCs that they offer, and the range of their HELOC product offerings.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Other Federal Rules

The Board has not identified any federal rules that conflict with the proposed revisions to Regulation Z.

Overlap With SAFE Act

The proposed rule's required disclosure contents for HELOCs would overlap with the SAFE Act by requiring that the disclosure include the loan originator's unique identifier, as defined by SAFE Act, if applicable.

F. Identification of Duplicative, Overlapping, or Conflicting State Laws

State Laws Requiring Loan Originator's Unique Identifier

The Board is aware that many states regulate loan originators, especially brokers. Under TILA Section 111, the proposed rule would not preempt such state laws except to the extent they are inconsistent with the proposal's requirements. 15 U.S.C. 1610.

State TILA Equivalents

Many states regulate consumer credit through statutory disclosure schemes similar to TILA (''TILA equivalents''). Similarly to state laws regulating loan originators, such state TILA equivalents

[43] Regulation Z generally applies to ''each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly, (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes.'' § 226.1(c)(1).

[44] The 8,610 lenders (both depository institutions and mortgage companies) covered by HMDA in 2007 accounted for an estimated 80% of all home lending in the United States (2008 HMDA data are not yet available). Under HMDA, lenders use a ''loan/application register'' (HMDA/LAR) to report information annually to their federal supervisory agencies for each application and loan acted on during the calendar year. Lenders must make their HMDA/LARs available to the public by March 31 following the year to which the data relate, and they must remove the two date-related fields to help preserve applicants' privacy. Only lenders that have offices (or, for non-depository institutions, are deemed to have offices) in metropolitan areas are required to report under HMDA. However, if a lender is required to report, it must report information on all of its home loan applications and loans in all locations, including non-metropolitan areas.

[45] *The 2007 HMDA Data, http://www.federalreserve.gov/pubs/bulletin/2008/articles/hmda/default.htm.*

[46] The Board recognizes that reporting HELOC originations under HMDA is optional, so HMDA reporting is not an exact gauge of small non-depositories engaging in HELOC lending.

[47] *http://www.namb.org/namb/Industry_Facts.asp?SnID=719224934.* The cited page of the NAMB Web site, however, no longer provides an estimate of the number of mortgage brokerage companies.

would be preempted only to the extent they are inconsistent with the proposal's requirements. *Id.*

The Board seeks comment regarding any state or local statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

G. Discussion of Significant Alternatives

The Board welcomes comments on any significant alternatives, consistent with the requirements of TILA, that would minimize the impact of the proposed rule on small entities.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows while language that would be deleted is set off with brackets. In certain cases deemed appropriate by the Board to aid understanding, redesignated text, such as text moved from the commentary into the regulation or from one paragraph to another, reflects changes to the original text, with arrows and brackets.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, and 1637(c)(5).

Subpart A—General

2. Section 226.2 is amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(6) *Business Day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of ►§ 226.5b(e), § 226.9(j)(2),◄ § 226.19(a)(1)(ii), § 226.19(a)(2), and § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * * *

Subpart B—Open-End Credit

3. Section 226.5 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (b)(1), (b)(4), and (c), and by re-publishing paragraph (d) to read as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures*—(1) *General.* (i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing,[7] in a form that the consumer may keep,[8] except that:

(A) The following disclosures need not be written:

►(*1*) Disclosures under § 226.6(a)(3) of charges that are imposed as part of a home-equity plan that are not required to be disclosed under § 226.6(a)(2) and related disclosures under § 226.9(c)(1)(ii)(B) of charges;

(*2*)◄ Disclosures under § 226.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under § 226.6(b)(2) and related disclosures under § 226.9(c)(2)(ii)(B) of charges;

►(*3*) Disclosures◄ [disclosures] under § 226.9(c)(2)(v); and

►(*4*) Disclosures◄ [disclosures] under § 226.9(d) when a finance charge is imposed at the time of the transaction.

(B) The following disclosures need not be in a retainable form:

►(*1*)◄ Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section;

►(*2*) Disclosures◄ [disclosures] for credit and charge card applications and solicitations under § 226.5a; [home-equity disclosures under § 226.5b(d)];

►(*3*) The◄ [the] alternative summary billing-rights statement under § 226.9(a)(2);

►(*4*) The◄ [the] credit and charge card renewal disclosures required under § 226.9(e); and

►(*5*) The◄ [the] payment requirements under § 226.10(b), except as provided in § 226.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The disclosures required by §§ 226.5a, 226.5b►(a)◄, and 226.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(2) *Terminology.* (i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) ►If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3)(ii) of this section, the terms *borrowing period* (in reference to the draw period), *repayment period,* and *balloon payment* shall be used, as applicable. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name.◄ [For home-equity plans subject to § 226.5b, the terms *finance charge* and *annual percentage rate,* when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.[9] The terms need not be more conspicuous when used for periodic statement disclosures under § 226.7(a)(4) and for advertisements under § 226.16.]

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3)►(except for paragraph (a)(3)(ii) and the disclosures required under § 226.6(a)(2) that must be presented in a tabular format pursuant to paragraph (a)(3)(iii))◄ of this section, the term *penalty APR* shall be used, as applicable. The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) (except for the disclosures required under § 226.6(a)(2) that must be presented in a tabular format

[7] [Reserved].

[8] [Reserved].

[9] [Reserved].

pursuant to paragraph (a)(3)(iii)) of this section), the term *fixed,* or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(3) *Specific formats.* (i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of § 226.5a(a)(2).

(ii) Certain disclosures for home-equity plans [must precede other disclosures and] must be [given] ►provided in a tabular format◄ in accordance with the requirements of § 226.5b[(a)]►(b)(2)◄.

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of § 226.6►(a)(1) and◄ (b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of § 226.7►(a)(6),◄ (b)(6) and (b)(13).

(v) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of § 226.9(b)(3).

(vi) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of § 226.9(c)►(1)(iii)(B) and (c)◄(2)(iii)(B).

(vii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of § 226.9(g)(3)(ii)►and (*i*)(4)◄.

* * * * *

(b) *Time of disclosures*—(1) *Account-opening disclosures*—(i) *General rule.* The creditor shall furnish account-opening disclosures required by § 226.6 before the first transaction is made under the plan.

(ii) *Charges imposed as part of an open-end [(not home-secured)] plan.* Charges that are imposed as part of an open-end [(not home-secured)] plan and are not required to be disclosed under § 226.6►(a)(2) or◄ (b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner ►such◄ that a consumer would be likely to notice them. [This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of § 226.5b.]

(iii) *Telephone purchases.* Disclosures required by § 226.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) *Membership fees*—(A) *General.* In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under § 226.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 226.5a(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section. ►(See §§ 226.5b(d), 226.5b(e), and 226.15 regarding requirements for refunds of fees applicable to creditors offering home-equity plans.)◄

(v) *Application fees.* ►(A) *General.* In general, a◄ [A] creditor may collect an application fee excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. See § 226.5(b)(1)(iv).

►(B) *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are not subject to the requirements of paragraph (b)(1)(v)(A) of this section. (See §§ 226.5b(d), 226.5b(e), and 226.15 regarding requirements for refunds of fees applicable to creditors offering home-equity plans.)◄

* * * * *

(4) *Home-equity plan[s]►application and three days after application disclosures◄.* Disclosures for home-equity plans shall be made in accordance with the timing requirements of § 226.5b►(a)(1) and◄ (b)►(1)◄.

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, ►the creditor◄[it] shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by §§ 226.6 and 226.15(b) shall be made to each consumer having the right to rescind.

* * * * *

4. Section 226.5b is amended by revising paragraphs (a) through (e), (f)(2)(ii), (f)(2)(iv), and (f)(3)(vi)(A), adding new paragraphs (f)(3)(vi)(G), and (g), and revising and redesignating current paragraph (g) as paragraph (d) and current paragraph (h) as paragraph (e) as follows:

§ 226.5b Requirements for home-equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. [For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under section 226.14(b).]

►(a) *Home-equity document provided on or with the application*—(1) *In general.* (i) Except as provided in paragraph (a)(1)(ii) of this section, the home-equity document ''Key Questions

to Ask about Home Equity Lines of Credit'' published by the Board shall be provided at the time an application is provided to the consumer. The document must be provided in a prominent location on or with an application.

(ii) For telephone applications or applications received through an intermediary agent or broker, the document required by paragraph (a)(1)(i) of this section must be delivered or mailed not later than account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier, with the disclosures required by paragraph (b) of this section.

(2) *Electronic disclosure.* For an application that is accessed by the consumer in electronic form, the document required by paragraph (a)(1) of this section may be provided to the consumer in electronic form on or with the application.

(3) *Duties of third parties.* Persons other than the creditor who provide applications to consumers for home-equity plans must comply with paragraphs (a)(1) and (a)(2) of this section, except that these third parties are not required to deliver or mail the document required by paragraph (a)(1)(i) of this section for telephone applications as discussed in paragraph (a)(1)(ii) of this section.[10a]

(b) *Home-equity disclosures provided no later than account opening or three business days after application, whichever is earlier*—(1) *Timing.* The disclosures required by paragraph (c) of this section shall be delivered or mailed not later than account opening, or three business days following receipt of a consumer's application by the creditor, whichever is earlier.

(2) *Form of disclosures; tabular format.* (i) The disclosures required by paragraphs (c)(4)(ii) through (c)(19) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G–14 in Appendix G to this part.

(ii) The table described in paragraph (b)(2)(i) of this section shall contain only the information required or permitted by paragraphs (c)(4)(ii) through (c)(19).

(iii) Disclosures required by paragraph (c)(1) and (c)(3) of this section must be placed directly above the table described in paragraph (b)(2)(i) of this section, in a format substantially similar to any of the applicable tables found in G–14 in Appendix G to this part.

[10a] [Reserved].

(iv) The disclosures required by paragraphs (c)(2), (c)(4)(i), (c)(20) through (c)(22) of this section must be disclosed directly below the table described in paragraph (b)(2)(i) of this section, in a format substantially similar to any of the applicable tables found in G–14 in Appendix G to this part.

(v) Other information may be presented with the table described in paragraph (b)(2)(i) of this section, provided that such information appears outside of the required table.

(vi) The following disclosures must be disclosed in bold text:

(A) Disclosures required by paragraphs (c)(2), (c)(4)(i), (c)(20), (c)(21), and (c)(22)(i) of this section.

(B) Any annual percentage rates required to be disclosed under paragraph (c)(10) of this section.

(C) Total account opening fees disclosed under paragraph (c)(11) of this section.

(D) Any percentage or dollar amount required to be disclosed under paragraphs (c)(12), (c)(13), (c)(16), (c)(17) and (c)(19) of this section, except the amount of any periodic fee disclosed pursuant to paragraph (c)(12) of this section that is not an annualized amount.

(E) If a creditor is required under paragraph (c)(9) of this section to provide a disclosure in a format substantially similar to the format used in any of the applicable tables found in Samples G–14(C), 14(D) and 14(E) in Appendix G to this part, the creditor must provide in bold text any terms and phrases that are shown in bold text for that disclosure in the applicable tables.

(3) *Disclosures based on a percentage.* Except for disclosing fees under paragraph (c)(11) of this section, if the amount of any fee required to be disclosed under paragraph (c) of this section or if the amount of any transaction requirement required to be disclosed under paragraph (c)(16) of this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee or transaction amount, as applicable.◄

[(a) *Form of disclosures*—(1) *General.* The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees described in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) *Precedence of certain disclosures.* The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(3) For an application that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application.

(b) *Time of disclosures.* The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer.[10a]

(c) *Duties of third parties*—Persons other than the creditor who provide applications to consumers for home-equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section for a creditor's home-equity plan, they also shall provide the disclosures at such time.[10a]]

[(d)]►(c)◄ *Content of disclosures.* The creditor shall provide the following disclosures ►in the manner prescribed by paragraph (b) of this section◄, as applicable. ►In making the disclosures required by this paragraph (except under paragraph (c)(18) of this section), a creditor must not disclose in the table described in paragraph (b)(2)(i) of this section any terms applicable to fixed-rate and -term payment plans offered during the draw period of the plan, unless fixed-rate and -term payment plans are the only payment plans offered during the draw period of the plan.

(1) *Identification information.*

(i) The consumer's name and address.

(ii) The identity of the creditor making the disclosures.

(iii) The date the disclosure was prepared.

(iv) The loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 Sections 1503(3) and (12), 12 U.S.C. 5102(3) and (12).◄

[(1) *Retention of information.* A statement that the consumer should make or otherwise retain a copy of the disclosures.]

►(2) *No obligation statement.* A statement that the consumer has no

[10a] [The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.]

obligation to accept the terms disclosed in the table. If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement.

(3) *Identification of plan as a home-equity line of credit.* A statement that the consumer has applied for a home-equity line of credit. ◄

►(4)◄[(2)] *Conditions for disclosed terms.* (i) [A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification] ►Identification◄ of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer [therefore] elects not to open the plan, the consumer may receive a refund of all fees paid ►by the consumer◄[in connection with the application].

►(5) *Refund of fees under paragraph (e) of this section.* A statement that the consumer may receive a refund of all fees paid by the consumer, if the consumer notifies the creditor within three business days of receiving the disclosures given pursuant to paragraph (b) of this section that the consumer does not want to open the plan.◄

►(6)◄[(3)] *Security interest and risk to home.* A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

►(7)◄[(4)] *Possible actions by creditor.* (i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and [, as specified in the initial agreement,] implement [certain] changes in the plan.

(ii) ►As applicable, either (A) a◄ [A] statement that the consumer may receive, upon request, information about the conditions under which such actions may occur►, or (B) if the information about the conditions is provided with the table described in paragraph (b)(2)(i) of this section, a reference to the location of the information.◄

[(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.]

►(8) *Tax implications.* A statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes. A statement that the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.◄

►(9)◄[(5)] *Payment terms.* The payment terms of the plan, ►as follows.◄[including:] ► A creditor must distinguish payment terms applicable to the draw period and the repayment period, by using the heading ''Borrowing Period'' for the draw period and ''Repayment Period'' for the repayment period, in a format substantially similar to the format used in any of the applicable tables found in Samples G–14(C) and G–14(E) in Appendix G to this part.◄

(i) The length of the ►plan, the length of the◄ draw period and ►the length of◄ any repayment period. ►When the length of the plan is definite, a creditor must disclose the length of the plan, the length of the draw period and the length of any repayment period in a format substantially similar to the format used in any of the applicable tables found in Samples G–14(C) and G–14(D) in Appendix G to this part. If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full. ◄

(ii) ►(A) If a creditor offers to the consumer only one payment plan option, an◄ [An] explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance ►by the end of the plan◄, a statement of this fact, as well as a statement that a balloon payment may result ►or will result, as applicable◄.[10b] ►If a balloon payment will not result under the payment plan, a creditor must not disclose in the table required by paragraph (b)(2)(i) of this section the fact that a balloon payment will not result for the plan.◄

►(B) If a creditor offers to the consumer more than one payment plan option, the creditor must disclose only two payment plan options in the table described in paragraph (b)(2)(i) of this section. If under one or more payment plans offered by the creditor a consumer would repay all of the principal by the end of the plan if the consumer makes only the minimum payments, the creditor must describe one of these payment plans in the table required by paragraph (b)(2)(i) of this section. A creditor must include a statement indicating that the table shows how the creditor determines minimum required payments for two plans offered by the creditor. If a creditor offers more than the two payment plans described in the table described in paragraph (b)(2)(i) of this section (other than fixed-rate and -term payment plans unless those are the only plans offered on the HELOC plan during the draw period), the creditor also must disclose that other payment plans are available, and that the consumer should ask the creditor for additional details about these other payment plans. The creditor must provide the following information:

(*1*) If under at least one of the payment plans disclosed in the table required by paragraph (b)(2)(i) of this section, paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement of this fact, as well as a statement that a balloon payment may result or will result, as applicable. If a balloon payment would result under one payment plan but not both payment plans, the creditor must disclose that a balloon payment may result depending on the terms of the payment plan. If a balloon payment would result under both payment plans, the creditor must disclose that a balloon payment will result. If a balloon payment would not result under both payment plans, a creditor must not disclose in the table required by paragraph (b)(2)(i) of this section the fact that a balloon payment would not result for both plans.

(*2*) An explanation of how the minimum periodic payments will be determined and the timing of the payments for each plan.

(*3*) For each payment plan described in the table required under paragraph (b)(2)(i) of this section, if paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement that a balloon payment may result or will result under that plan, as applicable. If one of the plans has a balloon payment and the other does not, a creditor must disclose that a balloon payment will not result for the plan in which no balloon payment would occur. If neither payment plan has a balloon payment, a creditor must not disclose the fact that a balloon payment will not result for the plan.

(iii)(A) For the payment plan(s) described in paragraph (c)(9)(ii) of this section, sample payments showing the first minimum periodic payment for the

[10b] ►Reserved.◄ [A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.]

draw period and any repayment period, and the balance outstanding at the beginning of any repayment period, based on the following assumptions:

(*1*) The consumer borrows the full credit line (as disclosed in paragraph (c)(17) of this section) at account opening, and does not obtain any additional extensions of credit.

(*2*) The consumer makes only minimum periodic payments during the draw period and any repayment period.

(*3*) The annual percentage rates used to calculate the sample payments, as described in paragraph (c)(9)(iii)(B) of this section, will remain the same during the draw period and any repayment period.

(B) A creditor must provide the information described in paragraph (c)(9)(iii)(A) of this section for the following two annual percentage rates:

(*1*) The current annual percentage rate for the plan, as disclosed under paragraph (c)(10) of this section, except that if an introductory annual percentage rate applies, the creditor must use the rate that would otherwise apply to the plan after the introductory rate expires, as described in paragraph (c)(10)(ii) of this section.

(*2*) The maximum annual percentage rate that may apply under the payment option, as described in paragraph (c)(10)(i)(A)(*5*).

(C) In disclosing the payment samples as required by paragraph (c)(9)(iii)(A) of this section, a creditor also must include the following information:

(*1*) A statement that the sample payments show the first periodic payments at the current and maximum annual percentage rates if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money.

(*2*) A statement that the sample payments are not the consumer's actual payments. A statement that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period.

(*3*) If a creditor is disclosing two payment plans under paragraph (c)(9)(ii) of this section, the creditor must identify which plan results in the least amount of interest, and which plan results in the most amount of interest, based on the assumptions described in paragraphs (c)(9)(iii)(A) and (B) of this section.

(*4*) For each payment plan disclosed under paragraph (c)(9)(ii) of this section, if a consumer may pay a balloon payment under that plan, the creditor must disclose that fact, and the amount of the balloon payment based on the assumptions described in paragraphs (c)(9)(iii)(A) and (B) of this section. If a creditor is disclosing only one payment plan under paragraph (c)(9)(ii), and a balloon payment will not occur for that plan, the creditor must not disclose that a balloon payment will not result for the plan. If a creditor is disclosing two payment plans under paragraph (c)(9)(ii) of this section, one in which a balloon payment would occur and one in which it would not, a creditor must disclose that a balloon payment will not result for the plan in which no balloon payment would occur. If neither payment plan has a balloon payment, a creditor must not disclose the fact that a balloon payment will not result for the plan.

(D) A creditor must provide the information described in paragraph (c)(9)(iii) of this section in a format that is substantially similar to the format used in any of the applicable tables found in Samples G–14(C), G–14(D) and G–14(E) in Appendix G to this part.◄

[(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate,[10c] showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.]

►(iv) A statement that the consumer can borrow money during the draw period. If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period.

(v) A statement indicating whether minimum payments are due in the draw period and any repayment period.◄

►(10)◄[(6)] *Annual percentage rate.* ►Each periodic interest rate applicable to any payment plan disclosed under paragraph (c)(9)(ii) of this section that may be used to compute the finance charge on an outstanding balance, expressed as an annual percentage rate (as determined by § 226.14(b)), except a creditor must not disclose any penalty rate set forth in the initial agreement that may be imposed in lieu of termination of the plan. The annual percentage rates disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Any minimum or maximum annual percentage rates that may apply; and any disclosure of rate changes set forth in the initial agreement except for rates that would apply after the expiration of an introductory rate.◄ [For fixed-rate plans, a recent annual percentage rate [10c] imposed under the plan and a statement that the rate does not include costs other than interest.]

►(i) *Disclosures for variable-rate plans.* (A) If a rate disclosed under paragraph (c)(10) of this section is a variable rate, the following disclosures, as applicable:

(*1*) The fact that the annual percentage rate may change due to the variable-rate feature, using the term ''variable rate'' in underlined text as shown in any of the applicable tables found in Samples G–14(C), G–14(D) and G–14(E) in Appendix G to this part.

(*2*) An explanation of how the annual percentage rate will be determined. Except as provided in paragraph (c)(10)(A)(*6*) of this section, in providing this disclosure, a creditor must only identify the index used and the amount of any margin.

(*3*) The frequency of changes in the annual percentage rate.

(*4*) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(*5*) A statement of any limitations on changes in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed under each payment plan disclosed under paragraph (c)(9)(ii) of this section. If no annual or other periodic limitations apply to changes in the annual percentage rate, a statement that no annual limitation exists.

(*6*) The lowest and highest value of the index in the past 15 years.

(B) A variable rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(ii) *Introductory initial rate.* If the initial rate is an introductory rate, the creditor must also disclose the rate that

[10c] ►Reserved.◄[For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.]

[10c] ►Reserved.◄[For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.]

would otherwise apply to the plan pursuant to paragraph (c)(10) of this section. Where the rate is fixed, the creditor must disclose the rate that will apply after the introductory rate expires. Where the rate is variable, the creditor must disclose the rate based on the applicable index or formula. A creditor must disclose in the table described in paragraph (b)(2)(i) of this section the introductory rate along with the rate that would otherwise apply to the plan, and use the term ''introductory'' or ''intro'' in immediate proximity to the introductory rate. The creditor must also disclose the time period during which the introductory rate will remain in effect.◄

►(11)◄[(7)] *Fees imposed by the creditor► and third parties to open the plan◄.* ►The total of all one-time fees imposed by the creditor and any third parties to open the plan, stated as a dollar amount.◄ An itemization of [any] ►all one-time◄ fees imposed by the creditor ►and any third parties◄ to open [, use, or maintain] the plan, stated as a dollar amount [or percentage], and when such fees are payable.► If the exact total of one-time fees for account opening is not known at the time the disclosures under paragraph (b) of this section are delivered or mailed, a creditor must provide the highest total of one-time account opening fees possible for the plan terms described in the table required under paragraph (b)(2)(i) of this section with a indication that the one-time account opening costs may be ''up to'' that amount. If the dollar amount of an itemized fee is not known at the time the disclosures under paragraph (b) of this section are delivered or mailed, a creditor must provide a range for such fee. A creditor must not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(12) *Fees imposed by the creditor for availability of the plan.* All annual or other periodic fees that may be imposed by the creditor for the availability of the plan, including any fee based on account activity or inactivity; how frequently the fee will be imposed; and the annualized amount of the fee. A creditor must not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(13) *Fees imposed by the creditor for early termination of the plan by the consumer.* Any fee that may be imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity.

(14) *Statement about other fees.* A statement that other fees will apply and a reference to penalty fees and transaction fees as examples of those fees, as applicable. As applicable, either (i) a statement that the consumer may receive, upon request, additional information about fees applicable to the plan, or (ii) if the additional information about fees is provided with the table described in paragraph (b)(2)(i) of this section, a reference to the location of the information.◄

[(8) *Fees imposed by third parties to open a plan.* A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.]

►(15)◄[(9)] *Negative amortization.* ►If applicable, a◄ [A] statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

►(16)◄[(10)] *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements [, stated as dollar amounts or percentages].

[(11) *Tax implications.* A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.]

►(17) *Credit limit.* The credit limit applicable to the plan.

(18) *Statements about fixed-rate and -term payment plans.* (i) Except as provided in paragraph (c)(18)(ii) of this section, if a creditor offers a fixed-rate and -term payment plan under the plan, the following information:

(A) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate.

(B) The amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term.

(C) As applicable, either (*1*) a statement that the consumer may receive, upon request, further details about the fixed-rate and -term payment plan, or (*2*) if information about the fixed-rate and -term payment plan is provided with the table described in paragraph (b)(2)(i) of this section, a reference to the location of the information.

(ii) A creditor must not make the disclosures required by paragraph (c)(18)(i) of this section if fixed-rate and -term payment plans are the only payment plans offered during the draw period.

(19) *Required insurance, debt cancellation or debt suspension coverage.* (i) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided with the table described in paragraph (b)(2)(i) of this section about the insurance or coverage, as applicable.

(20) *Statement about asking questions.* A statement that if the consumer does not understand any disclosure in the table the consumer should ask questions.

(21) *Statement about Board's Web site.* A statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board, and a reference to that Web site.

(22) *Statement about refundability of fees.* (i) A statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan; and

(ii) A cross reference to the ''Fees'' section in the table described in paragraph (b)(2)(i) of this section.◄

[(12) *Disclosures for variable-rate plans.* For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on

changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(e) *Brochure.* The home-equity brochure published by the Board or a suitable substitute shall be provided.]

[(g)]►(d)◄ *Refund of fees.* A creditor shall refund all fees paid by the consumer [to anyone in connection with an application] if any term required to be disclosed under paragraph [(d)] ►(b)◄ of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and [, as a result,] the consumer elects not to open the plan.

[(h)]►(e)◄ *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee [in connection with an application] until three business days after the consumer receives the disclosures [and brochure] required under ►paragraph (b) of◄ this section.[10d] If the disclosures required under this section are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(f) *Limitations on home-equity plans.* No creditor may, by contract or otherwise—

* * * * *

(2) terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse-mortgage transactions that are subject to paragraph (f)(4) of this section) unless—

(i) there is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) the consumer fails to ►make a required minimum periodic payment within 30 days after the due date for that payment◄ [meet the repayment terms of the agreement for any outstanding balance];

(iii) any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) federal law ►requires the creditor to terminate the plan and demand repayment of the entire outstanding balance in advance of the original term◄ [dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand], provided that the creditor includes such a provision in the initial agreement.

(3) change any term, except that a creditor may—

(i) provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) make a specified change if the consumer specifically agrees to it in writing at that time.

(iii) make a specified change if the consumer specifically agrees to it in writing at that time.

(v) make an insignificant change to terms.

(vi) prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which—

(A) the value of the dwelling that secures the plan declines significantly below the dwelling's [appraised] value for purposes of the plan;

(B) the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) the consumer is in default of any material obligation under the agreement;

(D) the creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) the priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(F) the creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

►(G) federal law prohibits the creditor from extending credit under a plan or requires that the creditor reduce the credit limit for a plan.◄

(g) ►*Reinstatement of credit privileges.* If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home-equity plan pursuant to § 226.5b(f)(3)(i) or (f)(3)(vi), the creditor must reinstate credit privileges as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist, assuming that no other circumstance permitting such action exists at that time.

(1) The creditor shall meet the obligation of this paragraph by either—

(i) monitoring the line on an ongoing basis to determine when no condition permitting the action exists; or

(ii) requiring the consumer to request reinstatement of credit privileges.

(2) If the creditor requires the consumer to request reinstatement of credit privileges under § 226.5b(g)(1)(ii), the creditor—

(i) shall disclose that the consumer must request reinstatement of credit privileges in accordance with § 226.9(j)(1)(iii)(A);

(ii) upon receipt of a reinstatement request from a consumer, shall complete an investigation of whether a condition allowing the suspension of credit extensions or credit limit reduction exists within 30 days of receiving the consumer's request;

(iii) may not charge the consumer any fees associated with investigating the consumer's first reinstatement request after a suspension of advances or credit limit reduction;

(iv) if not prohibited by state law, may charge the consumer bona fide and reasonable property valuation and credit report fees actually incurred in investigating the consumer's

[10d] ►Reserved◄ [If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.]

reinstatement requests after the first request; and

(v) if investigation of the consumer's reinstatement request shows that a condition permitting continued suspension of advances or reduction of the credit limit exists and that therefore credit privileges will not be restored, shall, within 30 days of receiving the consumer's request, mail or deliver to the consumer a written notice with the following information (see Model Clauses G–22(A) and G–22(B) in Appendix G to this part):

(A) the results of any investigation by the creditor conducted in response to the consumer's first request; and

(B) the information required by § 226.9(j)(1).

(3) If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home-equity plan for a significant decline in the property value pursuant to § 226.5b(f)(vi)(A), or continues an existing suspension of credit extensions or reduction of the credit limit pursuant to § 2265b(f)(vi)(A), the creditor must provide, upon the consumer's request, a copy of the documentation supporting the property value on which the creditor based the action.

(4) When conditions permitting termination and acceleration exist under § 226.5b(f)(2), but the creditor opts to suspend advances or reduce the credit limit, the creditor has no obligation to reinstate the account.◄

[(g)] ►(d)◄

* * * * *

[(h)] ►(e)◄

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5. Section 226.6 is amended by revising paragraph (a) as follows:

§ 226.6 Account-opening disclosures.

(a) *Rules affecting home-equity plans.* The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of § 226.5b. [A creditor shall disclose the items in this section, to the extent applicable:]

►(1) *Form of disclosures; tabular format*—(i) *In general.* A creditor must provide the account-opening disclosures specified in paragraphs (a)(2)(ii) through (a)(2)(xx) of this section in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G–15 in Appendix G to this part.

(ii) *Location.* Only the information required or permitted by paragraphs (a)(2)(ii) through (a)(2)(xx) of this section shall be in the table required under paragraph (a)(1)(i) of this section. Disclosures required by paragraph (a)(2)(i) of this section must be placed directly above the table, in a format substantially similar to any of the applicable tables found in G–15 in Appendix G to this part. Disclosures required by paragraphs (a)(2)(xxi) through (a)(2)(xxvi) of this section must be placed directly below the table, in a format substantially similar to any of the applicable tables found in G–15 in Appendix G to this part. Disclosures required by paragraphs (a)(3) through (a)(5) of this section that are not otherwise required to be in the table (or directly above or below the table) and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(iii) *Highlighting.* The following disclosures must be disclosed in bold text:

(A) Any annual percentage rates required to be disclosed under paragraph (a)(2)(vi) of this section.

(B) Any percentage or dollar amount required to be disclosed under paragraphs (a)(2)(vii) through (a)(2)(xiv), (a)(2)(xvii), (a)(2)(xviii) and (a)(2)(xx) of this section, except the amount of any periodic fee disclosed pursuant to paragraph (a)(2)(viii) of this section that is not an annualized amount.

(C) If a creditor is required under paragraph (a)(2)(v) of this section to provide a disclosure in a format substantially similar to the format used in any of the applicable tables found in Samples G–15(B), G–15(C) and G–15(D) in Appendix G to this part, the creditor must provide in bold text any terms and phrases that are shown in bold text for that disclosure in the applicable tables.

(D) Disclosures required by paragraphs (a)(2)(xxiv)(A), (a)(2)(xxiv)(C) and (a)(2)(xxv) through (a)(2)(xxvi) of this section.

(iv) *Fees based on a percentage.* Except for disclosing fees under paragraph (a)(2)(vii) of this section, if the amount of any fee required to be disclosed under paragraph (a)(2) of this section or if the amount of any transaction requirement required to be disclosed under paragraph (a)(2)(xvii) of this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee or transaction amount, as applicable.

(2) *Required disclosures for account-opening table for home-equity plans.* The creditor shall disclose the items in paragraph (a)(2) of this section to the extent applicable. In making the disclosures required by paragraph (a)(2) of this section (except under paragraph (a)(2)(xix) of this section), a creditor must not disclose in the table described in paragraph (a)(1) of this section any terms applicable to fixed-rate and -term payment plans offered during the draw period of the plan, unless fixed-rate and -term payment plans are the only payment plans offered during the draw period of the plan.

(i) *Identification information.* The following information:

(A) The consumer's name, address, and account number.

(B) The identity of the creditor making the disclosures.

(C) The date the disclosure was prepared.

(D) The loan originator's unique identifier, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 Sections 1503(3) and (12), 12 U.S.C. 5102(3) and (12).

(ii) *Security interest and risk to home.* A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(iii) *Possible actions by creditor.* (A) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and implement changes in the plan.

(B) A statement that information about the conditions under which the creditor may take the actions described in paragraph (a)(2)(iii)(A) of this section is included in the account-opening disclosures or agreement, as applicable.

(iv) *Tax implications.* A statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling may not be tax deductible for Federal income tax purposes. A statement that the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(v) *Payment terms.* The payment terms of the plan that will apply to the consumer at account opening, as follows. The creditor must distinguish payment terms applicable to the draw period and the repayment period, by using the applicable heading ''Borrowing Period'' for the draw period and ''Repayment Period'' for the repayment period, in a format substantially similar to the format used in any of the applicable tables found in Samples G–15(B) and G–15(D) in Appendix G to this part.

(A) The length of the plan, the length of the draw period and the length of any

repayment period. When the length of the plan is definite, a creditor must disclose the length of the plan, the length of the draw period and the length of any repayment period in a format substantially similar to the format used in any of the applicable tables found in Samples G–15(B) and G–15(C) in Appendix G to this part. If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full.

(B) An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, a statement of this fact, as well as a statement that a balloon payment may result or will result, as applicable. If a balloon payment will not result under the payment plan, a creditor must not disclose in the table required by paragraph (a)(1) of this section the fact that a balloon payment will not result for the plan.

(C)(*1*) For the payment plan described in paragraph (a)(2)(v) of this section, sample payments showing the first minimum periodic payment for the draw period and any repayment period, and the balance outstanding at the beginning of any repayment period, based on the following assumptions:

(*i*) The consumer borrows the full credit line (as disclosed in paragraph (a)(2)(xviii) of this section) at account opening, and does not obtain any additional extensions of credit.

(*ii*) The consumer makes only minimum periodic payments during the draw period and any repayment period.

(*iii*) The annual percentage rate used to calculate the sample payments, as described in paragraph (a)(2)(v)(C)(*2*) of this section, will remain the same during the draw period and any repayment period.

(*2*) A creditor must provide the information described in paragraph (a)(2)(v)(C)(*1*) of this section for the following two annual percentage rates:

(*i*) The current annual percentage rate for the plan, as disclosed under paragraph (a)(2)(vi) of this section, except that if an introductory annual percentage rate applies, the creditor must use the rate that would otherwise apply to the plan after the introductory rate expires, as described in paragraph (a)(2)(vi)(B) of this section.

(*ii*) The maximum annual percentage rate that may apply under the payment plan as described in paragraph (a)(2)(vi)(A)(*1*)(*v*).

(*3*) In disclosing the payment samples as required by paragraph (a)(2)(v)(C) of this section, a creditor also must include the following information:

(*i*) A statement that the sample payments show the first periodic payments at the current and maximum annual percentage rates if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money.

(*ii*) A statement that the sample payments are not the consumer's actual payments. A statement that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period.

(*iii*) If a creditor is disclosing a payment plan under paragraph (a)(2)(v)(B) of this section under which a consumer may pay a balloon payment, the creditor must disclose that fact, and the amount of the balloon payment based on the assumptions described in paragraphs (a)(2)(v)(C)(*1*) and (a)(2)(v)(C)(*2*) of this section. If a balloon payment will not result under the payment plan, a creditor must not disclose in the table required by paragraph (a)(1) of this section the fact that a balloon payment will not result for the plan.

(*4*) A creditor must provide the information described in paragraph (a)(2)(v)(C) of this section in a format that is substantially similar to the format used in any of the applicable tables found in Samples G–15(B), G–15(C) and G–15(D) in Appendix G to this part.

(D) A statement that the consumer can borrow money during the draw period. If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period.

(E) A statement indicating whether minimum payments are due in the draw period and any repayment period.

(vi) *Annual percentage rate.* Each periodic interest rate applicable to the payment plan disclosed under paragraph (a)(2)(v) of this section that may be used to compute the finance charge on an outstanding balance, expressed as an annual percentage rate (as determined by § 226.14(b)), except a creditor must not disclose any penalty rate set forth in the initial agreement that may be imposed in lieu of termination of the plan. The annual percentage rates disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Any minimum or maximum annual percentage rates that may apply; and any disclosure of rate changes set forth in the initial agreement except for rates that would apply after the expiration of an introductory rate.

(A) *Disclosures for variable rate plans.* (*1*) If a rate disclosed under paragraph (a)(2)(vi) of this section is a variable rate, the following disclosures, as applicable:

(*i*) The fact that the annual percentage rate may change due to the variable-rate feature, using the term ''variable rate'' in underlined text as shown in any of the applicable tables found in Samples G–15(B), G–15(C) and G–15(D) in Appendix G of this part.

(*ii*) An explanation of how the annual percentage rate will be determined. Except as provided in paragraph (a)(2)(vi)(A)(*1*)(*vi*) of this section, in providing this disclosure, a creditor must only identify the type of index used and the amount of any margin.

(*iii*) The frequency of changes in the annual percentage rate.

(*iv*) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(*v*) A statement of any limitations on changes in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed under the payment plan disclosed under paragraph (a)(2)(v) of this section. If no annual or other periodic limitations apply to changes in the annual percentage rate, a statement that no annual limitation exists.

(*vi*) The lowest and highest value of the index in the past 15 years.

(*2*) A variable rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(B) *Introductory initial rate.* If the initial rate is an introductory rate, the creditor must disclose the rate that would otherwise apply to the plan pursuant to paragraph (a)(2)(vi) of this section. Where the rate is fixed, the creditor must disclose the rate that will apply after the introductory rate expires. Where the rate is variable, the creditor must disclose the rate based on the applicable index or formula. A creditor must disclose in the table described in paragraph (a)(1) of this section the introductory rate along with the rate that would otherwise apply to the plan, and use the term ''introductory'' or ''intro'' in immediate proximity to the introductory rate. The creditor must also disclose the time period during which the introductory rate will remain in effect.

(vii) *Fees imposed by the creditor and third parties to open the plan.* The total of all one-time fees imposed by the

creditor and any third parties to open the plan, stated as a dollar amount. An itemization of all one-time fees imposed by the creditor and any third parties to open the plan, stated as a dollar amount, and when such fees are payable. A cross-reference from the disclosure of the total of one-time fees, indicating that the itemization of the fees is located elsewhere in the table. A creditor must not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(viii) *Fees imposed by the creditor for availability of the plan.* Any annual or other periodic fees that may be imposed by the creditor for the availability of the plan, including any fee based on account activity or inactivity; how frequently the fee will be imposed; and the annualized amount of the fee. A creditor must not disclose the amount of any property insurance premiums under this paragraph, even if the creditor requires property insurance.

(ix) *Fees imposed by the creditor for early termination of the plan by the consumer.* Any fee that may be imposed by the creditor if a consumer terminates the plan prior to its scheduled maturity.

(x) *Late-payment fee.* Any fee imposed for a late payment.

(xi) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(xii) *Transaction charges.* Any transaction charge imposed by the creditor for use of the home-equity plan.

(xiii) *Returned-payment fee.* Any fee imposed by the creditor for a returned payment.

(xiv) *Fees for failure to comply with transaction limitations.* Any fee imposed by the creditor for a consumer's failure to comply with:

(A) Any limitations on the number of extensions of credit or the amount of credit that may be obtained during any time period.

(B) Any minimum outstanding balance requirements.

(C) Any minimum draw requirements.

(xv) *Statement about other fees.* A cross-reference indicating that other fees are located elsewhere in the table. A statement that other fees may apply. A statement that information about other fees is included in the account-opening disclosures or agreement, as applicable.

(xvi) *Negative amortization.* If applicable, a statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(xvii) *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements.

(xviii) *Credit limit.* The credit limit applicable to the plan.

(xix) *Statements about fixed-rate and -term payment plans.* (A) Except as provided in paragraph (a)(2)(xix)(B) of this section, if a creditor offers a fixed-rate and -term payment plan under the plan, the following information:

(*1*) A statement that the consumer has the option during the draw period to borrow at a fixed interest rate.

(*2*) The amount of the credit line that the consumer may borrow at a fixed interest rate for a fixed term.

(*3*) A statement that information about the fixed-rate and -term payment plan is included in the account-opening disclosures or agreement, as applicable.

(B) A creditor must not make the disclosures required by paragraph (a)(2)(xix)(A) of this section if fixed-rate and -term payment plans are the only payment plans offered during the draw period.

(xx) *Required insurance, debt cancellation or debt suspension coverage.* (A) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(B) A cross reference to any additional information provided with the table described in paragraph (a)(1) of this section about the insurance or coverage, as applicable.

(xxi) *Grace period.* The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing a grace period that applies to all features on the account, the phrase ''How to Avoid Paying Interest'' shall be used as the heading for the information below the table describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact below the table, the phrase ''Paying Interest'' shall be used as the heading for this information.

(xxii) *Balance computation method.* The name of the balance computation method listed in § 226.5a(g) that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by paragraph (a)(4)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the creditor shall assume that credit extended will not be repaid within any grace period, if any.

(xxiii) *Billing error rights reference.* A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

(xxiv) *No obligation statement.*

(A) A statement that the consumer has no obligation to accept the terms disclosed in the table.

(B) A statement that the consumer should confirm that the terms disclosed in the table are the same terms for which the consumer applied.

(C) If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement.

(xxv) *Statement about asking questions.* A statement that if the consumer does not understand any disclosure in the table the consumer should ask questions.

(xxvi) *Statement about Board's Web site.* A statement that the consumer may obtain additional information at the Web site of the Federal Reserve Board, and a reference to this Web site.

(3) *Disclosure of charges imposed as part of home-equity plans.* A creditor shall disclose, to the extent applicable:◄

[(1) *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows.]

►(i) For charges imposed as part of a home-equity plan subject to the requirements of § 226.5b, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined.[11] For finance charges, a◄ [(i) A] statement of when ►the charge◄ [finance charges] begin►s◄ to accrue [, including] ►and◄ an explanation of whether or not any time period exists within which any credit ►that has been ◄ extended may be repaid without incurring ►the◄ [a finance] charge. If such a time period is provided, a creditor may, at its option and without disclosure, ►elect not to◄ impose [no] ►a◄

[11] [Reserved].

finance charge when payment is received after the time period ►expires.◄ ['s expiration.]

►(ii) Charges imposed as part of the plan are:

(A) Finance charges identified under § 226.4(a) and § 226.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default; costs for protection of the creditor's interest in the collateral for the plan due to default; attorney's fees whether or not automatically imposed; foreclosure costs; and post-judgment interest rates imposed by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(iii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under § 226.4(e) disclosed as specified.

(4) *Disclosure of rates for home-equity plans.* A creditor shall disclose, to the extent applicable:

(i) For each periodic rate that may be used to calculate interest:

(A) *Rates.* The rate, expressed as a periodic rate and a corresponding annual percentage rate.[12]

(B) *Range of balances.* The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.[13]

(C) *Type of transaction.* The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) *Balance computation method.* An explanation of the method used to determine the balance to which the rate is applied.

(ii) *Variable-rate accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) specifically set forth in the account agreement:

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) A rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(iii) *Rate changes not due to index or formula.* For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (a)(4)(i)(A) of this section.

(B) How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) The balances to which the new rate will apply.

(E) The balances to which the current rate at the time of the change will apply.◄

[(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If a creditor offers a variable-rate plan, the creditor shall also disclose: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.

(iv) An explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined.

(2) *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(3) *Home-equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(i) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(ii) The payment information described in § 226.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.

(iii) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(iv) A statement of any transaction requirements as described in § 226.5b(d)(10).

(v) A statement regarding the tax implications as described in § 226.5b(d)(11).

(vi) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in § 226.5b(d)(6) and (d)(12)(ii).

(vii) The variable-rate disclosures described in § 226.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.]

►(5) *Additional disclosures for home-equity plans.* A creditor shall disclose, to the extent applicable:

(i) *Voluntary credit insurance, debt cancellation or debt suspension.* The disclosures in §§ 226.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10).◄

►(ii)◄[(4)] *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

►(iii)◄[(5)] *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G–3 [or, at the creditor's option G–3(A),] in Appendix G to this part.

[12] [Reserved].

[13] [Reserved].

►(iv) *Possible creditor actions.* A statement of the conditions under which the creditor may take certain actions, as described in § 226.5b(c)(7)(i), such as terminating the plan or changing the terms.

(v) *Additional information on fixed-rate and -term payment plans.* Information related to any fixed-rate and -term payment plans, as follows.

(A) The period during which the plan can be selected.

(B) The length of time over which repayment can occur.

(C) An explanation of how the minimum periodic payment will be determined for the payment plan.

(D) Any limitations on the number of extensions of credit or the amount of credit that may be obtained under the payment plan. Any minimum outstanding balance requirements or any minimum draw requirements applicable to the payment plan.◄

* * * * *

6. Section 226.7, as amended on January 29, 2009 (74 FR 5409) is amended by republishing the introductory text and by revising paragraph (a), as follows:

§ 226.7 Periodic Statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Rules affecting home-equity plans.* The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of § 226.5b. [Alternatively, a creditor subject to this paragraph may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses not to provide a disclosure under paragraph (a)(7) of this section must comply with paragraph (b)(6) of this section.]

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

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

(3) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in [accounting] ►crediting◄ does not result in any finance or other charge.

(4) *Periodic rates.* (i) Except as provided in paragraph (a)(4)(ii) of this section, each periodic rate that may be used to compute the [finance charge,] ►interest charge expressed as an annual percentage rate and using the term, *Annual Percentage Rate,*[14] along with◄ the range of balances to which it is applicable [, and the corresponding annual percentage rate].[15] If no [finance] ►interest◄ charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no [finance] ►interest◄ charge will be imposed. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the [periodic rate(s)] ►annual percentage rate◄ may vary.

(ii) *Exception.* An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined ►using the term *Balance Subject to Interest Rate*◄. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. ►As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in § 226.5a(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in § 226.5a(g), the creditor shall provide a brief explanation of the method used.◄

►(6) *Charges imposed.* (i) The amounts of any charges imposed as part of a plan as stated in § 226.6(a)(3) grouped together, in proximity to transactions identified under paragraph (a)(2) of this section, substantially similar to Sample G–24(A) in Appendix G to this part.

(ii) *Interest.* A total of finance charges attributable to periodic interest rates, using the term *Total Interest,* must be disclosed for the statement period and calendar year to date. If different periodic rates apply to different types of transactions, finance charges attributable to periodic interest rates, using the term *Interest Charge,* must be grouped together under the heading *Interest Charged,* itemized and totaled by type of transaction or group of transactions subject to different periodic rates. The disclosures made pursuant to this paragraph must be provided using a format substantially similar to Sample G–24(A) in Appendix G to this part.

(iii) *Fees.* Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading *Fees,* identified consistent with the feature or type, and itemized, and a total of charges, using the term *Fees,* must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–24(A) in Appendix G.

(7) *Change-in-terms and increased penalty rate summary for home-equity loans.* Creditors that provide a change-in-terms notice required by § 226.9(c)(1), or a rate increase notice required by § 226.9(i), on or with the periodic statement, must disclose the information in § 226.9(c)(1)(iii)(A) or § 226.9(i)(3) on the periodic statement in accordance with the format requirements in § 226.9(c)(1)(iii)(B), and § 226.9(i)(4). See Samples G–25 and G–26 in Appendix G to this part.◄

[(6) *Amount of finance charge and other charges.* Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.

(i) *Finance charges.* The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amount(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

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

(7) *Annual percentage rate.* At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14(c) using the term *annual percentage rate.*]

(8) *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is

[14] [Reserved].

[15] [Reserved].

received after the time period's expiration.

(9) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

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

7. Section 226.9, as amended on January 29, 2009 (74 FR 5412), is amended by revising paragraph (c)(1), and adding new paragraphs (*i*) and (j), as follows

§ 226.9 Subsequent disclosure requirements.

* * * * *

(c) *Change in terms*—(1) *Rules affecting home-equity plans*—(i) *Written notice required.* For home-equity plans subject to the requirements of § 226.5b, ►except as provided in paragraphs (c)(1)(ii) and (c)(1)(iv) of this section,◄ whenever any term required to be disclosed under § 226.6(a) is changed [or the required minimum periodic payment is increased], ►a◄[the] creditor ►must provide a◄[shall mail or deliver] written notice of the change ►at least 45 days prior to the effective date of the change◄ to each consumer who may be affected. [The notice shall be mailed or delivered at least 15 days prior to the effective date of the change.] The ►45-day◄[15-day] timing requirement does not apply if the ►consumer has agreed to a particular◄ change [has been agreed to by the consumer]; the notice shall be given, however, before the effective date of the change. ►Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (*i*) of this section must be disclosed pursuant to paragraph (*i*) of this section.◄

►(ii) *Charges not covered by § 226.6(a)(1) and (a)(2).* Except as provided in paragraph (c)(1)(iv) of this section, if a creditor increases any component of a charge or introduces a new charge required to be disclosed under § 226.6(a)(3) that is not required to be disclosed in a tabular format under § 226.6(a)(2), a creditor may either, at its option:

(A) Comply with the requirements of paragraph (c)(1)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iii) *Disclosure requirements*—(A) *Changes to terms described in account-opening table.* If a creditor changes a term required to be disclosed in a tabular format pursuant to § 226.6(a)(1) and (a)(2), the creditor must provide the following information on the notice provided pursuant to paragraph (c)(1)(i) of this section:

(*1*) A summary of the changes made to terms required by § 226.6(a)(1) and (2);

(*2*) A statement that changes are being made to the account;

(*3*) A statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(*4*) The date the changes will become effective; and

(*5*) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice.

(B) *Format requirements*—(*1*) *Tabular format.* The summary of changes described in paragraph (c)(1)(iii)(A)(*1*) of this section must be in a tabular format, with headings and format substantially similar to any of the account-opening tables found in G–15 in Appendix G to this part. The table must disclose the changed term(s) and information relevant to the change(s), if that relevant information is required by § 226.6(a)(1) and (a)(2). The new terms must be described with the same level of detail as required when disclosing the terms under § 226.6(a)(2).

(*2*) *Notice included with periodic statement.* If a notice required by paragraph (c)(1)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(1)(iii)(A)(*1*) of this section must be disclosed on the front of any page of the statement. The summary of changes described in paragraph (c)(1)(iii)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(*2*) through (c)(1)(iii)(A)(*5*) of this section, and be substantially similar to the format shown in Sample G–25 in Appendix G to this part.

(*3*) *Notice provided separately from periodic statement.* If a notice required by paragraph (c)(1)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(1)(iii)(A)(*1*) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(1)(iii)(A)(*1*) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(1)(iii)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(*2*) through (c)(1)(iii)(A)(*5*) of this section, substantially similar to the format shown in Sample G–25 in Appendix G to this part.◄

►(iv)◄[(ii)] *Notice not required.* For home-equity plans subject to the requirements of § 226.5b, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding. ►Suspension of credit privileges, reduction of a credit limit, or termination of an account do not require notice under paragraph (c)(1)(i) of this section, but must be disclosed pursuant to paragraph (j) of this section.◄

[(iii) *Notice to restrict credit.* For home-equity plans subject to the requirements of § 226.5b, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(i) or (f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.]

* * * * *

(g) *Increase in rates due to delinquency or default or as a penalty* ►*—rules affecting open-end (not home-secured) plans*◄.

* * * * *

►(*i*) *Increase in rates due to delinquency or default or as a penalty—rules affecting home-equity plans*—(1) *Increases subject to this section.* For home-equity plans subject to the requirements of § 226.5b, except as provided in paragraph (*i*)(5) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default as specified in the account agreement; or

(ii) A rate is increased as a penalty for one or more events, other than a

consumer's default or delinquency, as specified in the account agreement.

(2) *Timing of written notice.* Whenever any notice is required to be given pursuant to paragraph (*i*)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (*i*)(1)(i) and (*i*)(1)(ii) of this section that trigger the imposition of the rate increase.

(3) *Disclosure requirements for rate increases.* If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (*i*)(1) of this section:

(i) A statement that the delinquency, default, or penalty rate, as applicable, has been triggered;

(ii) The date on which the delinquency, default, or penalty rate will apply;

(iii) The circumstances under which the delinquency, default, or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency, default, or penalty rate will remain in effect for a potentially indefinite time period; and

(iv) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied.

(4) *Format requirements.* (i) If a notice required by paragraph (*i*)(1) of this section is included on or with a periodic statement, the information described in paragraph (*i*)(3) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(1)(iii)(A) of this section if that notice is provided on the same statement.

(ii) If a notice required by paragraph (*i*)(1) of this section is not included on or with a periodic statement, the information described in paragraph (*i*)(3) of this section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(1)(iii)(A) of this section.

(5) *Exception for workout and temporary hardship arrangements.* A creditor is not required to provide a notice pursuant to paragraph (*i*)(1) of this section if a rate applicable to a category of transactions is increased due to the consumer's completion of a workout or temporary hardship arrangement or as a result of the consumer's failure to comply with the terms of a workout or temporary hardship arrangement between the creditor and the consumer, provided that:

(i) The rate following any such increase does not exceed the rate that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; or

(ii) If the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement.◄

►(j) *Notices of action taken for home-equity plans.*

(1) For home-equity plans subject to the requirements of § 226.5b, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(i) or 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to any consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain [specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice shall state that fact.] the following information (see Model Clauses G–23(A) in Appendix G of this part):

(i) a statement of the action taken, including the date on which the action was effective and, if the credit limit was reduced, the amount of the new credit limit;

(ii) a statement of specific reasons for the action taken;

(iii) if the creditor requires the consumer to request reinstatement of credit privileges under § 226.5b(g)(1)(ii)—

(A) a statement that the consumer has a right to request reinstatement of the account at any time and the method with which the consumer may request reinstatement, including specific contact information for submitting reinstatement requests to the creditor;

(B) a statement that, upon receiving a reinstatement request, the creditor will complete an investigation of whether a reason for continuing the suspension or reduction exists within 30 days of receiving the request, and that if no reason is found to exist, the creditor will restore the consumer's credit privileges; and

(C) a statement that, to investigate the consumer's first reinstatement request after advances have been suspended or the credit limit reduced, the creditor may not charge the consumer any fees, but that for subsequent reinstatement requests by the consumer, the creditor has a right to charge the consumer bona fide and reasonable property valuation or credit report fees associated with the investigation.

(2) For home-equity plans subject to the requirements of § 226.5b, if a creditor suspends advances or decreases the credit limit on an account under § 226.5b(f)(3)(i) or (f)(3)(vi), the creditor may not charge a fee for denied advances or exceeding the credit limit provided for in the original agreement until the consumer has received the notice of action taken required by § 226.9(j)(1).

(3) For home-equity plans subject to the requirements of § 226.5b, if, pursuant to § 226.5b(f)(2), a creditor terminates a plan and demands repayment of the entire outstanding balance in advance of the original term or temporarily or permanently suspends further advances or reduces the credit limit applicable to a home-equity plan, the creditor shall mail or deliver written notice of the action to any consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain the following information (see Model Clauses G–23(B) in Appendix G of this part):

(i) a statement of the action taken; and

(ii) a statement of specific reasons for the action taken.

(4) If, pursuant to § 226.5b(f)(2), a creditor takes any action other than terminating a plan and demanding repayment of the entire outstanding balance in advance of the original term, or temporarily or permanently suspending further advances or reducing the credit limit for a home-equity plan, the creditor must comply with the notice requirements of § 226.9(c)(1) or (*i*), as applicable.◄

8. Section 226.14 is revised to read as follows:

§ 226.14 Determination of annual percentage rate.

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than ⅛th of 1 percentage point above or below the annual percentage rate determined in accordance with this section.[31a] An error in disclosure of the annual percentage rate or finance charge

[31a] [Reserved].

shall not, in itself, be considered a violation of this regulation if:

(1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(2) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.

(b) *Annual percentage rate—in general.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of ►subpart B of this regulation◄ [§§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16, and 226.26] shall be computed by multiplying each periodic rate by the number of periods in a year.

[(c) *Optional effective annual percentage rate for periodic statements for creditors offering open-end plans subject to the requirements of § 226.5b.* A creditor offering an open-end plan subject to the requirements of § 226.5b need not disclose an effective annual percentage rate. Such a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to § 226.7(a)(7) and compute the effective annual percentage rate as follows:

(1) *Solely periodic rates imposed.* If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) *Minimum or fixed charge, but not transaction charge, imposed.* If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable [32] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.[33] If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

(3) *Transaction charge imposed.* If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[34] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.[35] Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate. See Appendix F to this part regarding determination of the denominator of the fraction under this paragraph.

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (c)(3) of this section.

(d) *Calculations where daily periodic rate applied.* If the provisions of paragraph (c)(1)(ii) or (c)(2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.]

9. Appendix F is removed and reserved as follows:

Appendix F to Part 226 [—Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5b] ►[Reserved]◄

[In determining the denominator of the fraction under § 226.14(c)(3), no amount will be used more than once when adding the sum of the balances [1] subject to periodic rates to the sum of the amounts subject to specific transaction charges. (Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase ''sum of the balances'' shall also mean the ''average of daily balances.'') In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none. A specific transaction of $100 occurs on the first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½ percent) multiplied by 12 (the number of months in a year), i.e., 54 percent.

2. Previous balance—$100. A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is $50), totaling $150. As explained in example 1, the annual percentage rate is 3½ percent × 12 = 42 percent.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance subject only to the periodic rate, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼ percent × 12 = 27 percent.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance

[32] [Reserved].

[33] [Reserved].

[34] [Reserved].

[35] [Reserved].

[1] [Reserved].

less payments and credits) and the consumer made a payment of $50 at the midpoint of the billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance subject to the periodic rate, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½ percent × 12 = 30 percent.

5. Previous balance—$100. A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½ percent applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔ percent × 12 = 20 percent.

6. Previous balance—none. A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3 percent of the transaction amount or $3.00. The periodic rate is 1½ percent per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction ($0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($50 − $100 = −$50). The denominator, in this case, is $100. As explained in example 1, the annual percentage rate is 3¾ percent × 12 = 45 percent.]

10. Appendix G to Part 226 is amended by:

A. Revising the table of contents at the beginning of the appendix;

B. Removing Model Clauses and Forms G–1, G–2, G–3, and G–4;

C. Redesignating Model Clauses and Forms G–1(A), G–2(A), G–3(A), and G–4(A) as Model Clauses and Forms G–1, G–2, G–3, and G–4, respectively;

D. Removing Sample Forms and Model Clauses G–14A, G–14B, and G–15; and

E. Adding new Model and Sample Forms and Clauses G–14(A) through G–14(E), G–15(A) through G–15(D), G–22(A), G–22(B), G–23(A), G–23(B), G–24(A) through G–24(C), G–25, and G–26, in numerical order, to read as follows:

Appendix G to Part 226—Open-End Model Forms and Clauses

G–1 Balance Computation Methods Model Clauses [(Home-equity Plans)] (§§ 226.6 and 226.7)
[G–1(A) Balance Computation Methods Model Clauses (Plans other than Home-equity Plans) (§§ 226.6 and 226.7)]
G–2 Liability for Unauthorized Use Model Clause [(Home-equity Plans)] (§ 226.12)
[G–2(A) Liability for Unauthorized Use Model Clause (Plans other than Home-equity Plans) (§ 226.12)]
G–3 Long-Form Billing-Error Rights Model Form [(Home-equity Plans)] (§§ 226.6 and ►226.7◄ [226.9])
[G–3(A) Long-Form Billing-Error Rights Model Form (Plans other than Home-equity Plans) (§§ 226.6 and 226.9)]
G–4 Alternative Billing-Error Rights Model Form [(Home-equity Plans)] (§ ►226.7◄ [226.9])]
[G–4(A) Alternative Billing-Error Rights Model Form (Plans other than Home-equity Plans) (§ 226.9)]
G–5 Rescission Model Form (When Opening an Account) (§ 226.15)
G–6 Rescission Model Form (For Each Transaction) (§ 226.15)
G–7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)
G–8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)
G–9 Rescission Model Form (When Increasing the Security) (§ 226.15)
G–10(A) Applications and Solicitations Model Form (Credit Cards) (§ 226.5a(b))
G–10(B) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))
G–10(C) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))
G–10(D) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))
G–10(E) Applications and Solicitations Sample (Charge Cards) (§ 226.5a(b))
G–11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))
G–12 Reserved
G–13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))
G–13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))
[G–14A Home-equity Sample
G–14B Home-equity Sample
G–15 Home-equity Model Clauses]
►G–14(A) Early Disclosure Model Form (Home-equity Plans) (§ 226.5b(c))
G–14(B) Early Disclosure Model Form (Home-equity Plans) (§ 226.5b(c))
G–14(C) Early Disclosure Sample (Home-equity Plans) (§ 226.5b(c))
G–14(D) Early Disclosure Sample (Home-equity Plans) (§ 226.5b(c))
G–14(E) Early Disclosure Sample (Home-equity Plans) (§ 226.5b(c))
G–15(A) Account-Opening Disclosure Model Form (Home-equity Plans) (§ 226.6(a)(2))
G–15(B) Account-Opening Disclosure Sample (Home-equity Plans) (§ 226.6(a)(2))
G–15(C) Account-Opening Disclosure Sample (Home-equity Plans) (§ 226.6(a)(2))
G–15(D) Account-Opening Disclosure Sample (Home-equity Plans) (§ 226.6(a)(2))◄
G–16(A) Debt Suspension Model Clause (§ 226.4(d)(3))
G–16(B) Debt Suspension Sample (§ 226.4(d)(3))
G–17(A) Account-opening Model Form (§ 226.6(b)(2))
G–17(B) Account-opening Sample (§ 226.6(b)(2))
G–17(C) Account-opening Sample (§ 226.6(b)(2))
G–17(D) Account-opening Sample (§ 226.6(b)(2))
G–18(A) Transactions; Interest Charges; Fees Sample (§ 226.7(b))
G–18(B) Late Payment Fee Sample (§ 226.7(b))
G–18(C) Actual Repayment Period Sample Disclosure on Periodic Statement (§ 226.7(b))
G–18(D) New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit cards) (§ 226.7(b))
G–18(E) New Balance, Due Date, and Late Payment Sample (Open-end Plans (Non-credit-card Accounts)) (§ 226.7(b))
G–18(F) Periodic Statement Form
G–18(G) Periodic Statement Form
G–19 Checks Accessing a Credit Card Account Sample (§ 226.9(b)(3))
G–20 Change-in-Terms Sample (§ 226.9(c)(2))
G–21 Penalty Rate Increase Sample (§ 226.9(g)(3))
►G–22(A) Home-equity Notice of Reinstatement Investigation Results Model Clauses (§ 226.5b(g)(2)(v))
G–22(B) Home-equity Notice of Reinstatement Investigation Results Model Clauses (§ 226.5b(g)(2)(v))
G–23(A) Home-equity Notice of Action Taken Model Clauses (§ 226.9(j)(1))
G–23(B) Home-equity Notice of Action Taken Model Clauses (§ 226.9(j)(2))
G–24(A) Periodic Statement Transactions; Interest Charges; Fees Sample (Home-equity Plans) (§ 226.7(a))
G–24(B) Periodic Statement Sample (Home-equity Plans) (§ 226.7(a))
G–24(C) Periodic Statement Sample (Home-equity Plans) (§ 226.7(a))
G–25 Change-in-Terms Sample (Home-equity Plans) (§ 226.9(c)(1))
G–26 Rate Increase Sample (Home-equity Plans) (§ 226.9(*j*)(3))◄

[G–1—Balance Computation Methods Model Clauses (Home-equity Plans)

(a) Adjusted balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ''adjusted balance'' of your account. We get the ''adjusted balance'' by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance

charges]. We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to your account this billing cycle was $ ___.]

(c) Average daily balance method (excluding current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ''average daily balance'' of your account (excluding current transactions). To get the ''average daily balance'' we take the beginning balance of your account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(d) Average daily balance method (including current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ''average daily balance'' of your account (including current transactions). To get the ''average daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(e) Ending balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ''daily balance'' of your account for each day in the billing cycle. To get the ''daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid finance charges and] any payments or credits. This gives us the daily balance.]

G–1[(A)]—Balance Computation Methods Model Clauses [(Plans Other Than Home-Equity Plans)]

(a) Adjusted balance method

We figure the interest charge on your account by applying the periodic rate to the ''adjusted balance'' of your account. We get the ''adjusted balance'' by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid interest or other finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle. We do not subtract any payments or credits received during the billing cycle.

(c) Average daily balance method (excluding current transactions)

We figure the interest charge on your account by applying the periodic rate to the ''average daily balance'' of your account. To get the ''average daily balance'' we take the beginning balance of your account each day and subtract [any unpaid interest or other finance charges and] any payments or credits. We do not add in any new [purchases/advances/fees]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(d) Average daily balance method (including current transactions)

We figure the interest charge on your account by applying the periodic rate to the ''average daily balance'' of your account. To get the ''average daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(e) Ending balance method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new [purchases/advances/fees] and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure the interest charge on your account by applying the periodic rate to the ''daily balance'' of your account for each day in the billing cycle. To get the ''daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance.

[G–2—Liability for Unauthorized Use Model Clause (Home-Equity Plans)

You may be liable for the unauthorized use of your credit card [or other term that describes the credit card]. You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. [You may also contact us on the Web: [Creditor Web or e-mail address]] In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].]

G–2[(A)]—Liability for Unauthorized Use Model Clause [(Plans Other Than Home-equity Plans)]

If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at:

[address] [address listed on your bill], or call us at [telephone number].

[You may also contact us on the Web: [Creditor Web or e-mail address]]

You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

[G–3—Long-Form Billing-Error Rights Model Form (Home-Equity Plans)

YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address listed on your bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. [You may also contact us on the Web: [Creditor Web or e-mail address]] You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services.

There are two limitations on this right:

(a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and

(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.]

G–3[(A)]—Long-Form Billing-Error Rights Model Form [(Plans Other Than Home-equity Plans)]

Your Billing Rights: Keep this Document for Future Use

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

What To Do If You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or e-mail address]]

In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Letter

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.

2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.
- *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first $50 of the amount you question even if your bill is correct.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

[Creditor Name]

[Creditor Address]

[[Creditor Web or e-mail address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

[G–4—Alternative Billing-Error Rights Model Form (Home-equity Plans)

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address shown on your bill] as soon as possible. [You may also contact us on the Web: [Creditor Web or e-mail address]] We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

Special Rule for Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)]

G–4[(A)]—Alternative Billing-Error Rights Model Form [(Plans Other Than Home-equity Plans)]

What To Do If You Think You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or e-mail address]]

In your letter, give us the following information:

• *Account information:* Your name and account number.

• *Dollar amount:* The dollar amount of the suspected error.

• *Description of Problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

• We cannot try to collect the amount in question, or report you as delinquent on that amount.

• The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.

• While you do not have to pay the amount in question, you are responsible for the remainder of your balance.

• We can apply any unpaid amount against your credit limit.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

[Creditor Name]

[Creditor Address]

[Creditor Web address]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

BILLING CODE 6210–01–P

G-14(A) Early Disclosure Model Form (Home-equity Plans)

[Loan Applicant's Name]
[Loan Applicant's Address]

[Date]
[Name of Creditor]
[Loan Originator's Unique Identifier]

[Statement that the consumer has applied for a home-equity line of credit]

Borrowing Guidelines	
Credit Limit	[Disclosure of credit limit]
First Transaction	[Description of any minimum draw requirements at account opening]
Minimum Transaction	[Description of any minimum draw requirements after account opening]
Minimum Balance	[Description of any minimum outstanding balance requirement]
Limits on Number of Credit Transactions	[Description of any limitations on the number of extensions of credit]
Limits on Amount of Credit Borrowed	[Description of any limitations on the amount of credit that may be obtained during any time period]

Annual Percentage Rate	
Annual Percentage Rate (APR)	[APR(s) applicable to the payment plans disclosed in the table, including introductory APR information] [For variable APRs, the following (1) description that the APR varies, (2) how the APR is determined, (3) the frequency of changes in the APR, (4) description of any limitations on changes in the APR (except for minimum and maximum APRs) or a statement that no annual limitation exists, as applicable, and (5) description of any rules relating to changes in the index value and the APR, including preferred rate provisions and rate carryover provisions, if any]
Maximum APR	[Maximum APR(s) applicable to the payment plans disclosed in the table]
Minimum APR	[Minimum APR(s) applicable to the payment plans disclosed in the table]
Historical Changes to Prime Rate	[Description of the lowest and highest value of the index in the past 15 years]

Fees	
Refundability of Fees	[Description of a consumer's rights to refund of fees]
Total Account Opening Fees	[Description of total one-time account opening fees] [Description of itemized one-time account opening fees]
[Annual Fee/Monthly Fees]	[Description of fees imposed by the creditor for availability of the plan]
Early Termination Fee	[Description of fees imposed by the creditor for early termination of the plan by the consumer]
Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plan] [Cross reference to additional information]
Other Fees	[Statements about other fees]

Borrowing and Repayment Terms	
Length of Credit Plan	[Disclosures of length of plan, length of draw period, and length of any repayment period] [If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full] [A statement that the consumer can borrow money during the draw period] [If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period] [A statement indicating whether minimum payments are due in the draw period and any repayment period]
Balloon Payment	[Statement that paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan] [Statement that a balloon payment may result or will result, as applicable]

Payment Plans	
[Statement indicating that the table shows how the creditor determines minimum required payments for two plans offered by the creditor] [Statement that other payment plans are available] [Statement that consumer should ask the creditor for additional details about these other payment plans]	
Plan A	[Explanation of how the minimum periodic payment will be determined and the timing of the payments for this plan] [Statement about balloon payment for this plan] [Statement about payment limitations] [Statement about negative amortization]
Plan B	[Explanation of how the minimum periodic payment will be determined and the timing of the payments for this plan] [Statement about balloon payment for this plan] [Statement about payment limitations] [Statement about negative amortization]

Plan Comparison: Sample Payments on an $(credit limit) Balance			
[Statement that the sample payments show the first periodic payments if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money] [Statement that the sample payments are not the consumer's actual payments] [Statement that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period]			
Sample Payments under Plan A			
APR	**Borrowing Period (Years __ to __) First Payment**	**[Balance at Start of Repayment Period]**	**[Repayment Period (Years __ to __) First Payment]**
____% (current)	$____	[$____]	[$____]
____% (max.)	$____	[$____]	[$____]
Sample Payments under Plan B			
APR	**Borrowing Period (Years __ to __) First Payment**	**[Balance at Start of Repayment Period]**	**[Repayment Period (Years __ to __) First Payment]**
____% (current)	$____	[$____]	[$____]
____% (max.)	$____	[$____]	[$____]
Plan A vs. Plan B			
[Identification of which plan results in the least amount of interest, and which plan results in the most amount of interest] [Statements about balloon payments]			

[Fixed Interest Rate Option]
[Statements about fixed-rate and -term payment plans] [Statement that consumer should ask creditor for details about fixed-rate and -term payment plans]

Risks	
You Could Lose Your Home	[Statements about security interest in the consumer's dwelling and risk to home]
You May Not Be Able to Borrow From Your Line of Credit	[Statements about possible actions by creditor on HELOC plan]
The Interest You Pay May Not Be Tax-Deductible	[Statements about tax implications]

- [Statement that the consumer has no obligation to accept the terms disclosed in the table] [Identification of any disclosed term that is subject to change prior to opening the plan, or a statement that all terms disclosed could change before the plan is opened, as applicable]
- [Statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan] [Cross reference to the "Fees" section in the table]
- [Statement about asking questions]
- [Statement about Board's website]

[If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement]

[_____

Borrower's Signature Date]

G-14(B) Early Disclosure Model Form (Home-equity Plans)

[Loan Applicant's Name]
[Loan Applicant's Address]

[Date]
[Name of Creditor]
[Loan Originator's Unique Identifier]

[Statement that the consumer has applied for a home-equity line of credit]

Borrowing Guidelines	
Credit Limit	[Disclosure of credit limit]
First Transaction	[Description of any minimum draw requirements at account opening]
Minimum Transaction	[Description of any minimum draw requirements after account opening]
Minimum Balance	[Description of any minimum outstanding balance requirement]
Limits on Number of Credit Transactions	[Description of any limitations on the number of extensions of credit]
Limits on Amount of Credit Borrowed	[Description of any limitations on the amount of credit that may be obtained during any time period]

Annual Percentage Rate	
Annual Percentage Rate (APR)	[APR(s) applicable to the payment plans disclosed in the table, including introductory APR information] [For variable APRs, the following (1) description that the APR varies, (2) how the APR is determined, (3) the frequency of changes in the APR, (4) description of any limitations on changes in the APR (except for minimum and maximum APRs) or a statement that no annual limitation exists, as applicable, and (5) description of any rules relating to changes in the index value and the APR, including preferred rate provisions and rate carryover provisions, if any]
Maximum APR	[Maximum APR(s) applicable to the payment plans disclosed in the table]
Minimum APR	[Minimum APR(s) applicable to the payment plans disclosed in the table]
Historical Changes to Prime Rate	[Description of the lowest and highest value of the index in the past 15 years]

Fees	
Refundability of Fees	[Description of a consumer's rights to refund of fees]
Total Account Opening Fees	[Description of total one-time account opening fees] [Description of itemized one-time account opening fees]
[Annual Fee/Monthly Fees]	[Description of fees imposed by the creditor for availability of the plan]
Early Termination Fee	[Description of fees imposed by the creditor for early termination of the plan by the consumer]
Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plan] [Cross reference to additional information]
Other Fees	[Statements about other fees]

Borrowing and Repayment Terms	
Length of Credit Plan	[Disclosures of length of plan, length of draw period, and length of any repayment period] [If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full] [A statement that the consumer can borrow money during the draw period] [If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period] [A statement indicating whether minimum payments are due in the draw period and any repayment period]
Balloon Payment	[Statement that paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan] [Statement that a balloon payment may result or will result, as applicable]

How Your Minimum Monthly Payments Are Calculated
[Explanation of how the minimum periodic payment will be determined and the timing of the payments for this plan] [Statement about payment limitations] [Statement about negative amortization]

Sample Payments on an $(credit limit) Balance
[Statement that the sample payments show the first periodic payments if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money] [Statements about balloon payment] [Statement that the sample payments are not the consumer's actual payments] [Statement that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period]

Sample Payments

APR	Borrowing Period (Years __ to __) First Payment	[Balance at Start of Repayment Period]	[Repayment Period (Years __ to __) First Payment]
____% (current)	$____	[$____]	[$____]
____% (max.)	$____	[$____]	[$____]

[Fixed Interest Rate Option]
[Statements about fixed-rate and -term payment plans] [Statement that consumer should ask creditor for details about fixed-rate and -term payment plans]

Risks	
You Could Lose Your Home	[Statements about security interest in the consumer's dwelling and risk to home]
You May Not Be Able to Borrow From Your Line of Credit	[Statements about possible actions by creditor on HELOC plan]
The Interest You Pay May Not Be Tax-Deductible	[Statements about tax implications]

→ [Statement that the consumer has no obligation to accept the terms disclosed in the table] [Identification of any disclosed term that is subject to change prior to opening the plan, or a statement that all terms disclosed could change before the plan is opened, as applicable]

→ [Statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan] [Cross reference to the "Fees" section in the table]

→ [Statement about asking questions]

→ [Statement about Board's website]

[If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement]

[_____

Borrower's Signature Date]

G-14(C) Early Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

December 20, 2011
XXX Bank
Loan Officer: 12345 1234

You have applied for a home equity line of credit.

Borrowing Guidelines	
Credit Limit	**$80,000**
First Transaction	You must borrow at least **$10,000** when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least **$300**.
Minimum Balance	You must keep a balance of at least **$500**.

Annual Percentage Rate	
Annual Percentage Rate (APR)	**4.00%** introductory APR for the first six months. After that, your APR will be **5.25%.** This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on how much the rate can change in one year.
Maximum APR	**24.99%**
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.

Fees	
Refundability of Fees	We will refund all fees you paid if you tell us that you do not want to open an account: • for any reason within three business days after you receive this statement; or • any time before your account is opened if any of these terms (other than the APR) changes.
Total Account Opening Fees	Up to **$1,740**, for the following: • $350 for loan origination • $800 for loan discount • $295 for underwriting • $200 - $295 for appraisal
Annual Fee	**$50**
Early Termination Fee	**$500** or **.125%** of the credit limit, whichever is greater, if you close your account within three years.
Other Fees	Other fees will apply, such as penalty fees and fees to make transactions on the account. Ask us for additional information about other fees.

Borrowing and Repayment Terms	
Length of Credit Plan	20 years, divided into two periods: • **Borrowing Period (Years 1-10):** During this time you can borrow money. • **Repayment Period (Years 11-20):** During this time you cannot borrow money. You must make a minimum monthly payment during both periods.
Balloon Payment	Depending on the terms of your payment plan, if you make only the minimum monthly payment you may not pay off your entire balance by the end of the repayment period. If this happens, you will have to pay the remaining balance in a single payment, known as a "balloon payment."

Payment Plans	
This table shows how we determine minimum monthly payments for two plans that we offer. Other payment plans may be available. Ask us for details.	
Plan A	• **Borrowing Period (Years 1-10):** Your minimum monthly payment would cover interest plus 1.5% of the balance. • **Repayment Period (Years 11-20):** Your minimum monthly payment would cover interest plus enough principal to pay off your entire balance by the end of the repayment period. You would not owe a balloon payment.
Plan B	• **Borrowing Period (Years 1-10):** Your minimum monthly payment would cover only interest and you would not pay down your balance. • **Repayment Period (Years 11-20):** Your minimum monthly payment would cover interest plus 1% of the balance. You would owe a balloon payment.

Plan Comparison: Sample Payments on an $80,000 Balance

The table shows examples of your first monthly payments at the current and maximum APRs under each plan if you borrow **$80,000** when you open your account and do not borrow any more money.

These are not your actual payments. Your actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

Sample Payments under Plan A

APR	Borrowing Period (Years 1-10) First Payment	Balance at Start of Repayment Period	Repayment Period (Years 11-20) First Payment
5.25% (current)	$1,550.00	$13,045.00	$140.00
24.99% (max.)	$2,866.00	$13,045.00	$297.00

Sample Payments under Plan B

APR	Borrowing Period (Years 1-10) First Payment	Balance at Start of Repayment Period	Repayment Period (Years 11-20) First Payment
5.25% (current)	$350.00	$80,000.00	$1,150.00
24.99% (max.)	$1,666.00	$80,000.00	$2,466.00

Plan A vs. Plan B

- Under Plan A, you would pay **less** over time and **would not** owe a balloon payment.
- Under Plan B, you would pay **more** over time and **would** owe a balloon payment if you make only the minimum monthly payments. In the example above, the balloon payment would be $23,950.43.

Fixed Interest Rate Option

During the borrowing period under either payment plan, you have the option to borrow at a fixed interest rate an amount up to your available credit limit. Ask us for details.

Risks

You Could Lose Your Home	Your credit plan will be secured by your home. This means you could lose your home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From Your Line of Credit	Under certain circumstances, we can: • Terminate your line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; • Not allow you to borrow any more money, even if you have borrowed less than your credit limit; • Lower your credit limit; and • Make other changes to the plan. Ask us for more information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

→ **You have no obligation to accept these terms. These terms could change before we open your account.**

→ **You may be entitled to a refund of all fees you paid if you decide not to open an account.** See "Fees" section above for more details.

→ **Ask questions if you do not understand any part of this form.**

→ **For more information, go to www.xxx.gov.**

By signing below, I acknowledge receipt of this form.

Borrower's Signature **Date**

G-14(D) Early Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

December 20, 2011
XXX Bank
Loan Officer: 12345 1234

You have applied for a home equity line of credit.

Borrowing Guidelines	
Credit Limit	**$80,000**
First Transaction	You must borrow at least **$10,000** when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least **$300**.
Minimum Balance	You must keep a balance of at least **$500**.

Annual Percentage Rate	
Annual Percentage Rate (APR)	**5.25%.** This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on how much the rate can change in one year.
Maximum APR	**24.99%**
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.

Fees	
Refundability of Fees	We will refund all fees you paid if you tell us that you do not want to open an account: • for any reason within three business days after you receive this statement; or • any time before your account is opened if any of these terms (other than the APR) changes.
Total Account Opening Fees	Up to **$1,740**, for the following: • $350 for loan origination • $800 for loan discount • $295 for underwriting • $200 - $295 for appraisal
Annual Fee	**$50**
Early Termination Fee	**$500** or **.125%** of the credit limit, whichever is greater, if you close your account within three years.
Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See enclosed information for details.
Other Fees	Other fees will apply, such as penalty fees and fees to make transactions on the account. Ask us for additional information about other fees.

Borrowing and Repayment Terms	
Length of Credit Plan	You can borrow money for 10 years and must make minimum monthly payments during that time. At the end of this period, you must repay the remaining balance in full.
Balloon Payment	If you make only the minimum monthly payment you will not pay off your entire balance by the end of the line of credit. At that time, will have to pay the remaining balance in a single payment, known as a "balloon payment."

How Your Minimum Monthly Payments Are Determined
Your minimum monthly payment will cover only interest and will not pay down your balance.

Sample Payments on an $80,000 Balance
The table shows examples of your first monthly payments at the current and maximum APRs if you borrow **$80,000** when you open your account and do not borrow any more money. **No matter what your rate is, you would owe a balloon payment of $80,000 if you made only minimum monthly payments.** **These are not your actual payments.** Your actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

Sample Payments	
APR	**First Payment**
5.25% (current)	$350.00
24.99% (max.)	$1,666.00

Fixed Interest Rate Option
You have the option to borrow at a fixed interest rate an amount up to your available credit limit. Ask us for details.

Risks	
You Could Lose Your Home	Your credit plan will be secured by your home. This means you could lose your home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From Your Line of Credit	Under certain circumstances, we can: • Terminate your line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; • Not allow you to borrow any more money, even if you have borrowed less than your credit limit; • Lower your credit limit; and • Make other changes to the plan. Ask us for more information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

→ **You have no obligation to accept these terms. These terms could change before we open your account.**

→ **You may be entitled to a refund of all fees you paid if you decide not to open an account.** See "Fees" section above for more details.

→ **Ask questions if you do not understand any part of this form.**

→ **For more information, go to www.xxx.gov.**

By signing below, I acknowledge receipt of this form.

Borrower's Signature **Date**

G-14(E) Early Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

December 20, 2011
XXX Bank
Loan Officer: 12345 1234

You have applied for a home equity line of credit.

Borrowing Guidelines	
Credit Limit	**$80,000**
First Transaction	You must borrow at least **$10,000** when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least **$300**.
Minimum Balance	You must keep a balance of at least **$500**.

Annual Percentage Rate	
Annual Percentage Rate (APR)	**4.00%** introductory APR for the first six months. After that, your APR will be **5.25%.** This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on how much the rate can change in one year.
Maximum APR	**24.99%**
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.

Fees	
Refundability of Fees	We will refund all fees you paid if you tell us that you do not want to open an account: • for any reason within three business days after you receive this statement; or • any time before your account is opened if any of these terms (other than the APR) changes.
Total Account Opening Fees	Up to **$1,740**, for the following: • $350 for loan origination • $800 for loan discount • $295 for underwriting • $200 - $295 for appraisal
Annual Fee	**$50**
Early Termination Fee	**$500** or **.125%** of the credit limit, whichever is greater, if you close your account within three years.
Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See enclosed information for details.
Other Fees	Other fees will apply, such as penalty fees and fees to make transactions on the account. Ask us for additional information about other fees.

Borrowing and Repayment Terms	
Length of Credit Plan	25 or 40 years (depending on the balance at the beginning of the repayment period), divided into two periods: • **Borrowing Period (Years 1-10):** During this time you can borrow money. • **Repayment Period (starts in Year 11):** During this time you cannot borrow money. • If your balance at the beginning of the repayment period is less than $20,000, the length of the repayment period will be 15 years. • If your balance at the beginning of the repayment period is $20,000 or more, the length of the repayment period will be 30 years. You must make a minimum monthly payment during both periods.

How Your Minimum Monthly Payments Are Calculated

- **Borrowing Period (Years 1-10):** Your minimum monthly payment will cover only interest and will not pay down your balance.
- **Repayment Period (starts in Year 11):** Your minimum monthly payment will cover interest plus enough principal to pay off your entire balance by the end of the repayment period.

Sample Payments on an $80,000 Balance

The table shows examples of your first monthly payments at the current and maximum APRs if you borrow **$80,000** when you open your account and do not borrow any more money.

These are not your actual payments. Your actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

Sample Payments

APR	Borrowing Period (Years 1-10) First Payment	Balance at Start of Repayment Period	Repayment Period (Years 11-40) First Payment
5.25% (current)	$350.00	$80,000.00	$442.00
24.99% (max.)	$1,666.00	$80,000.00	$1,667.00

Fixed Interest Rate Option

During the borrowing period, you have the option to borrow at a fixed interest rate an amount up to your available credit limit. Ask us for details.

Risks

You Could Lose Your Home	Your credit plan will be secured by your home. This means you could lose your home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From Your Line of Credit	Under certain circumstances, we can: • Terminate your line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; • Not allow you to borrow any more money, even you have borrowed less than your credit limit; • Lower your credit limit; and • Make other changes to the plan. Ask us for more information about when we can take these actions.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

→ **You have no obligation to accept these terms. These terms could change before we open your account.**

→ **You may be entitled to a refund of all fees you paid if you decide not to open an account.** See "Fees" section above for more details.

→ **Ask questions if you do not understand any part of this form.**

→ **For more information, go to www.xxx.gov.**

By signing below, I acknowledge receipt of this form.

Borrower's Signature **Date**

G-15(A) Account-Opening Disclosure Model Form (Home-equity Plans)

[Loan Applicant's Name]
[Loan Applicant's Address]

[Date]
[Name of Creditor]
[Loan Originator's Unique Identifier]
[Loan number]

Borrowing Guidelines	
Credit Limit	[Disclosure of credit limit]
First Transaction	[Description of any minimum draw requirements at account opening]
Minimum Transaction	[Description of any minimum draw requirements after account opening]
Minimum Balance	[Description of any minimum outstanding balance requirement]
Limits on Number of Credit Transactions	[Description of any limitations on the number of extensions of credit]
Limits on Amount of Credit Borrowed	[Description of any limitations on the amount of credit that may be obtained during any time period]

Annual Percentage Rate	
Annual Percentage Rate (APR)	[APR(s) applicable to the payment plans disclosed in the table, including introductory APR information] [For variable APRs, the following (1) description that the APR varies, (2) how the APR is determined, (3) the frequency of changes in the APR, (4) description of any limitations on changes in the APR (except for minimum and maximum APRs) or a statement that no annual limitation exists, as applicable, and (5) description of any rules relating to changes in the index value and the APR, including preferred rate provisions and rate carryover provisions, if any]
Maximum APR	[Maximum APR(s) applicable to the payment plans disclosed in the table]
Minimum APR	[Minimum APR(s) applicable to the payment plans disclosed in the table]
Historical Changes to Prime Rate	[Description of the lowest and highest value of the index in the past 15 years]

Fees	
Total Account Opening Fees	[Description of total one-time account opening fees] [Cross reference to itemization of one-time account opening fees below]
[Annual Fee/Monthly Fees]	[Description of fees imposed by the creditor for availability of the plan]
Early Termination Fee	[Description of fees imposed by the creditor for early termination of the plan by the consumer]
Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plan] [Cross reference to additional information]
Other Fees	[Cross reference to disclosure of fees below]

Borrowing and Repayment Terms	
Length of Credit Plan	[Disclosures of length of plan, length of draw period, and length of any repayment period] [If there is no repayment period on the plan, a statement that after the draw period ends, the consumer must repay the remaining balance in full] [A statement that the consumer can borrow money during the draw period] [If a repayment period is provided, a statement that the consumer cannot borrow money during the repayment period] [A statement indicating whether minimum payments are due in the draw period and any repayment period]
[Balloon Payment	[Statement that paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan] [Statement that a balloon payment may result or will result, as applicable]

How Your Minimum Monthly Payments Are Determined
[Explanation of how the minimum periodic payment will be determined and the timing of the payments for this plan]
[Statement about payment limitations]
[Statement about negative amortization]

Sample Payments			
[Statement that the sample payments show the first periodic payments if the consumer borrows the maximum credit available when the account is opened and does not borrow any more money]			
[Statements about balloon payment]			
[Statement that the sample payments are not the consumer's actual payments]			
[Statement that the actual payments each period will depend on the amount that the consumer has borrowed and the interest rate that period]			
APR	**Borrowing Period (Years __ to __) First Payment**	**[Balance at start of Repayment Period]**	**[Repayment Period (Years __ to __) First Payment]**
____% (current)	$____	[$____]	[$____]
____% (max.)	$____	[$____]	[$____]

More Information about Fees	
Account Opening Fees	
[itemization of one-time account opening fees]	
Penalty Fees	
• Late Payment	[Description of late payment fee]
• Over-the-Credit Limit	[Description of over-the-credit-limit fee]
• Balance below $____	[Description of any fees imposed by the creditor for a consumer's failure to comply with any minimum balance requirements]
• Returned Payment	[Description of returned payment fee]
• Exceeding Limits on Amount of Credit Borrowed	[Description of any fees imposed for a consumer's failure to comply with any limitations on the amount of credit that may be obtained during any time period]
Transaction Fees	
• Transaction less than $____	[Description of any fees imposed for a consumer's failure to comply with minimum draw requirements]
• Exceeding Limits on Number of Credit Transactions	[Description of any fees imposed for a consumer's failure to comply with any limitations on the number of extensions of credit]
[itemization of any transaction charges imposed by the creditor for use of the home-equity plan]	
[Statement that information about other fees is included in the account-opening disclosures or agreement, as applicable]	

[Fixed Interest Rate Option]
[Statements about fixed-rate and -term payment plans] [Statement that consumer should ask creditor for details about fixed-rate and -term payment plans]

Risks	
You Could Lose Your Home	[Statements about security interest in the consumer's dwelling and risk to home]
You May Not Be Able to Borrow From Your Line of Credit	[Statements about possible actions by creditor on HELOC plan]
The Interest You Pay May Not Be Tax-Deductible	[Statements about tax implications]

How We Will Calculate Your Balance: [Description of balance computation method]

[How to Avoid Paying Interest]/[Paying Interest]: [Description of grace period for purchases, cash advances, or any other credit extension or statement that no grace period applies]

Billing Rights: [Reference to account agreement for details on billing-error rights]

→ [Statement that the consumer has no obligation to accept the terms disclosed in the table] [Statement that the consumer should use this form to confirm that these are the terms for which the consumer applied.]

→ [Statement about asking questions]

→ [Statement about Board's website]

[If the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement]

[_____

Borrower's Signature Date]

G-15(B) Account-Opening Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

January 9, 2012
XXX Bank
Loan Officer: 12345 1234
Loan Number: 123-12-1234-556

Borrowing Guidelines	
Credit Limit	**$80,000**
First Transaction	You must borrow at least **$10,000** when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least **$300**.
Minimum Balance	You must keep a balance of at least **$500**.

Annual Percentage Rate	
Annual Percentage Rate (APR)	**4.00%** introductory APR for the first six months. After that, your APR will be **5.25%.** This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on how much the rate can change in one year.
Maximum APR	**24.99%**
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.

Fees	
Total Account Opening Fees	**$1,740** (itemized below under "More Information about Fees")
Annual Fee	**$50**
Early Termination Fee	**$500** or **.125%** of the credit limit, whichever is greater, if you close your account within three years.
Other Fees	See below under "More Information about Fees."

Borrowing and Repayment Terms	
Length of Credit Plan	20 years, divided into two periods: • **Borrowing Period (Years 1-10):** During this time you can borrow money. • **Repayment Period (Years 11-20):** During this time you cannot borrow money. You must make a minimum monthly payment during both periods.
Balloon Payment	If you make only the minimum payment each month you will not pay off your entire balance by the end of the repayment period. At that time, you will have to pay the remaining balance in a single payment, known as a "balloon payment."

How Your Minimum Monthly Payments Are Determined

- **Borrowing Period (Years 1-10):** Your minimum monthly payment will cover only interest and will not pay down your balance.
- **Repayment Period (Years 11-20):** Your minimum monthly payment will cover interest plus 1% of the balance.

Sample Payments

The table shows examples of your first monthly payments at the current and maximum APRs if you borrow **$80,000** when you open your account and do not borrow any more money. **No matter what your rate is, you would owe a balloon payment of $23,950.43 if you made only minimum monthly payments.**

These are not your actual payments. Your actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

APR	Borrowing Period (Years 1-10) First Payment	Balance at start of Repayment Period	Repayment Period (Years 11-20) First Payment
5.25% (current)	$350.00	$80,000.00	$1,150.00
24.99% (max.)	$1,666.00	$80,000.00	$2,466.00

More Information about Fees	
Account Opening Fees	
• Loan Origination	**$350**
• Loan Discount	**$800**
• Underwriting	**$295**
• Appraisal	**$295**
Penalty Fees	
• Late Payment	Either **$15** or **5%** of the minimum monthly payment, whichever is greater.
• Over-the-Credit Limit	**$20**
• Balance below $500	**$25** if your balance falls below $500.
• Returned Payment	**$30**
Transaction Fees	
• Transaction less than $300	**4%** of each transaction that is less than **$300**. This fee does not apply to credit card transactions.
Other fees may also apply; see your account agreement for details.	

Fixed Interest Rate Option
During the borrowing period, you have the option to borrow at a fixed interest rate an amount up to your available credit limit. See account agreement for details.

Risks	
You Could Lose Your Home	Your credit plan will be secured by your home. This means you could lose your home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From Your Line of Credit	Under certain circumstances, we can: • Terminate your line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; • Not allow you to borrow any more money, even if you have borrowed less than your credit limit; • Lower your credit limit; and • Make other changes to the plan. See your account agreement for details.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Paying Interest: We will begin charging interest on each transaction on the date the transaction is posted to your account.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

→ **You have no obligation to accept these terms.** Use this statement to confirm that these are the terms for which you applied.

→ **Ask questions if you do not understand any part of this form.**

→ **For more information, go to www.xxx.gov.**

By signing below, I acknowledge receipt of this form.

Borrower's Signature **Date**

G-15(C) Account-Opening Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

January 9, 2012
XXX Bank
Loan Officer: 12345 1234
Loan Number: 123-12-1234-556

Borrowing Guidelines	
Credit Limit	**$80,000**
First Transaction	You must borrow at least **$10,000** when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least **$300**.
Minimum Balance	You must keep a balance of at least **$500**.

Annual Percentage Rate	
Annual Percentage Rate (APR)	**5.25%.** This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on how much the rate can change in one year.
Maximum APR	**24.99%**
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.

Fees	
Total Account Opening Fees	**$1,740** (itemized below under "More Information about Fees")
Annual Fee	**$50**
Early Termination Fee	**$500** or **.125%** of the credit limit, whichever is greater, if you close your account within three years.
Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See enclosed information for details.
Other Fees	See below under "More Information about Fees."

Borrowing and Repayment Terms	
Length of Credit Plan	You can borrow money for 10 years and must make minimum monthly payments during that time. At the end of this period, you must repay the remaining balance in full.
Balloon Payment	If you make only the minimum payment each month you will not pay off your entire balance by the end of the line of credit. At that time, you will have to pay the remaining balance in a single payment, known as a "balloon payment."

How Your Minimum Monthly Payments Are Determined
Your minimum monthly payment will cover only interest and will not pay down your balance.

Sample Payments

The table shows examples of your first monthly payments at the current and maximum APRs if you borrow **$80,000** when you open your account and do not borrow any more money. **No matter what your rate is, you will owe a balloon payment of $80,000 if you made only minimum monthly payments.**

These are not your actual payments. Your actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

APR	Borrowing Period (Years 1-10) First Payment
5.25% (current)	$350.00
24.99% (max.)	$1,666.00

More Information about Fees	
Account Opening Fees	
• Loan Origination	**$350**
• Loan Discount	**$800**
• Underwriting	**$295**
• Appraisal	**$295**
Penalty Fees	
• Late Payment	Either **$15** or **5%** of the minimum monthly payment, whichever is greater.
• Over-the-Credit Limit	**$20**
• Balance below $500	**$25** if your balance falls below $500.
• Returned Payment	**$30**
Transaction Fees	
• Transaction less than $300	**4%** of each transaction that is less than **$300**. This fee does not apply to credit card transactions.
Other fees may also apply; see your account agreement for details.	

Fixed Interest Rate Option
You have the option to borrow at a fixed interest rate an amount up to your available credit limit. See account agreement for details.

Risks	
You Could Lose Your Home	Your credit plan will be secured by your home. This means you could lose your home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From Your Line of Credit	Under certain circumstances, we can: • Terminate your line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; • Not allow you to borrow any more money, even if it is available under your credit limit; • Lower your credit limit; and • Make other changes to the plan. See your account agreement for details.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Paying Interest: We will begin charging interest on each transaction on the date the transaction is posted to your account.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

➔ **You have no obligation to accept these terms.** Use this statement to confirm that these are the terms for which you applied.

➔ **Ask questions if you do not understand any part of this form.**

➔ **For more information, go to www.xxx.gov.**

By signing below, I acknowledge receipt of this form.

Borrower's Signature **Date**

G-15(D) Account-Opening Disclosure Sample (Home-equity Plans)

Joe Smith & Jane Doe
1234 Main Street,
Anytown, ST 12345

January 9, 2012
XXX Bank
Loan Officer: 12345 1234
Loan Number: 123-12-1234-556

Borrowing Guidelines	
Credit Limit	**$80,000**
First Transaction	You must borrow at least **$10,000** when you open the account.
Minimum Transaction	After the initial transaction, each transaction you make must be at least **$300**.
Minimum Balance	You must keep a minimum balance of at least **$500**.

Annual Percentage Rate	
Annual Percentage Rate (APR)	**4.00%** introductory APR for the first six months. After that, your APR will be **5.25%.** This is a variable rate that will change monthly based on the Prime Rate plus 1.00%. There is no limit on how much the rate can change in one year.
Maximum APR	**24.99%**
Historical Changes to Prime Rate	Over the past 15 years, the Prime Rate has varied between 4.25% and 10.00%.

Fees	
Total Account Opening Fees	**$1,740** (itemized below under "More Information about Fees")
Annual Fee	**$50**
Early Termination Fee	**$500** or **.125%** of the credit limit, whichever is greater, if you close your account within three years.
Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See enclosed information for details.
Other Fees	See below under "More Information about Fees".

Borrowing and Repayment Terms	

Length of Credit Plan	25 or 40 years (depending on the balance at the beginning of the repayment period), divided into two periods:
	• **Borrowing Period (Years 1-10):** During this time you can borrow money.
	• **Repayment Period (starts in Year 11):** During this time you cannot borrow money.
	  ◦ If your balance at the beginning of the repayment period is less than $20,000, the length of the repayment period will be 15 years.
	  ◦ If your balance at the beginning of the repayment period is $20,000 or more, the length of the repayment period will be 30 years.
	You must make a minimum monthly payment during both periods.

How Your Minimum Monthly Payments Are Determined

- **Borrowing Period (Years 1-10):** Your minimum monthly payment will cover only interest and will not pay down your balance.
- **Repayment Period (starts in Year 11):** Your minimum monthly payment will cover interest plus enough principal to pay off your entire balance by the end of the repayment period.

Sample Payments

The table shows examples of your first monthly payments at the current and maximum APRs if you borrow **$80,000** when you open your account and do not borrow any more money.

These are not your actual payments. Your actual payment each month will depend on the amount that you have borrowed and the interest rate that month.

APR	Borrowing Period (Years 1-10) First Payment	Balance at Start of Repayment Period	Repayment Period (Years 11-40) First Payment
5.25% (current)	$350.00	$80,000.00	$442.00
24.99% (max.)	$1,666.00	$80,000.00	$1,667.00

More Information about Fees	
Account Opening Fees	
• Loan Origination	**$350**
• Loan Discount	**$800**
• Underwriting	**$295**
• Appraisal	**$295**
Penalty Fees	
• Late Payment	Either **$15** or **5%** of the minimum monthly payment, whichever is greater.
• Over-the-Credit Limit	**$20**
• Balance below $500	**$25** if your balance falls below $500.
• Returned Payment	**$30**
Transaction Fees	
• Transaction less than $300	**4%** of each transaction that is less than **$300**. This fee does not apply to credit card transactions.
• Cash Advance Using a Credit Card	Either **$2** or **2%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction Using a Credit Card	**1%** of each transaction in U.S. dollars.
Other fees may also apply; see your account agreement for details.	

Fixed Interest Rate Option
During the borrowing period, you have the option to borrow at a fixed interest rate an amount up to your available credit limit. See account agreement for details.

Risks	
You Could Lose Your Home	Your credit plan will be secured by your home. This means you could lose your home if you cannot repay the money you owe, or otherwise default.
You May Not Be Able to Borrow From Your Line of Credit	Under certain circumstances, we can: • Terminate your line of credit, make you pay the outstanding balance in one payment, and charge you fees upon termination; • Not allow you to borrow any more money, even if you have borrowed less than your credit limit; • Lower your credit limit; and • Make other changes to the plan. See your account agreement for details.
The Interest You Pay May Not Be Tax-Deductible	If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Paying Interest: We will begin charging interest on each transaction on the date the transaction is posted to your account.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

→ **You have no obligation to accept these terms.** Use this statement to confirm that these are the terms for which you applied.

→ **Ask questions if you do not understand any part of this form.**

→ **For more information, go to www.xxx.gov.**

By signing below, I acknowledge receipt of this form.

Borrower's Signature **Date**

* * * * *

►G–22(A)—Home-equity Notice of Reinstatement Investigation Results Model Clauses (§ 226.5b(g)(2)(v)) (The Same Reason Originally Permitting Action Still Exists)

We received your request to have your credit privileges on your account reinstated and have investigated this matter. Based on the results of our investigation, we are not able to reinstate your credit privileges at this time.

Our investigation showed that

[your property value as of [date] is [property value], which still shows a significant decline in value. To determine the value of your home, we relied on [property valuation type, such as a tax record, automated valuation model, appraisal]. You have a right to receive a copy of information supporting this property value. You may send your request to the following [mail/e-mail address or telephone number:]].

[your financial circumstances have not [improved] [improved enough to reinstate your credit privileges]. To review your financial circumstances, we relied on [information about your income] [credit report information] [other].

You have the right to ask us to reinstate your credit privileges at any time [by sending a request for reinstatement in writing to: [mail/e-mail address]] [other method of requesting reinstatement and corresponding contact information designated by the creditor, such as by telephone].

We will complete an investigation within 30 days of receiving your request. If no reason for [suspending your credit privileges] [reducing your credit limit] is found, we will restore your credit privileges.

If you ask us again to reinstate your account, we may charge you fees for credit report information and property valuation reports to investigate your request.

G–22(B)—Home-equity Notice of Reinstatement Investigation Results Model Clauses (§ 226.5b(g)(2)(v)) (A different reason than the original reason permitting action exists)

Our investigation showed that [your property value as of [date] is [property value]]. However, our investigation also showed that [your financial circumstances have materially changed.] As a result, we will not be able to reinstate your credit privileges at this time. To review your financial circumstances, we relied on [information about your income] [credit report information] [other].

You have the right to ask us to reinstate your credit privileges at any time [by sending a request for reinstatement in writing to: [mail/e-mail address]] [other method of requesting reinstatement and corresponding contact information designated by the creditor, such as by telephone].

We will complete an investigation within 30 days of receiving your request. If no reason for [suspending your credit privileges] [reducing your credit limit] is found, we will restore your credit privileges.

If you ask us again to reinstate your account, we may charge you fees for credit information and property valuation reports to investigate your request.

G–23(A) Home-equity Notice of Action Taken Model Clauses (§ 226.9(j)(1))

(a) Action Based on a Significant Decline in the Property Value

As of [month/day/year], your [line of credit has been suspended] [credit limit has been reduced] to [new credit limit] because the value of the property securing your loan has declined significantly. The value of your property as of [month/day/year] has declined to [property value obtained].

The property valuation method used to obtain your updated property value was [property valuation type, such as a tax record, automated valuation model, appraisal]. You have a right to receive a copy of information supporting this property value. You may send your request to the following [mail/e-mail address or telephone number:].

(b) Action Based on a Material Change in the Consumer's Financial Circumstances

As of [date], [your line of credit has been suspended] [credit limit has been reduced] because your financial circumstances have materially changed. To review your financial circumstances, we relied on [information about your income] [credit report information] [other].

(c) Action Taken Based on the Consumer's Default of a Material Obligation

As of [month/day/year], [your line of credit has been suspended] [credit limit has been reduced] because you defaulted on your obligation under your HELOC agreement to [material obligation].

You have the right to ask us to reinstate your credit privileges at any time [by sending a request for reinstatement in writing to: [mail/e-mail address]] [other method of requesting reinstatement and corresponding contact information designated by the creditor, such as by telephone].

We will complete an investigation within 30 days of receiving your request. If no reason for [suspending your credit privileges] [reducing your credit limit] is found, we will restore your credit privileges.

We do not charge you any fees to investigate the first time you ask us to reinstate your credit privileges after your [line of credit has been suspended] [credit limit has been reduced]. If you ask us to reinstate your account after the first request, we may charge you a fee for a credit report or property valuation needed to investigate your request.

G–23(B) Home-equity Notice of Action Taken Model Clauses (§ 226.9(j)(2))

As of [month/day/year], your

[line of credit has been terminated. The outstanding balance on your account is due on [month/day/year]]

[line of credit has been suspended]

[credit limit has been reduced to [new credit limit]].

The specific reason[s] for the action on your account [is][are] the following:

[your payment is [more than 30 days overdue.]

[Our interest in the property securing your HELOC has been adversely affected because [you transferred title to the property without our permission.] [you failed to maintain property insurance on the property.] [you did not pay required taxes on the property.]]

[We have reason to believe that fraud or material misrepresentation regarding your account has occurred.]

BILLING CODE 6210–01–P

G-24(A) Periodic Statement Transactions; Interest Charges;

Fees Sample (Home-equity Plans)

Transactions				
Reference Number	**Trans Date**	**Post Date**	**Description of Transaction or Credit**	**Amount**
5884186PS0368W6YM	2/22	2/23	Variable Rate Advance	$3,000.00
0544400060ZLV72VL	2/24	2/25	Fixed Rate Advance	$5,000.00
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$500.00–
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$15.00
56415615647OJSNDS	2/26	2/26	Fixed Rate Advance Fee	$50.00
			TOTAL FEES FOR THIS PERIOD	**$65.00**
			Interest Charged	
			Interest Charge on Variable Rate Advances	$122.51
			Interest Charge on Fixed Rate Advances	$26.82
			TOTAL INTEREST FOR THIS PERIOD	**$149.33**

2012 Totals Year-to-Date	
Total fees charged in 2012	$80.00
Total interest charged in 2012	$258.83

G-24(B) Periodic Statement Sample (Home-equity Plans)

XXX Bank Home Equity Line of Credit Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Summary of Account Activity

Previous Balance	$25,105.00
Payments	-$0.00
Other Credits	$0.00
Variable Rate Advances	+$2,500.00
Fixed Rate Advances	+$5,000.00
Fees Charged	**+$65.00**
Total Interest Charged	**+$149.33**
New Balance	$32,819.33
Credit Limit	$80,000.00
Available Credit	$47,180.67
Statement Closing Date	3/22/2012
Days in Billing Cycle	31

Payment Information

New Balance	$32,819.33
Minimum Payment Due	$149.33
Payment Due Date	4/20/12

QUESTIONS?
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Notice of Changes to Your Interest Rates

You have triggered the penalty APR of 24.99%. This change will impact your account as follows:

Transactions on your account (other than your fixed-rate loan): As of 5/10/12, the penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Fixed-rate loan: The current APR will continue to apply to this balance.

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Payments and Other Credits	
854338203FS8OO0Z5			No Pymt	$0.00
			Advances	
5884186PS0388W6YM	2/22	2/23	Variable Rate Advance	$2,500.00
0544400060ZLV72VL	2/24	2/25	Fixed Rate Advance	$5,000.00
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Payment Fee	$15.00
56415615647OJSNDS	3/22	3/22	Fixed Rate Advance Fee	$50.00
			TOTAL FEES FOR THIS PERIOD	**$65.00**
			Interest Charged	
			Interest Charge on Variable Rate Advances	$122.51
			Interest Charge on Fixed Rate Advances	$26.82
			TOTAL INTEREST FOR THIS PERIOD	**$149.33**

2012 Totals Year-to-Date

Total fees charged in 2012	$80.00
Total interest charged in 2012	$258.83

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Page 1 of 2

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number: XXXX XXXX XXXX XXXX
New Balance $32,819.33
Minimum Payment Due $149.33
Payment Due Date 4/20/12

AMOUNT ENCLOSED: $

Please indicate address change and additional requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Home Equity Line of Credit Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Variable Rate Advances	5.25%	$27,475.97	$122.51
Fixed Rate Advances	7.25%	$4,354.84	$26.82

G-24(C) Periodic Statement Sample (Home-equity Plans)

XXX Bank Home Equity Line of Credit Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Summary of Account Activity

Previous Balance	$25,105.00
Payments	-$500.00
Other Credits	$0.00
Variable Rate Advances	+$3,000.00
Fixed Rate Advances	+$5,000.00
Fees Charged	**+$65.00**
Total Interest Charged	**+$149.33**
New Balance	$32,819.33
Credit Limit	$80,000.00
Available Credit	$47,180.67
Statement Closing Date	3/22/2012
Days in Billing Cycle	31

Payment Information

New Balance	$32,819.33
Minimum Payment Due	$149.33
Payment Due Date	4/20/12

QUESTIONS?
Call Customer Service 1-XXX-XXX-XXXX

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of some of these changes. For more details, please refer to the information enclosed with this statement.

These changes will take effect on 5/10/12.

Revised Terms, as of 5/10/12	
Credit Limit	$100,000
How We Will Calculate Your Balance	Daily Balance

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
5864186PS0388W6YM	2/22	2/23	Variable Rate Advance	$3,000.00
0544400060ZLV72VL	2/24	2/25	Fixed Rate Advance	$5,000.00
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$500.00–
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$15.00
56415615647OJSNDS	2/26	2/26	Fixed Rate Advance Fee	$50.00
			TOTAL FEES FOR THIS PERIOD	**$65.00**
			Interest Charged	
			Interest Charge on Variable Rate Advances	$122.51
			Interest Charge on Fixed Rate Advances	$26.82
			TOTAL INTEREST FOR THIS PERIOD	**$149.33**

2012 Totals Year-to-Date	
Total fees charged in 2012	$80.00
Total interest charged in 2012	$258.83

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Page 1 of 2

Please detach this portion and return with your payment to ensure proper credit. Retain upper portion for your records.

Account Number: **XXXX XXXX XXXX XXXX**
New Balance **$32,819.33**
Minimum Payment Due **$149.33**
Payment Due Date **4/20/12**

AMOUNT ENCLOSED: $

Please indicate address change and additional requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Home Equity Line of Credit Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Variable Rate Advances	5.25%	$27,475.97	$122.51
Fixed Rate Advances	7.25%	$4,354.84	$26.82

G-25 Change-in-Terms Sample (Home-equity Plans)

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of some of these changes. For more details, please refer to the information enclosed with this statement.

These changes will take effect on 5/10/12.

Revised Terms, as of 5/10/12	
Credit Limit	$100,000
How We Will Calculate Your Balance	Daily Balance

G-26 Rate Increase Sample (Home-equity Plans)

Notice of Changes to Your Interest Rates

You have triggered the penalty APR of 24.99%. This change will impact your account as follows:

Transactions on your account (other than your fixed-rate loan): As of 5/10/12, the penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Fixed-rate loan: The current APR will continue to apply to this balance.

BILLING CODE 6210–01–C

11. In Supplement I to Part 226:

A. Under *Section 226.2—Definitions and Rules of Construction, 2(a)(6) Business day,* paragraph 2 is revised.

B. *Section 226.5—General Disclosure Requirements* is revised.

C. Under *Section 226.5b—Requirements for Home-equity Plans:*

i. Paragraph 1 is republished; paragraph 2 is revised; paragraphs 3 and 4 are removed; and paragraphs 5 and 6 are redesignated as paragraphs 3 and 4, respectively.

ii. *5b(a) Form of disclosures* and *5b(b) Time of disclosures* are removed.

iii. New *5b(a) Home-equity document provided on or with the application* and *5b(b) Home-equity disclosures provided no later than account opening or three business days after application, whichever is earlier* are added.

iv. *5b(c) Duties of third parties* is removed.

v. *5b(d) Content of disclosures* is redesignated *5b(c) Content of disclosures* and revised.

vi. *5b(g) Refund of fees* is redesignated *5b(d) Refund of fees* and revised.

vii. *5b(e) Brochure* is removed.

viii. *5b(h) Imposition of nonrefundable fees* is redesignated *5b(e) Imposition of nonrefundable fees* and revised.

ix. Under *5b(f) Limitations on home-equity plans, Paragraph 5b(f)(2)(ii)* is revised; new *Paragraph 5b(f)(2)(iv)* is added; and *Paragraphs 5b(f)(3), 5b(f)(3)(i), 5b(f)(3)(iv), 5b(f)(3)(v)* and *5b(f)(3)(vi)* are revised.

x. New *5b(g) Reinstatement of Credit Privileges* is added.

D. Under *Section 226.6—Account-opening Disclosures, 6(a) Rules affecting home-equity plans* is revised.

E. Under *Section 226.7—Periodic Statement, 7(a) Rules affecting home-equity plans* is revised.

F. Under *Section 226.9—Subsequent Disclosure Requirements, 9(c) Change in terms, 9(c)(1) Rules affecting home-equity plans* is revised; *9(g) Increase in rates due to delinquency or default or as a penalty,* the heading is revised; and new *9(i) Increase in rates due to delinquency or default or as a penalty—rules affecting home-equity plans* and *(9)(j) Notices of action taken for home-equity plans* are added.

G. *Section 226.14—Determination of Annual Percentage Rate* is revised.

H. Appendix F—Optional Annual Percentage Rate Computations for Creditors Offering Open-end Plans Subject to the Requirements of § 226.5b is removed and reserved.

I. Under Appendices G and H—Open-end and Closed-end Model Forms and Clauses, paragraph 1 is revised.

J. Under Appendix G—Open-end Model Forms and Clauses, paragraphs 1, 2, and 3 are revised and new paragraphs 12, 13, 14, and 15 are added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

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§ 226.2—Definitions and Rules of Construction.

2(a) Definitions.

* * * * *

2(a)(6) Business day.

* * * * *

2. *Rule for rescission and disclosures for certain mortgage* ►*and home-equity line of credit*◄ *transactions.* A more precise rule for what is a business day (all calendar days except Sundays and the federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission or the receipt of disclosures for certain dwelling-secured mortgage transactions ►for purposes of◄ [under] §§ ►226.5b(e), 226.9(j)(2),◄ 226.19(a)(1)(ii), 226.19(a)(2), or 226.31(c) is involved. Four federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

* * * * *

Subpart B—Open-end Credit

§ 226.5—General Disclosure Requirements

►1. *Guidance on compliance with rules for open-end (not home-secured) credit versus rules for home-equity*

plans. In some cases creditors offering open-end credit plans secured by residential property may not know whether the property is, or remains, the consumer's principal residence, second or vacation home, or rental or investment property. If the property is the consumer's principal residence or a second or vacation home (and not rental property), the credit plan is subject to § 226.5b and the associated rules for home-equity plans elsewhere in Regulation Z such as those in §§ 226.6(a), 226.7(a), 226.9(c)(1), 226.9(*i*), and 226.9(j). If the property is the consumer's rental or investment property, and the credit plan is used primarily for personal, family, or household purposes, the credit plan is subject to the rules for open-end (not home-secured) credit set forth in §§ 226.6(b), 226.7(b), 226.9(c)(2), and 226.9(g). (In this case, if the credit plan is accessible by credit card, the creditor must also comply with the rules applicable to open-end credit card plans under § 226.5a.) If the credit plan is used primarily for business purposes rather than personal, family, or household purposes, the credit plan is not subject to Regulation Z. (See § 226.3(a) and the related staff commentary provisions for guidance in determining whether credit is considered to be used primarily for business purposes.) In determining which rules apply, creditors may rely on the following guidance:

i. For existing credit plans, if the creditor does not know whether the property is or remains the consumer's principal residence or second or vacation home, and the creditor has been complying with the rules under § 226.5b and associated other rules, the creditor may continue to do so.

ii. Alternatively, the creditor in these circumstances may investigate the use of the property. If the creditor ascertains that the property is not used as the consumer's principal residence or as a second or vacation home, but the credit plan is nonetheless used for personal, family, or household purposes, the creditor may begin complying with the rules applicable to open-end (not home-secured) credit under Regulation Z. In this case, if the credit plan is accessible by credit card, the creditor must comply with the rules for open-end (not home-secured) credit card plans under § 226.5a and associated sections in the regulation, in addition to the rules applicable to open-end credit generally.

iii. When a new open-end credit plan is opened, the creditor may attempt to ascertain the status of the property securing the plan, and comply accordingly with the appropriate set of rules. However, if the creditor is not able, or chooses not, to determine the status of the property, the creditor may comply with the rules for home-equity plans under § 226.5b and associated sections of the regulation.◄

5(a) Form of disclosures.

5(a)(1) General.

1. *Clear and conspicuous standard.* The ''clear and conspicuous'' standard generally requires that disclosures be in a reasonably understandable form. Disclosures for credit card applications and solicitations under § 226.5a, ►disclosures for home-equity plans required three business days after application under § 226.5b(b),◄ highlighted account-opening disclosures under ►§ 226.6(a)(1) and◄ § 226.6(b)(1), highlighted disclosure on checks that access a credit card under § 226.9(b)(3), highlighted change-in-terms disclosures under ►§ 226.9(c)(1)(iii)(B) and◄ § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or ►otherwise as◄ [for] a penalty under § 226.9(g)(3)(ii) ►and § 226.9(*i*)(4)◄ must also be readily noticeable to the consumer ►to meet the ''clear and conspicuous'' standard◄.

2. *Clear and conspicuous—reasonably understandable form.* Except where otherwise provided, the reasonably understandable form standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. For disclosures that are given orally, the standard requires that they be given at a speed and volume sufficient for a consumer to hear and comprehend them. (See comment 5(b)(1)(ii)–1.) Except where otherwise provided, the standard does not prohibit:

i. Pluralizing required terminology (''finance charge'' and ''annual percentage rate'').

ii. Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

iii. Sending promotional material with the required disclosures.

iv. Using commonly accepted or readily understandable abbreviations (such as ''mo.'' for ''month'' or ''Tx.'' for ''Texas'') in making any required disclosures.

v. Using codes or symbols such as ''APR'' (for annual percentage rate), ''FC'' (for finance charge), or ''Cr'' (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

3. *Clear and conspicuous—readily noticeable standard.* To meet the readily noticeable standard, disclosures for credit card applications and solicitations under § 226.5a, ►disclosures for home-equity plans required three business days after application under § 226.5b(b),◄ highlighted account-opening disclosures under ►§ 226.6(a)(1) and◄ § 226.6(b)(1), highlighted disclosures on checks that access a credit card account under § 226.9(b)(3), highlighted change-in-terms disclosures under ►§ 226.9(c)(1)(iii)(B) and◄ § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under § 226.9(g)(3)(ii) ►and § 226.9(*i*)(4)◄ must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases ►in an open-end (not home-secured) plan◄ under §§ 226.5a(b)(1) and 226.6(b)(2)(i)►, and for the annual percentage rate in a home-equity plan under §§ 226.5b(c)(10) and 226.6(a)(2)(vi)◄.)

4. *Integrated document.* The creditor may make both the account-opening disclosures (§ 226.6) and the periodic-statement disclosures (§ 226.7) on more than one page, and use both the front and the reverse sides, except where otherwise indicated, so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

i. Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labeled to show that they relate to one another; or

ii. A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features.

5. *Disclosures covered.* Disclosures that must meet the ''clear and conspicuous'' standard include all required communications under this subpart. For example, disclosures made by a person other than the card issuer, such as disclosures of finance charges imposed at the time of honoring a consumer's credit card under § 226.9(d), and notices, such as the correction notice required to be sent to the consumer under § 226.13(e), must also be clear and conspicuous.

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

1. *Electronic disclosures.* Disclosures that need not be provided in writing under § 226.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electronic form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

Paragraph 5(a)(1)(iii).

1. *Disclosures not subject to E-Sign Act.* See the commentary to § 226.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under § 226.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

5(a)(2) Terminology.

[1. *When disclosures must be more conspicuous.* For home-equity plans subject to § 226.5b, the terms *finance charge* and *annual percentage rate,* when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in § 226.5(a)(2)(ii). At the creditor's option, *finance charge* and *annual percentage rate* may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

i. In disclosing the annual percentage rate as required by § 226.6(a)(1)(ii), the term *annual percentage rate* is subject to the more conspicuous rule.

ii. In disclosing the amount of the finance charge, required by § 226.7(a)(6)(i), the term *finance charge* is subject to the more conspicuous rule.

iii. Although neither *finance charge* nor *annual percentage rate* need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under § 226.6(a)(1)(iii) and (a)(1)(iv), they may be equally conspicuous as the disclosures required under §§ 226.6(a)(1)(ii) and 226.7(a)(7).

2. *Making disclosures more conspicuous.* In disclosing the terms *finance charge* and *annual percentage rate* more conspicuously for home-equity plans subject to § 226.5b, only the words *finance charge* and *annual percentage rate* should be accentuated. For example, if the term *total finance charge* is used, only *finance charge* should be emphasized. The disclosures may be made more conspicuous by, for example:

i. Capitalizing the words when other disclosures are printed in lower case.

ii. Putting them in bold print or a contrasting color.

iii. Underlining them.

iv. Setting them off with asterisks.

v. Printing them in larger type.

3. *Disclosure of figures—exception to more conspicuous rule.* For home-equity plans subject to § 226.5b, the terms *annual percentage rate* and *finance charge* need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).]

►1.◄[4.] *Consistent terminology.* Language used in disclosures required in this subpart must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical.

5(b) Time of disclosures.

5(b)(1) Account-opening disclosures.

5(b)(1)(i) General rule.

1. *Disclosure before the first transaction.* When disclosures must be furnished ''before the first transaction,'' account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:

i. *Purchases.* The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously (see commentary to § 226.5(b)(1)(iii) below).

ii. *Advances.* The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

2. *Reactivation of suspended account.* If an account is temporarily suspended (for example, ►for open-end (not home-secured) plans,◄ because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new account-opening disclosures are required.

3. *Reopening closed account.* If an account has been closed (for example, ►for open-end (not home-secured) plans,◄ due to inactivity, cancellation, or expiration) and then is reopened, new account-opening disclosures are required. No new account-opening disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the ''new'' account then continues on the same terms.

4. *Converting closed-end to open-end credit.* If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, account-opening disclosures under § 226.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to § 226.17 on converting open-end credit to closed-end credit.)

5. *Balance transfers.* A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must furnish the disclosures required by § 226.6 so that the consumer has an opportunity, after receiving the disclosures, to contact the creditor before the balance is transferred and decline the transfer. For example, assume a consumer responds to a card issuer's solicitation for a credit card account subject to § 226.5a that offers a range of balance transfer annual percentage rates, based on the consumer's creditworthiness. If the creditor opens an account for the consumer, the creditor would comply with the timing rules of this section by providing the consumer with the annual percentage rate (along with the fees and other required disclosures) that would apply to the balance transfer in time for the consumer to contact the creditor and withdraw the request. A creditor that permits consumers to withdraw the request by telephone has met this timing standard if the creditor does not affect the balance transfer until 10 days after the creditor has sent account-opening disclosures to the consumer, assuming the consumer has not contacted the creditor to withdraw the request. Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both §§ 226.5a and 226.6 in a single disclosure statement.

5(b)(1)(ii) Charges imposed as part of an open-end [(not home-secured)] plan.

1. *Disclosing charges before the fee is imposed.* Creditors may disclose charges imposed as part of an open-end [(not home-secured)] plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under ►§ 226.6(a)(2) or◄ § 226.6(b)(2). (Charges imposed as part of an open-end [(not home-secured plan)] that are not specified under ►§ 226.6(a)(2) or◄ § 226.6(b)(2) may alternatively be disclosed in electronic form; see the commentary to § 226.5(a)(1)(ii)(A).)

Creditors must provide such disclosures at a time and in a manner ►such◄ that a consumer would be likely to notice them. For example, if a consumer telephones a ►creditor◄ [card issuer] to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call orally to the consumer. Similarly, a creditor providing marketing materials in writing to a consumer about a particular service would meet the standard if the creditor provided a clear and conspicuous written disclosure of the fee for that service in those same materials. A creditor that provides written materials to a consumer about a particular service but provides a fee disclosure for another service not promoted in such materials would not meet the standard. For example, if a creditor provided marketing materials promoting payment by Internet, but included the fee for a replacement card on such materials with no explanation, the creditor would not be disclosing the fee at a time and in a manner that the consumer would be likely to notice the fee.

►2. *Relationship to rule prohibiting changes in home-equity plans.* Creditors offering home-equity plans subject to § 226.5b are subject to the rules under § 226.5b(f) restricting changes in terms. Therefore, even though the rule in § 226.5(b)(1)(ii) permits certain charges to be disclosed at a time later than account opening, a home-equity plan creditor would not be permitted to impose a charge for a feature or service previously not subject to a charge, or to increase a charge for a feature or service previously subject to a lower charge, even if the absence of a charge, or the lower charge, had not been previously disclosed to the consumer.◄

5(b)(1)(iii) Telephone purchases.

1. *Return policies.* In order for creditors to provide disclosures in accordance with the timing requirements of this paragraph, consumers must be permitted to return merchandise purchased at the time the plan was established without paying mailing or return-shipment costs. Creditors may impose costs to return subsequent purchases of merchandise under the plan, or to return merchandise purchased by other means such as a credit card issued by another creditor. A reasonable return policy would be of sufficient duration that the consumer is likely to have received the disclosures and had sufficient time to make a decision about the financing plan before his or her right to return the goods expires. Return policies need not provide a right to return goods if the consumer consumes or damages the goods, or for installed appliances or fixtures, provided there is a reasonable repair or replacement policy to cover defective goods or installations. If the consumer chooses to reject the financing plan, creditors comply with the requirements of this paragraph by permitting the consumer to pay for the goods with another reasonable form of payment acceptable to the merchant and keep the goods although the creditor cannot require the consumer to do so.

5(b)(1)(iv) Membership fees.

1. *Membership fees.* See § 226.5a(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.

2. *Rejecting the plan.* If a consumer has paid or promised to pay a membership fee including an application fee excludable from the finance charge under § 226.4(c)(1) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee, application fee, or any other fee or charge. A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan.

3. *Using the account.* A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not ''use'' the account by activating the account. A consumer also does not ''use'' the account when the creditor assesses fees on the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures). For example, the consumer does not ''use'' the account when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. A consumer also does not ''use'' the account by paying an application fee excludable from the finance charge under § 226.4(c)(1) prior to receiving the account-opening disclosures.

4. *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are subject to the requirements of § 226.5b[(g)]►(d) and (e)◄ regarding the collection ►and refundability◄ of fees.

5(b)(2) Periodic statements.

Paragraph 5(b)(2)(i).

1. *Periodic statements not required.* Periodic statements need not be sent in the following cases:

i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1—so long as no finance charge has been imposed on the account for that cycle.

ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See § 226.13(a)(7).)

2. *Termination of draw privileges.* When a consumer's ability to draw on an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under § 226.5(b)(2)(i), for example, when the draw period of an open-end credit plan ends and consumers are paying off outstanding balances according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. In addition, creditors must continue to follow all of the other open-end credit requirements and procedures in subpart B.

3. *Uncollectible accounts.* An account is deemed uncollectible for purposes of § 226.5(b)(2)(i) when a creditor has ceased collection efforts, either directly or through a third party.

4. *Instituting collection proceedings.* Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.

Paragraph 5(b)(2)(ii).

1. *14-day rule.* The 14-day rule for mailing or delivering periodic statements does not apply if charges (for example, transaction or activity charges) are imposed regardless of the timing of a periodic statement. The 14-day rule does apply, for example:

i. If current debits retroactively become subject to finance charges when the balance is not paid in full by a specified date.

ii. For open-end plans not subject to 12 CFR part 227, subpart C; 12 CFR part

535, subpart C; or 12 CFR part 706, subpart C, if charges other than finance charges will accrue when the consumer does not make timely payments (for example, late payment charges or charges for exceeding a credit limit). (For consumer credit card accounts subject to 12 CFR part 227, subpart C; 12 CFR part 535, subpart C; or 12 CFR part 706, subpart C, see 12 CFR 227.22, 12 CFR 535.22, or 12 CFR 706.22, as applicable.)

2. *Deferred interest transactions.* See comment 7(b)–1.iv.

Paragraph 5(b)(2)(iii).

1. *Computer malfunction.* The exceptions identified in § 226.5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.

2. *Calling for periodic statements.* When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a grace period, the statement must be made available in accordance with the 14-day rule.

5(c) Basis of disclosures and use of estimates.

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

i. The legal obligation is determined by applicable state or other law.

ii. The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

iii. The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. *Estimates—obtaining information.* Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. *Estimates—redisclosure.* If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.

5(d) Multiple creditors; multiple consumers.

1. *Multiple creditors.* Under § 226.5(d):

i. Creditors must choose which ►creditor◄[of them] will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

2. *Multiple consumers.* Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.15.

3. *Card issuer and person extending credit not the same person.* Section 127(c)(4)(D) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(D)) contains rules pertaining to charge card issuers with plans that allow access to an open-end credit plan that is maintained by a person other than the charge card issuer. These rules are not implemented in Regulation Z (although they were formerly implemented in § 226.5a(f)). However, the statutory provisions remain in effect and may be used by charge card issuers with plans meeting the specified criteria.

5(e) Effect of subsequent events.

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under § 226.9(c).

2. *Use of inserts.* When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:

i. Should clearly refer to the disclosure provision it replaces.

ii. Need not be physically attached or affixed to the basic disclosure statement.

iii. May be used only until the supply of outdated forms is exhausted.

* * * * *

§ 226.5b—Requirements for Home-equity Plans.

1. *Coverage.* This section applies to all open-end credit plans secured by the consumer's ''dwelling,'' as defined in § 226.2(a)(19), and is not limited to plans secured by the consumer's *principal* dwelling. (See the commentary to § 226.3(a), which discusses whether transactions are consumer or business-purpose credit, for guidance on whether a home-equity plan is subject to Regulation Z.)

2. *Changes to home-equity plans [entered into on or after November 7, 1989].* Section 226.9(c) applies if, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home-equity plan [—entered into on or after November 7, 1989—] at or before its scheduled expiration, for example, by renewing a plan on different terms. A new plan results, however, if the plan is renewed (with or without changes to the terms) after the scheduled expiration. The new plan is subject to all open-end credit rules, including §§ 226.5b, 226.6, and 226.15.

[3. *Transition rules and renewals of preexisting plans.* The requirements of this section do not apply to home-equity plans entered into before November 7, 1989. The requirements of this section also do not apply if the original consumer, on or after November 7, 1989, renews a plan entered into prior to that date (with or without changes to the terms). If, on or after November 7, 1989, a security interest in the consumer's dwelling is added to a line of credit entered into before that date, the substantive restrictions of this section apply for the remainder of the plan, but no new disclosures are required under this section.

4. *Disclosure of repayment phase—applicability of requirements.* Some plans provide in the initial agreement for a period during which no further draws may be taken and repayment of the amount borrowed is made. All of the applicable disclosures in this section must be given for the repayment phase. Thus, for example, a creditor must

provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(d)(5). If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an annual percentage rate under § 226.5b(d)(6) for that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion to the repayment phase—even if the rate will thereafter be fixed—the creditor must provide the information in § 226.5b(d)(12), as applicable.]

►3.◄[5.] *Payment terms—applicability of closed-end provisions and substantive rules.* All payment terms that are provided for in the initial agreement are subject to the requirements of subpart B and not subpart C of the regulation. Payment terms that are subsequently added to the agreement may be subject to subpart B or to subpart C, depending on the circumstances. The following examples apply these general rules to different situations:

(i) If the initial agreement provides for a repayment phase or for other payment terms such as options permitting conversion of part or all of the balance to a fixed rate during the draw period, these terms must be disclosed pursuant to §§ 226.5b and 226.6, and not under subpart C. Furthermore, the creditor must continue to provide periodic statements under § 226.7 and comply with other provisions of subpart B (such as the substantive requirements of § 226.5b(f)) throughout the plan, including the repayment phase.

(ii) If the consumer and the creditor enter into an agreement during the draw period to repay all or part of the principal balance on different terms (for example, with a fixed rate of interest) and the amount of available credit will be replenished as the principal balance is repaid, the creditor must continue to comply with subpart B. For example, the creditor must continue to provide periodic statements and comply with the substantive requirements of § 226.5b(f) throughout the plan.

(iii) If the consumer and creditor enter into an agreement during the draw period to repay all or part of the principal balance and the amount of available credit will not be replenished as the principal balance is repaid, the creditor must give closed-end credit disclosures pursuant to subpart C for that new agreement. In such cases, subpart B, including the substantive rules, does not apply to the closed-end credit transaction, although it will continue to apply to any remaining open-end credit available under the plan.

►4.◄[6.] *Spreader clause.* When a creditor holds a mortgage or deed of trust on the consumer's dwelling and that mortgage or deed of trust contains a *spreader clause* (also known as a *dragnet* or cross-collateralization clause), subsequent occurrences such as the opening of an open-end plan are subject to the rules applicable to home-equity plans to the same degree as if a security interest were taken directly to secure the plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

►*5b(a) Home-equity Document Provided on or with the Application.*

5b(a)(1) In General.

1. *Mail and telephone applications.* If an application is sent through the mail, the document required by § 226.5b(a) must accompany the application. If an application is taken over the telephone, the document must be delivered or mailed not later than account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier. If an application is mailed to the consumer following a telephone request, however, the document must be sent along with the application.

2. *General purpose applications.* The document required by § 226.5b(a) need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a home-equity plan or (2) the application is provided in response to a consumer's specific inquiry about a home-equity plan. On the other hand, if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a home-equity plan, the document need not be provided even if the application indicates it can be used for a home-equity plan, unless it is accompanied by promotional information about home-equity plans.

3. *Publicly-available applications.* Some creditors make applications for home-equity plans, such as *take-ones,* available without the need for a consumer to request them. These applications must be accompanied by the document required by § 226.5b(a), such as by attaching the document to the application form.

4. *Response cards.* A creditor may solicit consumers for its home-equity plan by mailing a *response card* which the consumer returns to the creditor to indicate interest in the plan. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the document required by § 226.5b(a) with the response card. See comment 5b(a)(1)–1 discussing mail and telephone applications.

5. *Denial or withdrawal of application.* Section 226.5b(a)(1)(ii) provides that for telephone applications and applications received through an intermediary agent or broker, creditors must deliver or mail the document required by § 226.5b(a)(1)(i) to the consumer not later than account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier. If the creditor determines within that three-day period that an application will not be approved, the creditor need not provide the document. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the document.

6. *Prominent location.* i. *When document not given in electronic form.* The document required by § 226.5b(a)(1) must be prominently located on or with the application. The document is deemed to be prominently located, for example, if the document is on the same page as an application. If the document appears elsewhere, it is deemed to be prominently located if the application contains a clear and conspicuous reference to the location of the document and indicates that the document provides information about home-equity lines of credit.

ii. *Form of electronic document provided on or with electronic applications.* Generally, creditors must provide the document required by § 226.5b(a)(1) in a prominent location on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. (See comment 5b(a)(2)–1) Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

A. The document could automatically appear on the screen when the application appears;

B. The document could be located on the same Web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the document and indicates the document provides information about home-equity lines of credit.

C. Creditors could provide a link to the electronic document on or with the

application as long as consumers cannot bypass the document before submitting the application. The link would take the consumer to the document, but the consumer need not be required to scroll completely through the document; or

D. The document could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

Whatever method is used, a creditor need not confirm that the consumer has read the document.

7. *Intermediary agent or broker.* In determining whether or not an application involves an *intermediary agent or broker* as discussed in § 226.5b(a)(1)(ii), creditors should consult the provisions in comment 19(d)(3)–3.

8. *Definition of ''business day''.* The general definition of ''business day'' in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions—is used for purposes of § 226.5b(a)(1)(ii). *See* comment 2(a)(6)–1.

9. *As published.* The document required by § 226.5b(a)(1) must be provided as published by the Board. A creditor may not revise the document required by § 226.5b(a)(1).

5b(a)(2) Electronic Disclosures.

1. *When electronic disclosure must be given.* Whether the document required by § 226.5b(a)(1) must be in electronic form depends upon the following:

i. If a consumer accesses a home-equity credit line application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosure required by § 226.5b(a)(1) in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide the disclosure in a timely manner on or with the application. If the creditor instead mailed a paper disclosure to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses a home-equity credit line application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide the disclosure in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

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

1. *Duties of third parties.* The duties under § 226.5b(a)(3) are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations.

2. *Effect of third party delivery of document required by § 226.5b(a)(1).* If a creditor determines that a third party has provided a consumer with the document required by § 226.5b(a)(1), the creditor need not give the consumer a second copy of the document.

3. *Telephone applications taken by third party.* For telephone applications taken by a third party, the third party is not required to provide the document required by § 226.5b(a)(1). The document required by § 226.5b(a)(1) must be provided by the creditor not later than account opening or three business days following receipt of the consumer's application by the creditor, whichever is earlier, along with the disclosures required by § 226.5b(b).

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

5b(b)(1) Timing.

1. *Denial or withdrawal of application.* Section 226.5b(b)(1) provides that creditors must deliver or mail disclosures required by § 226.5b(b) to the consumer not later than account opening or three business days following receipt of a consumer's application by the creditor, whichever is earlier. If the creditor determines within the three-day period that an application will not be approved, the creditor need not provide the disclosures. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the disclosures.

2. *Definition of ''business day''.* The general definition of ''business day'' in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions—is used for purposes of § 226.5b(b)(1). *See* comment 2(a)(6)–1.

5b(b)(2) Form of disclosures; tabular format.

1. *Terminology.* Section 226.5b(b)(2)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in Appendix G–14 to part 226. See § 226.5(a)(2) for terminology requirements applicable to disclosures provided pursuant to § 226.5b(b).

2. *Other format requirements.* See § 226.5b(c)(9) for formatting requirements applicable to disclosure of certain payment terms in the table required by § 226.5b(b). See § 226.5b(c)(10)(i)(A)(*1*) for formatting requirements applicable to disclosure of variable rates in the table required by § 226.5b(b). See comments 5b(c)(7)(ii)–1, 5b(c)(9)(ii)–5, 5b(c)(14)–1 and 5b(c)(18)–2 for format requirements that apply to information that a creditor provides to a consumer upon request.

3. *Highlighting of disclosures.* i. *In general.* See Samples G–14(C), G–14(D) and G–14(E) for guidance on providing the disclosures described in § 226.5b(b)(2)(vi) in bold text.

ii. *Periodic fees.* Section 226.5b(b)(2)(vi)(D) provides that any periodic fee disclosed pursuant to § 226.5b(c)(12) that is not an annualized amount must not be disclosed in bold. For example, if a creditor imposes a $10 monthly maintenance fee for a HELOC account, the creditor must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis. In this example, the $10 fee disclosure would not be disclosed in bold, but the $120 annualized amount must be disclosed in bold. In addition, if a creditor must disclose any annual fee in the table, the amount of the annual fee must be disclosed in bold.

iii. *Format requirements under § 226.5b(c)(9).* Section 226.5b(b)(2)(vi)(E) provides that if a creditor is required under § 226.5b(c)(9) to provide a disclosure in a format substantially similar to the format used in any of the applicable tables found in Samples G–14(C), 14(D) or 14(E), the creditor in making that disclosure must provide in bold text any terms and phrases that are shown in bold text with regard to that disclosure in the applicable tables. For example, § 226.5b(c)(9) provides that a creditor must distinguish payment terms applicable to the draw period from payment terms applicable to the repayment period, by using the applicable heading ''Borrowing Period'' for the draw period and ''Repayment Period'' for the repayment period in a format substantially similar to the format used in any of the applicable tables found in Samples G–14(C) and G–14(E). Because the tables found in Samples G–14(C) and G–14(E) show the heading ''Borrowing Period'' and ''Repayment Period'' in bold text, a creditor must disclose these headings in bold text. See § 226.5b(c)(9)(i) and (c)(9)(iii)(D) for other instances in which a creditor may be required to provide disclosures in a format substantially similar to the format used in any of the

applicable tables found in Samples G–14(C), G–14(D) and G–14(E).

iv. *Itemized list of fees to open the plan.* The total amount of account-opening fees disclosed under § 226.5b(c)(11) must be disclosed in bold text. The itemization of those fees also required to be disclosed under § 226.5b(c)(11) must not be disclosed in bold text.

4. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to § 226.5b(b) disclosures.

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

1. *Transaction requirements.* Section 226.5b(c)(16) requires a creditor to disclose in the table required under § 226.5b(b) any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements. If any amount that must be disclosed under § 226.5b(c)(16) is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the transaction amount.

[5b(a) Form of Disclosures

5b(a)(1) General.

1. *Written disclosures.* The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (See the commentary to § 226.6(a)(3) for special rules when disclosures required under § 226.5b(d) are given in a retainable form.)

2. *Disclosure of annual percentage rate—more conspicuous requirement.* As provided in § 226.5(a)(2), when the term *annual percentage rate* is required to be disclosed with a number, it must be more conspicuous than other required disclosures.

3. *Segregation of disclosures.* While most of the disclosures must be grouped together and segregated from all unrelated information, the creditor is permitted to include information that explains or expands on the required disclosures, including, for example:

- Any prepayment penalty
- How a substitute index may be chosen
- Actions the creditor may take short of terminating and accelerating an outstanding balance
- Renewal terms
- Rebate of fees

An example of information that does not explain or expand on the required disclosures and thus cannot be included is the creditor's underwriting criteria, although the creditor could provide such information separately from the required disclosures.

4. *Method of providing disclosures.* A creditor may provide a single disclosure form for all of its home-equity plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all such options must be disclosed. (See, however, the commentary to § 226.5b(d)(5)(iii) and (d)(12)(x) and (xi) for disclosure requirements relating to these provisions.) If any aspects of a plan are linked together, the creditor must disclose clearly the relationship of the terms to each other. For example, if the consumer can only obtain a particular payment option in conjunction with a certain variable-rate feature, this fact must be disclosed. A creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a creditor that offers different payment options for the draw period may prepare separate disclosure forms for the two payment options. A creditor using this alternative, however, must include a statement on each disclosure form that the consumer should ask about the creditor's other home-equity programs. (This disclosure is required only for those programs available generally to the public. Thus, if the only other programs available are employee preferred-rate plans, for example, the creditor would not have to provide this statement.) A creditor that receives a request for information about other available programs must provide the additional disclosures as soon as reasonably possible.

5. *Form of electronic disclosures provided on or with electronic applications.* Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

i. The disclosures could automatically appear on the screen when the application appears;

ii. The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

iii. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

iv. The disclosures could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

Whatever method is used, a creditor need not confirm that the consumer has read the disclosures.

5b(a)(2) Precedence of Certain Disclosures.

1. *Precedence rule.* The list of conditions provided at the creditor's option under § 226.5b(d)(4)(iii) need not precede the other disclosures.

Paragraph 5b(a)(3).

1. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a home-equity credit line application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses a home-equity credit line application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

5b(b) Time of Disclosures

1. *Mail and telephone applications.* If the creditor sends applications through the mail, the disclosures and a brochure must accompany the application. If an application is taken over the telephone, the disclosures and brochure may be delivered or mailed within three business days of taking the application. If an application is mailed to the

consumer following a telephone request, however, the creditor also must send the disclosures and a brochure along with the application.

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

3. *Publicly-available applications.* Some creditors make applications for home-equity plans, such as *take-ones,* available without the need for a consumer to request them. These applications must be accompanied by the disclosures and a brochure, such as by attaching the disclosures and brochure to the application form.

4. *Response cards.* A creditor may solicit consumers for its home-equity plan by mailing a *response card* which the consumer returns to the creditor to indicate interest in the plan. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the disclosures and brochure with the response card.

5. *Denial or withdrawal of application.* In situations where footnote 10a permits the creditor a three-day delay in providing disclosures and the brochure, if the creditor determines within that period that an application will not be approved, the creditor need not provide the consumer with the disclosures or brochure. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the disclosures or brochure.

6. *Intermediary agent or broker.* In determining whether or not an application involves an *intermediary agent or broker* as discussed in footnote 10a, creditors should consult the provisions in comment 19(b)–3.

5b(c) Duties of Third Parties

1. *Disclosure requirements.* Although third parties who give applications to consumers for home-equity plans must provide the brochure required under § 226.5b(e) in all cases, such persons need provide the disclosures required under § 226.5b(d) only in certain instances. A third party has no duty to obtain disclosures about a creditor's home-equity plan or to create a set of disclosures based on what it knows about a creditor's plan. If, however, a creditor provides the third party with disclosures along with its application form, the third party must give the disclosures to the consumer with the application form. The duties under this section are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations. If an intermediary agent or broker takes an application over the telephone or receives an application contained in a magazine or other publication, footnote 10a permits that person to mail the disclosures and brochure within three business days of receipt of the application. (See the commentary to § 226.5b(h) about imposition of nonrefundable fees.)]

5b[(d)]►(c)◄ Content of Disclosures

1. *Disclosures given as applicable.* The disclosures required under this section generally need be made only as applicable. Thus, for example, if negative amortization cannot occur in a home-equity plan, a reference to it need not be made. Nonetheless, there are exceptions to this general rule. Specifically, in certain circumstances, a creditor must state that a balloon payment will not result for payment plans in which no balloon payment would occur, as set forth in § 226.5b(c)(9)(ii)(B)(*3*) and (c)(9)(iii)(C)(*4*). In addition, if there are no annual or other periodic limitations on changes in the annual percentage rate, a creditor must state that no annual limitation exists, as set forth in § 226.5b(c)(10)(i)(A)(*5*).

2. *Duty to respond to requests for information.* If the consumer, prior to the opening of a plan, requests information ►described◄[as suggested] in the disclosures (such as ►additional information about fees applicable to the plan or the conditions under which the creditor may make take certain actions with respect to the plan◄[the current index value or margin]), the creditor must provide this information as soon as reasonably possible after the request. ►See comments 5b(c)(7)(ii)–1, 5b(c)(9)(ii)–5, 5b(c)(14)–1 and 5b(c)(18)–2 for format requirements that apply to information that a creditor provides to a consumer upon request.◄

►3. *Disclosure of repayment phase—applicability of requirements.* Some plans provide in the initial agreement for a period during which the consumer may make no further draws and must repay all or a portion of the amount borrowed. All of the applicable disclosures in this section must be given for the repayment phase. Thus, for example, a creditor must provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(c)(9). To the extent required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

4. *Fixed-rate and -term payment plans during draw period.* Home-equity plans typically offer a variable-rate feature during the draw period. Specifically, withdrawals on a home-equity plan typically will access a general-revolving feature to which a variable rate applies. Nonetheless, some home-equity plans also offer a fixed-rate and -term payment feature, where a consumer is permitted to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. If a home-equity plan offers a variable-rate feature and a fixed-rate and -term feature during the draw period, a creditor generally may not disclose in the table the terms applicable to the fixed-rate and -term feature in making the disclosures under § 226.5b(c), except as required under § 226.5b(c)(18). For example, the creditor would not be allowed to disclose in the table information about the payment terms and the annual percentage rate applicable to the fixed-rate and -term payment feature, under § 226.5b(c)(9) and (c)(10), respectively. In this case, the creditor would only be allowed to disclose this information for the variable-rate feature; for the fixed-rate and -term feature, the creditor would be allowed to disclose in the table only information specified in § 226.5b(c)(18). The creditor may, however, disclose additional information relating to the fixed-rate and -term feature outside of the table. See § 226.5b(b)(2)(v). If a home-equity plan does not offer a variable-rate feature during the draw period, but only offers fixed-rate and -term payment features during the draw period, a creditor must disclose in the table information for the fixed-rate and -term features when making the disclosures required by § 226.5b(c).

5b(c)(1) Identification Information.

1. *Identification of creditor.* The creditor making the disclosures must be identified. Use of the creditor's name is sufficient, but the creditor may also

include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

2. *Multiple loan originators.* In transactions with multiple loan originators, each loan originator's unique identifier must be disclosed. For example, in a transaction where a mortgage broker meets the definition of a loan originator under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Section 1503(3), 12 U.S.C. 5102(3), the identifiers for the broker and for its employee originator meeting that definition must be disclosed.◄

[*5b(d)(1) Retention of Information.*

1. *When disclosure not required.* The creditor need not disclose that the consumer should make or otherwise retain a copy of the disclosures if they are retainable—for example, if the disclosures are not part of an application that must be returned to the creditor to apply for the plan.]

►*5b(c)(4)*◄*[5b(d)(2)] Conditions for Disclosed Terms.*

Paragraph ►5b(c)(4)(i)◄ [5b(d)(2)(i)]

1. *Guaranteed terms.* [The requirement that the creditor disclose the time by which an application must be submitted to obtain the disclosed terms does not require the creditor to guarantee any terms.] If a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor also is permitted to guarantee some terms and not others, but must indicate which terms are subject to change.

[2. *Date for obtaining disclosed terms.* The creditor may disclose either a specific date or a time period for obtaining the disclosed terms. If the creditor discloses a time period, the consumer must be able to determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms. For example, the disclosure might read, ''To obtain the following terms, you must submit your application within 60 days after the date appearing on this disclosure,'' provided the disclosure form also shows the date.]

Paragraph ►5b(c)(4)(ii)◄[5b(d)(2)(ii)].

1. *Relation to other provisions.* Creditors should consult the rules in ►§ 226.5b(d)◄ [§ 226.5b(g)] regarding refund of fees ►when terms change◄.

►*5b(c)(5) Refund of Fees Under § 226.5b(e).*

1. *Relation to other provisions.* Creditors should consult the rules in § 226.5b(e) regarding refund of fees if the consumer rejects the plan within three business days of receiving the disclosures required by § 226.5b(b).

►*5b(c)(7)*◄*[5b(d)(4)] Possible Actions by Creditor.*

Paragraph ►5b(c)(7)(i)◄[5b(d)(4)(i)].

1. *Fees imposed upon termination.* This disclosure applies only to fees (such as penalty or prepayment fees) that the creditor imposes if it terminates the plan prior to normal expiration. The disclosure does not apply to fees that are imposed either when the plan expires in accordance with the agreement or if the consumer terminates the plan prior to its scheduled maturity. In addition, the disclosure does not apply to fees associated with collection of the debt, such as attorneys' fees and court costs, or to increases in the annual percentage rate linked to the consumer's failure to make payments. The actual amount of the fee need not be disclosed.

2. *Changes ►to the plan◄ [specified in the initial agreement].* If changes may occur pursuant to § 226.5b(f)(3)(i)►–(v)◄, a creditor must state that ►the creditor can make changes to the plan.◄[certain changes will be implemented as specified in the initial agreement].

►*Paragraph 5b(c)(7)(ii)*◄ *[Paragraph 5b(d)(4)(iii)].*

1. *Disclosure of conditions.* ►A creditor may disclose the conditions under which a creditor may take certain actions as specified in § 226.5b(c)(7) either upon the consumer's request (prior to account opening) or with the disclosures required by § 226.5b(b).◄ In making this disclosure, the creditor may provide a highlighted copy of the document that contains such information, such as the contract or security agreement. The relevant items must be distinguished from the other information contained in the document. For example, the creditor may provide a cover sheet that specifically points out which contract provisions contain the information, or may mark the relevant items on the document itself. As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in § [§] 226.5b(f)(2)(i)–[(iii)]►(iv)◄, [226.5b](f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached), and [226.5b](f)(3)(vi) or language that is substantially similar. [The condition contained in § 226.5b(f)(2)(iv) need not be stated.] In describing [specified] changes that may be implemented during the plan ►under § 226.5b(f)(3)(i)–(v)◄, the creditor may provide a disclosure such as, ''►We are allowed to make certain changes in the terms of the line, such as◄ [Our agreement permits us to make certain] changes [to the terms of the line] at specified times or upon the occurrence of specified events ►as set forth in the initial agreement◄.'' ►See comment 5b(c)-2 regarding how soon after the consumer's request the creditor must disclose this information to the consumer.◄

[2. *Form of disclosure.* The list of conditions under § 226.5b(d)(4)(iii) may appear with the segregated disclosures or apart from them. If the creditor elects to provide the list of conditions with the segregated disclosures, the list need not comply with the precedence rule in § 226.5b(a)(2).]

►*5b(c)(9)*◄*[5b(d)(5)] Payment Terms.*

►1. *Balloon payments.* i. *In general.* Section 226.5b(c)(9)(ii) and (iii) require disclosures of balloon payments. A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time. The creditor must not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan. The balloon payment disclosures in § 226.5b(c)(9)(ii) and (iii) do not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration.

ii. *Terminology.* In disclosing a balloon payment under § 226.5b(c)(9)(ii) and (iii), a creditor must disclose that a balloon payment ''may'' result if a balloon payment under a payment plan is possible, even if such a payment is uncertain or unlikely; a creditor must disclose that a balloon payment ''will'' result if a balloon payment will occur under a payment plan, such as a payment plan with interest-only payments during the draw period and no repayment period.

►2. *Disclosing balloon payment when one payment plan is disclosed.* If under the payment plan, paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, the creditor must disclose information about the balloon payment twice in the table—under § 226.5b(c)(9)(ii)(A) and (c)(9)(iii)(C)(*4*). See the row ''Balloon Payment'' in the ''Borrowing and Repayment Terms'' section of Sample G–14(D) for guidance on how to comply with the requirements in § 226.5b(c)(9)(ii)(A). See the first paragraph in the ''Sample Payments on a $80,000 Balance'' section

of Sample G–14(D) for guidance on how to comply with the requirements in § 226.5b(c)(9)(iii)(C)(*4*).

3. *Disclosing balloon payments when two payment plans are disclosed.* If under at least one of the payment plans, paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance by the end of the plan, the creditor must disclose information about the balloon payment three times in the table—under § 226.5b(c)(9)(ii)(B)(*1*), (c)(9)(ii)(B)(*3*), and (c)(9)(iii)(C)(*4*). See the row ''Balloon Payment'' in the ''Borrowing and Repayment Terms'' section of Sample G–14(C) for guidance on how to comply with the requirements in § 226.5b(c)(9)(ii)(B)(*1*). See the rows ''Plan A'' and ''Plan B'' in the ''Payment Plans'' section of Sample G–14(C) for guidance on how to comply with the requirements in § 226.5b(c)(9)(ii)(B)(*3*). See the ''Plan A vs. Plan B'' part of the ''Plan Comparison: Sample Payments on an $80,000 Balance'' section of Sample G–14(C) for guidance on how to comply with the requirements in § 226.5b(c)(9)(iii)(C)(*4*).◄

Paragraph ►*5b(c)(9)(i)*◄*[5b(d)(5)(i)].*

1. *Length of the plan.* [The combined length of the draw period and any repayment period need not be stated. If the length of the repayment phase cannot be determined because, for example, it depends on the balance outstanding at the beginning of the repayment period, the creditor must state that the length are determined by the size of the balance. If the length of the plan is indefinite (for example, because there is no time limit on the period during which the consumer can take advances), the creditor must state that fact.] ►i. If a maturity date is set forth for the plan, the length of the plan, the length of the draw period and the length of any repayment period are definite. The length of the plan must be based on the maturity date of the plan, regardless of whether the outstanding balance will be paid off before or after the maturity date. For example, assume that a plan has a draw period of 10 years and a maturity date of 20 years. If the outstanding balance on the plan is not paid off by the maturity date, the creditor will extend the maturity date of the plan and require the consumer to make minimum payments until the outstanding balance is repaid. In this example, the creditor must disclose the length of the plan as 20 years, the draw period as 10 years and the repayment period as 10 years, even though in some cases the maturity date of the plan may be extended in the future.

ii. If the plan does not have a maturity date and the length of the repayment period cannot be determined at the time the disclosures required by § 226.5b(b) must be given because the length of the plan and the length of the repayment period depend on the balance outstanding at the beginning of the repayment period or the balance at the time of the last advance during the draw period, the creditor must state that the length of the plan and the length of the repayment period is determined by the size of the balance outstanding at the beginning of the repayment period or the balance at the time of the last advance during the draw period, as applicable. The following examples illustrate this rule:

A. Assume the plan has no maturity date, the draw period is 10 years, and the minimum payment during the repayment period is 1.5 percent of the outstanding balance at the time of the last advance during the draw period. In this example, the creditor would disclose that the lengths of the plan and the repayment period are determined by the size of the outstanding balance at the time of the last advance during the draw period.

B. Assume the length of the draw period is 10 years and the length of the repayment period will be 15 years if the balance at the beginning of the repayment period is less than $20,000 and 30 years if the balance is $20,000 or more. In this example, the creditor must disclose that the length of the plan will be 25 or 40 years depending on the outstanding balance at the beginning of the repayment period. In addition, the creditor must disclose that the repayment period will be 15 years if the balance is less than $20,000 and 30 years if the balance is $20,000 or more. The creditor may not simply disclose that the repayment period is determined by the size of the balance. See Sample G–14(E) for guidance on how to disclose this information.

iii. If the length of the plan is indefinite (for example, because there is no time limit on the period during which the consumer can take advances), the creditor must state that fact.◄

2. *Renewal provisions.* If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension—regardless of its likelihood—should be ignored for purposes of the disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years.

►3. *Format.* Under § 226.5b(c)(9)(i), if the length of the plan is definite, a creditor must disclose the length of the plan, the length of the draw period and the length of any repayment period in a format substantially similar to the format used in any of the applicable tables found in Samples G–14(C) and G–14(D) . (See comment 5b(c)(9)(i)-1 for guidance on determining whether the length of the plan is definite.) Sample G–14(D) shows the format a creditor must use for plans that have a definite length and have a draw period but no repayment period. Sample G–14(C) shows the format a creditor must use for plans that have a definite length and have a draw period and a repayment period. For example, in Sample G–14(C), the length of a plan is 20 years, and the length of the draw period and repayment period are 10 years each. As shown in Sample G–14(C), the length of the plan must be disclosed as 20 years, along with a statement indicating that this period is divided into two periods. In this example, the length of the draw period must be disclosed as ''Years (1–10)'' and the length of the repayment period must be disclosed as ''Years (11–20).'' The length of the draw period and repayment period must be included with the headings ''Borrowing Period'' (for the draw period) and ''Repayment Period'' (for the repayment period), respectively, each time these headings are used. See § 226.5b(c)(9) for when the headings must be used.

4. *Length of the plan and the length of the draw period are the same.* If the length of the plan and the length of the draw period are the same, a creditor will be deemed to satisfy the requirement to disclose the length of plan by disclosing the length of the draw period.◄

Paragraph ►*5b(c)(9)(ii)*◄*[5b(d)(5)(ii)].*

1. *Determination of the minimum periodic payment.* This disclosure [must reflect] ►of◄ how the minimum periodic payment is determined [, but] ►must◄ [need only] describe ►only◄ the principal and interest components of the payment. Other charges that may be part of the payment (as well as the balance computation method) ►must not be◄ [may, but need not, be] described under this provision. ►In addition, this disclosure must not include a description of any floor payment amount, where the payment will not go below this amount.◄

►2. *Multiple payment plans.* If a creditor only offers two payment plans (other than fixed-rate and -term

payment plans unless those are the only payment plans offered during the draw period), both of those payment options must be disclosed in the table required by § 226.5b(b). If a creditor offers more than two payment options (other than fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), the creditor pursuant to § 226.5b(c)(9)(ii)(B) must only disclose two of the payment plans in the table required by § 226.5b(b). The following would be considered two payment plans: The draw period is 10 years and the consumer has the choice between two repayment periods—10 and 20 years. The two payment plans would be (1) a 10 year draw period and a 10 year repayment period, and (2) a 10 year draw period and a 20 year repayment period.

3. *Statement about additional payment plans not disclosed in table.* Section 226.5b(c)(9)(ii)(B) provides that if a creditor offers more than the two payment plans described in the table required by § 226.5b(b)(2)(i) (other than fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), the creditor must disclose that other payment plans are available, and the consumer should ask the creditor for additional details about these other payment plans. This disclosure is required only if the creditor offers additional payment plans available to that consumer. If the only other payment plans available are employee preferred-rate plans, for example, the creditor must provide this statement only if the consumer would qualify for the employee preferred-rate plans.◄

[2. *Fixed rate and term payment options during draw period.* If the home-equity plan permits the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period, this feature must be disclosed. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay all or a portion of the balance over a three-year period at a fixed rate. The creditor must disclose the rules relating to this feature including the period during which the option can be selected, the length of time over which repayment can occur, any fees imposed for such a feature, and the specific rate or a description of the index and margin that will apply upon exercise of this choice. For example, the index and margin disclosure might state: ''If you choose to convert any portion of your balance to a fixed rate, the rate will be the highest prime rate published in the 'Wall Street Journal' that is in effect at the date of conversion plus a margin.'' If the fixed rate is to be determined according to an index, it must be one that is outside the creditor's control and is publicly available in accordance with § 226.5b(f)(1). The effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example required in § 226.5b(d)(12)(xi).]

[3] ►4◄. *Balloon payments.* ►See comments 5b(c)(9)–1 through –3 for guidance on disclosing balloon payments under § 226.5b(c)(9)(ii).◄ [In programs where the occurrence of a balloon payment is possible, the creditor must disclose the possibility of a balloon payment even if such a payment is uncertain or unlikely. In such cases, the disclosure might read, ''Your minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. If they are not, you will be required to pay the entire outstanding balance in a single payment.'' In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that fact. For example, the disclosure might read, ''Your minimum payments will not repay the principal that is outstanding on your line. You will be required to pay the entire outstanding balance in a single payment.'' In making this disclosure, the creditor is not required to use the term ''balloon payment.'' The creditor also is not required to disclose the amount of the balloon payment. (See, however, the requirement under § 226.5b(d)(5)(iii).) The balloon payment disclosure does not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration. The creditor also need not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan.]

►5. *Consumer's request for additional information on other payment plans.* If the creditor offers any other payment plans than the two payment plans disclosed in the table required under § 226.5b(b) (except for fixed-rate and -term payment plans unless those are the only payment plans offered during the draw period), and a consumer requests additional information about this other plan prior to account opening, the creditor must disclose an additional table under § 226.5b(b) to the consumer with the terms of the other payment plan described in the table. If the creditor offers multiple payment plans that were not disclosed in the table required under § 226.5b(b), only one payment plan may be disclosed on each additional table given to the consumer. For example, if a creditor offers two payment plans that were not disclosed in the table required under § 226.5b(b), the creditor must provide the consumer, upon request, two additional tables—one table for each payment plan. See comment 5b(c)–2 regarding how soon after the consumer's request the creditor must disclose this information to the consumer.

6. *Reverse mortgages.* Reverse mortgages, also known as reverse annuity or home-equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

i. If the reverse mortgage has a specified period for advances and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as ''The disclosures assume that you will repay the line at the time the borrowing period and our payments to you end. As provided in your agreement, your repayment may be required at a different time.'' The single payment should be considered the ''minimum periodic payment'' and consequently would not be treated as a balloon payment. The examples of the minimum payment under § 226.5b(c)(9)(iii) should assume the consumer borrows the full credit line (as disclosed in § 226.5b(c)(17)) at the beginning of the draw period.

ii. If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death,

the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

iii. In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as ''The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement.''

iv. Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing how the creditor's share will be determined, any limitations, and when the feature may be exercised. ◄

Paragraph ►*5b(c)(9)(iii)*◄*[5b(d)(5)(iii)].*

1. *Minimum periodic payment examples.* ►A creditor must provide examples for each payment option disclosed in the table pursuant to § 226.5b(c)(9)(ii). In calculating the payment examples, a creditor must take into account any significant terms related to each payment option, such as any payment caps or payment floor amounts. (A creditor must take payment floor amounts into account when calculating the payment examples even though the creditor may not disclose that payment floor in the table when describing how minimum payments will be calculated. See comment 5b(c)(9)(ii)–1.) For example, assume that under a payment plan, the monthly payment for the draw period will be calculated as the interest accrued during that month, or $50, whichever is greater. In the table described in § 226.5b(b), a creditor must disclose that the minimum monthly payment during the draw period only covers interest. The creditor must not disclose in the table the payment floor of $50. Nonetheless, the creditor must take into account this $50 payment floor in calculating the disclosures shown as part of the payment examples.◄ In disclosing the payment example►s◄, the creditor ►must assume that the consumer borrows the full credit line (as disclosed in § 226.5b(c)(17)) at the beginning of the draw period and that this advance is reduced according to the terms of the plan. The creditor must not assume that an additional advance is taken at any time, including at the beginning of any repayment period. A creditor must assume that the annual percentage rate used to calculate each payment example required by § 226.5b(c)(9)(iii) will remain the same during the draw period and any repayment period as specified in § 226.5b(c)(9)(iii)(A)(*3*) even if that annual percentage rate is a variable rate under the plan. ◄ [may assume that the credit limit as well as the outstanding balance is $10,000 if such an assumption is relevant to calculating payments. (If the creditor only offers lines of credit for less than $10,000, the creditor may assume an outstanding balance of $5,000 instead of $10,000 in making this disclosure.)] The example►s◄ should reflect the payment comprised only of principal and interest. ►The sample payments in the table showing the first minimum periodic payment for the draw period and any repayment period, and the balance outstanding at the beginning of any repayment period, must be rounded to the nearest whole dollar.◄[Creditors may provide an additional example reflecting other charges that may be included in the payment, such as credit insurance premiums.] Creditors may assume that all months have an equal number of days, that payments are collected in whole cents, and that payments will fall on a business day even though they may be due on a non-business day. [For variable-rate plans, the example must be based on the last rate in the historical example required in § 226.5b(d)(12)(xi), or a more recent rate. In cases where the last rate shown in the historical example is different from the index value and margin (for example, due to a rate cap), creditors should calculate the rate by using the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.]

[2. *Representative examples.* In plans with multiple payment options within the draw period or within any repayment period, the creditor may provide representative examples as an alternative to providing examples for each payment option. The creditor may elect to provide representative payment examples based on three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges (*interest only* plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2% of the balance or 1/180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories even if other features exist, such as varying lengths of a draw or repayment period, required payment of past due amounts, late charges, and minimum dollar amounts. The creditor may use a single example within each category to represent the payment options in that category. For example, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the example required under § 226.5b(d)(5)(iii) for that option alone.

The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. (See the commentary to § 226.5b(d)(12) (x) and (xi) for a discussion of the use of representative examples for making those disclosures. Creditors using a representative example within each category must use the same example for purposes of the disclosures under § 226.5b(d)(5)(iii) and (d)(12)(x) and (xi).) Creditors may use representative examples under § 226.5b(d)(5) only with respect to the payment example required under paragraph (d)(5)(iii). Creditors must provide a full narrative description of all payment options under § 226.5b(d)(5)(i) and (ii).

3. *Examples for draw and repayment periods.* Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods. In setting forth payment examples for any repayment period under this section (and the historical example under § 226.5b(d)(12)(xi)), creditors should assume a $10,000 advance is taken at the beginning of the draw period and is reduced according to the terms of the plan. Creditors should

not assume an additional advance is taken at any time, including at the beginning of any repayment period.]

►2. *Balloon payments.* See comments 5b(c)(9)–1 through –3 for guidance on disclosing balloon payments under § 226.5b(c)(9)(iii)(D).

3. ◄[4.] *Reverse mortgages.* ►See comment 5b(c)(9)(ii)–6 for guidance on providing the payment examples required under § 226.5b(c)(9)(iii) for reverse mortgages.◄ [Reverse mortgages, also known as reverse annuity or home-equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

i. If the reverse mortgage has a specified period for advances and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as ''The disclosures assume that you will repay the line at the time the draw period and our payments to you end. As provided in your agreement, your repayment may be required at a different time.'' The single payment should be considered the ''minimum periodic payment'' and consequently would not be treated as a balloon payment. The example of the minimum payment under § 226.5b(d)(5)(iii) should assume a single $10,000 draw.

ii. If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

iii. In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as ''The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement.''

iv. Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing how the creditor's share will be determined, any limitations, and when the feature may be exercised.]

►*5b(c)(10)*◄*[5b(d)(6)] Annual Percentage Rate.*

►1. *Rates disclosed.* The only rates that may be disclosed in the table required by § 226.5b(b) are annual percentage rates determined under § 226.14(b). Periodic rates must not be disclosed in the table.

2. *Rate changes set forth in initial agreement.* This paragraph requires disclosure of the rate changes set forth in the initial agreement, as discussed in § 226.5b(f)(3)(i), that are applicable to the payment plans disclosed pursuant to § 226.5b(c)(9). For example, this paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. The creditor must disclose the preferred rate that applies to the plan, and the rate that would apply if the event is triggered, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor. If the preferred rate and the rate that would apply if the event is triggered are variable rates, the creditor must disclose those rates based on the applicable index or formula, and disclose other information required by § 226.5b(c)(10)(i).

3. *Rates applicable to payment plans disclosed.* A creditor is only required to disclose the rates applicable to the payment plans that are disclosed in § 226.5b(c)(9). If the creditor offers other payment plans than the ones disclosed in the table required under § 226.5b(b), and a consumer requests additional information about those other plans, the creditor must disclose the annual percentage rates applicable to those other plans (as well as other information) when disclosing those other payment plans to the consumer. See comment 5b(c)(9)(ii)–5 and comment 5b(c)(18)–2 for the information a creditor must provide to a consumer that requests additional information about other payment plans offered by the creditor.◄

[1. *Preferred-rate plans.* If a creditor offers a preferential fixed-rate plan in which the rate will increase a specified amount upon the occurrence of a specified event, the creditor must disclose the specific amount the rate will increase.]

►*Paragraph 5b(c)(10)(i) Disclosures for Variable-rate Plans.*

1. *Variable-rate accounts—definition.* For purposes of § 226.5b(c)(10)(i), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to § 226.6(a)(4)(ii)–1 for examples of variable-rate plans.)

2. *Variable-rate accounts—fact that the rate varies and how the rate will be determined.* In describing how the applicable rate will be determined, the creditor must identify in the table described in § 226.5b(b) the type of index used and the amount of any margin. In describing the index, a creditor may not include in the table details about the index. For example, if a creditor uses a prime rate, the creditor must disclose the rate as a ''prime rate'' and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. Except as permitted by § 226.5b(c)(10)(i)(A)(*6*), a creditor may not disclose in the table the current value of the index (such as that the prime rate is currently 7.5 percent). See Samples G–14(C), G–14(D) and G–14(E) for guidance on how to disclose the fact that the applicable rate varies and how it is determined.

3. *Rate during any repayment period.* If a creditor uses an index to determine the rate that will apply at the time of conversion to the repayment phase—even if the rate will thereafter be fixed—the creditor must provide the information in § 226.5b(c)(10)(i), as applicable.

4. *Limitations on increases in rates.* The creditor must disclose in the table required by § 226.5b(b) any limitations on increases in the annual percentage rate, including the minimum and maximum annual percentage rate that may be imposed under each payment plan disclosed under § 226.5b(c)(9)(ii). For example, a creditor must disclose any rate limitations that occur every two years, annually or on less than an annual basis. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation must be treated as an annual cap. Rate limitations imposed on more or less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a rate limitation for a six-month time period. If the creditor does not impose annual or other periodic limitations on rate increases, the fact must be stated in the table described in § 226.5b(b).

5. *Maximum limitations on increases in rates.* The maximum annual percentage rate that may be imposed under each payment option disclosed under § 226.5b(c)(9)(ii) over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided in the table described in § 226.5b(b). If separate overall limitations apply to rate increases resulting from events such as leaving the creditor's employ, those limitations also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

6. *Sample forms.* Samples G–14(C), G–14(D) and G–14(E) provide illustrative guidance on the variable-rate rules.

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

1. *Preferred rates.* If a creditor offers a preferred rate that will increase a specified amount upon the occurrence of a specified event other than the expiration of a specific time period, such as the borrower-employee leaving the creditor's employ, the preferred rate is not an introductory rate under § 226.5b(C)(10)(ii), but must be disclosed in accordance with § 226.5b(C)(10). See comment 5b(C)(10)–2.

2. *Immediate proximity.* i. *In general.* If the term ''introductory'' is in the same phrase as the introductory rate, it will be deemed to be in immediate proximity of the listing. For example, a creditor that uses the phrase ''introductory APR X percent'' has used the word ''introductory'' within the same phrase as the rate. (See Samples G–14(C) and G–14(E) for guidance on how to disclose clearly and conspicuously the expiration date of the introductory rate and the rate that will apply after the introductory rate expires, if an introductory rate is disclosed in the table.)

ii. *More than one introductory rate.* If more than one introductory rate may apply to a particular balance in succeeding periods, the term ''introductory'' need only be used to describe the first introductory rate. For example, if a creditor offers an introductory rate of 8.99% on the plan for six months, and an introductory rate of 10.99% for the following six months, the term ''introductory'' need only be used to describe the 8.99% rate.

3. *Rate that applies after introductory rate expires.* If the initial rate is an introductory rate, the creditor must disclose the introductory rate, how long the introductory rate will remain in effect, and the rate that would otherwise apply to the plan. Where the rate that would otherwise apply is fixed, the creditor must disclose the rate that will apply after the introductory rate expires. Where the rate that would otherwise apply is variable, the creditor must disclose the rate based on the applicable index or formula, and disclose the other variable-rate disclosures required under § 226.5b(c)(10)(i).◄

►*5b(c)(11)*◄*[5b(d)(7)] Fees Imposed by Creditor* ►*and Third Parties to Open the Plan*◄.

1. *Applicability.* ►Section 226.5b(c)(11) applies only to one-time fees imposed by the creditor or third parties to open the plan. The fees referred to in § 226.5b(c)(11) include items such as application fees, points, appraisal or other property valuation fees, credit report fees, government agency fees, and attorneys' fees. Annual fees or other periodic fees that may be imposed for the availability of the plan would not be disclosed under § 226.5b(c)(11), but must be disclosed under § 226.5b(c)(12). A creditor must not state the amount of any property insurance premiums in the table, even in cases where property insurance is required by the creditor.◄ [The fees referred to in section 226.5b(d)(7) include items such as application fees, points, annual fees, transaction fees, fees to obtain checks to access the plan, and fees imposed for converting to a repayment phase that is provided for in the original agreement. This disclosure includes any fees that are imposed by the creditor to use or maintain the plan, whether the fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be specifically stated. Third party fees to open the plan that are initially paid by the consumer to the creditor may be included in this disclosure or in the disclosure under § 226.5b(d)(8).]

2. *Manner of describing itemized fees.* ►Section 226.5b(d)(11) provides that if the dollar amount of a one-time account opening fee is not known at the time the disclosures under § 226.5b(b) are delivered or mailed, a creditor must provide a range for such fee. If a range is shown, the highest amount of the fee in that range must assume that the consumer will borrow the full credit line at account opening. The lowest amount of the fee in the range must be the lowest amount of the fee that may be imposed.◄ [Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. The creditor may provide a stepped fee schedule in which a fee will increase a specified amount at a specified date. (See the discussion contained in the commentary to § 226.5b(f)(3)(i).)]

3. *Fees not required to be disclosed.* Fees that are not imposed to open [, use, or maintain] a plan, such as fees for researching an account, photocopying, paying late, stopping payment, having a check returned, exceeding the credit limit, or closing out an account, do not have to be disclosed under this section. Credit report and ►property valuation◄ [appraisal] fees imposed to investigate whether a condition permitting a freeze continues to exist—as discussed in ►226.5b(g)(3)(iv) and accompanying commentary◄ [the commentary to § 226.5b(f)(3)(vi)]—are not required to be disclosed under this section [or § 226.5b(d)(8)].

4. *Rebates of* ►*account opening fees*◄*[closing costs].* If ► one-time fees for account opening ◄ [closing costs] are imposed they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of any interest paid during the first year of the plan).

[5. *Terms used in disclosure.* Creditors need not use the terms *finance charge* or *other charge* in describing the fees imposed by the creditor under this section or those imposed by third

parties, as applicable, under section 226.5b(d)(8).]

►5. *Disclosure of itemized list of fees to open a plan.* A creditor will be deemed to provide the itemization of the account-opening fees clearly and conspicuously if the creditor provides this information in a bullet format as shown in Samples G–14(C), G–14(D) and G–14(E).◄

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

1. *Fee to obtain access devices.* The fees referred to in § 226.5b(c)(12) include fees to obtain access devices, such as fees to obtain checks or credit cards to access the plan. For example, a fee to obtain checks or a credit card on the account must be disclosed in the table as a fee for issuance or availability under § 226.5b(c)(12). This fee must be disclosed even if the fee is optional; that is, if the fee is charged only if the consumer requests checks or a credit card.

2. *Fees kept by third party.* The fees referred to in § 226.5b(c)(12) include any fees that are imposed by the creditor for the availability of the plan, whether the fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be disclosed under § 226.5b(c)(12).

3. *Waived or reduced fees.* If fees required to be disclosed under § 226.5b(c)(12) are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in the table in addition to the required fees if the creditor also discloses how long the reduced fees or waivers will remain in effect.

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

1. *Applicability.* This disclosure applies to fees (such as penalty or prepayment fees) that the creditor imposes if the consumer terminates the plan prior to its scheduled maturity. This disclosure includes waived account-opening fees for the plan, if the creditor will impose those costs on the consumer if the consumer terminates the plan within a certain amount of time after account opening. The disclosure does not apply to fees that the creditor may impose in lieu of termination under comment 5b(f)(2)–2. The disclosure also does not apply to fees that are imposed when the plan expires in accordance with the agreement or that are associated with collection of the debt if the creditor terminates the plan, such as attorneys' fees and court costs.

5b(c)(14) Statement about Other Fees.

1. *Disclosure of additional information upon request.* A creditor generally must include in the table required by § 226.5b(b) a statement that the consumer may receive, upon request, additional information about fees applicable to the plan. Alternatively, a creditor may provide additional information about fees applicable to the plan along with the table required by § 226.5b(b). In that case, the creditor must disclose in the table that is required by § 226.5b(b) that additional information about fees applicable to the plan is enclosed with the table. In providing additional information about fees to a consumer upon the consumer's request prior to account opening (or along with the table required under § 226.5b(b)), a creditor must disclose the penalty and transaction fees that are required to be disclosed under § 226.6(a)(2)(x) through (xiv) and a statement that other fees may apply. A creditor must use a tabular format to disclose the additional information about fees that is provided upon request or provided with the table required by § 226.5b(b). See comment 5b(c)–2 regarding how soon after the consumer's request the creditor must disclose this information to the consumer.◄

[*5b(d)(8) Fees Imposed by Third Parties to Open a Plan.*

1. *Applicability.* Section 226.5b(d)(8) applies only to fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorneys' fees. In cases where property insurance is required by the creditor, the creditor either may disclose the amount of the premium or may state that property insurance is required. For example, the disclosure might state, ''You must carry insurance on the property that secures this plan.''

2. *Itemization of third-party fees.* In all cases creditors must state the total of third-party fees as a single dollar amount or a range except that the total need not include costs for property insurance if the creditor discloses that such insurance is required. A creditor has two options with regard to providing the more detailed information about third party fees. Creditors may provide a statement that the consumer may request more specific cost information about third party fees from the creditor. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures. Any itemization provided upon the consumer's request need not include a disclosure about property insurance.

3. *Manner of describing fees.* A good faith estimate of the amount of fees must be provided. Creditors may provide, based on a typical or representative amount of credit, a range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis, for example, $5 per $1,000 of credit.

4. *Rebates of third party fees.* Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(d)(7).)]

►*5b(c)(15)*◄*[5b(d)(9)] Negative Amortization.*

1. *Disclosure required.* In transactions where the minimum payment will not or may not be sufficient to cover the interest that accrues on the outstanding balance, the creditor must disclose that negative amortization will or may occur. This disclosure is required whether or not the unpaid interest is added to the outstanding balance upon which interest is computed. A disclosure is not required merely because a loan calls for non-amortizing or partially amortizing payments. ►A creditor will be deemed to meet the requirements of § 226.5b(c)(15) by providing the following disclosure, as applicable: ''Your minimum payment may cover/covers only part of the interest you owe each month and none of the principal. The unpaid interest will be added to your loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in your home.''◄

►*5b(c)(16)*◄ *[5b(d)(10)] Transaction Requirements.*

1. *Applicability.* A limitation on automated teller machine usage need not be disclosed under this paragraph unless that is the only means by which the consumer can obtain funds.

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

1. *Disclosure of fixed-rate and -term payment plans in the table.* See comment 5b(c)–4 regarding disclosure of terms relating to fixed-rate and -term payment plans during the draw period in the table required by § 226.5b(b).

2. *Disclosure of additional information upon request.* A creditor generally must disclose in the table required by § 226.5b(b) a statement that the consumer may receive, upon request, further details about the fixed-rate and -term payment plans. Alternatively, a creditor may provide additional detail about the fixed-rate and -term payment plans with the table required by § 226.5b(b). In that case, the

creditor must state that information about the fixed-rate and -term payment plans are provided along with the table required by § 226.5b(b). In disclosing additional information about the fixed-rate and -term payment plans upon a consumer's request prior to account opening (or along with the table required by § 226.5b(b)), a creditor must disclose in the form of a table (1) the information described by § 226.5b(c) applicable to the fixed-rate and -term payment plans, and (2) any fees imposed related to the use of the fixed-rate and -term payment plans, such as fees to exercise the fixed-rate and -term payment plans or to convert a balance under a fixed-rate and -term payment feature to a variable-rate feature under the HELOC plan. See comment 5b(c)–2 regarding how soon after the consumer's request the creditor must disclose this information to the consumer.

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

1. *Content.* See Samples G–14(D) and G–14(E) for guidance on how to comply with the requirements in § 226.5b(c)(19).◄

[*5b(d)(12) Disclosures for Variable-Rate Plans.*

1. *Variable-rate provisions.* Sample forms in appendix G–14 provide illustrative guidance on the variable-rate rules.

Paragraph 5b(d)(12)(iv).

1. *Determination of annual percentage rate.* If the creditor adjusts its index through the addition of a margin, the disclosure might read, ''Your annual percentage rate is based on the index plus a margin.'' The creditor is not required to disclose a specific value for the margin.

Paragraph 5b(d)(12)(viii).

1. *Preferred-rate provisions.* This paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor.

2. *Provisions on conversion to fixed rates.* The commentary to § 226.5b(d)(5)(ii) discusses the disclosure requirements for options permitting the consumer to convert from a variable rate to a fixed rate.

Paragraph 5b(d)(12)(ix).

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

2. *Maximum limitations on increases in rates.* The maximum annual percentage rate that may be imposed under each payment option over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided. The creditor may disclose this rate as a specific number (for example, 18%) or as a specific amount above the initial rate. For example, this disclosure might read, ''The maximum annual percentage rate that can apply to your line will be 5 percentage points above your initial rate.'' If the creditor states the maximum rate as a specific amount above the initial rate, the creditor must include a statement that the consumer should inquire about the rate limitations that are currently available. If an initial discount is not taken into account in applying maximum rate limitations, that fact must be disclosed. If separate overall limitations apply to rate increases resulting from events such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitations also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

3. *Form of disclosures.* The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest periodic and maximum rate limitations that may be applicable to the creditor's home-equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

Paragraph 5b(d)(12)(x).

1. *Maximum rate payment example.* In calculating the payment creditors should assume the maximum rate is in effect. Any discounted or premium initial rates or periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclose the maximum cap under § 226.5b(d)(12)(ix), the highest rate in the range must be used for the disclosure under this paragraph. As an alternative to making disclosures based on each payment option, the creditor may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the commentary to § 226.5b(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods. Creditors should calculate the example for the repayment period based on an assumed $10,000 balance. (See the commentary to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

2. *Time the maximum rate could be reached.* In stating the date or time when the maximum rate could be reached, creditors should assume the rate increases as rapidly as possible under the plan. In calculating the date or time, creditors should factor in any discounted or premium initial rates and periodic rate limitations. This disclosure must be provided for the draw phase and any repayment phase. Creditors should assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

Paragraph 5b(d)(12)(xi).

1. *Index movement.* Index values and annual percentage rates must be shown for the entire 15 years of the historical example and must be based on the most recent 15 years. The example must be updated annually to reflect the most recent 15 years of index values as soon as reasonably possible after the new index value becomes available. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available and may start the historical example at the year for which values are first available.

2. *Selection of index values.* The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages must be used in the example, but if an index value as of a particular date is used, a single index value must be shown. The creditor is required to assume one date (or one period, if an average is used) within a year on which to base the history of index values. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the example. Only one index value per year need be shown, even if the plan provides for adjustments to the annual percentage rate or payment more than once in a year. In such cases, the creditor can assume that the index rate remained

constant for the full year for the purpose of calculating the annual percentage rate and payment.

3. *Selection of margin.* A value for the margin must be assumed in order to prepare the example. A creditor may select a representative margin that it has used with the index during the six months preceding preparation of the disclosures and state that the margin is one that it has used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values.

4. *Amount of discount or premium.* In reflecting any discounted or premium initial rate, the creditor may select a discount or premium that it has used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. The creditor may assume that a discount or premium that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example.

5. *Rate limitations.* Limitations on both periodic and maximum rates must be reflected in the historical example. If ranges of rate limitations are provided under § 226.5b(d)(12)(ix), the highest rates provided in those ranges must be used in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2% annual cap.

6. *Assumed advances.* The creditor should assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. As discussed in the commentary to § 226.5b(d)(5), creditors should not assume an additional advance is taken at the beginning of any repayment period. If applicable, the creditor may assume the $10,000 is both the advance and the credit limit. (See the commentary to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

7. *Representative payment options.* The creditor need not provide an historical example for all of its various payment options, but may select a representative payment option within each of the three categories of payments upon which to base its disclosure. (See the commentary to § 226.5b(d)(5).)

8. *Payment information.* The payment figures in the historical example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted initial rate, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have applied to the plan. The historical example should include payments for as much of the length of the plan as would occur during a 15-year period. For example:

- If the draw period is 10 years and the repayment period is 15 years, the example should illustrate the entire 10-year draw period and the first 5 years of the repayment period.
- If the length of the draw period is 15 years and there is a 15-year repayment phase, the historical example must reflect the payments for the 15-year draw period and would not show any of the repayment period. No additional historical example would be required to reflect payments for the repayment period.
- If the length of the plan is less than 15 years, payments in the historical example need only be shown for the number of years in the term. In such cases, however, the creditor must show the index values, margin and annual percentage rates and continue to reflect all significant plan terms such as rate limitations for the entire 15 years.

A creditor need show only a single payment per year in the example, even though payments may vary during a year. The calculations should be based on the actual payment computation formula, although the creditor may assume that all months have an equal number of days. The creditor may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date, but must be consistent in the manner in which the period used to illustrate payment information is selected. Information about balloon payments and remaining balance may, but need not, be reflected in the example.

9. *Disclosures for repayment period.* The historical example must reflect all features of the repayment period, including the appropriate index values, margin, rate limitations, length of the repayment period, and payments. For example, if different indices are used during the draw and repayment periods, the index values for that portion of the 15 years that reflect the repayment period must be the values for the appropriate index.

10. *Reverse mortgages.* The historical example for reverse mortgages should reflect 15 years of index values and annual percentage rates, but the payment column should be blank until the year that the single payment will be made, assuming that payment is estimated to occur within 15 years. (See the commentary to § 226.5b(d)(5) for a discussion of reverse mortgages.)

5b(e) Brochure

1. *Substitutes.* A brochure is a suitable substitute for the Board's home-equity brochure if it is, at a minimum, comparable to the Board's brochure in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Board's brochure.

2. *Effect of third-party delivery of brochure.* If a creditor determines that a third party has provided a consumer with the required brochure pursuant to section 226.5b(c), the creditor need not give the consumer a second brochure.]

5b[(g)]►(d)◄ Refund of Fees

1. *Refund of fees required.* If any disclosed term, including any term provided upon request pursuant to section 226.5b►(c)◄[(d)], changes between the time the early disclosures are provided to the consumer and the time the plan is opened, and the consumer [as a result] decides to not enter into the plan, a creditor must refund all fees paid by the consumer [in connection with the application]. All fees, including credit-report fees and appraisal fees, must be refunded whether such fees are paid to the creditor or directly to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under section 226.5b►(c)(4)(i)◄[(d)(2)(i)].

2. *Variable-rate plans.* The right to a refund of fees does not apply to changes in the annual percentage rate resulting from fluctuations in the index value in a variable-rate plan. Also, if the maximum annual percentage rate is [expressed as] an amount over the initial rate, the right to refund of fees would not apply to changes in the cap resulting from fluctuations in the index value.

3. *Changes in terms.* If a term, such as ►a fee◄ [the maximum rate], is stated as a range in the early disclosures ►required under § 226.5b(b)◄, and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of 6 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could

elect to not enter into the agreement and would be entitled to a refund of fees. [On the other hand, if fees imposed by third parties are disclosed as estimates and those fees change, the consumer is not entitled to a refund of fees paid in connection with the application. Creditors must, however, use the best information reasonably available in providing disclosures about such fees.]

4. *Timing of refunds and relation to other provisions.* The refund of fees must be made as soon as reasonably possible after the creditor is notified►, after a term has changed,◄ that the consumer is not entering into the plan [because of the changed term,] or that the consumer wants a refund of fees. The fact that an application fee may be refunded to some applicants under this provision does not render such fees finance charges under section 226.4(c)(1) of the regulation.

5b[(h)] ►(e)◄ Imposition of Nonrefundable Fees

1. *Collection of fees after consumer receives disclosures.* A fee may be collected after the consumer receives the disclosures ►required under this section◄ [and brochure] and before the expiration of three ►business◄ days, although the fee must be refunded if, within three ►business◄ days of receiving the required information, the consumer decides not to enter into the agreement. In such a case, the consumer must be notified that the fee is refundable for three ►business◄ days. The notice must be clear and conspicuous and in writing, and ►must ◄ [may] be included with the disclosures required under § 226.5b[(d)]►(b)◄ [or as an attachment to them]. If disclosures ►required under § 226.5b(b)◄ [and brochure] are mailed to the consumer, ►§ 226.5b(e)◄ [footnote 10d] of the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing.

2. *Collection of fees before consumer receives disclosures.* An application fee may be collected before the consumer receives the disclosures ►required under § 226.5b(b)◄ [and brochure] (for example, when an application contained in a magazine is mailed in with an application fee) provided that [it] ►the fee◄ remains refundable until three business days after the consumer receives the section 226.5b►(b)◄ disclosures. No other fees except a refundable membership fee may be collected until after the consumer receives the disclosures required under section 226.5b►(b)◄.

3. *Relation to other provisions.* A fee collected before disclosures ►required under § 226.5b(b)◄ are provided may become nonrefundable except that, under section 226.5b[(g)]►(d)◄, it must be refunded if ►a term changes and◄ the consumer elects not to enter into the plan [because of a change in terms]. (Of course, all fees must be refunded if the consumer later rescinds under section 226.15.)

►4. *Definition of ''Business Day''.* For purposes § 226.5b(e), the more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) under § 226.2(a)(6) applies. *See* comment 2(a)(6)–2.◄

5b(f) Limitations on home-equity plans.

Paragraph 5b(f)(2)(ii).

►1. Under this paragraph, a creditor may not terminate and accelerate a home-equity plan, or take the lesser actions of permanently suspending advances or reducing the credit limit, imposing a penalty rate of interest, or adding or increasing a fee (as permitted under comment 5b(f)(2)–2, unless the consumer's required minimum payment is not received by the creditor within 30 days after the due date for that payment. This paragraph does not prohibit a creditor from imposing a late-payment fee disclosed in the agreement, or from temporarily suspending advances or reducing the credit limit for a ''default of any material obligation'' (as permitted under § 226.5b(f)(3)(vi)(C)), for a delinquency of 30 days or fewer.

2. A creditor may not take any action under this paragraph unless the creditor complies with notice requirements under § 226.9(j)(3), which requires notice of the action taken and the reasons for the action and, if applicable, notice of an increased annual percentage rate (under § 226.9(*i*)(1)) or notice of any other change in terms, such as the addition or increase of a fee (under § 226.9(c)(1)). This section does not override any state or other law that requires a right to cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.◄

[1. Failure to meet repayment terms. A creditor may terminate a plan and accelerate the balance when the consumer fails to meet the repayment terms provided for in the agreement. However, a creditor may terminate and accelerate under this provision only if the consumer actually fails to make payments. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. This section does not override any state or other law that requires a right to cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.]

* * * * *

►*Paragraph 5b(f)(2)(iv)*

1. ''Federal law'' under this provision is limited to any federal statute, its implementing regulation, and official interpretations issued by the regulatory agency with authority to implement the statute or regulation.◄

* * * * *

Paragraph 5b(f)(3).

1. *Scope of provision.* In general, a creditor may not change the terms of a plan after it is opened. For example, a creditor may not increase any fee or impose a new fee once the plan has been opened, even if the fee is charged by a third party, such as a credit reporting agency, for a service. The change-of-terms prohibition applies to all features of a plan, not only those required to be disclosed under this section. [For example, this provision applies to charges imposed for late payment, although this fee is not required to be disclosed under § 226.5b(d)(7).]

2. [*Charges not covered*] ►*Certain tax and insurance charges.*◄ [There are three charges not covered by this provision.] A creditor may pass on increases in taxes since such charges are imposed by a governmental body and are beyond the control of the creditor. In addition, a creditor may pass on increases in premiums for property insurance that are excluded from the finance charge under § 226.4(d)(2), since such insurance provides a benefit to the consumer independent of the use of the line and is often maintained notwithstanding the line. A creditor also may pass on increases in premiums for credit insurance that are excluded from the finance charge under § 226.4(d)(1), since the insurance is voluntary and provides a benefit to the consumer.

►3. *Certain default-related charges.* This provision does not prohibit a creditor from passing on to the consumer bona fide and reasonable costs incurred by the creditor for collection activity after default, to protect the creditor's interest in the property securing the plan, or to foreclose on the securing property. These costs might include, among others, attorneys' fees, court costs, property repairs, payment of overdue taxes, or paying sums secured by a lien with priority over the lien securing the

home-equity plan. The requirement that these costs be ''bona fide and reasonable'' means that the creditor must actually incur the costs and that the amount of the costs must be reasonably related to the services related to debt collection, collateral protection or foreclosure. A creditor may pass these costs on to the consumer only if the creditor incurs these costs due to the consumer's default on an obligation under the agreement for the plan.◄

Paragraph 5b(f)(3)(i).

1. *Changes provided for in agreement.* A creditor may provide in the initial agreement that further advances may be prohibited or the credit line reduced during any period in which the maximum annual percentage rate is reached. A creditor may provide for other specific changes to take place upon the occurrence of specific events. Both the triggering event and the resulting modification must be stated with specificity. For example, in home-equity plans for employees, the agreement could provide that a specified higher rate or margin will apply if the borrower's employment with the creditor ends, ►or upon the occurrence of some other triggering event. However, the agreement would not be permitted to provide for a rate or margin higher than the one that would have been available to the consumer in the absence of special circumstances such as employment with the creditor (unless the triggering event is a circumstance that would permit the rate to be increased as a penalty under § 226.5b(f)(2) and comment 5b(f)(2)–2)).◄ A contract could contain a stepped-rate or stepped-fee schedule providing for specified changes in the rate or the fees on certain dates or after a specified period of time. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific appreciation share and the specific circumstances which require the payment of it are set forth. A contract may permit a consumer to switch among minimum-payment options during the plan.

* * * * *

Paragraph 5b(f)(3)(iv).

1. *Beneficial changes.* After a plan is opened, a creditor may make changes that unequivocally benefit the consumer. Under this provision, a creditor may offer more options to consumers, as long as existing options remain. For example, a creditor may offer the consumer the option of making lower monthly payments or could increase the credit limit. Similarly, a creditor wishing to extend the length of the plan on the same terms may do so. Creditors are permitted to temporarily reduce the rate or fees charged during the plan (though change-in-terms notice ►would◄ [may] be required under § 226.9(c)►(1)◄ when the rate or fees are returned to their original level ►, unless these features are explained on the account-opening disclosure statement required under § 226.6 (including an explanation of the terms upon resumption). Also, as long as the 45-day advance notice timing requirement of § 226.9(c)(1) is met, notice of the increase in the rate or fees may be included with a notice to the consumer that the rate or fees are being reduced.◄ Creditors also may offer an additional means of access to the line, even if fees are associated with using the device, provided the consumer retains the ability to use prior access devices on the original terms.

Paragraph 5b(f)(3)(v).

1. *Insignificant changes.* A creditor is permitted to make insignificant changes after a plan is opened. This rule accommodates operational and similar problems, such as changing the address of the creditor for purposes of sending payments. It does not permit a creditor to change a term such as a fee charged for late payments.

2. *Examples of insignificant changes.* Creditors may make minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are measured to determine changes to the rate for variable-rate plans. A creditor also may change its rounding practice in accordance with the tolerance rules set forth in § 226.14 (for example, stating an exact APR is 14.3333 percent as 14.3 percent, even if it had previously been stated as 14.33 percent.) A creditor may change the balance computation method it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the average-daily-balance method (including new transactions) to the daily balance method (including new transactions). ►A creditor may also eliminate a means of access to the line, as long as one or more access devices available at account opening remain available to the consumer on the original terms. For example, a creditor could eliminate the option of accessing a plan via credit card, but only if the creditor originally offered access to the plan via check or a credit card, and the option of accessing the account via check remains, based on the terms in the initial agreement. A creditor may not change the original terms on which an existing access device is available under this provision, although such change may be permitted as a ''beneficial change'' under § 226.5b(f)(3)(iv).◄

Paragraph 5b(f)(3)(vi).

1. *Suspension of credit or reduction of credit limit.* A creditor may prohibit additional extensions of credit or reduce the credit limit in the circumstances specified in this section of the regulation. In addition, as discussed under § 226.5b(f)(3)(i), a creditor may contractually reserve the right to take such actions when the maximum annual percentage rate is reached. A creditor may not take these actions under other circumstances, unless the creditor would be permitted to terminate the line and accelerate the balance as described in section 226.5b(f)(2). The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment.

[2. *Temporary nature of suspension or reduction.* Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, credit privileges must be reinstated, assuming that no other circumstance permitting such action exists at that time.]

[3. *Imposition of fees.* If not prohibited by state law, a creditor may collect only bona fide and reasonable appraisal and credit-report fees if such fees are actually incurred in investigating whether the condition permitting the freeze continues to exist. A creditor may not, in any circumstances, charge a fee to reinstate a credit line that has been suspended or reduced once the condition has been determined not to exist.]

[4. *Reinstatement of credit privileges.* Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. One way a creditor can meet this responsibility is to monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such

monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges by providing a notice in accordance with § 226.9(c)(3). A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under § 226.9(c)(3). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.]

[5.]►2.◄ *Suspension of credit privileges following request by consumer.* A creditor may honor a specific request by a consumer to suspend credit privileges ►or reduce the credit limit◄. If the consumer later requests that the creditor reinstate credit privileges, the creditor must do so provided no other circumstance justifying a suspension ►or credit limit reduction◄ exists at that time. ►If a circumstance justifying a suspension or credit limit reduction exists at that time and the creditor therefore does not reinstate credit privileges, the creditor must comply with the notice requirements of § 226.9(j)(1) or (j)(3), as applicable.◄ If two or more consumers are obligated under a plan and each has the ability to take advances, the agreement may permit any of the consumers to direct the creditor not to make further advances ►or to reduce the credit limit◄. A creditor may require that all persons obligated under a plan request reinstatement.

[6.]►4.◄ *Significant decline defined►—safe harbors◄.* What constitutes a significant decline for purposes of § 226.5b(f)(3)(vi)(A) will vary according to individual circumstances. ►At a minimum, this means that compliance with this provision requires the creditor to assess the value of the property based on specific characteristics of the property. For plans with a combined loan-to-value ratio at origination of 90 percent or higher, a five (5) percent reduction in the property value would constitute a significant decline under § 226.5b(f)(3)(vi)(A). For plans with a combined loan-to-value ratio at origination of under 90 percent, a decline in value would be significant under § 226.5b(f)(3)(vi)(A)◄ if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's [appraised] value for purposes of the plan) is reduced by 50 percent. For example, assume that a house with a first mortgage of $50,000 is [appraised] ►valued◄ at origination at $100,000 and the credit limit is $30,000. The difference between the credit limit and the available equity is $20,000, half of which is $10,000. The creditor could prohibit further advances or reduce the credit limit if the value of the property declines from $100,000 to $90,000. [This provision does not require a creditor to obtain an appraisal before suspending credit privileges, although a significant decline must occur before suspension can occur.]

►5. *Property valuation tools.* Section 226.5b(f)(3)(vi)(A) does not require a creditor to obtain an appraisal before suspending credit privileges or reducing the credit limit, although a significant decline must occur before a creditor suspends advances or reduces the credit limit. If not prohibited by state law, property valuation methods other than an appraisal that may be appropriate to use under this provision include, but are not limited to, automated valuation models, tax assessment valuations, and broker price opinions. Any property valuation method must, however, consider specific characteristics of the property, such as square footage and number of rooms, and not merely estimate the value based on property values or re-sale prices generally in a particular geographic area.◄

[7.]►6.◄ *Material change in financial circumstances.* Two conditions must be met for § 226.5b(f)(3)(vi)(B) to apply. First, there must be a ''material change'' in the consumer's financial circumstances[, such as a significant decrease in the consumer's income]. ►Ways in which this first condition may be met include, but are not limited to, demonstration of a significant decrease in the consumer's income, or credit report information showing late payments or nonpayments on the part of the consumer, such as delinquencies, defaults, or derogatory collections or public records related to the consumer's failure to pay other obligations according to their terms.◄ Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. ►In all cases, the creditor must have a basis to support the creditor's reasonable belief that the consumer will be unable to fulfill the repayment obligations of the plan.◄ A creditor may[, but does not have to,] rely on►, for example, the consumer's failure to pay other debts, such as significant delinquencies, defaults, or derogatory collections or public records◄ [specific evidence (such as the failure to pay other debts)] in concluding that the second part of the test has been met. ►However, late payments of 30 days or fewer, by themselves, would not be sufficient to satisfy the second part of the test. The payment failures that may serve as evidence under either prong of the two-part test must have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance. In all cases, a payment failure will be deemed to have occurred within a reasonable time from the date of the creditor's review if it occurred within six months of the creditor's suspending advances or reducing the credit limit, and the consumer has not brought the account or other obligation current as of the time of the review.◄ A creditor may prohibit further advances or reduce the credit limit under this section if a consumer files for or is placed in bankruptcy.

[8.]►7.◄ *Default of a material obligation.* Creditors ►must◄ [may] specify events that would qualify as a default of a material obligation under § 226.5b(f)(3)(vi)(C). For example, a creditor may provide that default of a material obligation will exist if the consumer moves out of the dwelling or permits an intervening lien to be filed that would take priority over future advances made by the creditor.

[9.]►8.◄ *Government limits on the annual percentage rate.* Under § 226.5b(f)(3)(vi)(D), a creditor may prohibit further advances or reduce the credit limit if, for example, a state usury law is enacted which prohibits a creditor from imposing the agreed-upon annual percentage rate.

►9. *Suspensions and credit limit reductions required by federal law.* ''Federal law'' under this provision is limited to any federal statute, its implementing regulation, and official interpretations issued by the regulatory agency with authority to implement the statute or regulation. A creditor may prohibit either a single advance or multiple advances, depending on what the applicable federal law requires.◄

►*5b(g) Reinstatement of Credit Privileges.*◄

1. *Temporary nature of suspension or reduction.* Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit ►under § 226.5b(f)(3)(i) and (f)(3)(vi)◄ only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, the creditor must reinstate the consumer's credit privileges, assuming that no other circumstance permitting the creditor's action exists at that time.

2. *Imposition of fees to reinstate a credit line.* A creditor may not, in any circumstances, charge a fee to reinstate

a credit line ►that has been suspended or reduced under paragraphs 226.5b(f)(3)(i) or (f)(3)(vi)◄ once [the] ►no◄ condition ►permitting the suspension or reduction◄ [has been determined not to] exist►s◄.

►*Paragraph 5b(g)(1).*◄

1. *Creditor responsibility for restoring credit privileges.* Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist and ►no other condition permitting a freeze or credit limit reduction exists at that time.◄ One way ►in which◄ a creditor can meet this obligation is to monitor the line on an ongoing basis to determine when the condition permitting the freeze or credit limit reduction ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze or credit limit reduction continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to [such] ►ongoing◄ monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges. [A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under § 226.9(c)(3). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.]

►*Paragraph 5b(g)(2)(i).*

1. *Disclosure of consumer obligation to request reinstatement.* The creditor may shift the duty to the consumer to request reinstatement if, pursuant to § 226.9(j)(1), the creditor discloses that the consumer must request reinstatement.◄

► *Paragraph 5b(g)(2)(ii).*

1. *Creditor responsibility to investigate reinstatement requests.*◄ Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the [freeze continues to] ►suspension or credit limit reduction◄ exist►s◄. The investigation should verify that the information on which the creditor relied to take action in fact pertained to the specific property securing the affected plan (as with a property valuation) or to the specific consumer (as with a credit report). To investigate whether a significant decline in property value exists under § 226.5b(f)(3)(vi)(A), the creditor should reassess the value of the property securing the line based on an updated property valuation meeting the standards in comment 5b(f)(3)(vi)–5. To investigate whether a material change in the consumer's financial circumstances exists under § 226.5b(f)(3)(vi)(B), the creditor should obtain and evaluate information sufficient to assess whether the original finding on which action was based was accurate or, if accurate, remains current.◄

►*Paragraph 5b(g)(3).*

1. *Duty to provide documentation of property value.* The creditor has a duty to provide to the consumer, upon request, a copy of documentation supporting the property value on which the creditor relied to suspend advances or reduce the credit limit due to a significant decline in the value of the property securing the line under § 226.5b(f)(vi)(A), or to continue suspension or reduction of an account due to a significant decline in the property value under § 226.5b(f)(vi)(A).

2. *Appropriate documentation of property value.* Appropriate documentation supporting the property value on which the action was based under this paragraph would include, as applicable, a copy of the appraisal report or a copy of any written evidence of an automated valuation model, tax assessment value, broker price opinion, or other valuation method used that clearly and conspicuously shows the property value specific to the subject property and factors considered to obtain the value.◄

* * * * *

[5b(g)]►5b[(d)]◄

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[5b(h)]►5b[(e)]◄

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§ 226.6—Account-opening Disclosures.

6(a) Rules affecting home-equity plans.

►1. *Fixed-rate and -term payment plans during draw period.* Under some home-equity plans, a creditor will permit the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay all or a portion of the balance over a three-year period at a fixed rate. A creditor generally may not disclose the terms applicable to this feature in the account-opening table required under § 226.6(a)(2), except as required under § 226.6(a)(2)(xix). A creditor must, however, disclose fixed-rate and -term payment features in the account-opening table if they are the only payment plans offered during the draw period of the plan. (See § 226.6(a)(2).) Even though a creditor generally may not disclose the terms of fixed-rate and -term payment plans in the account-opening table, the creditor must disclose information about these payment plans as required by § 226.6(a)(3), (a)(4) and (a)(5). For example, a creditor must disclose fee and rate information related to these features under § 226.6(a)(3) and (a)(4), and information about payment and other terms related to these features under § 226.6(a)(5)(v).

2. *Disclosures for the repayment period.* The creditor must provide the disclosures under § 226.6 for both the draw and repayment phases when giving the disclosures under § 226.6. To the extent required disclosures are the same for the draw and repayment phases, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

6(a)(1) Form of disclosures; tabular format.

1. *Relation to tabular disclosures required under § 226.5b(b).* The commentary to § 226.5b(b) and (c) regarding format and content requirements are also applicable to disclosures required by § 226.6(a)(2), except for the following:

i. A creditor may not disclose above the account-opening table a statement that the consumer has applied for a home-equity line of credit.

ii. A creditor may not disclose below the account-opening table an identification of any disclosed term that is subject to change prior to opening the plan.

iii. A creditor may not disclose in the account-opening table a statement about the right to a refund of fees pursuant to § 226.5b(d) and (e).

iv. A creditor must disclose the account number as part of the identification information required by § 226.6(a)(2)(i)(A).

v. With respect to the statements about the conditions under which the creditor may take certain actions, such as terminating the plan, a creditor must indicate in the account-opening table that information about the conditions is provided in the account-opening disclosures or agreement, as applicable.

vi. A creditor must disclose in the account-opening table the payment terms applicable to the plan that will apply to the consumer at account opening (and may not disclose payment terms for two possible payment plans as allowed under § 226.5b(c)(9)(ii)(B)).

viii. A creditor must disclose in the account-opening table the total of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose the highest amount of possible fees as allowed under § 226.5b(c)(11). In addition, a creditor must disclose in the account-opening table an itemization of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose a range for those fees, as otherwise allowed under § 226.5b(c)(11). A creditor also must include in the account-opening table a cross-reference from the disclosure of the total of one-time fees for opening an account, indicating that the itemization of the fees is located elsewhere in the table.

ix. A creditor must include in the account-opening table the following fees (that are not required to be disclosed in the table under § 226.5b(b)): Late-payment fees; over-the-limit fees; transaction charges; returned-payment fees; and fees for failure to comply with transaction limitations.

x. A creditor must include in the account-opening table a statement that other fees are located elsewhere in the table, and a statement that information about other fees is included in the account-opening disclosures or agreement, as applicable.

xi. A creditor must include in the account-opening table a statement that information about the fixed-rate and -term payment plans is disclosed in the account-opening disclosures or agreement, as applicable.

xii. A creditor must include below the account-opening table an explanation of whether or not a grace period exists for all features on the account.

xiii. A creditor must include below the account-opening table the name of the balance computation method used for each feature of the account and state that an explanation of the balance computation method(s) is provided in the account-opening disclosures or agreement, as applicable.

xiv. A creditor must state below the account-opening table that consumers' billing rights are provided in the account-opening disclosures or agreement, as applicable.

xv. A creditor may not disclose below the account-opening table a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan; and a cross reference to the ''Fees'' section in the table described in paragraph (b)(2)(i) of this section.

xvi. A creditor must disclose below the account-opening table a statement that the consumer should confirm that the terms disclosed in the table are the same terms for which the consumer applied.

xvii. The applicable forms providing safe harbors for account-opening tables are under Appendix G–15 to part 226.

2. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to § 226.6(a) disclosures.

3. *Terminology.* Section 226.6(a)(1)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in appendix G–15 to part 226; but see § 226.5(a)(2) for terminology requirements applicable to disclosures provided pursuant to § 226.6(a).

6(a)(2) Required disclosures for account-opening table for home-equity plans.

1. *Fixed-rate and -term payment plans.* See comment 6(a)–1 for guidance on disclosing information related to fixed-rate and -term payment plans.

Paragraph 6(a)(2)(vii) Fees imposed by the creditor and third parties to open the plan.

1. *Manner of disclosure.* A creditor must disclose in the account-opening table the total of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose the highest amount of possible fees as allowed under § 226.5b(c)(11) for the disclosure table required under § 226.5b(b). In addition, a creditor must disclose in the account-opening table an itemization of all one-time fees imposed by the creditor and third parties to open the plan, and may not disclose a range for those fees, as otherwise allowed under § 226.5b(c)(11) for the disclosure table required under § 226.5b(b).

Paragraph 6(a)(2)(x) Late-payment fee.

1. *Applicability.* The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to § 226.4(c)(2) for additional guidance on late-payment fees. See Samples G–15(B), G–15(C) and G–15(D) for guidance on how to disclose clearly and conspicuously the late-payment fee.)

Paragraph 6(a)(2)(xi) Over-the-limit fee.

1. *Applicability.* The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. (But see § 226.9(j)(2) for limitations on these fees.) See Samples G–15(B), G–15(C), and G–15(D) for guidance on how to disclose clearly and conspicuously the over-the-limit fee.

Paragraph 6(a)(2)(xii) Transaction charges.

1. *Charges imposed by person other than creditor.* Charges imposed by a third party, such as a seller of goods, shall not be disclosed in the table under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

2. *Foreign transaction fees.* A transaction charge imposed by the creditor for use of the home-equity plan includes any fee imposed by the creditor for transactions in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the creditor.) See Sample G–15(D) for guidance on how to disclose a foreign transaction fee for use of a credit card where the same foreign transaction fee applies for purchases and cash advances in a foreign currency, or that take place outside the United States or with a foreign merchant.

Paragraph 6(a)(2)(xxi) Grace period.

1. *Grace period.* Creditors must state any conditions on the applicability of the grace period. A creditor that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: ''Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you interest on your account if you pay your entire balance by the due date each month.''

2. *No grace period.* Creditors may use the following language to describe that no grace period is offered, as applicable: ''We will begin charging interest on [applicable transactions] on the date the transaction is posted to your account.''

Paragraph 6(b)(2)(xxii) Balance computation method.

1. *Form of disclosure.* In cases where the creditor uses a balance computation method that is identified by name in the regulation, the creditor must disclose below the table only the name of the method. In cases where the creditor uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much

detail as set forth in the descriptions of balance computation methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(a)(4)(i)(D). (See the commentary to § 226.5a(g) for guidance on particular methods.)

2. *Content.* See Samples G–15(B), G–15(C) and G–15(D) for guidance on how to disclose the balance computation method where the same method is used for all features on the account.

6(a)(3) Disclosure of charges imposed as part of home-equity plans◄ *[6(a)(1) Finance charge.]*

►1. *Fixed-rate and -term payment plans.* See comment 6(a)–1 for guidance on disclosing information related to fixed-rate and -term payment plans.◄

[Paragraph 6(a)(1)(i).]

►2.◄[1.] *When finance charges accrue.* Creditors are not required to disclose a specific date when ►a cost that is a finance charge under § 226.4◄ [finance charges] will begin to accrue. [Creditors may provide a general explanation such as that the consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on the account.]

►3.◄[2.] *Grace periods.* In disclosing ►in the account agreement or disclosure statement◄ whether or not a grace period exists, the creditor need not use [''free period,'' ''free-ride period,'' ''grace period'' or] any [other] particular descriptive phrase or term. ►However, the descriptive phrase or term must be sufficiently similar to the disclosures provided pursuant to § 226.6(a)(2)(xxi) to satisfy a creditor's duty to provide consistent terminology under § 226.5(a)(2).◄ [For example, a statement that ''the finance charge begins on the date the transaction is posted to your account'' adequately discloses that no grace period exists. In the same fashion, a statement that ''finance charges will be imposed on any new purchases only if they are not paid in full within 25 days after the close of the billing cycle'' indicates that a grace period exists in the interim.]

►4. *No finance charge imposed below certain balance.* Creditors are not required to disclose under § 226.6(a)(3) the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

Paragraph 6(a)(3)(ii).

1. *Failure to use the plan as agreed.* Late-payment fees, over-the-limit fees, and fees for payments returned unpaid are examples of charges resulting from consumers' failure to use the plan as agreed.

2. *Examples of fees that affect the plan.* Examples of charges the payment, or nonpayment, of which affects the consumer's account are:

i. *Access to the plan.* Fees for using a credit card at the creditor's ATM to obtain a cash advance, fees to obtain additional checks or credit cards including replacements for lost or stolen cards, fees to expedite delivery of checks or credit cards or other credit devices, application and membership fees, and annual or other participation fees identified in § 226.4(c)(4).

ii. *Amount of credit extended.* Fees for increasing the credit limit on the account, whether at the consumer's request or unilaterally by the creditor.

iii. *Timing or method of billing or payment.* Fees to pay by telephone or via the Internet.

3. *Threshold test.* If the creditor is unsure whether a particular charge is a cost imposed as part of the plan, the creditor may at its option consider such charges as a cost imposed as part of the plan for purposes of the Truth in Lending Act.

Paragraph 6(a)(3)(iii)(B).

1. *Fees for package of services.* A fee to join a credit union is an example of a fee for a package of services that is not imposed as part of the plan, even if the consumer must join the credit union to apply for credit. In contrast, a membership fee is an example of a fee for a package of services that is considered to be imposed as part of a plan where the primary benefit of membership in the organization is the opportunity to apply for credit, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature.

6(a)(4) Disclosure of rates for home-equity plans.

1. *Fixed-rate and -term payment plans.* See comment 6(a)-1 for guidance on disclosing information related to fixed-rate and -term payment plans.

Paragraph 6(a)(4)(i)(B).◄ [Paragraph 6(a)(1)(ii)]

1. *Range of balances.* ►Creditors are not required to disclose the range of balances◄[The range of balances disclosure is inapplicable]:

i. If only one periodic interest rate may be applied to the entire account balance.

ii. If only one periodic interest rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic interest rate on purchase balances of $0—$500, and a 1% periodic interest rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

► *Paragraph 6(a)(4)(i)(D).*

1. *Explanation of balance computation method.* Creditors do not provide a sufficient explanation of a balance computation method by using a shorthand phrase such as ''previous balance method'' or the name of a balance computation method listed in § 226.5a(g). (See Model Clauses G–1 in appendix G to part 226. See § 226.6(a)(2)(xxii) regarding balance computation descriptions required to be disclosed below the account-opening table required by § 226.6(a)(1).)

2. *Allocation of payments.* Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances.

Paragraph 6(a)(4)(ii) Variable-rate accounts.◄

►1.◄[2.] *Variable-rate disclosures—coverage.*

i. *Examples.* This section covers open-end credit plans under which rate changes are specifically set forth in the account agreement and are tied to an index or formula. A creditor would use variable-rate disclosures for plans involving rate changes such as the following:

A. Rate changes that are tied to ►Treasury bill rates◄ [the rate the creditor pays on its six-month certificates of deposit].

B. Rate changes that are tied to ►the prime rate◄[Treasury bill rates].

C. Rate changes that are tied to ►the Federal Reserve discount rate.◄ [changes in the creditor's commercial lending rate.]

ii. ►The following is an example of open-end plans that permit the rate to change and are not considered variable rate: Rate changes that are triggered by a specific event such as an◄ [An] open-end credit plan in which the employee receives a lower rate contingent upon employment►, and the rate increases upon termination of employment.◄ [(that is, with the rate to be increased upon termination of employment) is not a variable-rate plan.]

[3. *Variable-rate plan—rate(s) in effect.* In disclosing the rate(s) in effect at the time of the account-opening disclosures (as is required by § 226.6(a)(1)(ii)), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under § 226.5(c).

4. *Variable-rate plan—additional disclosures required.* In addition to disclosing the rates in effect at the time

of the account-opening disclosures, the disclosures under § 226.6(a)(1)(ii) also must be made.

5. *Variable-rate plan—index.* The index to be used must be clearly identified; the creditor need not give, however, an explanation of how the index is determined or provide instructions for obtaining it.]

►2.◄[6.] *Variable-rate plan—circumstances for increase.*

i. ►The following are examples that comply with the requirement to disclose circumstances under which the rate(s) may increase:◄[Circumstances under which the rate(s) may increase include, for example:]

A. ► ''The Treasury bill rate increases.''◄[An increase in the Treasury bill rate.]

B. ► ''The prime rate increases.'' ◄[An increase in the Federal Reserve discount rate.]

ii. ►Disclosing the frequency with which the rate may increase includes disclosing when the increase will take effect; for example:◄[The creditor must disclose when the increase will take effect; for example:]

A. ''An increase will take effect on the day that the Treasury bill rate increases.'' [or]

B. ''An increase in the ►prime rate◄ [Federal Reserve discount rate] will take effect on the first day of the creditor's billing cycle.''

►3.◄[7.] *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. [When there are no limitations, the creditor may, but need not, disclose that fact. (A maximum interest rate must be included in dwelling-secured open-end credit plans under which the interest rate may be changed. See § 226.30 and the commentary to that section.)] Legal limits such as usury or rate ceilings under State or Federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. ''The rate on the plan will not exceed 25% annual percentage rate.''

ii. ''Not more than ½% increase in the annual percentage rate per year will occur.''

►4.◄[8.] *Variable-rate plan—effects of increase.* Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

[9. *Variable-rate plan—change-in-terms notice not required.* No notice of a change in terms is required for a rate increase under a variable-rate plan as defined in comment 6(a)(1)(ii)–2.]

►5.◄[10.] *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors ►disclose in the account-opening disclosures an◄ [use an] initial rate that is not calculated using the index or formula for later rate adjustments, the [account-opening] disclosure [statement] should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required in ►§ 226.6(a)(4)(ii).◄ [§ 226.6(a)(1)(ii).]

►*Paragraph 6(a)(4)(iii) Rate changes not due to index or formula.*

1. *Events that cause the initial rate to change.*

i. *Changes based on expiration of time period.* If the initial rate will change at the expiration of a time period, creditors must identify the expiration date and the fact that the initial rate will end at that time.

ii. *Changes based on specified contract terms.* If the account agreement provides that the creditor may change the initial rate upon the occurrence of specified event or events, the creditor must identify the event or events. Examples include imposing a penalty rate in lieu of terminating the account, as allowed under comment 5b(f)(2)–2, or the termination of an employee preferred rate when the employment relationship is terminated.

2. *Rate that will apply after initial rate changes.*

i. *Increased margins.* If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. *Risk-based pricing.* In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. For example, a creditor may specify that a penalty rate may apply in lieu of termination of the account, as allowed under comment 5b(f)(2)–2. In these cases, a creditor must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or state only the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments,'' or if there is no limitation, the fact that the increased rate may remain indefinitely.

3. *Effect of rate change on balances.* Creditors must disclose information to consumers about the balance to which the new rate will apply and the balance to which the current rate at the time of the change will apply.◄

[iii. In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(1)(ii)–3.

11. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must disclose the index and the margin. The creditor must also disclose the specific event or events that may result in the increased rate, such as ''22% APR, if 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the creditor must provide an explanation of the specific event or events that may result in the increased rate. At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

Paragraph 6(a)(1)(iii).

1. *Explanation of balance computation method.* A shorthand

phrase such as ''previous balance method'' does not suffice in explaining the balance computation method. (See Model Clauses G–1 [and G–1(A)] to part 226.)

2. *Allocation of payments.* Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances. For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (See comment 7–1 for definition of multifeatured plan.)

Paragraph 6(a)(1)(iv).

1. *Finance charges.* In addition to disclosing the periodic rate(s) under § 226.6(a)(1)(ii), creditors must disclose any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees (unless excluded from the finance charge under § 226.4(c)(7)). Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

6(a)(2) Other charges.

1. *General; examples of other charges.* Under § 226.6(a)(2), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

i. Late-payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under § 226.13 (billing error resolution).

iii. Charges imposed in connection with residential mortgage transactions or real estate transactions such as title, appraisal, and credit-report fees (see § 226.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances (See the commentary to § 226.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an ''other charge,'' even if membership is required to apply for credit. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature, the membership fee would be disclosed as an ''other charge.''

vi. Charges imposed for the termination of an open-end credit plan.

2. *Exclusions.* The following are examples of charges that are not ''other charges''

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under § 226.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (See commentary to § 226.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (See also comment 7(a)(2)–2.)

viii. Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer's request (regardless of how frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.]

► *6(a)(5) Additional disclosures for home-equity plans.*◄ *[6(a)(3) Home-equity plan information.]*

►*Paragraph 6(a)(5)(i) Voluntary credit insurance, debt cancellation or debt suspension.*

1. *Timing.* Under § 226.4(d), disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge must be provided before the consumer agrees to the purchase of the insurance or coverage. Creditors comply with § 226.6(a)(5)(i) if they provide those disclosures in accordance with § 226.4(d). For example, if the disclosures required by § 226.4(d) are provided at application, creditors need not repeat those disclosures at account opening.◄

[1. *Additional disclosures required.* For home-equity plans, creditors must provide several of the disclosures set forth in § 226.5b(d) along with the disclosures required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (See comment 5b(d)(4)(iii)–1.)

2. *Form of disclosures.* The home-equity disclosures provided under this section must be in a form the consumer can keep, and are governed by § 226.5(a)(1). The segregation standard set forth in § 226.5b(a) does not apply to home-equity disclosures provided under § 226.6.

3. *Disclosure of payment and variable-rate examples.* i. The payment-example disclosure in § 226.5b(d)(5)(iii) and the variable-rate information in § 226.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii) need not be provided with the disclosures under § 226.6 if the disclosures under § 226.5b(d) were provided in a form the consumer could keep; and the disclosures of the payment example under § 226.5b(d)(5)(iii), the maximum-payment example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.

ii. For example, if a creditor offers three payment options (one for each of the categories described in the commentary to § 226.5b(d)(5)), describes all three options in its early disclosures, and provides all of the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or (d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case with a separate disclosure form rather than a combined form, as discussed under § 226.5b(a)), the disclosures under § 226.5b(d)(5)(iii), (d)(12)(viii), (d)(12)(x), (d)(12)(xi) and (d)(12)(xii) must be given to any consumer who chooses one of the other two options. If the § 226.5b(d)(5)(iii) and (d)(12) disclosures are provided with the second set of disclosures, they need not

be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. *Disclosures for the repayment period.* The creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under § 226.6. Specifically, the creditor must make the disclosures in § 226.6(a)(3), state the corresponding annual percentage rate, and provide the variable-rate information required in § 226.6(a)(1)(ii) for the repayment phase. To the extent the corresponding annual percentage rate, the information in § 226.6(a)(1)(ii), and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.]

►*Paragraph 6(a)(5)(ii)*◄ *[6(a)(4)] Security interests.*

1. *General.* Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.

2. *Identification of property.* Creditors sufficiently identify collateral by type by stating, for example, ►your home.◄ [*motor vehicle* or *household appliances.* (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.)] The creditor may, at its option, provide a more specific identification (for example, ►the address of property securing the line of credit.◄ [a model and serial number.)]

3. *Spreader clause.* If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) The creditor need not specifically identify the collateral; a reminder such as ''collateral securing other loans with us may also secure this loan'' is sufficient. At the creditor's option, a more specific description of the property involved may be given.

[4. *Additional collateral.* If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under § 226.9(c) at the time the security is taken. (See comment 6(a)(4)–2.)

5. *Collateral from third party.* Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.]

►*Paragraph*◄ *6(a)(5)*►*(iii)*◄ *Statement of billing rights.*

1. ►*Model forms.*◄ See the commentary to Model Forms ►G–3 and G–4 ◄ [G–3, G–3(A), G–4, and G–4(A)].

►*Paragraph 6(a)(5)(iv) Possible creditor actions.*

1. *Disclosure.* Creditors must disclose under § 226.6(a)(5)(iv) a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (See comment 5b(c)(7)(i).)

Paragraph 6(a)(5)(v) Additional information on fixed-rate and -term payment plans.

1. *Fixed-rate and -term payment plans.* See comment 6(a)–1 for guidance on disclosing information related to fixed-rate and -term payment plans.◄

* * * * *

§ *226.7—Periodic Statement.*

7(a) Rules affecting home-equity plans.

7(a)(1) Previous balance.

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

7(a)(2) Identification of transactions.

1. *Multifeatured plans.* [In identifying transactions under § 226.7(a)(2) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.]► Creditors may, but are not required to, arrange transactions by feature (such as disclosing purchase transactions separately from cash advance transactions). Pursuant to § 226.7(a)(6), however, creditors must group all fees and all interest separately from transactions and may not disclose any fees or interest charges with transactions.◄

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system, and included by the terminal-operating institution in the amount of the transaction, need not be separately disclosed on the periodic statement.

7(a)(3) Credits.

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—''credit'' would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to § 226.13(e) and (f).)► Credits may be distinguished from transactions in any way that is clear and conspicuous, for example, by use of debit and credit columns or by use of plus signs and/or minus signs.◄

2. *Format.* A creditor may list credits relating to credit extensions ►made to the consumer◄ under the plan (►such as◄ payments► or◄ rebates[, etc.]) together with other types of credits (such as deposits to a checking account), as long as the entries are identified so as to inform the consumer which type of credit each entry represents.

3. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

4. *Totals.* A total of amounts credited during the billing cycle is not required.

7(a)(4) Periodic rates.

1. *Disclosure of periodic* ►*interest*◄ *rates—whether or not actually applied.* Except as provided in § 226.7(a)(4)(ii), any periodic ►interest◄ rate that may be used to compute finance charges [(and its corresponding annual percentage rate)] ►, expressed as and

labeled ''Annual Percentage Rate,''◄ must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the ►annual percentage◄ rate for each, even if the consumer only makes purchases ►(or cash advances)◄ on the account during the billing cycle.

ii. If the ►annual percentage◄ rate varies (such as when it is tied to a particular index), the creditor must disclose each ►annual percentage ◄ rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic ►interest◄ rates required only if imposition possible.* [With regard to the periodic rate disclosure (and its corresponding annual percentage rate), only rates] ►With regard to disclosure of periodic rates (expressed as annual percentage rates), only annual percentage rates◄ that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing ►annual percentage◄ rates effective during the next billing cycle (because of a variable-rate plan), the ►annual percentage◄ rates required to be disclosed under § 226.7(a)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the ►annual percentage◄ [monthly] rate applied during May was [1.5] ►8.0◄%, but the creditor will increase the rate to [1.8%] ►11.0%◄ effective June 1, [1.5%] ►8.0%◄ [(and its corresponding annual percentage rate)] is the only required disclosure under § 226.7(a)(4) for the periodic statement reflecting the May account activity.

ii. If ►annual percentage◄ rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the [finance] ►interest◄ charge consists of a monthly periodic ►interest◄ rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), ►creditors must disclose the periodic interest rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to the credit life insurance component must be disclosed as a fee under § 226.7(a)(6)(iii). *(See* comment 7(a)(6)–2.) [the creditor may do either of the following:

i. Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each. (For example, 1.5% monthly, 18% annual percentage rate; 0.1% monthly, 1.2% annual percentage rate.)

ii. Disclose one composite periodic rate (that is, 1.6% per month) along with the applicable range of balances and the corresponding annual percentage rate.

4. *Corresponding annual percentage rate.* In disclosing the annual percentage rate that corresponds to each periodic rate, the creditor may use ''corresponding annual percentage rate,'' ''nominal annual percentage rate,'' ''corresponding nominal annual percentage rate,'' or similar phrases.

5. *Rate same as actual annual percentage rate.* When the corresponding rate is the same as the annual percentage rate disclosed under § 226.7(a)(7), the creditor need disclose only one annual percentage rate, but must use the phrase ''annual percentage rate.'']

►4. *Fees.* Creditors that identify fees in accordance with § 226.7(a)(6)(iii) need not identify the periodic rate at which a fee would accrue if the fee remains unpaid. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.◄

[6]►5.◄ *Range of balances.* See comment 6(a)(4)(i)(B)–1 [6(a)(1)(ii)–1]. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

7(a)(5) Balance on which finance charge computed.

[1. *Limitation to periodic rates.* Section 226.7(a)(5) only requires disclosure of the balance(s) to which a periodic rate was applied and does not apply to balances on which other kinds of finance charges (such as transaction charges) were imposed. For example, if a consumer obtains a $1,500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor need only disclose the balance subject to the monthly rate (which might include portions of earlier cash advances not paid off in previous cycles).]

[2]►1◄. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the [finance] ►interest◄ charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(a)(5)–4.)

[3]►2◄. *Monthly rate on average daily balance.* Creditors may apply a monthly periodic rate to an average daily balance.

[4]►3◄. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comment►s◄ 7(a)(5)–4►and 7(a)(4)–5◄.)

[5]►4◄. *Daily rate on daily balances.* i. If the finance charge is computed on the balance each day by application of one or more daily periodic ►interest◄ rates, the balance on which the [finance] ►interest◄ charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic ►interest◄ rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor [shall] ►may, at its option,◄ explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of [the finance charge] ►interest◄.

iii. If two or more daily periodic ►interest◄ rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic ►interest◄ rates imposed for the time that those rates were in effect►.◄ [, as long as the creditor] ►The creditor may, at its option,◄ explain[s] that [the finance charge] ►interest◄ is or may be determined by [(*1*)] multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), [(*2*)] multiplying each of the results by the applicable daily periodic rate, and [(*3*)] adding these products together.

[6. *Explanation of balance computation method.* See the commentary to 6(a)(1)(iii).]

[*7*]►5◄. *Information to compute balance.* In connection with disclosing the [finance] ►interest◄ charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

[8]►6◄. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§ 226.7(a)(3)) and indicating which credits will not be deducted in determining the balance (for example, ''credits after the 15th of the month are not deducted in computing the [finance] ►interest◄ charge.'').

[9]►7◄. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation ►or a single identification of the name (as permitted under § 226.7(a)(5)) ◄ of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(a)(5)–2. In these cases, one explanation ► or a single identification of the name (as permitted under § 226.7(a)(5))◄ of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

[*7(a)(6) Amount of finance charge and other charges.*

Paragraph 7(a)(6)(i).

1. *Total.* A total finance charge amount for the plan is not required.

2. *Itemization—types of finance charges.* Each type of finance charge (such as periodic rates, transaction charges, and minimum charges) imposed during the cycle must be separately itemized; for example, disclosure of only a combined finance charge attributable to both a minimum charge and transaction charges would not be permissible. Finance charges of the same type may be disclosed, however, individually or as a total. For example, five transaction charges of $1 may be listed separately or as $5.]

3. *Itemization—different periodic rates.* Whether different periodic rates are applicable to different types of transactions or to different balance ranges, the creditor may give the finance charge attributable to each rate or may give a total finance charge amount. For example, if a creditor charges 1.5% per month on the first $500 of a balance and 1% per month on amounts over $500, the creditor may itemize the two components ($7.50 and $1.00) of the $8.50 charge, or may disclose $8.50.

4. *Multifeatured plans.* In a multifeatured plan, in disclosing the amount of the finance charge attributable to the application of periodic rates no total periodic rate disclosure for the entire plan need be given.

5. *Finance charges not added to account.* A finance charge that is not included in the new balance because it is payable to a third party (such as required life insurance) must still be shown on the periodic statement as a finance charge.

6. *Finance charges other than periodic rates.* See comment 6(a)(1)(iv)–1 for examples.

7. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, no disclosure is required of finance charges that have accrued since the last payment.

8. *Start-up fees.* Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (See § 226.14(c)(3).)

Paragraph 7(a)(6)(ii).

1. *Identification.* In identifying any *other charges* actually imposed during the billing cycle, the type is adequately described as *late charge* or *membership fee,* for example. Similarly, *closing costs* or *settlement costs,* for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under § 226.4(c)(7), if the same term (such as *closing costs*) was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. Even though the taxes and filing or notary fees excluded from the finance charge under § 226.4(e) are not required to be disclosed as *other charges* under § 226.6(a)(2), these charges may be included in the amount shown as *closing costs* or *settlement costs* on the periodic statement, if the charges were itemized and disclosed as part of the *closing costs* or *settlement costs* on the initial disclosure statement. (See comment 6(a)(2)–1 for examples of *other charges*.)

2. *Date.* The date of imposing or debiting *other charges* need not be disclosed.

3. *Total.* Disclosure of the total amount of other charges is optional.

4. *Itemization—types of other charges.* Each type of *other charge* (such as late-payment charges, over-the-credit-limit charges, and membership fees) imposed during the cycle must be separately

itemized; for example, disclosure of only a total of *other charges* attributable to both an over-the-credit-limit charge and a late-payment charge would not be permissible. *Other charges* of the same type may be disclosed, however, individually or as a total. For example, three fees of $3 for providing copies related to the resolution of a billing error could be listed separately or as $9.

7(a)(7) Annual percentage rate.

1. *Plans subject to the requirements of § 226.5b.* For home-equity plans subject to the requirements of § 226.5b, creditors are not required to disclose an effective annual percentage rate. Creditors that state an annualized rate in addition to the corresponding annual percentage rate required by § 226.7(a)(4) must calculate that rate in accordance with § 226.14(c).

2. *Labels.* Creditors that choose to disclose an annual percentage rate calculated under § 226.14(c) and label the figure as ''annual percentage rate'' must label the periodic rate expressed as an annualized rate as the ''corresponding APR,'' ''nominal APR,'' or a similar phrase as provided in comment 7(a)(4)–4. Creditors also comply with the label requirement if the rate calculated under § 226.14(c) is described as the ''effective APR'' or something similar. For those creditors, the periodic rate expressed as an annualized rate could be labeled ''annual percentage rate,'' consistent with the requirement under § 226.7(b)(4). If the two rates represent different values, creditors must label the rates differently to meet the clear and conspicuous standard under § 226.5(a)(1).]

►*7(a)(6) Charges imposed.*

1. *Examples of charges.* See commentary to § 226.6(a)(3).

2. *Fees.* Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer obtains credit life insurance that is calculated at 0.1% per month on an outstanding balance and a monthly interest rate of 1.5% applies to the same balance, the creditor must disclose the dollar cost attributable to interest as an ''interest charge'' and the credit insurance cost as a ''fee.''

3. *Total fees for calendar year to date.*

i. *Monthly statements.* Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011, through January 9, 2012, may disclose the year-to-date total for fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, showing the year-to-date total for fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering November 10, 2011, through December 9, 2011, may disclose the year-to-date total for fees imposed from December 10, 2010, through December 9, 2011.

ii. *Quarterly statements.* Creditors issuing quarterly statements may apply the guidance set forth for monthly statements to comply with the requirement to provide calendar year-to-date totals on quarterly statements.

4. *Minimum charge in lieu of interest.* A minimum charge imposed if a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum must be disclosed as a fee. For example, assume a creditor imposes a minimum charge of $1.50 in lieu of interest if the calculated interest for a billing period is less than that minimum charge. If the interest calculated on a consumer's account for a particular billing period is 50 cents, the minimum charge of $1.50 would apply. In this case, the entire $1.50 would be disclosed as a fee; the periodic statement would reflect the $1.50 as a fee, and $0 in interest.

5. *Adjustments to year-to-date totals.* In some cases, a creditor may provide a statement for the current period reflecting that fees or interest charges imposed during a previous period were waived or reversed and credited to the account. Creditors may, but are not required to, reflect the adjustment in the year-to-date totals. If an adjustment is made, creditors are not required to provide an explanation about the reason for the adjustment. Such adjustments would not affect the total fees or interest charges imposed for the current statement period.

6. *Acquired accounts.* An institution that acquires an account or plan must include, as applicable, fees and charges imposed on the account or plan prior to the acquisition in the aggregate disclosures provided under § 226.7(a)(6) for the acquired account or plan. Alternatively, the institution may provide separate totals reflecting activity prior and subsequent to the account or plan acquisition. For example, a creditor that acquires an account or plan on August 12 of a given calendar year may provide one total for the period from January 1 to August 11 and a separate total for the period beginning on August 12.

7. *Account replacement.* A creditor that replaces a consumer's plan with another home equity line of credit plan with the consumer must include, as applicable, fees and charges imposed for that portion of the calendar year prior to the replacement in the aggregate disclosures provided pursuant to § 226.7(a)(6) for the new plan. For example, assume a consumer has incurred $125 in fees for the calendar year to date for a plan, which is then replaced by a home equity line of credit plan also provided by the creditor. In this case, the creditor must reflect the $125 in fees incurred prior to the replacement in the calendar year-to-date totals provided for the new home equity line of credit plan. Alternatively, the institution may provide two separate totals reflecting activity prior and subsequent to the replacement of the plan.

7(a)(7) Change-in-terms and increased penalty rate summary.

1. *Location of summary tables.* If a change-in-terms notice required by § 226.9(c)(1) is provided on or with a periodic statement, a tabular summary of key changes must appear on the front of any page of the statement. Similarly, if a notice of a rate increase due to delinquency or default or as a penalty required by § 226.9(i) is provided on or with a periodic statement, information required to be provided about the increase, presented in a table, must appear on the front of any page of the statement.◄

7(a)(8) Grace period.

1. *Terminology.* [Although the creditor is required to indicate any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the account-opening disclosure statement. For example, ''To avoid additional finance charges, pay the new balance before _____'' would suffice.] ► In describing the grace period, the language used must be consistent with that used on the account-opening

disclosure statement. (See §§ 226.5(a)(2)(i) and 226.6(a)(2)(xxi))◄

7(a)(9) Address for notice of billing errors.

1. *Terminology.* The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number.* A telephone number, e-mail address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

7(a)(10) Closing date of billing cycle; new balance.

1. *Credit balances.* See comment 7(a)(1)–1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

* * * * *

§ 226.9—Subsequent Disclosure Requirements.

* * * * *

9(c) *Change in terms.*

9(c)(1) *Rules affecting home-equity plans.*

1. *Changes initially disclosed.* ►Except as provided in § 226.9(*i*), no◄ [No] notice of a change in terms need be given if the specific change is set forth initially, such as[:]►a◄ rate increase[s] under a properly disclosed variable-rate plan[, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum]. The rules in § 226.5b(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by § 226.9(c) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (But see § 226.5b(f)►.◄)

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change [either] affects any of the terms required to be disclosed under § 226.6(a) [or increases the minimum payment], unless an exception under § 226.9(c)(1)[(ii)]►(iv)◄ applies[; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change].

9(c)(1)(i) Written notice required.

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. [For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.]►For example, a change in the balance computation method, from average-daily-balance to daily-balance (permissible under § 226.5b(f)(3)(v) as an ''insignificant change'') need not be disclosed to consumers for whose accounts the balance computation method will not change. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.◄

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least [15]►45◄ days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as [the imposition of a transaction fee]►increasing the credit limit or extending the length of the plan◄. Any change in the balance computation method, in contrast, would need to be disclosed at least [15]►45◄ days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of [15]►45◄ days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change [—in two circumstances:

i. If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.

ii. If]►if◄ the consumer agrees to the particular change. This provision is intended ►solely◄ for use in the unusual instance [when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or]►when the consumer and the creditor specifically agree to the change in writing before the effective date of the change, as permitted under § 226.5b(f)(3)(iii), such as on◄ paying an increased minimum payment amount. [Therefore, the following are not ''agreements'' between the consumer and the creditor for purposes of § 226.9(c)(1)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.]

4. *Form of change-in-terms notice.* ► Except if the tabular format requirement under § 226.9(c)(1)(iii) applies, a◄[A] complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(1)(i) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

[5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.]

►5◄[6]. *Changes to home-equity plans[entered into on or after November 7, 1989].* Section 226.9(c)(1) applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home-equity plan [—entered into on or after November 7, 1989—] at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

i. If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by § 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by § 226.5b(c)(9)(iii) and (c)(10)(i)(A)(*6*), unless these disclosures are unchanged from those given earlier.

ii. If the minimum payment requirement is changed, the creditor must include the disclosures required by § 226.5b(c)(9)(iii) (and, in variable-rate plans, the disclosures required by § 226.5b(c)(10)(i)(A)(*6*))►.◄ [unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. (See the commentary to § 226.5b(c)(9)(iii) and (c)(10)(i)(A)(*6*) for a discussion of representative examples.)]

iii. When the terms are changed pursuant to a written agreement as described in § 226.5b(f)(3)(iii), the advance-notice requirement does not apply.

►9(c)(1)(ii) *Charges not covered by § 226.6(a)(1) and (a)(2).*

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge (assuming in either case that such action is permitted under § 226.5b(f)), that is imposed as part of the plan under § 226.6(a)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(a)(2), the creditor may either, at its option, provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(1)(i), or provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (See the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(a)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(a)(2). If a creditor adds expedited delivery of a credit card as a new service, the new service and the accompanying fee would be permissible under § 226.5b(f)(3)(iv) as a beneficial change. In these circumstances, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (See comment 5(b)(1)(ii)–1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

9(c)(1)(iii) *Disclosure requirements.*

9(c)(1)(iii)(A) *Changes to terms described in account-opening table.*

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 226.9(c)(1)(iii)(B), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

2. *Changing index for calculating a variable rate.* If the creditor is changing the index pursuant to § 226.5b(f)(3)(ii), the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and the how the rate is determined, as explained in § 226.6(a)(2)(vi)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing from a variable rate to a non-variable rate, the creditor must disclose the amount of the new rate (that is, the non-variable rate) in the table. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing from a non-variable rate to a variable rate, the creditor must disclose the amount of the new rate (the variable rate using the index and margin), and indicate that the rate varies with the market based on the index used, such as the prime rate or the LIBOR. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 226.6(a)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of ''Either $5 or 3% of the transaction amount, whichever is greater. (Max: $100),'' and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. The creditor in this example would disclose the following: ''Either $10 or 3% of the transaction amount, whichever is greater. (Max: $100).'' (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

7. *Combining a notice described in § 226.9(c)(1)(iii) with a notice described in § 226.9(i).* If a creditor is required to provide a notice described in § 226.9(c)(1)(iii) and a notice described in § 226.9(*i*) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

8. *Content.* Sample G–25 contains an example of how to comply with the requirements in § 226.9(c)(1)(iii) when the following terms are being changed: (i) the balance computation method is being changed from average-daily-balance to daily-balance; and (ii) the credit limit is being increased.

9. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(1)(iii)(A)(*1*).

10. *Terminology.* See § 226.5(a)(2) for terminology requirements applicable to

disclosures required under § 226.9(c)(1)(iii)(A)(*1*).

11. *Opt-out disclosure.* If a consumer has a right to opt out of one change (such as an increase in the credit limit), but not another being made at the same time (such as a change in the balance computation method), the notice should indicate that the consumer has ''the right to opt out of some of these changes,'' and refer to additional information specifying which change the opt-out right applies to.◄

[9(c)(1)(iii) Notice to restrict credit.

1. *Written request for reinstatement.* If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under § 226.9(c)(1)(iii) must state that fact.

2. *Notice not required.* A creditor need not provide a notice under this paragraph if, pursuant to the commentary to § 226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.]

9(c)(1)►(iv)◄[(ii)] *Notice not required.*

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

[i. A change in the consumer's credit limit.]

►i.◄[ii.] A change in the name of the ►home equity credit◄[credit card or credit card] plan.

►ii.◄[iii.] The substitution of one insurer for another.

[iv. A termination or suspension of credit privileges. (But see § 226.5b(f).)]

►iii◄[v.] Changes arising merely by operation of law[; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car].

►iv. Suspension of credit privileges, reduction of a credit limit under §§ 226.5b(f)(2), 226.5b(f)(3)(i), or 226.5b(f)(3)(vi), or termination of an account under § 226.5b(f)(2) do not require notice under paragraph (c)(1)(i) of this section, but must be disclosed pursuant to paragraph (j) of this section.◄

2. *Skip features.* If a home-equity plan allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges ►(permissible as beneficial changes under § 226.5b(f)(3)(iv))◄, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the ►account-opening◄[initial] disclosure statement (including an explanation of the terms upon resumption). [For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation.] Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as ''You may skip your October payment,'' or ''We will waive your finance charges for January,'' may serve as the change-in-terms notice. ►However, a creditor offering a temporary reduction in an interest rate must provide a notice in accordance with the timing requirements of § 226.9(c)(1)(i) and the content and format requirements of § 226.9(c)(1)(iii)(A) and (B) prior to resuming the original rate.◄

►3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c)(1) even if the variable rate at the time of the change is higher than the non-variable rate. (See comment 9(c)(1)(iii)(A)–3.) (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c)(1) even if the non-variable rate is higher than the variable rate at the time of the change. (See comment 9(c)(1)(iii)(A)–4.) (See § 226.5b(f) for restrictions on a creditor's right to change terms.)◄

* * * * *

9(g) *Increase in rates due to delinquency or default or as a penalty►—rules affecting open-end (not home-secured) plans◄.*

* * * * *

►9(*i*) *Increase in rates due to delinquency or default or as a penalty—rules affecting home-equity plans.*

1. *Affected consumers.* If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Combining a notice described in § 226.9(i)(1) with a notice described in § 226.9(c)(1).* If a creditor is required to provide notices pursuant to both § 226.9(c)(1) and (*i*)(1) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time. (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

3. *Content.* Model Clause G–26 contains an example of how to comply with the requirements in § 226.9(*i*)(3)(i) when the rate on a consumer's account is being increased to a penalty rate as described in § 226.9(*i*)(1)(ii). (See § 226.5b(f) for restrictions on a creditor's right to change terms.)

4. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(*i*).

5. *Terminology.* See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(*i*).

* * * * *

►9(j) Notices of Action Taken for Home-equity Plans

Paragraph 9(j)(1)

1. *Statement of action taken.* The notice under § 226.9(j)(1) must state the specific action taken, such as whether the creditor suspended advances or reduced the credit limit. If the creditor reduced the credit limit, the notice must state the new credit limit. The statement of action taken under this section must include the date the action taken was effective.

2. *Statement of specific reasons for action taken.* A creditor must disclose the principal reasons for prohibiting additional extensions of credit or reducing the credit limit for a home-equity plan under § 226.5b(f)(3)(i) or (f)(3)(vi). In addition to any information specified in comments 9(j)(1)–3, –4, and –5, as applicable, compliance with this provision requires stating the reason under the regulation permitting the action, such as that the maximum annual percentage has been reached, the property securing the plan has declined significantly, or the consumer's financial circumstances have materially changed.

3. *Disclosure of specific reasons for action taken based on a significant decline in property value.* When a creditor prohibits credit extensions or reduces a credit limit because the value of the property securing the plan has significantly declined under

§ 226.5b(f)(3)(vi)(A), compliance with the requirement to disclose the specific reasons for the action taken is met by disclosing—

i. the value of the property obtained by the creditor;

ii. the type of valuation method used to obtain the property value; and

iii. a statement that the consumer has a right to a copy of documentation. supporting the property value on which the action was based.

4. *Disclosure of specific reasons for action taken based on a material change in the consumer's financial circumstances.* When a creditor prohibits credit extensions or reduces a credit limit because the consumer's financial circumstances have materially changed such that the creditor has a reasonable belief that the consumer will be unable to meet the repayment obligations of the plan under § 226.5b(f)(3)(vi)(B), compliance with the requirement to disclose the specific reasons for the action taken is met by disclosing the type of information concerning the consumer's financial circumstances on which the creditor relied, such as information about the consumer's income, credit report information, or some other indicia of the consumer's financial circumstances, as applicable.

5. *Specific reasons in other cases.* When a creditor takes action due to a consumer's default of a material obligation under § 226.5b(f)(3)(vi)(C), compliance with the requirement to disclose the specific reasons for the action taken is met by disclosing the material obligation under the agreement on which the consumer defaulted. When a creditor takes action under § 226.5b(f)(3)(vi)(D) through (G), the creditor need disclose only the regulatory reason for the action. For example, if action was taken because a federal law required the action (pursuant to proposed § 226.5b(f)(3)(vi)(G)), the creditor need disclose only that the line action was taken because federal law required the action.

6. *Method of request for reinstatement.* If a creditor requires the consumer to request reinstatement of credit privileges under § 226.5b(g)(1)(ii), the notice under § 226.9(j)(1) must state the method or methods by which the consumer may request reinstatement. For example, if a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under § 226.9(j)(1) must state that fact. The notice must also state the address to which the consumer should send the written request.

7. *Timing of notice.* The creditor must mail or deliver the notice required under § 226.9(j)(1) within three business days after the action is taken. The general definition of ''business day'' in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions—is used for purposes of § 226.9(j)(1). *See* comment 2(a)(6)–1.

Paragraph 9(j)(2)

1. *Imposition of fees.* If a creditor reduces the credit limit under §§ 226.5b(f)(3)(i) or (f)(3)(vi), the creditor may not charge the consumer a fee for exceeding the new credit limit until after the consumer has received notice of the action taken under § 226.9(j)(1). Similarly, if a creditor suspends future advances on the account, the creditor may not charge the consumer a fee for any advances that the creditor denies until after the consumer has received notice of the action taken under § 226.9(j)(1). These limitations apply to fees disclosed in the original agreement for the plan. Imposing denied advance fees or over-the-limit fees not disclosed in the original agreement would be permitted only if an exception to the general limitations on changing home-equity plan terms under § 226.5b(f) applies.

2. *Receipt of notice.* For purposes of when a creditor may impose a fee for a denied advance or exceeding the credit limit after suspending advances on a line or reducing the credit limit, the consumer will be deemed to have received a notice required under § 226.9(j)(1) mailed by the creditor after midnight on the third business day following mailing of the notice. The more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) applies. *See* comment 2(a)(6)–2.

Paragraph 9(j)(3)

1. *Statement of action taken.* The notice under § 226.9(j)(3) must disclose whether the creditor has terminated the plan and is accelerating the balance, and, if so, the date on which payment of the balance is due. If, pursuant to comment 5b(f)(2)–2, the creditor has suspended advances or reduced the credit limit, the notice must state this fact. If the creditor is reducing the credit limit, the notice must disclose the new credit limit. In all cases, the notice must include the date on which the action taken was effective.

2. *Statement of specific reasons for action taken.*

i. A creditor must disclose the principal reasons for action taken on a home-equity plan under § 226.5b(f)(2). In addition to any information specified in comments 9(j)(3)–2.ii, as applicable, compliance with the requirement to disclose the specific reasons for the action requires stating the reason under the regulation permitting the action, such as that the consumer failed to make a required minimum payment within 30 days after the due date for that payment (pursuant to § 226.5b(f)(2)(ii)).

ii. When a creditor takes action due to fraud or material misrepresentation by the consumer under § 226.5b(f)(2)(i), the creditor need only disclose that the action was taken due to either, as applicable, fraud or misrepresentation by the consumer; the creditor is not required to specify in the notice the nature of the fraud or misrepresentation. When a creditor takes action due to the consumer's action or inaction that adversely affects the creditor's interest in the property securing the plan under § 226.5b(f)(2)(iii), the creditor should include in the notice the consumer's action or inaction that jeopardizes the creditor's interest in the property securing the account, such as failing to pay property taxes or allowing a new superior lien on the property.

3. *Timing of notice.* The creditor must mail or deliver the notice required under § 226.9(j)(3) within three business days after the action is taken. The general definition of ''business day'' in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions—is used for purposes of § 226.9(j)(3). *See* comment 2(a)(6)–1.

Paragraph 9(j)(4)

1. *Notice of action taken under § 226.5b(f)(2) other than termination and acceleration, suspension, and reduction.* If, pursuant to comment 5b(f)(2)–2, a creditor takes action under § 226.5b(f)(2) other than termination and acceleration, suspension of advances, or reduction of the credit limit, such as imposing fees or raising the interest rate applicable to the account, the creditor must comply with the notice requirements of § 226.9(c)(1) (for fee changes) or (*i*) (for rate changes), as applicable.

* * * * *

§ *226.14 Determination of Annual Percentage Rate.*

14(a) General rule.

1. *Tolerance.* The tolerance of $\frac{1}{8}$th of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in

§§ 226.5a, 226.5b, 226.6, 226.7, 226.9, 226.15, 226.16, and 226.26.

2. *Rounding.* The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within the ⅛th of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14 ¼%; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.

3. *Periodic rates.* No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equivalent is within the tolerance permitted by § 226.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.

4. *Finance charges.* The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.

5. *Good faith reliance on faulty calculation tools.* The regulation relieves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the safe harbor from liability is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

14(b) Annual percentage rate—in general.

1. *Corresponding annual percentage rate computation.* For [purposes of §§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16, and 226.26,] ►open-end credit under Subpart B of Regulation Z,◄ the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. [This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance.]

[*14(c) Optional effective annual percentage rate for periodic statements for creditors offering open-end plans subject to the requirements of § 226.5b.*

1. *General rule.* The periodic statement may reflect (under § 226.7(a)(7)) the annualized equivalent of the rate actually applied during a particular cycle; this rate may differ from the corresponding annual percentage rate because of the inclusion of, for example, fixed, minimum, or transaction charges. Sections 226.14(c)(1) through (c)(4) state the computation rules for the effective rate.

2. *Charges related to opening, renewing, or continuing an account.* Sections 226.14(c)(2) and (c)(3) exclude from the calculation of the effective annual percentage rate finance charges that are imposed during the billing cycle such as a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account. The charges involved here do not relate to a specific transaction or to specific activity on the account, but relate solely to the opening, renewing, or continuing of the account. For example, an annual fee to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under § 226.4(c)(4). (See comment 4(c)(4)–2.) This rule applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

3. *Classification of charges.* If the finance charge includes a charge not due to the application of a periodic rate, the creditor must use the annual percentage rate computation method that corresponds to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3 percent of the amount of each transaction), then the method in § 226.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in § 226.14(c)(2) is appropriate.

4. *Small finance charges.* Section 226.14(c)(4) gives the creditor an alternative to § 226.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in § 226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1½ percent per month.

5. *Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)–5.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a

payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accordance with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

14(c)(1) Solely periodic rates imposed.

1. *Periodic rates.* Section 226.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:

i. By multiplying each periodic rate by the number of periods in the year; or

ii. By the ''quotient'' method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of 1½ percent on balances up to $500, and 1 percent on balances over $500. If, in a given cycle, the consumer has a balance of $800, the finance charge would consist of $7.50 ($500 \times .015$) plus $3.00 ($300 \times .01$), for a total finance charge of $10.50. The annual percentage rate for this period may be disclosed either as 18% on $500 and 12 percent on $300, or as 15.75 percent on a balance of $800 (the quotient of $10.50 divided by $800, multiplied by 12).

14(c)(2) Minimum or fixed charge, but not transaction charge, imposed.

1. *Certain charges not based on periodic rates.* Section 226.14(c)(2) specifies use of the quotient method to determine the annual percentage rate if the finance charge imposed includes a certain charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer's balance was $40 in a particular cycle, the creditor would disclose an annual percentage rate of 30 percent ($\frac{1}{40} \times 12$).

2. *No balance.* If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under § 226.14(c)(2). This could occur not only when minimum charges are imposed on an account with no balance, but also when a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

14(c)(3) Transaction charge imposed.

1. *Transaction charges.* i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3 percent of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the ''other amounts on which a finance charge was imposed'' figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable basis for the distinctions. For further explanation and examples of how to determine the components of this formula, see Appendix F to part 226.

2. *Daily rate with specific transaction charge.* Section 226.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in Appendix F to part 226 in calculating the annual percentage rate, especially the provision in the introductory section of Appendix F which addresses the daily rate/transaction charge situation by providing that the ''average of daily balances'' shall be used instead of the ''sum of the balances.''

14(d) Calculations where daily periodic rate applied.

1. *Quotient method.* Section 226.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in § 226.14(c)(1)(ii) and (c)(2) cannot be used when a daily rate is being applied to a series of daily balances, § 226.14(d) provides two alternative ways to calculate the annual percentage rate—either of which satisfies the provisions of § 226.7(a)(7).

2. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)–2 for guidance on an appropriate calculation method.]

* * * * *

Appendix F [—Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5b] ►[Reserved]◄

[1. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)–2 for guidance on an appropriate calculation method.]

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability►.◄ [, except] ►However,◄ formatting changes may not be made to ►the following◄ model forms ►, model clauses,◄ and samples in ►Appendices G and H:◄ G–2[(A)], G–3[(A)], G–4[(A)], G–10(A)–(E), ►G–14(A)–(E), G–15(A)–(D),◄ G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, [and] G–21►, G–22(A)–(B), G–23(A)–(B), G–24(A) (except as permitted pursuant to § 226.7(a)(2)), G–25, and G–26; and H–4(B) through H–4(L), H–17(A) through (D), H–19(A)–(I), and H–20 through H–22◄. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using ''borrower'' and ''creditor'' instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state ''plain English'' requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms ►for transactions not secured by real property or a dwelling◄.)

[vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.]

* * * * *

Appendix G—Open-End Model Forms and Clauses

1. *Model[s] G–1 [and G–1(A)].* The model disclosures in G–1 [and G–1(A)] (different

balance computation methods) may be used in both the account-opening disclosures under § 226.6 and the periodic disclosures under § 226.7. As is clear from the models given, ''shorthand'' descriptions of the balance computation methods are not sufficient, except where § 226.7(b)(5) applies. [For creditors using model G–1, the phrase ''a portion of'' the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate.] If unpaid interest or finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. [Only model G–1(b) contains a final sentence appearing in brackets, which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in model G–1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in model G–1(b).) (See the commentary to § 226.7(a)(5) and (b)(5).) For open-end plans subject to the requirements of § 226.5b, creditors may, at their option, use the clauses in G–1 or G–1(A).]

2. *Model[s] G–2 [and G–2(A)].* ►This◄ [These] model[s] contain►s◄ the notice of liability for unauthorized use of a credit card. [For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G–2 or G–2(A). For open-end plans not subject to the requirements of § 226.5b, creditors properly use G–2(A).]

3. *Models G–3[, G–3(A),]* ►*and*◄ *G–4 [and G–4(A)].*

i. These set out models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. [For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G–3 or G–3(A), and for creditors that use the short form, G–4 or G–4(A). For open-end (not home-secured) plans that not subject to the requirements of § 226.5b, creditors properly use G–3(A) and G–4(A).] Creditors must provide the billing-error rights statements in a form substantially similar to the models in order to comply with the regulation. The model billing-rights statements may be modified in any of the ways set forth in the first paragraph to the commentary on appendices G and H. The models may, furthermore, be modified by deleting inapplicable information, such as:

A. The paragraph concerning stopping a debit in relation to a disputed amount, if the creditor does not have the ability to debit automatically the consumer's savings or checking account for payment.

B. The rights stated in the special rule for credit card purchases and any limitations on those rights.

ii. The model billing rights statements also contain optional language that creditors may use. For example, the creditor may:

A. Include a statement to the effect that notice of a billing error must be submitted on something other than the payment ticket or other material accompanying the periodic disclosures.

B. Insert its address or refer to the address that appears elsewhere on the bill.

C. Include instructions for consumers, at the consumer's option, to communicate with the creditor electronically or in writing.

iii. Additional information may be included on the statements as long as it does not detract from the required disclosures. For instance, information concerning the reporting of errors in connection with a checking account may be included on a combined statement as long as the disclosures required by the regulation remain clear and conspicuous.

* * * * *

►12. *Models G–22(A) and G–22(B).* These model clauses illustrate the disclosures required under § 226.5b(g)(2)(v). They inform the consumer that the consumer's reinstatement request has been received and that the creditor has investigated the request. They contain sample language for explaining the results of a reinstatement investigation in which the creditor found that a reason for suspension of advances or reduction of the credit limit still exists. Clauses in Model G–22(A) illustrate how a notice may explain that the same reason or reasons originally supporting the suspension or reduction still exist. Clauses in Model G–22(B) illustrate how a creditor may explain that a new reason or reasons for account suspension or reduction exist. Models G–22(A) and G–22(B) do not contain sample clauses for all reasons in which a creditor may temporarily suspend or reduce a home-equity plan. A creditor may comply with the disclosure requirements of § 226.5b(g)(2)(v) by using language substantially similar to the language in the model clauses or by substituting applicable reasons for the action not represented in these model clauses, as long as the information required to be disclosed is clear and conspicuous.

13. *Models G–23(A) and G–23(B).* These model clauses illustrate the disclosures required under § 226.9(j)(1) and (j)(3).

i. Clauses in Model G–23(A) contain information regarding information required by § 226.9(j)(1) regarding the nature of the action taken on the home-equity plan under § 226.5b(f)(3)(i) and (f)(3)(vi) and the specific reasons for the action taken. In particular, they illustrate language for a notice in which the creditor temporarily suspends advances or reduces a credit limit due to a significant decline in the value of the property securing the plan under § 226.5b(f)(3)(vi)(A); a material change in the consumer's financial circumstances such that the creditor has a reasonable belief that the consumer will be unable to meet the repayment terms of the plan under § 226.5b(f)(3)(vi)(B)); and the consumer's default of a material obligation under the plan under § 226.5b(f)(3)(vi)(C)). Model G–23(A) clauses also contain information regarding the consumer's rights when the creditor requires the consumer to request reinstatement under § 226.5b(g)(1)(ii).

ii. Clauses in Model G–23(B) contain information required under § 226.9(j)(3) regarding the nature of the action taken on the account under § 226.5b(f)(2) and the specific reasons for the action taken. In particular, they illustrate language for a notice in which the creditor takes action on an account due to the consumer's failure to meet the repayment terms of the plan under § 226.5b(f)(2)(ii) and the consumer's action or inaction that adversely affected the creditor's interest in the property securing the plan under § 226.5b(f)(2)(iii). Model clauses for the notice when a creditor takes action due to a consumer's fraud or material misrepresentation under § 226.5b(f)(2)(i) are not included because a creditor need disclose only that the consumer's fraud or misrepresentation is the reason for the action; if the creditor does not include this information.

iii. A creditor may comply with the disclosure requirements of § 226.9(j)(1) and (j)(3) by using language substantially similar to the language in the model clauses or by substituting applicable reasons for the action not represented in these model clauses, as long as the information required to be disclosed is clear and conspicuous.

14. *Models G–14(A) and G–14(B), Samples G–14(C), G–14(D), and G–14(E), Model G–15(A), and Samples G–15(B), G–15(C), and G–15(D).*

i. Models G–14(A) and G–14(B) and Samples G–14(C), G–14(D), and G–14(E) illustrate, in the tabular format, the disclosures required under § 226.5b to be provided within three business days after a consumer makes an application for a home equity line of credit (HELOC). Model G–15(A) and Samples G–15(B), G–15(C), and G–15(D) illustrate, in the tabular format, the disclosures required under § 226.6(a)(1) and (a)(2) for HELOC account-opening disclosures.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Models G–14(A), G–14(B), and G–15(A). While proper use of the model forms will be deemed in compliance with the regulation, creditors offering HELOCs are permitted to use headings other than those in the forms if they are clear and concise and are substantially similar to the headings contained in model forms, except that the terms ''Borrowing Period,'' ''Repayment Period,'' ''Balloon Payment,'' and ''Annual Percentage Rate'' (or ''APR''), must be used as applicable. In addition, in relation to required insurance, or debt cancellation or suspension coverage, if applicable, the term ''Required'' and the name of the product must be used, and for headings that must be used to describe the grace period, or lack of grace period, the terms ''Paying Interest'' or ''How to Avoid Paying Interest'' must be used, as applicable.

iii. Model G–14(A) and Sample G–14(C) provide guidance for creditors that offer two or more HELOC plans and that, accordingly,

are required under § 226.5b to disclose two HELOC plans and, if the creditor offers more than two plans, a statement that the consumer should ask for details about other plans that the creditor offers. Sample G–14(C) illustrates two plans, one (''Plan B'') with a balloon payment at the end of the repayment period and the other (''Plan A'') with no balloon payment, and shows the required disclosures about the balloon payment, as well as the required disclosures stating which plan results in the lesser and which results in the greater amount of interest.

iv. Model G–14(B) and Samples G–14(D) and G–14(E) provide guidance for creditors that offer only one HELOC plan. Sample G–14(D) illustrates a plan with an interest-only draw period of 10 years, no repayment period (*i.e.*, the consumer is required to pay the outstanding balance in full in a single payment at the end of the draw period), and a balloon payment. Sample G–14(E) illustrates a plan in which the length of the repayment period depends upon the outstanding balance at the end of the draw period, and in which no balloon payment will occur.

v. Among the account-opening disclosure samples, Sample G–15(B) corresponds to early disclosure Sample G–14(C), and illustrates the situation where the consumer has chosen Plan B (the plan with a balloon payment) shown in Sample G–14(C). Account-opening disclosure Sample G–15(C) corresponds to early disclosure Sample G–14(D), showing the plan with an interest-only draw period, no repayment period, and a balloon payment. Account-opening disclosure Sample G–15(D) corresponds to early disclosure Sample G–14(E), showing the plan in which the length of the repayment period depends upon the outstanding balance at the end of the draw period, and in which no balloon payment will occur.

vi. Samples G–14(C), G–14(E), G–15(B), and G–15(D) illustrate plans with discounted introductory APRs, and show the required use of the term ''introductory'' (''intro'' is also permissible, but is not shown in the samples) in immediate proximity to the term ''APR.'' Samples G–14(D) and G–15(C) illustrate plans without discounted introductory APRs. All of the samples illustrate plans with variable-rate APRs, and show required use of the term ''variable rate'' in underlined text.

vii. The samples do not contain all possible required disclosures. For example, the models show the format for disclosure of limits on number of credit transactions, limits on amount of credit borrowed, minimum APR, payment limitations, and negative amortization, but the samples do not show this information. Also, the account-opening disclosure samples show certain account-opening, penalty, and transaction fees in the table detailing fees, but the fees shown in the samples do not constitute an exhaustive list of all the fees in these categories that may have to be disclosed.

viii. Although creditors are not required to use a certain paper size in disclosing the §§ 226.5b or 226.6(a)(1) and (2) disclosures, Samples G–14(C), G–14(D), G–14(E), G–15(B), G–15–(C), and G–15(D) are each designed to be printed on two 8½ x 14 inch sheets of paper. A creditor may use a smaller sheet of paper, such as an 8½ x 11 inch sheet of paper. A creditor must disclose the table on consecutive pages and may not include any intervening information between portions of the table. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style, except for annual percentage rates shown in 16-point type).

B. Sufficient spacing between lines of the text.

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type.

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

ix. While the Board is not requiring creditors to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font requirement), the Board encourages creditors to consider these techniques when deciding how to disclose information in the table, to ensure that the information is presented in a readable format.

x. Creditors are allowed to use color, shading and similar graphic techniques with respect to the table, so long as the table remains substantially similar to the model and sample forms in Appendix G.

15. *Samples G–24(A), G–24(B), G–24(C), G–25, and G–26.* Samples G–24(A), G–24(B), and G–24(C) are intended as a compliance aid to illustrate front sides of a periodic statement, and how periodic statements for HELOC plans might be designed to comply with the requirements of § 226.7. The samples contain information that is not required by Regulation Z. The samples also present information in additional formats that are not required by Regulation Z.

i. Creditors are not required to use a certain paper size in disclosing the § 226.7 disclosures. However, Samples G–24(B) and G–24(C) are designed to be printed on two 8 x 14 inch sheets of paper.

ii. The summary of account activity presented on Samples G–24(B) and G–24(C) is not itself a required disclosure, although the previous balance and the new balance, presented in the summary, must be disclosed in a clear and conspicuous manner on periodic statements.

iii. Additional information not required by Regulation Z may be presented on the statement. The information need not be located in any particular place or be segregated from disclosures required by Regulation Z. Any additional information must be presented consistent with the creditor's obligation to provide required disclosures in a clear and conspicuous manner.

iv. Samples G–24(B) and G–24(C) demonstrate two examples of ways in which transactions could be presented on the periodic statement. Sample G–24(B) presents transactions grouped by type and Sample G–24(C) presents transactions in a list in chronological order. Neither of these approaches to presenting transactions is required; a creditor may present transactions differently, such as in a list grouped by authorized user or other means.

v. Samples G–24(B) and G–24(C) also illustrate how change-in-terms notices and rate increases notices would be required to appear, if given on a periodic statement. Sample G–24(B) provides an example of a rate increase notice on a periodic statement; Sample G–24(C) provides an example of a change-in-terms notice on a periodic statement. Change-in-terms notices and rate increase notices may alternatively be given separately from periodic statements, provided the formatting requirements of § 226.9(c)(1) and (*i*) are followed; Sample G–25 provides an example of a change-in-terms notice, and Sample G–26 provides an example of a rate increase notice.

By order of the Board of Governors of the Federal Reserve System, July 24, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 6210–01–P

Attachment A

FEDERAL RESERVE BOARD CONSUMER PROTECTION RESOURCES

Key Questions to Ask About Home Equity Lines of Credit

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

1

Can my interest rate increase?

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

2

Can my minimum payment increase?

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

3

When can I borrow money?

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

4

How soon do I have to pay off my balance?

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

5

Will I owe a balloon payment?

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

6

Do I have to pay any fees?

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

7

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

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

[FR Doc. E9–18121 Filed 8–25–09; 8:45 am]
BILLING CODE 6210–01–C

Federal Register

Wednesday,
August 26, 2009

Part IV

The President

Memorandum of August 21, 2009—Provision of Aviation Insurance Coverage for Commercial Air Carrier Service in Domestic and International Operations

Federal Register
Vol. 74, No. 164
Wednesday, August 26, 2009

Presidential Documents

Title 3—

The President

Memorandum of August 21, 2009

Provision of Aviation Insurance Coverage for Commercial Air Carrier Service in Domestic and International Operations

Memorandum for the Secretary of Transportation

By the authority vested in me as President by the Constitution and laws of the United States including 49 U.S.C. 44302, *et seq.*, I hereby:

1. Determine that continuation of U.S. flag commercial air service is necessary in the interest of air commerce, national security, and the foreign policy of the United States.

2. Approve provision by the Secretary of Transportation of insurance or reinsurance to U.S. flag air carriers against loss or damage arising out of any risk from the operation of an aircraft in the manner and to the extent provided in Chapter 443 of 49 U.S.C., until August 31, 2010, when he determine that such insurance or reinsurance cannot be obtained on reasonable terms and conditions from any company authorized to conduct an insurance business in a State of the United States.

You are directed to bring this determination immediately to the attention of all air carriers within the meaning of 49 U.S.C. 40102 (a) (2), and to arrange for its publication in the *Federal Register*.

THE WHITE HOUSE,
Washington, August 21, 2009

[FR Doc. E9–20749
Filed 8–25–09; 11:15 am]
Billing code 4910–62–M

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H.R. 774/P.L. 111–50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the ''Geraldine Ferraro Post Office Building''. (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111–51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the ''John Scott Challis, Jr. Post Office''. (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111–52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the ''Elijah Pat Larkins Post Office Building''. (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111–53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111–54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the ''Caroline O'Day Post Office Building''. (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111–55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building''. (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111–56

To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the ''Herbert A Littleton Postal Station''. (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111–57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the ''Laredo Veterans Post Office''. (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111–58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the ''Kile G. West Post Office Building''. (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111–59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the ''Lieutenant Commander Roy H. Boehm Post Office Building''. (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111–60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111–61

Recognizing the service, sacrifice, honor, and professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111–62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

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