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.

(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] [Reserved].

[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)◄

* * * * *

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)

(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

* * * * *

§ 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)]◄

* * * * *

[5b(h)]►5b[(e)]◄

* * * * *

§ 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