

## Section 226.20—Subsequent Disclosure Requirements

### 20(a) *Refinancings*

The Board has been asked whether certain actions constitute adding a variable-rate feature for purposes of this section. Comment 20(a)–3 would be revised to clarify that changing the index on a variable-rate transaction is not adding a variable-rate feature, nor is substituting an index for one that no longer exists.

### *Subpart E—Special Rules for Certain Home Mortgage Transactions*

## Section 226.31—General Rules

### 31(c) *Timing of Disclosures*

#### 31(c)(1) *Disclosures for Certain Closed-end Home Mortgages*

Numerous creditors have suggested that the rule for furnishing disclosures should be deemed to be satisfied as long as the creditor places the disclosures in the mail three days prior to consummation. The word “furnish” for purposes of § 226.32 disclosures has the same meaning as “deliver” for the other disclosure requirements of Regulation Z. Accordingly, proposed comment 31(c)(1)–1 clarifies that disclosures are furnished, or delivered, when received by the consumer, not when mailed by the creditor.

Proposed comment 31(c)(1)–2 clarifies that creditors may rely on the definition of “business days” in comment 2(a)(6)–2 for purposes of complying with the timing requirements for furnishing disclosures under this section.

#### 31(c)(1)(i) *Change in Terms*

Proposed comment 31(c)(1)(i)–1 clarifies that a creditor must provide new § 226.32(c) disclosures if a change in terms (whether in the formal written agreement or otherwise, such as an oral agreement affecting the amount of a fee required to be paid at closing) makes the previously provided disclosures inaccurate.

#### 31(c)(1)(iii) *Consumer’s Waiver of Waiting Period Before Consummation*

Proposed comment 31(c)(1)(iii)–1 provides guidance on circumstances in which the consumer may modify or waive the right to the three-day waiting period to meet bona fide personal financial emergencies. Generally, whether a bona fide personal financial emergency exists is a matter to be decided between the parties. The provisions in comments 23(e)–1 and 34(e)–2 apply to this section. For example, a consumer’s waiver does not automatically insulate the creditor from

liability for failing to provide the three-day waiting period.

#### 31(c)(2) *Disclosures for Reverse Mortgages*

Proposed comment 31(c)(2)–1 clarifies the definition of “business day” for purposes of providing reverse mortgage disclosures to consumers.

#### 31(d) *Basis of Disclosures and Use of Estimates*

Section 226.31(d) mirrors the provisions in § 226.5(c) and § 226.17(c), and allows the use of estimates when information necessary for an accurate disclosure is unknown to the creditor, provided that the disclosure is clearly identified as an estimate. Proposed comment 31(d)–1 clarifies that when a disclosure required by § 226.32 is marked as an estimate and becomes inaccurate due to a change in terms that occurs before consummation, new disclosures must be provided.

## Section 226.32—Requirements for Certain Closed-end Home Mortgages

### 32(a) *Coverage*

#### *Paragraph 32(a)(1)(i)*

Proposed comment 32(a)(1)(i)–1 clarifies when an application is received, for purposes of determining which Treasury securities yield should be used to compare the APR. Proposed comment 32(a)(1)(i)–2 provides guidance on comparing loan maturities to yields on Treasury securities, for purposes of determining whether a mortgage loan is covered by § 226.32. Proposed comment 32(a)(1)(i)–3 clarifies rules for calculating the APR for variable-rate, discount, premium, or stepped-rate loans.

Proposed comment 32(a)(1)(i)–4 clarifies which Treasury security to use for the APR test, and where the yields on these securities can be found. Creditors may request the Board statistical release H–15 by calling (202) 452–3245. Treasury security yields are also available from the Federal Reserve Bank of New York by calling (212) 720–6619.

#### *Paragraph 32(a)(1)(ii)*

Creditors must follow the rules in § 226.32 if, in part, the total points and fees payable by the consumer at or before loan closing exceed the greater of \$400 or 8 percent of the total loan amount. The Board is required to adjust the \$400 amount, based on the annual percentage change in the Consumer Price Index as reported on June 1, effective January 1 of the following year. The Board anticipates that adjustments to the \$400 dollar figure will be

published each yearend and incorporated into the commentary the following spring.

#### *Paragraph 32(b)(1)*

#### *Paragraph 32(b)(1)(i)*

Comment 32(b)(1)(i)–1 clarifies the scope of items defined as finance charges under § 226.4 that are considered “points and fees.”

#### *Paragraph 32(b)(1)(ii)*

Proposed comment 32(b)(1)(ii)–1 addresses the treatment of mortgage brokers fees. Section 226.32(b)(1) defines “points and fees” to include all finance charges (except interest or the time-price differential), as well as all compensation paid to mortgage brokers. Accordingly, compensation paid to a mortgage broker must be included as “points and fees” even if the amount is not disclosed as a finance charge.

Section 32(b)(1)(ii) at the time it was issued was interpreted to include all mortgage broker fees that are required to be disclosed under the Real Estate Settlement Procedures Act. Under that interpretation, amounts paid by creditors to mortgage brokers would be included, as are amounts paid by consumers. Upon further analysis, a narrower interpretation is being proposed. Proposed comment 32(b)(1)(ii)–1 states that for purposes of the “points and fees” test, only mortgage broker fees paid by the consumer are included in the calculation. The comment further clarifies that mortgage broker fees should not be double counted; that is, where such fees are included in the finance charge, they are already included as “points and fees” under § 226.32(b)(1)(i) and should not be counted again under § 226.32(b)(1)(ii).

#### 32(c)(3) *Regular payment*

Proposed comment 32(c)(3)–1 clarifies that the regulation contemplates the disclosure of monthly or other regularly scheduled periodic payments, such as bimonthly or quarterly. The comment also clarifies that there must be at least two payments, and they must be in an amount and occur at such intervals that the payments fully amortize the loan. For the amount of the payment, proposed comment 32(c)(3)–2 clarifies that creditors may rely on § 226.18(g) for guidance.

#### 32(c)(4) *Variable-rate*

Proposed comment 32(c)(4)–1 provides additional guidance on calculating “worst-case” payment examples when the transaction has more than one payment stream.