Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

Paragraph 32(a)(1)(i).

1. Application date. An application is deemed received when it reaches the creditor in any of the ways applications are normally transmitted. (See § 226.19(a).) For example, if a borrower applies for a 10-year loan on September 30 and the creditor counteroffers with a 7-year loan on October 10, the creditor must measure the annual percentage rate against the appropriate Treasury security yield as of August 15. An application transmitted through an intermediary agent or broker is received when it reaches the agent or broker.

2. When fifteenth not a business day. If the 15th day of the month immediately preceding the application date is not a business day, the creditor must use the yield as of the business day immediately preceding the 15th.

3. Calculating annual percentage rates for variable-rate loans and discount loans. Creditors must use the rules set out in the commentary to § 226.17(c)(1) in calculating the annual percentage rate for variable-rate loans (assume the rate in effect at the time of disclosure remains unchanged) and for discount, premium, and stepped-rate transactions (which must reflect composite annual percentage rates).

4. Treasury securities. To determine the vield on a Treasury security for the annual percentage rate test, creditors may use the Board's Selected Interest Rates (statistical release H-15) or the actual auction results. Treasury auctions are held at regular intervals for the different types of securities. These figures are published by major financial and metropolitan newspapers, and are also available from Federal Reserve Banks. Creditors must use the yield on the security that has the nearest maturity at issuance to the loan's maturity. For example, if a creditor must compare the annual percentage rate to Treasury securities with either seven-year or ten-year maturities, the annual percentage rate for an eight-year loan is compared with securities that have a seven-year maturity; the annual percentage rate for a nine-year loan is compared with securities that have a ten-year maturity. If the loan maturity is exactly halfway between, the annual percentage rate is compared with the Treasury security that has the lower yield. For example, if the loan has a maturity of 20 years and comparable securities have maturities of 10 years with a yield of 6.501 percent and 30 years with a yield of 6.906 percent, the annual percentage rate is compared with 10 percentage points over the yield of 6.501 percent, the lower of the two vields.

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

1. Total loan amount. For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii) that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. For example, if a consumer borrows \$10,000, finances a \$300 fee for a creditor-conducted

appraisal, and pays \$400 in points at closing, the amount financed according to § 226.18(b) is \$9,900 (\$10,000 plus the \$300 appraisal fee that is financed by the creditor, less \$400 in prepaid finance charges). The \$300 appraisal fee paid to the creditor is added to other points and fees under § 226.32(b)(1)(iii). It is deducted from the amount financed under §226.18(b) (\$9,900) to derive a total loan amount of \$9,600. If the \$300 appraisal fee is paid in cash at closing, the \$300 is included in the points and fees calculation. However, because it is not financed by the creditor, the \$300 fee is not part of the amount financed under § 226.18(b) (\$10,000, in this case). The total loan amount is \$9,600 (\$10,000, less \$400 in prepaid finance charges).

## *32(b)* Definitions.

Paragraph 32(b)(1)(i).

1. General. Items defined as finance charges under § 226.4(a) and 226.(4)(b) are included under this paragraph as a component of the total "points and fees." Items excluded from the finance charge under other provisions of § 226.4 are not included in the calculation under this paragraph 32(b)(1)(i), although the fee may be included in "points and fees." under paragraphs 32(b)(1)(i) and 32(b)(1)(ii).

Paragraph 32(b)(1)(ii).

1. Mortgage broker fees. In determining "points and fees" for purposes of this section, compensation paid by a consumer to a mortgage broker (directly or through the creditor for delivery to the broker) is included in the calculation whether or not the amount is disclosed as a finance charge. Mortgage broker fees that are not paid by the consumer are not included. Broker fees already included in the calculation as finance charges under § 226.32(b)(1)(i) need not be counted again under § 226.32(b)(1)(ii).

2. Example. Section 226.32(b)(1)(iii) defines "points and fees" to include all items listed in § 226.4(c)(7), other than amounts held for future payment of taxes. An item listed in  $\S226.4(c)(7)$  may be excluded from the "points and fees" calculation, however, if the charge is reasonable, the creditor receives no direct or indirect compensation from the charge, and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be excluded from the points and fees calculation (assuming no compensation is paid to the creditor). A fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation, even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount. 32(c) Disclosures.

1. *Format.* The disclosures must be clear and conspicuous but need not be in any particular type size or typeface, nor presented in any particular manner. For example, the disclosures need not be a part of the mortgage.

Paragraph 32(c)(3) Regular payment. 1. General. The regular payment is the amount due from the borrower at regular intervals, such as monthly, bimonthly, quarterly, or annually. There must be at least two payments, and the payments must be in an amount and at such intervals that they fully amortize the amount owed. If the loan has two payment streams, the regular payment for each must be disclosed.

2. Discount and premium rates. In disclosing the regular payment, creditors may rely on the rules set forth in §226.18(g). In discounted or premium variable rate transactions where the creditor sets the initial interest rate and later rate adjustments are determined by an index or formula, the creditor must disclose both the payment based on the discount or premium and the payment that will be in effect thereafter. Additional explanatory material which does not detract from the required disclosures may accompany the disclosed amounts. For example, if a monthly payment is \$250 for the first six months and then increases based on an index and margin, the creditor could use language such as the following: "Your regular monthly payment will be \$250 for six months. After six months your regular monthly payment will be based on an index and margin, which currently would make your payment \$350. Your actual payment at that time may be higher or lower.

Paragraph 32(c)(4) Variable-rate. 1. Calculating "worst-case" payment example. Creditors may rely on instructions in § 226.19(b)(2)(x) for calculating the maximum possible increases in rates in the shortest possible timeframe, based on the face amount of the note (not the hypothetical loan amount of \$10,000 required by § 226.19(b)(2)(x)). The creditor must provide a maximum payment for each payment stream, where a payment schedule provides for more than one payment stream and more than one maximum payment amount is possible.

32(d) Limitations.

Paragraph 32(d)(1)(i) Balloon payment. 1. Regular periodic payments. The

repayment schedule for a § 226.32 mortgage loan with a term of less than five years must fully amortize the outstanding principal balance through "regular periodic payments." A payment is a "regular periodic payment" if it is not more than twice the amount of other payments.

Paragraph 32(d)(2) Negative amortization. 1. Negative amortization. The prohibition against negative amortization in a mortgage covered by § 226.32 does not preclude increases in the principal balance that result from events unrelated to the payment schedule, such as when a consumer fails to obtain property insurance and the creditor purchases and adds the premium to the consumer's principal balance.

Paragraph 32(d)(4) Increased interest rate. 1. Variable-rate transactions. The limitation on interest rate increases does not apply to rate increases resulting from index changes in a variable-rate transaction, even if the increase occurs after default by the consumer.

## Paragraph 32(d)(5) Rebates.

1. Calculation of refunds. The limitation applies only to refunds of interest and not to any other charges that are considered finance charges under § 226.4 (for example, points and fees paid at closing). The calculation of the refund of interest includes odd-days interest, whether paid at or after consummation.