Paragraph 32(d)(6) Prepayment penalties. 1. State law. If using the actuarial method defined by applicable state law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors must use the state law definition in determining if a refund is a prepayment penalty under § 226.32(d)(6).

32(d)(7) Prepayment penalty exception. Paragraph 32(d)(7)(iii).

1. Calculating debt-to-income ratio. "Debt" does not include amounts paid by the borrower in cash at closing or amounts from the loan proceeds that directly repay an existing debt. Creditors may consider combined debt-to-income ratios for transactions involving joint applicants.

Verification. Verification of employment satisfies the requirement for payment records

for employment income.

32(e) Prohibited acts and practices. Paragraph 32(e)(1) Repayment ability.

1. Determining repayment ability. The information provided to the creditor in connection with § 226.32(d)(7) may be used to show that the creditor considered the consumer's income and obligations before extending the credit. Any expected income can be considered by the creditor, except equity income that the consumer would obtain through the foreclosure of a mortgage covered by § 226.32. For example, a creditor may use information about income other than regular salary or wages such as gifts, expected retirement payments, or income from housecleaning or childcare. The creditor also may use unverified income, so long as the creditor has a reasonable basis for believing that the income exists.

Paragraph 32(e)(2) Home-Improvement Contracts.

Paragraph 32(e)(2)(i).

1. Joint payees. If a creditor pays a contractor with an instrument jointly payable to the contractor and the consumer, the instrument must name as payee each consumer who is primarily obligated on the note.

Paragraph 32(e)(3) Notice to Assignee.

1. Subsequent sellers or assignors. Any person, whether or not the original creditor, that sells or assigns a mortgage subject to this section must furnish the notice of potential liability to the purchaser or assignee.

2. Format. While the notice of potential liability need not be in any particular format, the notice must be prominent. Placing it on the face of the note, such as with a stamp, is one means of satisfying the prominence requirement.

Section 226.33—Requirements for Reverse Mortgages

33(a) Definition.

1. Nonrecourse transaction. A nonrecourse reverse mortgage transaction limits the homeowner's liability to the proceeds of the sale of the home (or any lesser amount specified in the credit obligation). If a transaction structured as a closed-end reverse mortgage transaction allows recourse against the consumer, and the annual percentage rate or the points and fees exceed those specified

under \S 226.32(a)(1), the transaction is subject to all the requirements of \S 226.32, including the limitations concerning balloon payments and negative amortization.

Paragraph 33(a)(2).

1. *Default*. Default is not defined by the regulation, but rather by the legal obligation between the parties and state or other law.

2. Definite term or maturity date. To meet the definition of a reverse mortgage transaction, a creditor cannot require any principal, interest, or shared appreciation or equity to be due and payable (other than in the case of default) until after the consumer's death, transfer of the dwelling, or the consumer ceases to occupy the dwelling as a principal dwelling. Some state laws require legal obligations secured by a mortgage to specify a definite maturity date or term of repayment in the instrument. Such a provision in an obligation does not violate the definition of a reverse mortgage transaction if the maturity date or term or repayment required by state law would in no case operate to cause maturity prior to the occurrence of any of the events recognized in the regulation. For example, a provision that allows a reverse mortgage loan to become due and payable only after the consumer's death, transfer, or cessation of occupancy, or after a specified term, but which automatically extends the term for consecutive periods as long as none of the other events has occurred would meet the definition of a reverse mortgage transaction.

33(c) Projected total cost of credit. Paragraph 33(c)(1) Costs to consumer.

1. Costs and charges to consumer—relation to finance charge. All costs and charges to the consumer that are incurred in a reverse mortgage transaction are included in the projected total cost of credit, and thus in the total annual loan cost rates, whether or not the cost or charge is a finance charge under § 226.4 of the regulation.

2. Annuity costs. As part of the credit transaction, some creditors require or permit a consumer to purchase an annuity that immediately—or at some future time—supplements or replaces the creditor's payments. The amount paid by the consumer for the annuity is a cost to the consumer under this section, regardless of whether the annuity is purchased through the creditor or a third party, or whether the purchase is mandatory or voluntary.

3. Disposition costs excluded. Disposition costs incurred in connection with the sale or transfer of the property subject to the reverse mortgage are not included in the costs to the consumer under this paragraph. (However, see the definition of Val_n in appendix K to the regulation to determine the effect certain disposition costs may have on the total annual loan cost rates.)

Paragraph 33(c)(2) Payments to consumer.
1. Payments upon a specified event. The projected total cost of credit should not reflect contingent payments in which a credit to the outstanding loan balance or a payment to the consumer's estate is made upon the occurrence of an event (for example, a "death benefit" payable if the consumer's death occurs within a certain period of time). Thus, the table of total annual loan cost rates required under § 226.33(b)(2) would not

reflect such payments. At its option, however, a creditor may put an asterisk, footnote, or similar type of notation in the table next to the applicable total annual loan cost rate, and state in the body of the note, apart from the table, the assumption upon which the total annual loan cost is made and any different rate that would apply if the contingent benefit were paid.

Paragraph 33(c)(3) Additional creditor compensation.

1. Shared appreciation or equity. Any shared appreciation or equity that the creditor is entitled to receive pursuant to the legal obligation must be included in the total cost of a reverse mortgage loan. For example, if a creditor agrees to a reduced interest rate on the transaction in exchange for a portion of the appreciation or equity that may be realized when the dwelling is sold, that portion is included in the projected total cost of credit.

Paragraph 33(c)(4) Limitations on consumer liability.

- 1. In general. Creditors must include any limitation on the consumer's liability (such as a nonrecourse limit or an equity conservation agreement) in the projected total cost of credit. These limits and agreements protect a portion of the equity in the dwelling for the consumer or the consumer's estate. For example, the following contractual provisions are limitations on the consumer's liability that must be included in the projected total cost of credit:
- i. A limit on the consumer's liability to a certain percentage of the projected value of the home.

ii. A limit on the consumer's liability to the net proceeds from the sale of the property subject to the reverse mortgage.

2. Uniform assumption for "net proceeds" recourse limitations. If the legal obligation between the parties does not specify a percentage for the "net proceeds" liability of the consumer, for purposes of the disclosures required by § 226.33, a creditor must assume that the costs associated with selling the property will equal 7 percent of the projected sale price (see the definition of the Val_n symbol under appendix K(b)(6)). fi

10. In Supplement I to Part 226, a new Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions and a new Appendix L—Assumed Loan Periods for Computations of Total Annual Loan Cost Rates would be added to read as follows:

fl Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions

1. General. The calculation of total annual loan cost rates under appendix K is based on the principles set and the estimation or "iteration" procedure used to compute annual percentage rates under appendix J. Rather than restate this iteration process in full, the regulation cross-references the procedures found in appendix J. In other aspects the appendix reflects the special