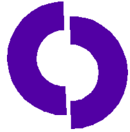

CCE-TIL

Comptroller of the Currency
Administrator of National Banks

Truth in Lending

Comptroller's Handbook

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CCE

Consumer Compliance Examination

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Truth In Lending — Introduction

Background and Summary

The Truth in Lending Act (TILA), 15 USC 1601 et seq., was enacted on May 29, 1968, as title I of the Consumer Credit Protection Act (Pub. L. 90-321). The TILA, implemented by Regulation Z (12 CFR 226), became effective July 1, 1969.

The TILA was first amended in 1970 to prohibit unsolicited credit cards. Additional major amendments to the TILA and Regulation Z were made by the Fair Credit Billing Act of 1974, the Consumer Leasing Act of 1976, the Truth in Lending Simplification and Reform Act of 1980, the Fair Credit and Charge Card Disclosure Act of 1988, the Home Equity Loan Consumer Protection Act of 1988, the Home Ownership and Equity Protection Act of 1994, and the Truth in Lending Act Amendments of 1995.

Regulation Z also was amended to implement section 1204 of the Competitive Equality Banking Act of 1987, and in 1988, to include adjustable rate mortgage loan disclosure requirements. All consumer leasing provisions were deleted from Regulation Z in 1981 and transferred to Regulation M (12 CFR 213).

Purpose of the TILA and Regulation Z

The Truth in Lending Act is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms more readily and knowledgeably. Before its enactment, consumers were faced with a bewildering array of credit terms and rates. It was difficult to compare loans because they were seldom presented in the same format. Now, all creditors must use the same credit terminology and expressions of rates. In addition to providing a uniform system for disclosures, the act is designed to:

- Protect consumers against inaccurate and unfair credit billing and credit card practices;
- Provide consumers with rescission rights;
- Provide for rate caps on certain dwelling-secured loans; and

- Impose limitations on home equity lines of credit and certain closed-end home mortgages.

The TILA and Regulation Z do not, however, tell banks how much interest they may charge or whether they must grant a consumer a loan.

Consequences of Noncompliance

Civil Liability

If a creditor fails to comply with any requirements of the TILA, other than with the advertising provisions of chapter 3, it may be held liable to the consumer for:

- Actual damage, and

- The cost of any legal action together with reasonable attorney's fees in a successful action.

If it violates certain requirements of the TILA, the creditor also may be held liable for either of the following:

- In an individual action, twice the amount of the finance charge involved, but not less than $100 or more than $1,000 (effective September 1995, not less than $200 or more than $2,000 for closed-end credit secured by real property or a dwelling);

- In a class action, such amount as the court may allow. The total amount of recovery, however, cannot be more than $500,000 or 1 percent of the creditor's net worth, whichever is less.

Civil actions that may be brought against a creditor also may be maintained against any assignee of the creditor if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary.

Criminal Liability

Anyone who willingly and knowingly fails to comply with any requirement of the TILA will be fined not more than $5,000 or imprisoned not more than one year, or both.

Administrative Actions

The TILA authorizes federal regulatory agencies to require financial institutions to make monetary and other adjustments to the consumers' accounts when the true finance charge or APR exceeds the disclosed finance charge or APR by more than a specified accuracy tolerance. That authorization extends to unintentional errors, including isolated violations (e.g., an error that occurred only once or errors, often without a common cause, that occurred infrequently and randomly.)

Under certain circumstances, the TILA requires federal regulatory agencies to order financial institutions to reimburse consumers when understatement of the APR or finance charge involves:

- Patterns or practices of violations (e.g., errors that occurred, often with a common cause, consistently or frequently, reflecting a pattern with a specific type or types of consumer credit).
- Gross negligence.
- Willful noncompliance intended to mislead the person to whom the credit was extended.

Any proceeding that may be brought by a regulatory agency against a creditor may be maintained against any assignee of the creditor if the violation is apparent on the face of the disclosure statement or other documents assigned, except where the assignment was involuntary.

Joint Notice of Statement of Interagency Enforcement Policy

On July 11, 1980, the federal financial regulatory agencies issued a Joint Notice of Statement of Interagency Enforcement Policy for Truth in Lending (policy guide). The policy guide summarizes and explains the reimbursement provisions of the TILA. It also describes corrective actions the financial regulatory agencies believe appropriate. The policy guide is contained in the appendix of this handbook.

The appendix contains a number of charts that are designed to show how accuracy tolerances apply to finance charges and annual percentage rates for disclosure and reimbursement purposes. Those charts are "Accuracy and Reimbursement Tolerances for Understated Finance Charges," "Accuracy Tolerances for Overstated Finance Charges," "Accuracy Tolerances for

Overstated Finance Charges," "Accuracy and Reimbursement Tolerances for Understated APRs," "Accuracy Tolerances for Overstated APRs," and "Finance Charge Tolerances."

The regulatory agencies anticipate that most banks will comply voluntarily with the reimbursement provisions of the TILA. However, if a bank does not act voluntarily to correct violations, the agencies are required by law to use their cease and desist authority to order correction.

Enforcement Policy Applicability to Indirect Paper

Violations identified on disclosures involving third parties are direct-loan violations of law if the bank is the creditor (i.e., if the bank is the entity to which the obligation is initially payable). In such cases, the bank is cited for the violation and may be required to reimburse affected consumers under the enforcement policy.

If a third party is the creditor, a bank's acceptance of the third party's disclosures containing reimbursable violations normally reflects only a need for improved internal controls. However, if affected consumers have not been reimbursed, the OCC will report such third-party violations (consistent with the requirements of the Right to Financial Privacy Act of 1978) to the national headquarters of the regulatory agency supervising the creditor.

Specific Defenses

Defense Against Civil, Criminal, and Administrative Actions

A bank in violation of TILA **may** avoid liability by:

- Discovering the error before an action is brought against the bank, or before the consumer notifies the bank, in writing, of the error.
- Notifying the consumer of the error within 60 days of discovery.
- Making the necessary adjustments to the consumer's account, also within 60 days of discovery. (The consumer will pay no more than the lesser of the finance charge actually disclosed or the dollar equivalent of the APR actually disclosed.)

The above three actions also may allow the bank to avoid a regulatory order to reimburse the customer.

An error is "discovered" if it is:

- Discussed in a final, written report of examination.
- Identified through the bank's own procedures.
- An inaccurately disclosed APR or finance charge included in a regulatory agency notification to the bank.

When a disclosure error occurs, the bank is not required to redisclose after a loan has been consummated or an account has been opened. If the bank corrects a disclosure error by merely redisclosing required information accurately, without adjusting the consumer's account, the bank may still be subject to civil liability and an order to reimburse from its regulator.

The circumstances under which a bank may avoid liability under the TILA do not apply to violations of the Fair Credit Billing Act (chapter 4 of the TILA).

Additional Defenses Against Civil Actions

The bank may avoid liability in a civil action if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error that occurred despite the maintenance of procedures to avoid the error.

A bona fide error may include a clerical, calculation, computer malfunction, programming, or printing error. It does **not** include an error of legal judgment.

Showing that a violation occurred unintentionally could be difficult if the bank is unable to produce evidence that explicitly indicates it has an internal controls program designed to ensure compliance. The bank's demonstrated commitment to compliance and its adoption of policies and procedures to detect errors before disclosures are furnished to consumers could strengthen its defense.

Statute of Limitations

Civil actions may be brought within one year after the violation occurred. After that time, and if allowed by state law, the consumer may still assert the violation as a defense if a bank were to bring an action to collect the consumer's debt.

Criminal actions are not subject to the TILA one-year statute of limitations.

Regulatory administrative enforcement actions also are not subject to the one-

year statute of limitations. However, enforcement actions under the policy guide involving erroneously disclosed APRs and finance charges are subject to time limitations by the TILA. Those limitations range from the date of the last regulatory examination of the bank, to as far back as 1969, depending on when loans were made, when violations were identified, whether the violations were repeat violations, and other factors.

There is no time limitation on willful violations intended to mislead the consumer. A summary of the various time limitations follows.

- For open-end credit, reimbursement applies to violations not older than two years.

- For closed-end credit, the OCC generally directs reimbursement for loans with violations occurring since the "immediately preceding examination" during which the federal regulator reviewed compliance with the TILA.

  – The U.S. Court of Appeals for the Eighth Circuit concluded that the phrase "immediately preceding examination " means the last examination of **any** kind, whether it included a review for TILA compliance. See First National Bank of Council Bluffs v. OCC, No. 91-2289 (8th Cir. February 19, 1992).
  – Unless the ruling is changed by the Supreme Court or Congress, banks in the states covered by the Eighth Circuit (Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Missouri, and Arkansas) are not obliged to follow the OCC's general interpretation. Banks in other areas, however, will continue to be required to comply with the OCC interpretation.

Relationship to State Law

State laws providing rights, responsibilities, or procedures for consumers or banks for consumer credit contracts may be:

- Preempted by federal law;

- Appropriate under state law and not preempted by federal law; or

- Substituted in lieu of TILA and Regulation Z requirements.

State law provisions are preempted to the extent that they contradict the requirements in the following chapters of the TILA and the implementing sections of Regulation Z:

- Chapter 1, "General Provisions," which contains definitions and acceptable methods for determining finance charges and annual percentage rates. For example, a state law would be preempted if it required a bank to include in the finance charge any fees that the federal law excludes, such as seller's points.

- Chapter 2 , "Credit Transactions," which contains disclosure requirements, rescission rights, and certain credit card provisions. For example, a state law would be preempted if it required a bank to use the terms "nominal annual interest rate" in lieu of "annual percentage rate."

- Chapter 3, "Credit Advertising," which contains consumer credit advertising rules and annual percentage rate oral disclosure requirements.

Conversely, state law provisions may be appropriate and are not preempted under federal law if they call for, without contradicting chapters 1, 2, or 3 of the TILA or the implementing sections of Regulation Z, either of the following:

- Disclosure of information not otherwise required. A state law that requires disclosure of the minimum periodic payment for open-end credit, for example, would not be preempted because it does not contradict federal law.

- Disclosures more detailed than those required. A state law that requires itemization of the amount financed, for example, would not be preempted, unless it contradicts federal law by requiring the itemization to appear with the disclosure of the amount financed in the segregated closed-end credit disclosures.

The relationship between state law and chapter 4 of the TILA ("Credit Billing") involves two parts. The first part is concerned with sections 161 (correction of billing errors) and 162 (regulation of credit reports) of the act; the second part addresses the remaining sections of chapter 4.

State law provisions are preempted if they differ from the rights, responsibilities, or procedures contained in sections 161 or 162. An exception is made, however, for state law that allows a consumer to inquire about an account and requires the bank to respond to such inquiry beyond the time limits provided by federal law. Such a state law would not be preempted for the extra time period.

State law provisions are preempted if they result in violations of sections 163

through 171 of chapter 4. For example, a state law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since it would violate 12 CFR 226.12(d). Conversely, a state law that requires periodic statements to be sent more than 14 days before the end of a free-ride period would not be preempted, since no violation of federal law is involved.

A bank, state, or other interested party may ask the Federal Reserve Board to determine whether state law contradicts chapters 1 through 3 of the TILA or Regulation Z. They also may ask if the state law is different from, or would result in violations of, chapter 4 of the TILA and the implementing provisions of Regulation Z. If the board determines that a disclosure required by state law (other than a requirement relating to the finance charge, annual percentage rate, or the disclosures required under 226.32) is substantially the same in meaning as a disclosure required under the act or Regulation Z, generally creditors in that state may make the state disclosure in lieu of the federal disclosure.

Format of Regulation Z

The disclosure rules creditors must follow differ depending on whether the creditor is offering open-end credit, such as credit cards or home-equity lines, or closed-end credit, such as car loans or mortgages.

Subpart A (sections 226.1 through 226.4) of the regulation provides general information that applies to open-end and closed-end credit transactions. It sets forth definitions and stipulates which transactions are covered and which are exempt from the regulation. It also contains the rules for determining which fees are finance charges.

Subpart B (sections 226.5 through 226.16) of the regulation contains rules for disclosures for home-equity loans, credit and charge card accounts, and other open-end credit.

Subpart B also covers rules for resolving billing errors, calculating annual percentage rates, credit balances, and advertising open-end credit. Special rules apply to credit card transactions only, such as certain prohibitions on the issuance of credit cards and restrictions on the right to offset a cardholder's indebtedness. Additional special rules apply to home-equity lines of credit, such as certain prohibitions against closing accounts or changing account terms.

Subpart C (sections 226.17 through 226.24) includes provisions for closed-end credit. Residential mortgage transactions, demand loans, and installment

credit contracts, including direct loans by banks and purchased dealer paper, are included in the closed-end credit category. Subpart C also contains disclosure rules for regular and variable rate loans, refinancings and assumptions, credit balances, calculating annual percentage rates, and advertising closed-end credit.

Subpart D (sections 226.25 through 226.30), which applies to both open-end and closed-end credit, sets forth the duty of creditors to retain evidence of compliance with the regulation. It also clarifies the relationship between the regulation and state law, and requires creditors to set a cap for variable rate transactions secured by a consumer's dwelling.

Subpart E (sections 226.31 through 226.33) includes disclosure and other requirements for home mortgage transactions having rates or fees above a certain percentage or amount (closed-end credit only) and disclosure requirements for reverse mortgage transactions (open-end and closed-end credit).

The appendices to the regulation set forth model forms and clauses that creditors may use when providing open-end and closed-end disclosures. The appendices also contain detailed rules for calculating the APR for open-end credit (appendix F) and closed-end credit (appendixes D and J).

Official staff interpretations of the regulation are published in a commentary that is normally updated annually in March. Good faith compliance with the commentary protects creditors from civil liability under the act. In addition, the commentary includes mandates, which are not necessarily explicit in Regulation Z, on disclosures or other actions required of creditors. It is virtually impossible to comply with Regulation Z without reference to and reliance on the commentary.

Summary of Coverage Considerations

Lenders must carefully consider several factors when deciding whether a loan requires Truth in Lending disclosures or is subject to other Regulation Z requirements. The coverage considerations under Regulation Z appear in the appendix in a chart designed to help the lender make such decisions.

The factors included in the chart are addressed in more detail by Regulation Z and its commentary. For example, broad coverage considerations are included under section 226.1(c) of the regulation and relevant definitions appear in section 226.2.

Exempt Transactions

The following transactions are exempt from Regulation Z:

- Credit extended primarily for a business, commercial, or agricultural purpose;
- Credit extended to other than a natural person;
- Credit in excess of $25 million not secured by real or personal property used as the principal dwelling of the consumer;
- Public utility credit;
- Credit extended by a broker-dealer registered with the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), involving securities or commodities accounts;
- Home fuel budget plans; and
- Certain student loan programs.

If a credit card is involved, generally exempt credit (e.g., business or agricultural purpose credit) is still subject to requirements that govern the issuance of credit cards and liability for their unauthorized use. Credit cards must not be issued on an unsolicited basis and, if a credit card is lost or stolen, the cardholder must not be held liable for more than $50 for the unauthorized use of the card.

When determining whether credit is for consumer purposes, the creditor must evaluate all of the following:

- Any statement obtained from the consumer describing the purpose of the proceeds.
  - For example, a statement that the proceeds will be used for a vacation trip would indicate a consumer purpose.
  - If the loan has a mixed-purpose (e.g., proceeds will be used to buy a car that will be used for personal and business purposes), the lender must look to the **primary** purpose of the loan to decide whether disclosures are necessary. A statement of purpose from the consumer will help the lender make that decision.
  - A checked box indicating that the loan is for a business purpose,

absent any documentation showing the intended use of the proceeds, could be insufficient evidence that the loan did not have a consumer purpose.

- The consumer's primary occupation and how it relates to the use of the proceeds. The higher the correlation between the consumer's occupation and the property purchased from the loan proceeds, the greater the likelihood that the loan has a business purpose. For example, proceeds used to purchase dental supplies for a dentist would indicate a business purpose.

- Personal management of the assets purchased from proceeds. The lower the degree of the borrower's personal involvement in the management of the investment or enterprise purchased by the loan proceeds, the less likely the loan will have a business purpose. For example, money borrowed to purchase stock in an automobile company by an individual who does not work for that company would indicate a personal investment and a consumer purpose.

- The size of the transaction. The larger the size of the transaction, the more likely the loan will have a business purpose. For example, if the loan is for a $5,000,000 real estate transaction, that might indicate a business purpose.

- The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income. The lesser the income derived from the acquired property, the more likely the loan will have a consumer purpose. For example, if the borrower has an annual salary of $100,000 and receives about $500 in annual dividends from the acquired property, that would indicate a consumer purpose.

All five factors must be evaluated before the lender can conclude that disclosures are not necessary. Normally, no one factor, by itself, is sufficient reason to determine the applicability of Regulation Z. In any event, the bank may routinely furnish disclosures to the consumer. Disclosure under such circumstances does not control whether the transaction is covered, but can assure protection to the bank and compliance with the law.

Special Requirements

Proper calculation of the finance charge and APR are of primary importance. The regulation requires that the terms "finance charge" and "annual percentage rate" be disclosed more conspicuously than any other required disclosure. The finance charge and APR, more than any other disclosures,

enable consumers to understand the cost of the credit and to comparison shop for credit. A creditor's failure to disclose those values accurately can result in significant monetary damages to the creditor, either from a class action law suit or from a regulatory agency's order to reimburse consumers for violations of law.

If an annual percentage rate or finance charge is disclosed incorrectly, the error is not, in itself, a violation of the regulation if:

- The error resulted from a corresponding error in a calculation tool **used in good faith** by the bank.
- Upon discovery of the error, the bank promptly discontinues use of that calculation tool for disclosure purposes.
- The bank notifies the Federal Reserve Board in writing of the error in the calculation tool.

When a bank claims a calculation tool was used in good faith, the bank assumes a reasonable degree of responsibility for ensuring that the tool in question provides the accuracy required by the regulation. For example, the bank might verify the results obtained using the tool by comparing those results to the figures obtained by using another calculation tool. The bank might also verify that the tool, if it is designed to operate under the actuarial method, produces figures similar to those provided by the examples in appendix J to the regulation. The calculation tool should be checked for accuracy before it is first used and periodically thereafter.

Annual Percentage Rate Definition

Credit costs may vary depending on the interest rate, the amount of the loan and other charges, the timing and amounts of advances, and the repayment schedule. The APR, which must be disclosed in nearly all consumer credit transactions, is designed to take into account all relevant factors and to provide a uniform measure for comparing the cost of various credit transactions.

The APR is a measure of the cost of credit, expressed as a nominal yearly rate. It relates the amount and timing of value received by the consumer to the amount and timing of payments made. The disclosure of the APR is central to the uniform credit cost disclosure envisioned by the TILA.

The value of a closed-end credit APR must be disclosed as a single rate only, whether the loan has a single interest rate, a variable interest rate, a

discounted variable interest rate, or graduated payments based on separate interest rates (step rates), and it must appear with the segregated disclosures.

Since an APR measures the total cost of credit, including costs such as transaction charges or premiums for credit guarantee insurance, it is not an "interest" rate, as that term is generally used. APR calculations do not rely on definitions of interest in state law and often include charges, such as a commitment fee paid by the consumer, that are not viewed by some state usury statutes as interest. Conversely, an APR might not include a charge, such as a credit report fee in a real property transaction, which some state laws might view as interest for usury purposes. Furthermore, measuring the timing of value received and of payments made, which is essential if APR calculations are to be accurate, must be consistent with parameters under Regulation Z.

The APR is often considered to be the finance charge expressed as a percentage. However, two loans could require the same finance charge and still have different APRs because of differing values of the amount financed or of payment schedules. For example, the APR is 12 percent on a loan with an amount financed of $5,000 and 36 equal monthly payments of $166.07 each. It is 13.26 percent on a loan with an amount financed of $4,500 and 35 equal monthly payments of $152.18 each and final payment of $152.22. In both cases the finance charge is $978.52. The APRs on these example loans are not the same because an APR does not only reflect the finance charge. It relates the amount and timing of value received by the consumer to the amount and timing of payments made.

The APR is a function of:

- The amount financed, which is not necessarily equivalent to the loan amount. If the consumer must pay at closing a separate 1 percent loan origination fee (prepaid finance charge) on a $100,000 residential mortgage loan, the loan amount is $100,000, but the amount financed would be $100,000 less the $1,000 loan fee, or $99,000.

- The finance charge, which is not necessarily equivalent to the total interest amount.

  - If the consumer must pay a $25 credit report fee for an auto loan, the fee must be included in the finance charge. The finance charge in that case is the sum of the interest on the loan (i.e., interest generated by the application of a percentage rate against the loan amount) plus the $25 credit report fee.
  - If the consumer must pay a $25 credit report fee for a home

improvement loan secured by real property, the credit report fee must be excluded from the finance charge. The finance charge in that case would be only the interest on the loan.
– Interest, which is defined by state or other federal law, is not defined by Regulation Z.

- The payment schedule, which does not necessarily include only principal and interest (P + I) payments.

) If the consumer borrows $2,500 for a vacation trip at 14 percent simple interest per annum and repays that amount with 25 equal monthly payments beginning one month from consummation of the transaction, the monthly P + I payment will be $115.87, if all months are considered equal, and the amount financed would be $2,500. If the consumer's payments are increased by $2.00 a month to pay a non-financed $50 loan fee during the life of the loan, the amount financed would remain at $2,500 but the payment schedule would be increased to $117.87 a month, the finance charge would increase by $50, and there would be a corresponding increase in the APR. This would be the case whether or not state law defines the $50 loan fee as interest.
) If the loan above has 55 days to the first payment and the consumer prepays interest at consummation ($24.31 to cover the first 25 days), the amount financed would be $2,500 - $24.31, or $2,475.69. Although the amount financed has been reduced to reflect the consumer's reduced use of available funds at consummation, the time interval during which the consumer has use of the $2,475.69, 55 days to the first payment, has not changed. Since the first payment period exceeds the limitations of the regulation's minor irregularities provisions (see 226.17(c)(4)), it may not be treated as regular. In calculating the APR, the first payment period must not be reduced by 25 days (i.e., the first payment period may not be treated as one month).

Banks may, if permitted by state or other law, precompute interest by applying a rate against a loan balance using a simple interest, add-on, discount or some other method, and may earn interest using a simple interest accrual system, the Rule of 78's (if permitted by law) or some other method. Unless the bank's internal interest earnings and accrual methods involve a simple interest rate based on a 360-day year that is applied over actual days (even that is important only for determining the accuracy of the payment schedule), it is not relevant in calculating an APR, since an APR is not an interest rate (as that term is commonly used under state or other law). Since the APR normally need not rely on the internal accrual systems of a bank, it always may be

computed after the loan terms have been agreed upon (as long as it is disclosed before actual consummation of the transaction).

Finance Charge (Open-End and Closed-End Credit)

Definition

The finance charge is a measure of the cost of consumer credit represented in dollars and cents. Along with APR disclosures, the disclosure of the finance charge is central to the uniform credit cost disclosure envisioned by the TILA. The finance charge does not include any charge of a type payable in a comparable cash transaction. Examples of charges payable in a comparable cash transaction may include taxes, title, license fees, or registration fees paid in connection with an automobile purchase.

Finance charges include any charges or fees payable directly or indirectly by the consumer and imposed directly or indirectly by the bank either as an incident to or as a condition of an extension of consumer credit. The finance charge on a loan always includes any interest charges and often other charges. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the disclosed finance charge (226.4(b)).

Accuracy Tolerances

Regulation Z provides finance charge tolerances for legal accuracy that should not be confused with those provided in the TILA for reimbursement under regulatory agency orders. As with disclosed APRs, if a disclosed finance charge is legally accurate, it would not be subject to reimbursement.

Under Regulation Z, finance charge disclosures for open-end credit must be accurate. However, since closed-end credit transactions occur in many forms and may have numerous complexities, Regulation Z permits various finance charge accuracy tolerances for closed-end credit.

Tolerances for the finance charge and other disclosures affected by any finance charge are generally $5 if the amount financed is less than or equal to $1,000 and $10 if the amount financed exceeds $1,000. For certain transactions consummated on or after September 30, 1995, those tolerances are superseded.

- Credit secured by real property or a dwelling (**closed-end credit only**):

- The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than $100.
- Overstatements are not violations.

- Rescission rights after the three-business-day rescission period **(closed-end credit only)**:

  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than one-half of 1 percent of the credit extended.
  - The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than 1 percent of the credit extended for the initial and subsequent refinancings of residential mortgage transactions when the new loan is made at a different bank.

  NOTE: This excludes high cost mortgage loans subject to 12 CFR 226.32, transactions in which there are new advances, and new consolidations.

- Rescission rights in foreclosure:

) The disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than $35.
) Overstatements are not considered violations.

  NOTE: Normally, the finance charge tolerance for a rescindable transaction is either 0.5 percent of the credit transaction or, for certain refinancings, 1 percent of the credit transaction. However, in the event of a foreclosure, the consumer may exercise the right of rescission if the disclosed finance charge is understated by more than $35.

See the "Finance Charge Tolerances" chart in the appendix for help in determining appropriate finance charge tolerances.

Calculating the Finance Charge

One of the more complex tasks under Regulation Z is determining whether a charge associated with an extension of credit must be included in, or excluded from, the disclosed finance charge. The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the bank requires use of the third party. Charges imposed by settlement or closing agents are finance charges if the bank requires the specific service that gave rise to the charge and the charge

is not otherwise excluded. The "Finance Charge Tolerances" chart in the appendix briefly summarizes the rules that must be considered.

Prepaid Finance Charges

A prepaid finance charge is any finance charge paid separately to the bank or to a third party, in cash or by check before or at closing, settlement, or consummation of a transaction, or withheld from the proceeds of the credit at any time.

Prepaid finance charges effectively reduce the amount of funds available for the consumer's use, usually before or at the time the transaction is consummated.

Examples of finance charges frequently prepaid by consumers are borrower's points, loan origination fees, real estate construction inspection fees, odd days' interest (interest attributable to part of the first payment period when that period is longer than a regular payment period), mortgage guarantee insurance fees paid to the Federal Housing Administration, private mortgage insurance (PMI) paid to such companies as the Mortgage Guaranty Insurance Company (MGIC), and, in non-real-estate transactions, credit report fees.

Precomputed Finance Charges

A precomputed finance charge includes, for example, interest added to the note amount that is computed by the add-on, discount, or simple interest methods. If reflected in the face amount of the debt instrument as part of the consumer's obligation, finance charges that are not viewed as prepaid finance charges are treated as precomputed finance charges that are earned over the life of the loan.

Finance Charge (Open-End Credit)

Each finance charge imposed must be individually itemized. The aggregate total amount of the finance charge need not be disclosed.

Determining the Balance and Computing the Finance Charge

The examiner must know how to compute the balance to which the periodic rate is applied. Common methods used are the previous balance method, the daily balance method, and the average daily balance method, which are described as follows:

- Previous balance method – The balance on which the periodic finance charge is computed is based on the balance outstanding at the start of the billing cycle. The periodic rate is multiplied by this balance to compute the finance charge.

- Daily balance method – A daily periodic rate is applied to either the balance on each day in the cycle or the sum of the balances on each of the days in the cycle. If a daily periodic rate is multiplied by the balance on each day in the billing cycle, the finance charge is the sum of the products. If the daily periodic rate is multiplied by the sum of all the daily balances, the result is the finance charge.

- Average daily balance method – The average daily balance is the sum of the daily balances (either including or excluding current transactions) divided by the number of days in the billing cycle. A periodic rate is then multiplied by the average daily balance to determine the finance charge. If the periodic rate is a daily one, the product of the rate multiplied by the average balance is multiplied by the number of days in the cycle.

In addition to those common methods, banks have other ways of calculating the balance to which the periodic rate is applied. By reading the bank's explanation, the examiner should be able to calculate the balance to which the periodic rate was applied. In some cases, the examiner may need to obtain additional information from the bank to verify the explanation disclosed. Any inability to understand the disclosed explanation should be discussed with management, who should be reminded of Regulation Z's requirement that disclosures be clear and conspicuous.

When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments must be disclosed.

If the bank uses the daily balance method and applies a single daily periodic rate, disclosure of the balance to which the rate was applied may be stated as any of the following:

- A balance for each day in the billing cycle. The daily periodic rate is multiplied by the balance on each day and the sum of the products is the finance charge.

- A balance for each day in the billing cycle on which the balance in the account changes. The finance charge is figured by the same method as discussed previously, but the statement shows the balance only for

those days on which the balance changed.

- The sum of the daily balances during the billing cycle. The balance on which the finance charge is computed is the sum of all the daily balances in the billing cycle. The daily periodic rate is multiplied by that balance to determine the finance charge.

- The average daily balance during the billing cycle. If this is stated, however, the bank must explain somewhere on the periodic statement or in an accompanying document that the finance charge is or may be determined by multiplying the average daily balance by the number of days in the billing cycle, rather than by multiplying the product by the daily periodic rate.

If the bank uses the daily balance method, but applies two or more daily periodic rates, the sum of the daily balances may not be used. Acceptable ways of disclosing the balances include:

- A balance for each day in the billing cycle;

- A balance for each day in the billing cycle on which the balance in the account changes; or

- Two or more average daily balances. If the average daily balances are stated, the bank shall indicate on the periodic statement or in an accompanying document that the finance charge is or may be determined by multiplying each of the average daily balances by the number of days in the billing cycle (or if the daily rate varies, by multiplying the number of days that the applicable rate was in effect), multiplying each of the results by the applicable daily periodic rate, and adding the products together.

In explaining the method used to find the balance on which the finance charge is computed, the bank need not reveal how it allocates payments or credits. That information may be disclosed as additional information, but all required information must be clear and conspicuous.

Finance Charge Resulting from Two or More Periodic Rates

Some banks use more than one periodic rate in computing the finance charge. For example, one rate may apply to balances up to a certain amount and another rate to balances more than that amount. If two or more periodic rates apply, the bank must disclose all rates and conditions. The range of balances to which each rate applies also must be disclosed. It is not

necessary, however, to break the finance charge into separate components based on the different rates.

Annual Percentage Rate (Open-End Credit)

Accuracy Tolerance

The disclosed annual percentage rate (APR) on an open-end credit account is accurate if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z.

Determination of APR

The regulation states two basic methods for determining the APR in open-end credit transactions. The first involves multiplying each periodic rate by the number of periods in a year. This method is used for disclosing:

- The corresponding APR in the initial disclosures;
- The corresponding APR on periodic statements;
- The APR in early disclosures for credit card accounts;
- The APR in early disclosures for home-equity plans;
- The APR in advertising; and
- The APR in oral disclosures.

The corresponding APR is prospective. In other words, it does not involve any particular finance charge or periodic balance.

The second method is the quotient method, used in computing the APR for periodic statements. The quotient method reflects the annualized equivalent of the rate that was actually applied during a cycle. This rate, also known as the historical rate, will differ from the corresponding APR if the creditor applies minimum, fixed, or transaction charges to the account during the cycle.

If the finance charge is determined by applying one or more periodic rates to a balance, and does not include any of the charges just mentioned, the bank may compute the historical rate using the quotient method. In that method, the bank divides the total finance charge for the cycle by the sum of the

balances to which the periodic rates were applied and multiplies the quotient (expressed as a percentage) by the number of cycles in a year.

Alternatively, the bank may use the method for computing the corresponding APR. In that method, the bank multiplies each periodic rate by the number of periods in one year. If the finance charge includes a minimum, fixed, or transaction charge, the bank must use the appropriate variation of the quotient method. When transaction charges are imposed, the bank should refer to appendix F of this handbook for computational examples.

The regulation also contains a computation rule for small finance charges. If the finance charge includes a minimum, fixed, or transaction charge, and the total finance charge for the cycle does not exceed 50 cents, the bank may multiply each applicable periodic rate by the number of periods in a year to compute the APR.

Optional calculation methods also are provided for accounts involving daily periodic rates. (226.14(d))

Brief Outline for Open-End Credit APR Calculations

NOTE: Assume monthly billing cycles for each of the calculations below.

I. APR when finance charge is determined solely by applying one or more periodic rates:

   A. Monthly periodic rates:

      1. Monthly rate X 12 = APR

         or

      2. (Total finance charge ÷ applicable balance[1]) X 12 = APR
         This calculation may be used when different rates apply to different balances.

   B. Daily periodic rates:

      1. Daily rate X 365 = APR

         or

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1 If zero, no APR can be determined. The amount of applicable balance is the balance calculation method and may include the average daily balance, adjusted balance, or previous balance method.

2. (Total finance charge ÷ average daily balance) X 12 = APR

or

3. (Total finance charge ÷ sum of balances) X 365 = APR

II. APR when finance charge includes a minimum, fixed, or other charge that is not calculated using a periodic rate (and does not include charges related to a specific transaction, like cash advance fees):

A. Monthly periodic rates:

1. (Total finance charge ÷ amount of applicable balance[2]) X 12 = APR[3]

B. Daily periodic rates

1. (Total finance charge ÷ amount of applicable balance[1]) X 365 = APR[3]

2. The following may be used if at least a **portion** of the finance charge is determined by the application of a daily periodic rate. If not, use the formula above.

a. (Total finance charge ÷ average daily balance) X 12 = APR[3]

or

b. (Total finance charge ÷ sum of balances) X 365 = APR[3]

C. Monthly and daily periodic rates

1. If the finance charge imposed during the billing cycle does not exceed $.50 for a monthly or longer billing cycles (or pro rata part of $.50 for a billing cycle shorter than monthly), the APR may be calculated by multiplying the

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2 If zero, no APR can be determined. The amount of applicable balance is the balance calculation method and may include the average daily balance, adjusted balance, or previous balance method.

3 Loan fees, points, or similar finance charges that relate to the opening of the account must not be included in the calculation of the APR.

monthly rate by 12 or the daily rate by 365.

III. If the total finance charge included a charge related to a specific transaction (such as a cash advance fee), even if the total finance charge also included any other minimum, fixed, or other charge not calculated using a periodic rate, then the monthly and daily APRs are calculated as follows: (total finance charge ÷ the greater of: the transaction amounts that created the transaction fees or the sum of the balances and other amounts on which a finance charge was imposed during the billing cycle[4]) X number of billing cycles in a year (12) = APR[5]

Finance Charge (Closed-End Credit)

The aggregate total amount of the finance charge must be disclosed. Each finance charge imposed need not be individually itemized and must not be itemized with the segregated disclosures.

Annual Percentage Rate (Closed-End Credit)

Accuracy Tolerances

The disclosed APR on a closed-end transaction is accurate for:

- Regular transactions (which include any single advance transaction with equal payments and equal payment periods, or an irregular first payment period and/or a first or last irregular payment), if it is within one-eighth of 1 percentage point of the APR calculated under Regulation Z (226.22(a)(2)).

- Irregular transactions (which include multiple advance transactions and other transactions not considered regular), if it is within one-quarter of 1 percentage point of the APR calculated under Regulation Z (226.22(a)(3)).

4 The sum of the balances may include the average daily balance, adjusted balance, or previous balance method. Where a portion of the finance charge is determined by application of one or more daily periodic rates, sum of the balances also means the average of daily balances.

5 Cannot be less than the highest periodic rate applied, expressed as an APR.

Construction Loans

Construction and certain other multiple advance loans pose special problems in computing the finance charge and APR. In many instances, the amount and dates of advances are not predictable with certainty since they depend on the progress of the work. Regulation Z provides that the APR and finance charge for such loans may be estimated for disclosure.

At its option, the bank may rely on the representations of other parties to acquire necessary information (for example, it might look to the consumer for the dates of advances). In addition, if either the amounts or dates of advances are unknown (even if some of them are known), the bank may, at its option, use appendix D to the regulation to make calculations and disclosures. The finance charge and payment schedule obtained through appendix D may be used with volume one of the Federal Reserve Board's APR tables or with any other appropriate computation tool to determine the APR. If the bank elects not to use appendix D, or if appendix D cannot be applied to a loan (e.g., appendix D does not apply to a combined construction-permanent loan if the payments for the permanent loan begin during the construction period), the bank must make its estimates under 226.17(c)(2) and calculate the APR using multiple advance formulas.

On loans involving a series of advances under an agreement to extend credit up to a certain amount, a bank may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided before consummation.

In a transaction that finances the construction of a dwelling that may or will be permanently financed by the same bank, the construction-permanent financing phases may be disclosed in one of three ways listed below.

- As a single transaction, with one disclosure combining both phases.
- As two separate transactions, with one disclosure for each phase.
- As more than two transactions, with one disclosure for each advance and one for the permanent financing phase.

If two or more disclosures are furnished, buyer's points or similar amounts imposed on the consumer may be allocated among the transactions in any manner the bank chooses, as long as the charges are not applied more than once. In addition, if the bank chooses to give two sets of disclosures and the

consumer is obligated for both construction and permanent phases at the outset, both sets of disclosures must be given to the consumer initially, before consummation of each transaction occurs.

If the creditor requires interest reserves for construction loans, special appendix D rules apply that can make the disclosure calculations quite complicated. The amount of interest reserves included in the commitment amount must not be treated as a prepaid finance charge.

If the lender uses appendix D for construction-only loans with required interest reserves, the lender must estimate construction interest using the interest reserve formula in appendix D. The lender's own interest reserve values must be completely disregarded for disclosure purposes.

If the lender uses appendix D for combination construction-permanent loans, the calculations can be much more complex. Appendix D is used to estimate the construction interest, which is then measured against the lender's contractual interest reserves.

If the interest reserve portion of the lender's contractual commitment amount exceeds the amount of construction interest estimated under appendix D, the excess value is considered part of the amount financed if the lender has contracted to disburse those amounts whether they ultimately are needed to pay for accrued construction interest. If the lender will not disburse the excess amount if it is not needed to pay for accrued construction interest, the excess amount must be ignored for disclosure purposes.

Calculating the Annual Percentage Rate

The APR must be determined under one of the following:

- The actuarial method, which is defined by Regulation Z and explained in appendix J to the regulation.

- The U.S. Rule, which is permitted by Regulation Z and briefly explained in appendix J to the regulation. The U.S. Rule is an accrual method that seems to have first surfaced officially in an early nineteenth century United States Supreme Court case, Story v. Livingston (38 U.S. 359).

Whichever method is used by the bank, the rate calculated will be accurate if it is able to "amortize" the amount financed while it generates the finance charge under the accrual method selected. Banks also may rely on minor irregularities and accuracy tolerances in the regulation, both of which effectively permit somewhat imprecise, but still legal, APRs to be disclosed.

360-Day and 365-Day Years

Confusion often arises over whether to use the 360-day or 365-day year in computing interest, particularly when the finance charge is computed by applying a daily rate to an unpaid balance. Many single payment loans or loans payable on demand are in this category. There are also loans in this category that call for periodic instalment payments.

Regulation Z does not require the use of one method of interest computation in preference to another (although state law may). It does, however, permit banks to disregard the fact that months have different numbers of days when calculating and making disclosures. This means banks may base their disclosures on calculation tools that assume all months have an equal number of days, even if their practice is to take account of the variations in months to collect interest.

For example, a bank may calculate disclosures using a financial calculator based on a 360-day year with 30-day months, when, in fact, it collects interest by applying a factor of 1/365 of the annual interest rate to actual days.

Disclosure violations may occur, however, when a bank applies a daily interest factor based on a 360-day year to the actual number of days between payments. In those situations, the bank must disclose the higher values of the finance charge, the APR, and the payment schedule resulting from this practice.

For example, a 12 percent simple interest rate divided by 360 days results in a daily rate of .033333 percent. If no charges are imposed except interest, and the amount financed is the same as the loan amount, applying the daily rate on a daily basis for a 365-day year on a $10,000 one year, single payment, unsecured loan results in an APR of 12.17 percent (.033333% x 365 = 12.17%), and a finance charge of $1,216.67. There would be a violation if the APR were disclosed as 12 percent or if the finance charge were disclosed as $1,200 (12% x $10,000).

However, if there are no other charges except interest, the application of a 360-day year daily rate over 365 days on a regular loan would not result in an APR in excess of the one eighth of one percentage point APR tolerance unless the nominal interest rate is greater than 9 percent. For irregular loans, with one-quarter of 1 percentage point APR tolerance, the nominal interest rate would have to be greater than 18 percent to exceed the tolerance.

Variable Rate Information

If the terms of the legal obligation allow the bank, after consummation of the transaction, to increase the APR, the bank must furnish the consumer with certain information on variable rates. Graduated payment mortgages and step-rate transactions without a variable rate feature are not considered variable rate transactions. In addition, variable rate disclosures are not applicable to rate increases resulting from delinquency, default, assumption, acceleration, or transfer of the collateral.

Some of the more important transaction-specific variable rate disclosure requirements under 226.18 follow.

- Disclosures for variable rate loans must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation.

- If the variable rate transaction includes either a seller buydown that is reflected in a contract or a consumer buydown, the disclosed APR should be a composite rate based on the lower rate for the buydown period and the rate that is the basis for the variable rate feature for the remainder of the term.

- If the initial rate is not determined by the index or formula used to make later interest rate adjustments, as in a discounted variable rate transaction, the disclosed APR must reflect a composite rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation (i.e., the fully indexed rate).

  - If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the adjustment, from changing to the fully indexed rate, the effect of that rate or payment cap needs to be reflected in the disclosures.
  - The index at consummation need not be used if the contract provides a delay in the implementation of changes in an index value (e.g., the contract indicates that future rate changes are based on the index value in effect for some specified period, like 45 days **before** the change date). Instead, the bank may use any rate from the date of consummation back to the beginning of the specified period (e.g., during the previous 45-day period).

- If the initial interest rate is set according to the index or formula used for later adjustments, but is set at a value as of a date before

consummation, disclosures should be based on the **initial** interest rate, even though the index may have changed by the consummation date.

Variable rate consumer loans secured by the consumer's principal dwelling and having a maturity of more than one year are subject to special adjustable rate mortgage (ARM) disclosures of the regulation under sections 226.18(f)(2), .19(b) and .20(c).

Payment Schedule

The disclosed payment schedule must reflect all components of the finance charge. It includes all payments scheduled to repay loan principal, interest on the loan, and any other finance charge payable by the consumer after consummation of the transaction.

However, any finance charge paid separately before or at consummation (e.g., odd days' interest) is not part of the payment schedule. It is a prepaid finance charge that must be reflected as a reduction in the value of the amount financed.

At the creditor's option, the payment schedule may include amounts beyond the amount financed and finance charge (e.g., certain insurance premiums or real estate escrow amounts such as taxes added to payments). However, when calculating the APR, the creditor must disregard such amounts.

If the obligation is a renewable balloon payment instrument that unconditionally obligates the bank to renew the short-term loan at the consumer's option or to renew the loan subject to conditions within the consumer's control, the payment schedule must be disclosed using the longer term of the renewal period or periods. The long-term loan must be disclosed with a variable rate feature.

If there are no renewal conditions or if the bank guarantees to renew the obligation in a refinancing, the payment schedule must be disclosed using the shorter balloon payment term. The short-term loan must be disclosed as a fixed rate loan, unless it contains a variable rate feature during the initial loan term.

Amount Financed

Definition

The amount financed is the net amount of credit extended for the consumer's use. It should not be assumed that the amount financed under the regulation is equivalent to the note amount, proceeds, or principal amount of the loan. The amount financed normally equals the total of payments less the finance charge.

To calculate the amount financed, all amounts and charges connected with the transaction, either paid separately or included in the note amount, must first be identified. Any prepaid, precomputed, or other finance charge must then be determined.

The amount financed must not include any finance charges. If finance charges have been included in the obligation (either prepaid or precomputed), they must be subtracted from the face amount of the obligation when determining the amount financed. The resulting value must be reduced further by an amount equal to any prepaid finance charge paid separately. The final resulting value is the amount financed.

When calculating the amount financed, finance charges (whether in the note amount or paid separately) should not be subtracted more than once from the total amount of an obligation. Charges not in the note amount and not included in the finance charge (e.g., an appraisal fee paid separately in cash on a real estate loan) are not required to be disclosed under Regulation Z and must not be included in the amount financed.

In a multiple advance construction loan, proceeds placed in a temporary escrow account and awaiting disbursement in draws to the developer are not considered part of the amount financed until actually disbursed. Thus, if the entire commitment amount is disbursed into the lender's escrow account, the lender must not base disclosures on the assumption that all funds were disbursed immediately, even if the lender pays interest on the escrowed funds.

Required Deposit

A required deposit, with certain exceptions, is one which the bank requires the consumer to maintain as a condition of the specific credit transaction. It can include a compensating balance or a deposit balance that secures the loan. The effect of a required deposit is not reflected in the APR. Also, a required deposit is not a finance charge since it is eventually released to the

consumer. A deposit that earns at least 5 percent per year need not be considered a required deposit.

Calculating the Amount Financed

A consumer signs a note secured by real property in the amount of $5,435. The note amount includes $5,000 in proceeds disbursed to the consumer, $400 in precomputed interest, $25 paid to a credit reporting agency for a credit report, and a $10 service charge. Additionally, the consumer pays a $50 loan fee separately in cash at consummation. The consumer has no other debt with the bank. The amount financed is $4,975.

The amount financed may be calculated by first subtracting all finance charges included in the note amount ($5,435 – $400 – $10 = $5,025). The $25 credit report fee is not a finance charge because the loan is secured by real property. The $5,025 is further reduced by the amount of prepaid finance charges paid separately, for an amount financed of $5,025 – $50 = $4,975. The answer is the same whether finance charges included in the obligation are considered prepaid or precomputed finance charges.

The bank may treat the $10 service charge as an addition to the loan amount and not as a prepaid finance charge. If it does, the loan principal would be $5,000. The $5,000 loan principal does not include either the $400 or the $10 precomputed finance charge in the note. The loan principal is increased by other amounts that are financed which are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee, not the $10 service charge) to arrive at the amount financed of $5,000 + $25 – $50 = $4,975.

Other Calculations

The bank may treat the $10 service charge as a prepaid finance charge. If it does, the loan principal would be $5,010. The $5,010 loan principal does not include the $400 precomputed finance charge. The loan principal is increased by other amounts that are financed which are not part of the finance charge (the $25 credit report fee) and reduced by any prepaid finance charges (the $50 loan fee **and** the $10 service charge withheld from loan proceeds) to arrive at the same amount financed of $5,010 + $25 – $50 – $10 = $4,975.

Refinancings

When an obligation is satisfied and replaced by a new obligation to the original financial institution (or a holder or servicer of the original obligation) and is undertaken by the same consumer, it must be treated as a refinancing for which a complete set of new disclosures must be furnished. A refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the earlier one to be considered a refinancing under the regulation. The finance charge on the new disclosure must include any unearned portion of the old finance charge that is not credited to the existing obligation. (226.20(a))

The following transactions are not considered refinancings even if the existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer:

- A renewal of an obligation with a single payment of principal and interest or with periodic interest payments and a final payment of principal with no change in the original terms.
- An APR reduction with a corresponding change in the payment schedule.
- An agreement involving a court proceeding.
- Changes in credit terms arising from the consumer's default or delinquency.
- The renewal of optional insurance purchased by the consumer and added to an existing transaction, if required disclosures were provided for the initial purchase of the insurance.

However, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the bank:

- Increases the rate based on a variable rate feature that was not previously disclosed; or
- Adds a variable rate feature to the obligation.

If, at the time a loan is renewed, the rate is increased, the increase is not

considered a variable rate feature. It is the cost of renewal, similar to a flat fee, as long as the new rate remains fixed during the remaining life of the loan. If the original debt is not canceled in connection with such a renewal, the regulation does not require new disclosures. Also, changing the index of a variable rate transaction to a comparable index is not considered adding a variable rate feature to the obligation.

Adjustable Rate Mortgages

History and Requirements

National bank adjustable rate mortgage loans (ARMs) may be subject to the OCC's ARM regulation or to special variable rate provisions of the Federal Reserve Board's (FRB's) Regulation Z, or to both. The OCC's ARM regulation was issued originally in March 1981, as 12 CFR 29, and amended significantly on March 7, 1983.

To achieve greater uniformity among the ARM regulations of several financial regulatory agencies, the OCC's regulation was rewritten completely, effective March 11, 1988. The original Part 29 continued to be available until October 1, 1988. The revised regulation was incorporated into 12 CFR 34, which is the OCC's regulation governing real estate lending activities of national banks.

The revised OCC ARM regulation modified the definition of an adjustable rate mortgage, reduced the circumstances under which independent indexes are required, and deferred all ARM disclosure requirements to Regulation Z, as amended December 29, 1987. National banks were given until October 1, 1988, to bring existing programs into compliance with the ARM provisions of 12 CFR 34, subpart B, at which time 12 CFR 29 ceased to exist. Subpart B was again modified and simplified effective April 19, 1996.

The OCC's ARM regulation covers any extension of credit made by a national bank with an interest rate subject to adjustment and for the purpose of purchasing or refinancing the purchase of a one-to-four-family dwelling and secured by that dwelling. OCC ARMs may either be open-end or closed-end credit.

Loans subject to the ARM requirements of Regulation Z are closed-end consumer credit transactions secured by the consumer's **principal** dwelling with a maturity greater than one year and an APR that may increase. Regulation Z ARMs include purchase-money mortgage loans, as well as closed-end credit extended for other reasons (e.g., for home improvement).

See the "Summary of Coverage Rules for ARMs" in the appendix for a comparison of ARM coverage requirements between the OCC's ARM regulation and the closed-end ARM requirements of Regulation Z and see the "Timing of Truth in Lending Disclosures for ARM Loans" in the appendix for an outline of the timing of disclosures for ARMs.

The FRB's changes to Regulation Z, effective on December 18, 1987, require creditors to provide comprehensive information about the variable rate features of closed-end ARMs. National bank and other creditor compliance with the Regulation Z ARM amendments became mandatory on October 1, 1988.

With the regulatory changes that became mandatory October 1, 1988, the only national bank federal disclosure requirements that remained for open-end ARMs were the regular open-end credit disclosures required by Regulation Z. However, in November 1988, the Home Equity Loan Consumer Protection Act became law. That statute required the FRB to amend Regulation Z to include special disclosure requirements for any open-end consumer credit plan secured by the consumer's dwelling. Additional comprehensive disclosure requirements were also included for variable rate plans.

Credit subject to the variable rate disclosure provisions of the Home Equity Loan Consumer Protection Act are open-end consumer credit transactions with variable rates of interest secured by the consumer's dwelling. Such disclosure requirements would apply both to open-end credit consumer ARMs, as defined by the OCC, as well as to any other consumer home equity line of credit (HELC) secured by the consumer's dwelling. Also, the statute applies to both variable and fixed rate HELCs.

OCC's ARM Regulation

The OCC's ARM regulation is intended to encourage national bank participation in the residential mortgage market. It provides a flexible framework within which banks may design adjustable rate mortgages that best meet their needs and those of their borrowers. National banks may make long-term mortgage loans with interest rates that can be adjusted to reflect changes in their cost of funds. At the same time, the regulation protects consumers by requiring national banks, for certain consumer ARMs, to link interest rates to an independent index.

The OCC's ARM regulation permits national banks to design their own adjustable rate mortgage loan programs, subject to certain rules. Banks may offer more than one adjustable rate mortgage loan program as long as the various programs are offered to all borrowers in a manner that does not

discriminate on any prohibited basis. Banks may impose limitations that are more restrictive than those provided in the regulation. Also, banks may continue to offer fixed rate mortgages.

Balancing the flexibility desired by national banks, the regulation contains certain provisions to protect the interests of borrowers. Those provisions include requiring the use of an independent index for ARMs that are subject both to 12 CFR 34 and 12 CFR 226.19(b). Additionally, ARMs subject to 12 CFR 226.19(b) are required by Regulation Z to have early and comprehensive initial shopping disclosures, as well as notifications of interest rate changes. Disclosure requirements reflect the belief that the marketplace operates efficiently only if both buyers and sellers are well informed about the transaction. Consumers must be equipped to evaluate a variety of complex mortgage instruments, including adjustable rate mortgages. Initial shopping disclosures serve the dual purpose of educating consumers about the nature of ARMs and equipping them to shop for the appropriate one.

Subsequent notifications aid ARM borrowers in monitoring the paydown of their loans and determining whether changes in instalment payment amounts or rates of amortization best serve their needs. Because the regulation relies primarily on disclosure rather than restriction of ARM terms to provide for consumer protection, the OCC views failure to provide timely and substantively complete disclosures as a serious violation of the regulation.

1. To appraise the quality of the bank's compliance management system for the Truth in Lending Act and adjustable rate mortgage regulation.

2. To determine the reliance that can be placed on the bank's compliance management system, including internal controls and procedures performed by the person(s) responsible for monitoring the bank's compliance review function for the Truth In Lending Act and the adjustable rate mortgage regulation.

3. To determine the bank's compliance with the Truth In Lending Act and the OCC's adjustable rate mortgage regulation.

4. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

1. From the examiner who completed the compliance management system program, obtain information pertinent to the area of examination (historical examination findings, complaint information, and significant findings from compliance review and audit).

2. Through discussions with management and review of the following documents, determine whether the bank's internal controls are adequate to ensure compliance in the area under review. Identify procedures used daily to detect errors/violations promptly. Also, review the procedures used to ensure compliance when changes occur (e.g., changes in interest rates, service charges, computation methods, and software programs).

   - ☐ Organizational charts.
   - ☐ Process flowcharts.
   - ☐ Policies and procedures.
   - ☐ Loan documentation and disclosures.
   - ☐ Checklists/worksheets and review documents.
   - ☐ Computer programs.

3. Review compliance review and audit work papers and determine whether:

   a. The procedures used address all regulatory provisions (see Transactional Testing section).

   b. Steps are taken to follow up on previously identified deficiencies.

   c. The procedures used include samples that cover all product types and decision centers.

   d. The work performed is accurate (through a review of some transactions).

   e. Significant deficiencies, and the root cause of the deficiencies, are included in reports to management/board.

   f. Corrective actions are timely and appropriate.

   g. The area is reviewed at an appropriate interval.

Transactional Testing

NOTE: When verifying APR accuracies, use the OCC's APR calculation model located in the application model section of your computer.

GENERAL INSTRUCTIONS – WORKSHEET GUIDANCE

The worksheets in the appendix contain all the detailed requirements of the TILA and ARM Regulation. There are worksheets to assist in the review of advertising, the accuracy of preprinted disclosure forms, and the accuracy of account files, including any Internet loan activity. Each worksheet contains general guidance on how the form is to be used.

There may be cases in which multiple worksheets will be completed for a particular review. For example, if you are reviewing a sample of variable rate home improvement loans secured by a second deed lien, three work sheets need to be completed: the "Closed-End Credit File Review Worksheet," "Closed-End Credit Adjustable Rate Mortgage File Review Worksheet," and "Closed-End Credit Right of Rescission File Review Worksheet."

DISCLOSURE FORMS

4. Determine if the bank has changed any preprinted TILA disclosure forms or if there are forms that have not been previously reviewed for accuracy. If so:

   a. Refer to contracts, policies, procedures, and other information from the bank that document pricing and other terms.

   b. Verify the accuracy of each preprinted disclosure by completing worksheets 3, 4, 8, 9, and 10 in the appendix.

   Examples of the types of forms to test for accuracy are as follows:

   - Note and/or contract forms (including those furnished to dealers).
   - Credit card application and solicitation disclosures (226.5a(b)–(e)).
   - HELC disclosures (226.5b(d) and (e)).
   - Initial disclosures (226.6(a)–(d) and, if applicable, additional HELC disclosures (226.6(e)).
   - Statement of billing rights (226.9(a)).
   - ARM disclosures (226.19(b)).
   - Reverse mortgage disclosures (226.31(b)).

NOTE: Forms that include or involve current transactions, such as change in

terms notices, periodic billing statements, rescission notices, and billing error communications, are verified for accuracy when the file review worksheets are completed.

TIMING OF DISCLOSURES

5. Review bank policies, procedures, and systems to determine, either separately, or when completing the file review worksheets, whether the applicable disclosures listed below are furnished when required by Regulation Z. Take into account products that have different features, such as closed-end loans or credit card accounts that are fixed or variable rate.

   a. Credit card application and solicitation disclosures (226.5a(b)).

   b. HELC disclosures (226.5b(b)).

   c. Initial disclosures (226.5(b)(1)).

   d. Periodic disclosures (226.5(b)(2)).

   e. Statement of billing rights (226.9(a)).

   f. Supplemental credit devices (226.9(b)).

   g. Change in terms (226.9(c) and 226.31(c)(i)).

   h. Finance charge imposed at time of transaction (226.9(d)).

   i. Disclosures upon renewal of credit or charge card (226.9(e)).

   j. Change in credit account insurance provider (226.9(f)).

   k. Closed-end credit disclosures (226.17(b)).

   l. Disclosures for certain closed-end home mortgages (226.31(c)(1)).

   m. Disclosures for reverse mortgages (226.31(c)(2)).

ADVERTISING

6. Sample advertising copy for closed-end credits, including any Internet advertising, from the last 12 months and complete worksheet #1.

7. Sample the bank's home equity lines of credit (HELC) and other open-end credit advertising for the last 12 months, including any Internet advertising, and complete worksheet #2.

NOTE: Examiners may decide to coordinate efforts and have one examiner review advertising copy for all related lending sections (fair housing, truth in lending, ECOA, leasing, etc.).

RECORD RETENTION

8. Review the bank's record retention practices to determine whether evidence of compliance (for other than the advertising requirements) is retained for at least two years after the disclosures were required to be made or other action was required to be taken. (12 CFR 226.25)

CLOSED-END CREDIT

9. For each type of closed-end loan being tested complete worksheet #5. When completing the worksheet, determine the accuracy of the disclosures by comparing the disclosures to the contract and other bank documents.

10. For each type of closed-end rescindable loan being tested complete worksheet #7. If applicable, test rescission waivers.

11. For each type of adjustable rate mortgage being tested complete worksheet #6. For applicability these loans need to:

    a. Be subject to Regulation Z;

    b. Be secured by the borrower's one-to-four unit principal dwelling;

    c. Have a maturity of more than one year; and

    d. Have a variable rate feature.

OPEN-END CREDIT

12. Review the bank's policies, procedures, and practices to determine whether it provides appropriate disclosures for creditor-initiated direct mail applications and solicitations to open **charge card** accounts, telephone applications and solicitations to open **charge card** accounts, and applications and solicitations made available to the general public to open **charge card** accounts, as required by sections 226.5a(b), (c), and (d) of Regulation Z.

13. For each type of open-end credit account being tested, including HELCs, complete worksheets #7 and #11. When completing the worksheets, determine the accuracy of the disclosures by comparing the disclosure with the contract and other bank documents. Also, review a sample of billing error resolution files and a sample of consumers who have asserted a claim or defense against the bank for a credit card dispute regarding property or services.

14. Review two consecutive periodic billing statements for each major type of open-end credit activity offered (overdraft and home-equity lines of credit, credit card programs, etc.) and complete worksheet #14. Determine whether disclosures were calculated accurately and are consistent with the initial disclosure statement furnished in connection with the accounts (or any subsequent change in terms notice) and the underlying contractual terms governing the plan(s).

15. For each type of open-end HELC, subject to section 226.5b of Regulation Z, complete worksheet #12.

ADDITIONAL VARIABLE RATE TESTING

16. Verify that when accounts were opened or loans were consummated that loan contract terms were recorded correctly in the bank's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:

    a. Index value,

    b. Margin and method of calculating rate changes,

    c. Rounding method, and

    d. Adjustment caps (periodic and lifetime).

17. Using a sample of periodic disclosures for open-end variable rate accounts (e.g., home equity accounts) and closed-end rate change notices for adjustable rate mortgage loans (use the appropriate worksheets when completing this step):

    a. Compare the rate-change date and rate on the credit obligation to the actual rate-change date and rate imposed.

    b. Determine that the index disclosed and imposed is based on the terms of the contract (example: the weekly average of one-year Treasury constant maturities, taken as of 45 days before the change date.). (12 CFR 226.7(g) and 12 CFR 226.20(c)(2))

    c. Determine that the new interest rate is correctly disclosed by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment. (12 CFR 226.7(g) and 12 CFR 226.20 (c)(1))

    d. Determine that the new payment disclosed (12 CFR 226.20(c)(4)) was based on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract). (12 CFR 226.20(c))

CERTAIN HOME MORTGAGE TRANSACTIONS

18. For a sample of high cost and reverse mortgage loans, complete worksheet #13.

19. Summarize findings from the worksheets and the previous procedural steps to assess the bank's level of compliance with the requirements of the TILA and ARM regulation and to evaluate the bank's consistency in following its contractual provisions.

ADMINISTRATIVE ENFORCEMENT

20. If there is noncompliance involving understated finance charges or understated APRs subject to reimbursement under the FFIEC Policy Guide on Reimbursement (policy guide), continue with step 23. Otherwise, go to step 25.

21. Document the date on which the administrative enforcement of the TILA policy statement would apply for reimbursement purposes by determining the date of the preceding examination in which compliance with TILA, Regulation Z, and 12 CFR 226, was reviewed. For banks in

the jurisdiction of the U.S. Court of Appeals for the Eighth Circuit (see discussion in the introduction), use the date of the last examination (of any kind).

22. If the noncompliance involves indirect (third-party paper) disclosure errors and affected consumers have not been reimbursed:

    a. Prepare comments, discussing the need for improved internal controls to be included in the report of examination.

    b. Notify your supervisory office for followup with the regulator that has primary responsibility for the original creditor.

    If the noncompliance involves direct credit:

    c. Make an initial determination whether the violation is a pattern or practice.

    d. Calculate the reimbursement for the loans or accounts in an expanded sample of the identified population.

    e. Estimate the total impact on the population based on the expanded sample.

    f. Inform management that reimbursement may be necessary under the law and the policy guide, and discuss all substantive facts including the sample loans and calculations.

    g. Inform management of the bank's options under section 130 of the TILA for avoiding civil liability and of its option under the policy guide and section 108 (e)(6) of the TILA for avoiding an OCC order to reimburse affected borrowers.

CONCLUSIONS

23. Summarize here **all** violations of law, regulation or ruling and identified contract problems and use when making SMS entries. Refer to EC 263, "SMS Documentation Policy."

	Citation	Department	Violation	Recommendation	Policy Guide	Reference
a.	________	__	__	__	__	__
b.	________	__	__	__	__	__
c.	________	__	__	__	__	__
d.	________	__	__	__	__	__
e.	________	__	__	__	__	__

24. If the violations noted above represent a pattern or practice, determine the root cause by identifying weaknesses in internal controls, compliance review, training, management oversight, or other factors. Consider whether civil money penalties (CMP), suspicious activity reporting, or an enforcement action should be recommended (see CMP matrix).

25. Identify action needed to correct violations and weaknesses in the bank's compliance system, as appropriate. Form a conclusion about the reliability of the compliance system for the area under review and provide conclusions to the examiner performing the compliance management system program.

26. In consultation with the examiner-in-charge, determine if violations or deficiencies in the compliance system are significant enough to merit bringing them to the board's attention in the report of examination. If so, prepare items for inclusion under the heading "Matters Requiring Board Attention" and under a Type 75 Followup Analysis.

27. Determine whether any items identified during this examination could materialize into a supervisory concern before the next examination using the examination procedures (consideration should be given to any planned increase in activity in this area, planned personnel changes, planned policy changes, planned changes to outside auditors or consultants, planned changes in business strategy, etc.) If so, summarize your concerns and assess the potential risk to the institution and discuss with the examiner-in-charge and/or appropriate bank personnel.

28. Discuss findings with bank management and obtain commitment(s) for corrective action.

Closed-End Credit Advertising Worksheet #1

This worksheet should be completed and made part of the work papers. To complete, review advertising files and place a check in each applicable box. All no answers indicate a possible violation of law and must be explained fully in the work papers. You also may insert an N/A if the line item is not applicable.

Closed-End Credit Advertising Worksheet											
	Identify Advertisement										
	Type of Advertisement										
	Date or Period Run	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1.	If terms are specific, were these terms actually available at time of advertisement ? [226.24(a)]										
2.	If the advertisement states a rate of finance charge, is it stated as an "APR ?" [226.24(b)]										
3.	If the APR is stated and may be increased after consummation, does the advertisement state that fact ? [226.24(b)]										
4.	If triggering terms are used, as defined under 226.24(c)(1), are the required disclosures made as applicable: a. The down payment (credit sales only) ? [226.24(c)(2)(i)] b. The terms of repayment ? [226.24(c)(2)(ii)] c. The APR, using that term ? [226.24(c)(2)(iii)] d. If the APR is stated and may be increased after consummation, does the ad state that fact ? [226.24(c)(2)(iii)]										

Open-End/Home Equity Line of Credit Advertising Worksheet #2

This worksheet should be completed and made part of the work papers. To complete, review advertising files and place a check in each applicable box. All no answers indicate a possible violation of law and must be explained fully in the work papers. You can also insert an NA if the line item is not applicable.

Open-End/Home Equity Line of Credit (HELC) Advertising Worksheet										
Identify Advertisement										
Type of Advertisement										
Date or Period Run	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. If terms are specific, were these terms actually available at time of advertisement? [226.16(a)]										
2. If triggering terms were used on any open-end plan, did the advertisement contain the following: [226.6(a), 226.6(b)] a. Any minimum, fixed, or transaction fee that could be imposed? [226.16(b)(1)] b. The corresponding APR(s) when one or more periodic rates are used? [226.16(b)(2)] c. Any membership or participation fee that could be imposed? [226.16(b)(3)]										

Open-End/Home Equity Line of Credit (HELC) Advertising Worksheet										
Identify Advertisement										
Type of Advertisement										
Date or Period Run	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
3. If triggering terms were used per 226.6(a), 226.6(b) for home equity plans (whether triggering terms are set forth affirmatively or negatively) did the advertisement include the following: a. Any loan fee that is a percentage of the credit limit? [226.16(d)(1)(i)] b. An estimate of any fees for opening the plan, stated as a single dollar amount or range? [226.16(d)(1)(i)] c. The periodic rate stated as an annual percentage rate(s)? [226.16(d)(1)(ii)] d. If the plan provides for a variable periodic rate, the highest APR that may be imposed? [226.16(d)(1)(iii)]										
4. If a discounted or premium rate plan, does the advertisement state a reasonably current, fully indexed rate with equal prominence, and how long the rate will be in effect? [226.16(d)(2)]										
5. If a minimum periodic payment is disclosed, does the ad disclose, if applicable, that a balloon payment may result? [226.16(d)(3)]										

Open-End/Home Equity Line of Credit (HELC) Advertising Worksheet											
	Identify Advertisement										
	Type of Advertisement										
	Date or Period Run	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
6.	If there's a reference to tax deductibility, does the reference refrain from misleading language? 226.16(d)(4))										
7.	Does all of the bank's HELC advertising refrain from misleading terms, such as referring to the HELC as "free money?" [226.16(d)(5)]										

Closed-End Credit Forms Review Worksheet #3

This worksheet should be completed and made part of the work papers. To complete, review applicable forms and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an NA if the line item is not applicable.

Closed-End Credit Forms Review Worksheet										
Product Type										
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are disclosures clear, conspicuous, grouped, and segregated? [226.17(a)(1)]										
2. Are terms more conspicuous (Finance Charge and APR)? [226.17(a)(2)]										
3. Is the creditor identified (may be apart from other disclosures)? [226.18(a)]										
4. Is there a brief description of the finance charge? [226.4 and 226.18(d)]										
5. Is there a brief description of the APR? [226.18(e)]										
6. For non-ARMs (variable rate), do the disclosures include (226.18(f)(1)): a. Circumstances which permit rate increase? [226.18(f)(1)(i)] b. Limitations on the increase: – Periodic? [226.18(f)(1)(ii)] – Lifetime? [226.18(f)(1)(ii)] c. Effects of increase? [226.18(f)(1)(iii)] d. Hypothetical example of new payment terms? [226.18(f)(1)(iv)]										
7. Is the payment schedule included? [226.18(g)]										

Closed-End Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8. Unless it's a single payment loan, is the "Total of Payments" included and described? [226.18(h)]										
9. If applicable, is a demand feature disclosed? [226.18(i)]										
10. If it's a credit sale, is the total sales price included and described? [226.18(j)]										
11. Does the disclosure include whether or not a penalty/rebate is imposed for prepayment? [226.18(k)]										
12. If applicable, is the late payment charge (dollar amount or percent) disclosed? [226.18(l)]										
13. If applicable, is there a security interest disclosure? [226.18(m)]										
14. If the credit life insurance premium has been excluded from the finance charge, has the bank: a. Disclosed that insurance coverage is not required? b. Disclosed the premium for initial term? c. Obtained the signature or initials as an affirmative request for the insurance? [226.18(n) and 226.4(d)]										

Closed-End Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
15. If the property insurance premium has been excluded from finance charge, has the bank: a. Disclosed that the consumer may choose the insurance company? b. Disclosed the cost of the insurance for the initial term if available from or through the bank? [226.18(n) and 226.4(d)]										
16. Are the disclosures required under 226.4(e) to exclude the filing fee or certain insurance premiums from the finance charge provided? [226.18(o)]										
17. Is there a statement referring to the contract document? [226.18(p)]										
18. For residential mortgage transactions, is there an appropriate assumption disclosure? [226.18(q)]										
19. If a deposit is required as a condition of the transaction, has the bank disclosed that the APR does not reflect its effect? [226.18(r)]										

Closed-End Credit Adjustable Rate Mortgage Forms Review Worksheet #4

This worksheet should be completed and made part of the work papers. To complete, review files and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an NA if the
line item is not applicable.

Disclosures for this section apply to variable rate loans or adjustable rate mortgages (ARMs) with a maturity greater than one year secured by the principal dwelling of the borrower.

Closed-End Credit Adjustable Rate Mortgage Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Is the fact that the note contains a variable rate feature disclosed? [226.18(f)(2)]										
2. Is there a statement that variable rate disclosures (listed below) were provided earlier – either at time of application or before consumer paid any nonrefundable fee? [226.19(b)]										
DISCLOSURE AT TIME OF APPLICATION (one for each program offered) 226.19(b)(2)										
3. Is the booklet entitled "Consumer Handbook on ARM," or a substitute provided? [226.19(b)(1)]										
4. Does the disclosure include a statement that interest rate payment or the term can change? [226.19(b)(2)(i)]										
5. Is the index/formula with source of information disclosed? [226.19(b)(2)(ii)]										
6. Is an explanation of the interest rate/payment determination and margin disclosed? [226.19(b)(2)(iii)]										
7. Does the disclosure iclude a statement that the consumer should ask for the current margin and interest rate? [226.19(b)(2)(iv)]										

Closed-End Credit Adjustable Rate Mortgage Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8. Does the disclosure include the fact that interest rate is discounted, if applicable? [226.19(b)(2)(v)]										
9. Is the frequency of interest rate and payment changes disclosed? [226.19(b)(2)(vi)]										
10. Are the rules relating to changes disclosed? [226.19(b)(2)(vii)]										
11. Is an historical example disclosed? [226.19(b)(2)(viii)]										
12. Is an explanation of how the loan payment can be figured, based on example, disclosed? [226.19(b)(2)(ix)]										
13. Is the initial and maximum interest rate and payment disclosed? [226.19(b)(2)(x)]										
14. Is the fact that the loan program contains a demand feature disclosed? [226.19(b)(2)(xi)]										
15. Is information on, and timing of, adjustment notices disclosed? [226.19(b)(2)(xii)]										
16. Is there a statement of "other variable rate loan program disclosures available?" [226.19(b)(2)(xiii)]										

Closed-End Credit File Review Worksheet #5

This worksheet should be completed and made part of the work papers. To complete, review loan files and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

This worksheet contains all the standard closed-end credit disclosure requirements and should be used with the other closed-end worksheets.

Closed-End Credit File Review Worksheet										
Product Type Name of Borrower Account Number	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are disclosures furnished before consummation? [226.17(b)]										
2. Is the amount financed disclosed and accurate? [226.18(b)]										
3. Is there a separate itemization of the amount financed (RESPA-GFE, if applicable, may be substituted)? [226.18 (c)]										
4. Is the APR disclosed? [226.18(e) and footnote 42.]										
5. Are the following required disclosures on non-ARMs provided ? 226.18(f)(1) a. Circumstances which permit rate increase? [226.18(f)(1)(i)] b. Limitations on the increase: – Periodic? [226.18(f)(1)(ii)] – Lifetime? [226.18(f)(1)(ii)] c. Effects of increase? [226.18(f)(1)(iii)] d. Hypothetical example of new payment terms? [226.18(f)(1)(iv)]										

Closed-End Credit File Review Worksheet										
Product Type Name of Borrower Account Number	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
6. Is the payment schedule (amount, timing, and number of payments) provided and accurate? [226.18(g)]										
7. Is the total of payments accurate? [226.18(h)]										
8. If a credit sale, is the total sale price accurate? [226.18(j])										
9. Is the security interest described accurately? [226.18(m)]										
10. Is the credit life insurance premium for the initial term accurately disclosed? [226.18(n) and 226.4(d)]										
11. If property insurance is available from or through the creditor, is the cost of insurance for the initial term accurately disclosed? [226.18(n) and 226.4(d)]										
12. Are deposits required for credit transactions disclosed accurately? [226.18(r)]										
13. Are bona fide and reasonable REM closing fees excluded from the disclosed finance charge? [226.4(c)(7)]										
14. Is the finance charge accurate? [226.4, 226.18(d) and footnote 41].										
15. Is the APR calculated correctly? [226.22(a)]										
16. Is the maximum interest rate in the contract (variable rate mortgage) disclosed? [226.30(a)]										

Closed-End Credit Adjustable Rate Mortgage File Review Worksheet #6

This worksheet should be completed and made part of the work papers. To complete, review applicable loan files and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

Disclosures for this section apply to adjustable rate loans with a maturity greater than one year secured by the principal dwelling of the borrower.

Closed-End Credit Adjustable Rate Mortgage File Review Worksheet										
Name of Borrower Account Number										
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. For residential mortgage transactions subject to RESPA, did the bank provide early disclosures? [226.19(a)(1)]										
2. Was the booklet entitled "Consumer Handbook on ARM" or a substitute provided? [226.19(b)(1)]										
3. If the transaction is an ARM under 34.20 and an ARM under 226.19(b), does the contract contain an independent index? (12 CFR 34.22)										
SUBSEQUENT DISCLOSURES										
4. Were subsequent disclosures mailed in accordance with [226.20(c)] timing requirements?										
5. Were current and prior interest rates provided (verify accuracy of rates used)? [226.20(c)(1)]										
6. Were index values provided on which interest rates are based (verify accuracy of indexes used)? [226.20(c)(2)]										
7. Was the extent to which the creditor has foregone an interest rate increase disclosed (only if carryover exists)? [226.20(c)(3)]										

Closed-End Credit Adjustable Rate Mortgage File Review Worksheet										
Name of Borrower Account Number	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8. Are the contractual effects of the adjustment disclosed, including the new payment amount and a statement of the loan balance? [226.20(c)(4)]										
9. Is the payment required to avoid negative amortization disclosed? [226.20(c)(5)]										

Closed-End and Open-End Credit Right of Rescission File Review Worksheet #7

This worksheet should be completed and made part of the work papers. To complete, review applicable loan files and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

This worksheet is used for both closed- and open-end loans subject to Regulation Z that are secured by the consumer's principal dwelling. Requirements for closed- and open-end loans are found in 12 CFR 226.23 and 12 CFR 226.15, respectively. (NOTE: Loans not subject to rescission include business purpose credit, refinancings in which no new money is advanced, and residential mortgage transactions.)

Closed- and Open-End Credit Right of Rescission Worksheet										
Product Type: Name of Borrower Loan/Account # Type of Credit (closed or open)	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Were two copies to each person entitled to rescind furnished? [226.23(b) or 226.15(b)]										
2. Does the rescission notice identify the transaction? [226.23(b) or 226.15(b)]										
3. Does the rescission notice disclose the date the rescission period expires? [226.23(b)(5) or 226.15(b)(5)]										
5. Was funding delayed (except into escrow) until the rescission period expired? [226.23(c) or 226.15(c)]										
6. Are waivers of the right to rescind appropriate? [226.23(e) or 226.15(e)]										
7. Internal controls: a. Does the consumer sign and date the notice?										

Open-End Credit Forms Review Worksheet #8

This worksheet should be completed and made part of the work papers. To complete, review files and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

Open-End Credit Forms Review Worksheet

Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
INITIAL DISCLOSURES										
1. Is there a statement of when the finance charge is to accrue and if a grace period exists? [226.6(a)(1)]										
2. Is there a disclosure of periodic rates used and corresponding APR? [226.6(a)(2)]										
3. Is the method to determine the balance provided and explained? [226.6(a)(3)]										
4. Is the method to determine any finance charge(s) provided and explained? [226.6(a)(4)]										
5. Is a statement of the amount of other charges provided? [226.6(b)]										
6. Has the fact that the creditor has or will acquire a security interest in the property purchased or other property identified by item or type been disclosed? [226.6(c)]										
7. Is there a statement detailing consumer billing rights? [226.6(d)]										
8. For HELC plans, are conditions for terminating the plan, for prohibiting additional credit, for reducing the credit limit and for implementing changes provided? [226.6(e)(1)]										

Open-End Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9. Are the payment terms provided (if terms for draw and repayment period are different, the terms for each must be disclosed, as applicable), including: a. The length of the draw period and any repayment period? b. An explanation of how the minimum periodic payment will be computed? c. The timing of periodic payments? d. If the periodic payment repays less than the balance or does not reduce principal (e.g., interest only payments), a statement of that fact and that a balloon payment may or will result, as applicable? [12 CFR 226.6(e)(2)]										
10. Is a statement provided, if applicable, that negative amortization might occur, and that it increases the principal balance and reduces the consumer's equity in the dwelling? [226.6(e)(3)]										
11. Is a statement of transaction requirements provided? [226.6(e)(4)]										
12. Is a statement about tax advisor provided? [226.6(e)(5)]										
13. Is a statement that the APR does not include costs other than interest provided? [226.6(e)(6)]										

Open-End Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
14. For variable rate loans, are the following disclosures provided: a. The rules relating to changes to the index, APR and payment amount, including information on payment limitations, negative amortization, and carryover? b. The minimum payment required (for both the draw and repayment periods) when the maximum APR is in effect for a $10,000 balance and when the maximum APR may be imposed? c. A table based on a $10,000 balance, reflecting all significant plan terms and showing how the APR and the minimum periodic payment amount would have been affected during the most recent 15 years by changes in the index? d. A statement that rate information will be provided on or with each periodic statement? [226.6(e)(7)] NOTE: This redisclosure (steps 9-14) may not be needed if it was provided with the application in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.										
15. Is the maximum interest rate disclosed (variable rate)? [226.30(b)]										
SUBSEQUENT DISCLOSURE REQUIREMENTS per. [226.9]										

Open-End Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
16. Does the bank furnish the annual statement of billing rights? [226.9(a)(1)] or										
17. Is an alternative summary statement provided? [226.9(a)(2])										
18. Are changes in terms disclosed? [226.9(c)]										

Home Equity Line of Credit Forms Review Worksheet #9

This worksheet should be completed and made part of the work papers. To complete, review applicable forms and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

Use this worksheet to review forms for disclosure at time of application and initial disclosures.

Home Equity Line of Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are disclosures segregated, clear, and conspicuous? [226.5b(a)(1)]										
2. Is a home equity brochure provided? [226.5b(e)]										
3. Is there a disclose that the consumer should retain a copy of the disclosures? [226.5b(d)(1)]										
4. Is the time by which to obtain the specific terms disclosed? [226.5b(d)(2)(i)]										
5. Is there a disclosure that terms are subject to change before the plan opens? [226.5b(d)(2)(i)]										
6. Does the disclosure state that the consumer may receive a refund of all fees? [226.5b(d)(2)(ii)]										
7. Does the disclosure state that the consumer's dwelling secures the HELC? [226.5b(d)(3)]										
8. Does it state that the loss of the dwelling may occur? [226.5b(d)(3)]										
9. Does it state the creditor's right to change, freeze, or terminate the account? [226.5b(d)(4)(i)]										

Home Equity Line of Credit Forms Review Worksheet										
Product Type										
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
10. Does it include a statement that information about conditions for adverse action is available on request? [226.5b(d)(4)(ii)]										
11. Does it include payment terms? [226.5b(d)(5)]										
12. For fixed rate plans, is a recent corresponding APR and a statement that each disclosed APR does not include costs other than interest provided? [226.5b(d)(6)]										
13. Is an itemization provided of fees to open, use, or maintain the plan and when such fees are payable? [226.5b(d)(7)]										
14. Is an estimate provided of fees imposed by third parties to open the account? [226.5b(d)(8)]										
15. Is a statement provided that the consumer may receive a good faith itemization of third party fees? [226.5b(d)(8)]										
16. Is a statement provided about negative amortization? [226.5b(d)(9)]										
17. Are transaction requirements under the plan disclosed? [226.5b(d)(10)]										
18. Is a statement on consulting a tax advisor included? [226.5b(d)(11)]										
VARIABLE RATE DISCLOSURE REQUIREMENTS – Sections 226.5b(d)(12)(i) through (d)(12)(xii)										
19. Is the fact that the APR, payment, or term may change disclosed? [226.5b(d)(12)(i)]										
20. Does the disclosure state that the APR excludes costs other than interest ? [226.5b(d)(12)(ii)]										

Home Equity Line of Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
21. Is the index identified and its source disclosed? [226.5b(d)(12)(iii)]										
22. Does the disclosure state how the rate will be determined? [226.5b(d)(12)(iv)]										
23. Does the disclosure state that the consumer should request information on the current index value, margin, discount, premium, or APR? [226.5b(d)(12)(v)]										
24. If applicable, does the disclosure state that the initial rate is discounted and the duration of the discount? [226.5b(d)(12)(vi)]										
25. Is the frequency of APR changes disclosed? [226.5b(d)(12)(vii)]										
26. Are the rules relating to changes in the index, APR, and payment amount disclosed? [226.5b(d)(12)(viii)]										
27. Does the disclosure include the lifetime rate cap and any annual (or more frequent) caps, or a statement that there is no annual limitation? [226.5b(d)(12)(ix)]										
28. Is the minimum payment requirement, using the maximum APR, and when the maximum APR may be imposed disclosed? [226.5b(d)(12)(x)]										
29. Is a table, based on a $10,000 balance, reflecting all significant plan terms included? [226.5b(d)(12)(xi)]										
30. Is there a statement that rate information will be provided on or with each periodic statement? [226.5b(d)(12)(xii)]										

Home Equity Line of Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
LIMITATIONS ON HOME EQUITY PLANS										
31. For variable rate accounts, is the APR based on an independent index? [226.5b(f)(1)(i)]										
32. Are accounts terminated only under the following conditions: a. There is fraud or material misrepresentation by the **consumer** in connection with the plan at any time, including during the application process, the draw period, or any repayment period? b. The **consumer** fails to meet repayment terms of the plan? c. The **consumer** takes action or fails to act in a manner that adversely affects the bank's security for the plan or any right in the security? [226.5b(f)(2)] NOTE: Regulation O requires, and Regulation Z permits, a demand feature in executive officer plans.										

Home Equity Line of Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
33. Are the terms of an account only changed under the following circumstances: a. A specified change occurs when a specific event takes place, as provided for in the initial agreement? b. The index or margin is changed because the original index is no longer available? c. The consumer specifically agrees to a specified change in writing at the time of the change? d. Any change unequivocally will benefit the consumer? e. Changes made to the terms are insignificant? [226.5b(f)(3)(i)-(v)]										

Home Equity Line of Credit Forms Review Worksheet										
Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
34. Is the credit limit reduced, or are additional extensions of credit prohibited, only under the following circumstances: a. The value of the dwelling securing the plan declines significantly? b. The consumer's financial circumstances change materially? c. The consumer defaults on any material obligation under the agreement? d. Government action restricts an APR increase? e. The bank's security interest is adversely affected because of government action to the extent that the security value is less than 120 percent of the credit line? f. The bank is notified by a regulatory agency that continued advances constitute an unsafe and unsound practice? [226.5b(f)(3)(vi)]										

Credit Card Forms Review Worksheet #10

This worksheet should be completed and made part of the work papers. To complete, review files and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

This worksheet is to be completed for general applications as well as creditor initiated direct mail applications and preapproved solicitations.

Credit Card Forms Review Worksheet										
Product Identification Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Is the APR for purchases in the table? [226.5a(b)(1)]										
2. Is the fee for issuance or availability of a card in the table? [226.5a(b)(2)]										
3. Is the minimum finance charge in the table? [226.5a(b)(3)]										
4. Are transaction fees for purchases in the table? [226.5a(b)(4)]										
5. Is the length of the "grace period" in the table? [226.5a(b)(5)]										
6. Is the name (or explanation) of the balance computation method in the table? [226.5a(b)(6)]										
7. Is the amount of cash advance fees included? [226.5a(b)(8)]										
8. Are late payment charges included? [226.5a(b)(9)]										
9. Are fees for exceeding the credit limit included? [226.5a(b)(10)]										
10. Are disclosures for creditor-initiated telephone applications and preapproved solicitations to open credit card accounts provided? [226.5a(d)]										

Credit Card Forms Review Worksheet										
Product Identification Product Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
11. In the case of applications or soliciations made available to the general public, does the bank make one of the optional disclosures? [226.5a(e)]										
12. Are renewal disclosures provided? [226.9(e)(1])										
13. Are credit insurance disclosures provided when the insurance provider is changed? [226.9(f)]										

Open-End Credit File Review Worksheet #11

This worksheet should be completed and made part of the work papers. To complete, review applicable forms and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

Open-End Credit File Review Worksheet										
Name of Borrower Account #										
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Does the bank promptly credit payments? [226.10]										
2. Is the treatment of credit balances appropriate? [226.11]										
3. Does the bank issue credit cards only upon request? [226.12(a)]										
4. Does the bank limit liability for unauthorized credit card use to a maximum of $50? [226.12(b)(1)]										
5. Does the bank handle disputes properly? Also, determine if the bank reports the disputed amount withheld by the consumer as delinquent only if the disputed amount remains unpaid after the dispute has been settled or judgment has been rendered against the consumer. [226.12(c)]										
6. Is offsetting credit card indebtedness prohibited? [226.12(d)(1)]										
7. Are billing errors resolved within two complete billing cycles (in no event more than 90 days)? [226.13(c)(2)]										
8. Does the bank wait until the billing error is resolved to: collect the amount in error; report the account as delinquent; or make, or threaten to make, an adverse credit report? [226.13(d)(1)&(2)]										

Home Equity Line of Credit File Review Worksheet #12

This worksheet should be completed and made part of the work papers. To complete, review applicable loan files and place a check in each applicable box. All "no" answers indicate a possible violation of law and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

Home Equity Line of Credit File Review Worksheet										
Name Loan #	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Is a written notice of adverse change in terms provided within three business days? [226.9(c)(3)]										
2. Are all fees refunded when the consumer rejects the plan because a disclosed term changes before the plan is opened? [226.5b(g)]										
3. Does the bank collect only refundable fees, if any, from the consumer before the end of three business days from delivering the disclosures (six days from the date of mailing, if mailed)? [226.5b(h)]										
4. Has the bank refunded any fees that it collected from the consumer before it delivered the required disclosures if the consumer rejected the plan within three business days after receiving the disclosures (even if there is no change in the disclosed terms)? [226.5b(h)]										

Special Rules for Certain Home Mortgage Transactions (High Cost and Reverse Mortgages) File Review Worksheet #13

This worksheet should be completed and made part of the work papers. To complete, review applicable forms and place a check in each applicable box. All "no" answers indicate a possible violation of law for either the form or processing and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

Special Rules for Certain Home Mortgage Transactions										
Product Type Name of Borrower Loan # or Account #	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
FOR CERTAIN CLOSED-END HOME MORTGAGES (226.32)										
1. Does the bank disclose: a. Notices? [226.32(c)(1)] b. APR? [226.32(c)(2)] c. Regular payment? [226.32(c)(3)] d. Variable rate? [226.32(c)(4)]										
2. Are these terms absent from the mortgage transaction: a. Balloon payment (if term is less than five years)? [226.32(d)(1)] b. Negative amortization? [226.32(d)(2)] c. Advance payments of more than two periodic payments? [226.32(d)(3)] d. Increased interest rate after default? [226.32(d)(4)] e. Rule of 78s rebates arising from a loan acceleration due to default? [226.32(d)(5)] f. Prepayment penalties (unless conditions are met)? [226.32(d)(6)]										

Special Rules for Certain Home Mortgage Transactions										
Product Type Name of Borrower Loan # or Account #	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
3. Does the bank: a. Only make loans to consumers who are qualified to make the scheduled payments? [226.32(e)(1)] b. Pay a contractor under a home improvement contract from mortgage proceeds only as provided? [226.32(e)(2)] c. Sell or assign a mortgage only when furnishing the required statement? [226.32(e)(3)]										
4. Are waivers to the waiting period appropriate, and do they reflect the signature of all the consumers entitled to the waiting period? [226.31(c)(1)(iii)]										
REVERSE MORTGAGES (Open- and Closed-End) (226.33)										
5. Are disclosures substantially similar to the model form in appendix K, and include: a. Notice? [226.33(b)(1)] b. Total annual loan cost rates? [226.33(c)(1) - (c)(6)] c. Itemization of pertinent information? [226.33(b)(3)] d. Explanation of table? [226.33(b)(4)]										

Periodic Billing Statements File Review Worksheet #14

This worksheet, if used, should be completed and made part of the work papers. To complete, review applicable forms and place a check in each applicable box. All "no" answers indicate a possible violation of law for either the form or processing and must be explained fully in the work papers. You can insert an N/A if the line item is not applicable.

Used for all open-end credit products; forms review by product type and sample review by loan name.

Periodic Billing Statements Worksheet										
Product Type/Borrower's Name Account Number	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are transactions identified and accurate? [226.7(b) and 226.8]										
2. Are the date and amount of credit to account disclosed accurately? [226.7 (c)]										
3. Are the periodic rate and APR stated and accurate? If it's a variable rate plan, is the fact that the periodic rates may vary disclosed? [226.7(d)]										
4. Is the amount of balance subject to the periodic rate and an explanation of how the balance is determined disclosed? [226.7(e)]										
5. Is the finance charge term disclosed and accurate? [226.7(f)]										
6. Is the amount of the finance charge imposed during the billing cycle individually itemized and identified? [226.7(f)]										
7. Are the amounts of any other charges debited to the account itemized, identified by type, and accurately disclosed? [226.7(h)]										
8. Are the account balance and closing date disclosed and accurate? [226.7(i)]										

Periodic Billing Statements Worksheet										
Product Type/Borrower's Name Account Number	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9. Is the payment date disclosed if there is a "free ride" period? [226.7(j)]										
10. Is the APR disclosed using that term? [226.7(g)]										
11. Does it include the address for notice of billing errors? [226.7(k)]										

Interagency Policy Statement – Restitution (Policy Guide)

The Depository Institutions Deregulation and Monetary Control Act of 1980 was enacted on March 31, 1980. The Truth in Lending Simplification and Reform Act amends the Truth in Lending Act, 15 USC 1601 et seq. effective March 31, 1980, and authorizes the federal truth-in-lending enforcement agencies to order creditors to make monetary and other adjustments to consumers' accounts when an APR or finance charge was inaccurately disclosed.

It generally requires the agencies to order restitution when such disclosure errors result from a clear and consistent pattern or practice of violations, gross negligence, or a willful violation that is intended to mislead the person to whom the credit is extended. However, the act does not preclude the agencies from ordering restitution for isolated disclosure errors. This policy guide summarizes and explains the restitution provisions of the Truth in Lending Act, as amended. The material also explains corrective actions the financial regulatory agencies believe will be appropriate and generally intend to take in those situations in which the act gives them the authority to perform equitable remedial action.

The agencies anticipate that most banks will voluntarily comply with the restitution provisions as part of the normal regulatory process. If a creditor does not voluntarily act to correct violations, the agencies will use their cease and desist authority to require correction pursuant to: 15 USC 1607 and 12 USC 1818(b) in the cases of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision; and 15 USC 1607 and 12 USC 1786(e)(1) in the case of the National Credit Union Administration.

Restitution Provisions

Definitions

Except as provided below, all definitions are those found in the Truth in Lending Act (act) and Regulation Z.

1. "Current examination" means the most recent examination begun on or after March 31, 1980, in which compliance with Regulation Z was reviewed.

2. "Irregular mortgage transaction" means a loan secured by real estate for which the APR cannot be calculated using **volume one of the Federal Reserve System's Truth in Lending, Regulation Z, APR tables**.

3. "Lump sum method" means a method of reimbursement in which a cash payment equal to the total adjustment will be made to a consumer.

4. "Lump sum/payment reduction method" means a method of reimbursement in which the total adjustment to a consumer will be made in two stages:

   a. A cash payment that fully adjusts the consumer's account up to the time of the cash payment.

   b. A reduction of the remaining payment amounts on the loan.

5. "Understated APR" means:

   a. For other than irregular mortgage transactions, a disclosed APR which, when increased by one-quarter of 1 percentage point, is less than the actual APR calculated under the act, without taking into account the specified tolerance.[6]

   b For irregular mortgage transactions consummated before April 1, 1981, a disclosed APR which is less than the actual APR calculated including a one-half of 1 percentage point tolerance.

   c. For irregular mortgage transactions consummated after March 31, 1981, but before April 1, 1982, a disclosed APR which, when increased by one-quarter of 1 percentage point (instead of one-half of 1 percentage point), is less than the actual APR calculated under TILA, without taking into account the specified tolerance.[6]

   d. For all loans consummated after March 31, 1982, (including irregular mortgage transactions), which have an amortization schedule of 10 years or less, a disclosed APR which, when increased by one quarter of 1 percentage point, is less than the actual APR calculated under the act, without considering the specific tolerance.[6]

   e. For all loans consummated after March 31, 1982 (including irregular mortgage transactions), which have an amortization schedule of more than 10 years, a disclosed APR which is less than the actual APR including the specified tolerance.[6]

6. "Understated finance charge" means a disclosed finance charge which, when increased by a numerical tolerance that is generated by the

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[6] Section 107(c).

corresponding APR tolerance,[7] is less than the finance charge calculated under the act.

De Minimis Rule

If the amount of adjustment on an account is less than $1, no restitution will be ordered. However, the agencies may require a creditor to make any adjustments of less than $1 by paying into the U.S. Treasury, if more than one year has elapsed since the date of the violation.

Corrective Action Period

1. Open-end credit transactions will be subject to an adjustment if the violations occurred within the two-year period preceding the date of the current examination.

2. Closed-end credit transactions will be subject to an adjustment if the violation resulted from a clear and consistent pattern or practice or gross negligence where:

   a. There is an understated APR on a loan that originated between January 1, 1977, and March 31, 1980.

   b. There is an understated APR or finance charge, and the practice giving rise to the violation is identified during a current examination. Loans containing the violation that were consummated since the date of the immediately preceding examination are subject to an adjustment.

   c. There is an understated APR or finance charge, the practice giving rise to the violation was identified during the previous examination, and the practice is not corrected by the date of the current examination. Loans containing the violation which were consummated since the creditor was first notified in writing of the violation are subject to an adjustment. (Previous examinations include any examinations conducted since July 1, 1969.)

3. Each closed-end credit transaction consummated since July 1, 1969, and

[7] Finance charge tolerance: The finance charge tolerance for each loan will be generated by the corresponding APR tolerance applicable to that loan. For example, consider a single-payment loan with a one-year maturity which is subject to a one-quarter of 1 percent APR tolerance. If the amount financed is $5,000 and the finance charge is $912.50, the APR will be 18.25 percent. The finance charge generated by the APR of 18 percent on that loan would be $900. The difference between $912.50 and $900 produces a numerical finance charge tolerance of $12.50. If the disclosed finance charge is not understated by more than $12.50, reimbursement would not be ordered.

containing a willful violation intended to mislead the consumer is subject to an adjustment.

4. For terminated loans subject to step 2, an adjustment will not be ordered if the violation occurred in a transaction consummated more than two years prior to the date of the current examination.

Calculating the Adjustment

Consumers will not be required to pay any amount in excess of the finance charge or dollar equivalent of the APR disclosed on transactions involving:

- Understated APR violations on transactions consummated between January 1, 1977, and March 31, 1980.
- Willful violations which were intended to mislead the consumer.

On all other transactions, applicable tolerances provided in the definitions of understated APR and the finance charge may be applied in calculating the amount of adjustment to the consumer's account.

Methods of Adjustment

The consumer's account will be adjusted using the lump sum method or the lump sum and payment reduction method, at the discretion of the creditor.

Violations Involving the Nondisclosure of the APR or Finance Charge

1. When an APR is required to be disclosed, but is not, the disclosed APR shall be considered to be the contract rate, if disclosed on the note or the truth-in-lending disclosure statement.

2. When an APR was required to be disclosed, but was not, and no contract rate was disclosed, consumers will not be required to pay an amount greater than the actual APR reduced by one-quarter of 1 percent in the case of first lien mortgage transactions, and by 1 percent in all other transactions.

3. When a finance charge was not disclosed, no adjustment will be ordered.

Violations Involving the Improper Disclosure of Credit Life, Accident, Health, or Loss of Income Insurance

1. Through March 31, 1982:

a. If the creditor did not disclose to the consumer in writing that credit life, accident, health, or loss of income insurance is optional, the insurance shall be treated as having been required and improperly excluded from the finance charge. An adjustment will be ordered if it results in an understated APR or finance charge. The insurance will remain in effect for the remainder of its term.

b. If the creditor did disclose to the consumer in writing that credit life, accident, health, or loss of income insurance is optional, but there is either no signed insurance option or no disclosure of the cost of the insurance, the creditor shall, unless a claim was made on the insurance policy and paid, be required to send a written notice to the affected consumer disclosing the cost of the insurance and notifying the consumer that the insurance is optional and may be canceled within 45 days to obtain a full refund of all premiums charged. If the creditor receives no response from the consumer within 45 days, the insurance will remain in effect and no further corrective action, with respect to that loan, will be required.

2. Since March 31, 1982, the above violations of the act have been treated as APR or finance charge violations for adjustment purposes, as applicable.

Special Disclosures

Adjustments will not be required for violations involving the disclosures required by sections 106(c) and (d).

Obvious Errors

If an APR was disclosed correctly, but the finance charge was understated, or if the finance charge was disclosed correctly but the APR was understated, no adjustment will be required if the error involved a disclosed value which was 10 percent or less of the amount that should have been disclosed.

Agency Discretion

Adjustments will not be required if the agency determines that the disclosure error resulted from any unique circumstance involving a clearly technical and nonsubstantive disclosure violation that did not adversely affect information provided to the consumer and that did not mislead or otherwise deceive the consumer.

Safety and Soundness

For loans consummated before April 1, 1980, if full adjustments would have a significantly adverse impact upon the safety and soundness of the creditor, partial adjustments that do not have such an impact may be required. For loans consummated after March 31, 1980, full adjustments will always be required. However, the affected creditor will be permitted to make the full adjustment in partial payments over an extended period to minimize the adverse impact on its safety and soundness.

Exemption from Restitution Orders

A creditor will not be subject to an order to make an adjustment if within 60 days after discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account to ensure that such person will not be required to pay a finance charge in excess of that actually disclosed or the dollar equivalent of the APR disclosed, whichever is lower. This 60-day period for correction of disclosure errors is unrelated to the provisions of the civil liability section of the Truth in Lending Act.

Questions and Answers – Interagency Guidance

1. Do the enforcement standards and accuracy tolerances in the policy guide, "Joint Notice of Statement of Interagency Enforcement Policy for Truth in Lending," supersede the requirements of the Truth in Lending Act and Regulation Z?

   No. The policy guide applies to agency enforcement procedures only. It does not alter a creditor's responsibility to comply fully with all the requirements of TILA and Regulation Z, including finance charge and APR accuracy requirements.

2. When violations are discovered in purchased or assigned loans that are initially payable to an entity other than the bank, should the bank be ordered to make the necessary adjustments to the accounts of affected consumers?

   No. The bank is not the creditor, even if the obligation by its terms is payable initially to a third party and simultaneously assigned to the bank. The violations will be referred to the creditor's enforcing agency.

3. How should the de minimis rule be applied in closed-end credit transactions?

   The de minimis rule should always be applied to the amount of the adjustment calculated under the "lump sum method" of reimbursement as of the maturity date of the transaction, regardless of which reimbursement method is ultimately used by the creditor.

4. If the creditor must itemize the amount financed, but fails to disclose or understates the prepaid finance charge, will reimbursement be required?

   No. This violation of Regulation Z will require prospective corrective action only, assuming the prepaid finance charges are properly included in the computation of the APR and finance charge.

5. If APR or finance charge disclosures not required by Regulation Z have been made, will reimbursement be required when such optional disclosures are understated?

   No. However, errors in disclosures not required by Regulation Z for a particular transaction are violations of either 12 CFR 226.5(a)(1) or 12 CFR 226.17(a)(1), both of which require that credit disclosures be made clearly and conspicuously.

6. Must reimbursements resulting from understated finance charges always be made as a single "lump sum" amount?

   No. Although reimbursements resulting from the creditor's failure to include prepaid finance charges in the total finance charge must always be refunded as a "lump sum" payment, reimbursements resulting from failure to include finance charge complaints that accrue over time may be prorated on a straight-line basis (no time value) over the life of the loan and refunded under the lump sum/payment reduction method.

7. How does the policy guide apply to violations of the early disclosure rules under Regulation Z?

   As a general rule, the policy guide does not apply to violations involving early truth-in-lending disclosures, but does apply to violations of the preconsummation disclosures required by section 226.17. However, if the creditor has provided erroneous early disclosures and has not made preconsummation disclosures, the policy guide does apply to the erroneous early disclosures.

8. How does the policy guide apply to loans for which no disclosure statements are on file?

   If there is no evidence that the creditor furnished disclosures or if there is a preponderance of evidence that disclosures containing violations subject to reimbursement were destroyed before the record retention period expired, either violation is treated as a failure to disclose the APR.

   The creditor should be given the opportunity to substantiate the claim that an accurate disclosure was made before final action is taken. The absence of compliance documentation should be viewed relative to known practices of the creditor for record retention and Regulation Z compliance.

9. What does the policy guide mean by "actual APR" and "APR calculated in accordance with the act"?

   Those terms mean the lowest permissible APR that can be computed, applying all applicable provisions of Regulation Z.

10. How should disclosures containing information properly estimated under 12 CFR 226.5(c), 12 CFR 226.17(c), and appendix D be treated for reimbursement determinations and computations?

    If an APR or finance charge is in error for any reason other than a

properly made estimate, the determination of whether the error constitutes a reimbursable overcharge should be made using the estimated information as disclosed. At the creditor's option, reimbursement should be based on either:

- The actual amount of loan advances, with consideration given to the amount and the dates payments were made by the borrower, or;
- The disclosed amounts or time intervals between advances and between payments. The basis selected shall be applied, using the lump sum or lump sum/payment reduction method (at the creditor's discretion), to all loans of the same type subject to reimbursement.

11. Must a creditor use one reimbursement method consistently on all affected loans?

    No. The creditor's right to choose between the two methods applies to each transaction.

12. May a creditor apply a lump sum reimbursement to the consumer's loan balance instead of making a cash payment?

    The creditor must make a cash payment or a deposit into an existing unrestricted consumer asset account, such as an unrestricted savings or NOW account. However, if the loan is delinquent, in default, or has been charged off, the creditor may apply all or part of the reimbursement to the amount past due, if permissible under law.

13. If the transaction involves more than one consumer, to whom must reimbursement be made?

    The reimbursement is the property of and is to be made to the primary obligor in the credit transaction. If there is more than one primary obligor, reimbursement must be made jointly. If the primary obligor(s) is deceased, the payment should be made pursuant to the estate and escheat laws of the state. If the creditor is unable to locate the primary obligor(s), after having at least mailed the reimbursement amount to the consumer's last known address, the amount of the reimbursement is subject to the escheat laws of the state.

14. Are the credit insurance provisions of the policy guide applicable to terminated loans?

    Yes. The credit insurance provisions apply if such loans originated

within the policy guide’s corrective action period for terminated loans.

15. How will the policy guide apply if the cost of credit insurance premiums is disclosed as a rate (e.g., as a percentage or in dollars and cents per hundred per month) in a closed-end transaction?

    Regulation Z permits creditors to disclose credit insurance premiums on a unit-cost basis in closed-end transactions by mail or telephone under 12 CFR 226.17(g), and in certain closed-end transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

    In all other closed-end credit transactions, however, the dollar amount of insurance premiums must be disclosed. If the premium cost in those cases is disclosed as dollars or cents per hundred or as a percentage, it will be treated as if no disclosure of the cost has been made and the policy guide will apply accordingly.

16. How will the policy guide apply if a creditor:

    - Does not include premiums for credit life, accident, and health insurance in the APR or finance charge disclosures?

    - Fails to disclose the optional nature of the insurance?

    - Has given the borrower the option of taking or refusing the insurance by checking a block or initialing a line opposite statements similar to the following, both of which are disclosed in writing to the borrower: “I desire credit life, accident, and health insurance” and “I do not desire credit life, accident, and health insurance?”

    In those cases, the policy guide will apply because the creditor has not disclosed to the customer in writing, as required by section 226.4(d)(1)(i) of Regulation Z, that the credit life insurance or accident and health insurance are optional.

17. How will the policy guide apply if the consumer is charged for credit life, accident, or health insurance premiums and:

    - The creditor did not include the premiums in the APR or finance charge disclosures?

    - The creditor disclosed the optional nature and cost of credit life insurance to the consumer in writing and the customer signed or initialed close to those disclosures?

- Either no affirmative statement indicating a desire to obtain the insurance was provided or the appropriate box or line was not checked or otherwise marked to indicate whether the customer did or did not desire the insurance?

If the disclosure provided a choice to the customer through statements, such as "I desire the insurance" and "I do not desire the insurance," and neither choice has been marked by the customer, enforcement action is in order because the creditor did not meet the requirements of 12 CFR 226.4(d)(1)(iii).

If no affirmative statement indicating a desire to purchase the insurance has been provided, and the customer has only signed or initialed near the optional nature statements or cost disclosures, enforcement action is in order because the creditor did not meet the requirements of 12 CFR 226.4(d)(1)(iii).

18. How will the policy guide apply if:

- The creditor does not include premiums for credit life, accident, and health insurance in the APR or finance charge disclosures?

- The creditor provides disclosures stating that the insurance is not required?

- The creditor provides the cost of each type of insurance, with a statement that the customer's signature will indicate a desire to purchase the insurance and the customer signs once, below the cost disclosures, but does not initial each type of insurance desired?

If the disclosures clearly indicate that the customer, by signing where indicated, elects to purchase each type of insurance for which the cost has been provided, no enforcement action is in order. However, prospectively the creditor shall clarify such disclosures by obtaining the customer's initials for each type of insurance selected or by changing the manner in which the customer signs for credit insurance when more than one type is offered.

19. If a creditor has failed to reflect private mortgage insurance premiums in the APR or finance charge disclosures, may the bank cancel the insurance after it first reimburses the customer with a lump sum payment to cover the period up to the date of reimbursement?

The creditor may elect to cancel the insurance if the quality of the asset is maintained and applicable laws and regulations are not violated. The

cancellation will reduce the amount of the customer's future payments, as permitted by the lump sum and payment reduction method of reimbursement.

20. If the creditor failed to include any component of the finance charge (e.g., a loan origination fee) in the APR or finance charge disclosures, may the amount of reimbursement be reduced to account for fees excludable from the finance charge under 12 CFR 226.4(c), which are paid for by such finance charge components?

    If the borrower has not otherwise paid such excludable fees (e.g., title insurance fees) to the creditor or to a third party, reimbursement may be computed after first deducting from the finance charge those fees qualifying under 12 CFR 226.4(c).

21. How will the policy guide apply if a creditor did not provide required disclosures to the consumer before consummation, but did supply them after consummation?

    If required disclosures were not provided before consummation of the transaction, the transaction will be viewed as having no APR disclosed, and enforcement action is in order. If the creditor's failure to provide disclosures included the credit life and accident and health insurance disclosures, the insurance premiums must be treated as finance charges.

22. How will the policy guide apply when a creditor has disclosed the APR as "2 percent OP," to mean a fluctuating rate of 2 percent over the prime rate, or has disclosed similar prime rate terminology instead of the APR?

    If the disclosure statement (not the note) clearly provides the numerical value of the prime rate as it pertains to the credit transaction, as of the time disclosures are given to the consumer, that rate (the prime rate or 2 percent OP) will be considered to be the disclosed APR under the policy guide. If the prime rate is not provided on the disclosure statement, the transaction will be viewed under the policy guide as if no APR had been disclosed.

23. How will the policy guide apply if a credit transaction has an interest rate or APR subject to increase and the variable rate feature was not provided on the disclosure statement?

    If the disclosure statement did not state that the rate would be subject to change, the borrower may be charged only at the original APR disclosed. Reimbursement under the policy guide will apply only to the

period of time in which the borrower made payments at an increased rate.

24. How will the policy guide apply if a creditor disclosed that a rate will be prospectively subject to increase, but the APR or the finance charge disclosed or both were originally understated?

    The policy guide will apply as follows:

    A. If only the APR is understated, reimbursement will be required only for the period of time before the first scheduled change in rate under the variable rate feature in the contract.

       The term "the first scheduled change in rate" refers to a date on which the rate will change to a level that is unknown or unpredictable at consummation. It does not include changes, such as step rates, that are agreed upon before consummation.

       For example, if the loan terms provide for a 9 percent rate for the first year and a 10 percent rate for the second year, followed by a variable rate feature to be invoked at the beginning of the third year, reimbursement will apply only to the initial 24-month period. The lump sum and payment reduction adjustment method may be used, using two payment streams for the initial two-year period. Payments after the 24th month would not be affected by the adjustment.

    B. If only the finance charge is understated, reimbursement generally will be required for a period covering the entire life of the loan, consistent with the options described in question #6.

       For example, if a loan origination fee that is paid separately by the consumer at loan closing (making it a prepaid finance charge) is not included in the disclosed finance charge, the entire loan fee (less the applicable dollar tolerance) must be refunded as a "lump sum" payment.

       If the loan fee is financed (included in the loan amount), the finance charge reimbursement may be prorated on a straight-line basis over the life of the loan and refunded under the lump sum and payment reduction method.

       However, a finance charge adjustment is required only for the period of time before the first scheduled change in rate if the error occurred solely because the interest component of the disclosed finance charge was based on either:

- The interest to be earned before the first scheduled change in rate, or

- The interest to be earned assuming an initial discounted rate over the life of the loan.

For example, the interest component of the disclosed finance charge might incorrectly reflect only loan interest for the first year on a transaction with variable rate changes scheduled annually. Alternatively, it might incorrectly reflect interest calculated only at an initial discounted variable rate for the full term of the loan. In either case, if the loan terms in the example provide that the variable interest rate is subject to change annually, the finance charge reimbursement will apply only to the initial 12-month period.

The adjustment may be prorated on a straight-line basis over the life of the loan. Reimbursement of prorated amounts covering the period of time after the first scheduled change in rate (after month 12 in this example) would not be required.

C. If both the APR and finance charge are understated, normally the lump sum finance charge adjustment is compared with the lump sum APR adjustment as of the loan maturity date and the larger adjustment determines which disclosure error is subject to reimbursement.

In the case of variable rate transactions, however, the lump sum APR adjustment **used for comparison** is calculated for the period of time before the first scheduled change in rate in the manner indicated by (A) above and the finance charge adjustment is calculated in the manner indicated by (B) above.

For example, assume a loan in which both the APR and finance charge are understated on a 30-year, variable rate loan that calls for rate changes annually. If both understatements were caused by the same failure to take into account a prepaid loan origination fee:

- The APR reimbursement amount — the lump sum value for a **12-month** period — is determined by using the lump sum/payment reduction method and appropriate reimbursement tolerances.

- The finance charge reimbursement amount — the lump sum value for a **360-month** period — is determined by

subtracting the appropriate reimbursement tolerance from the amount of the loan fee.

The APR adjustment is compared to the finance charge adjustment to determine the larger of the two. In the example, the finance charge adjustment (and not the APR adjustment) would be reimbursable.

25. If a creditor uses a simple interest rate, which is disclosed as the APR, to compute a monthly payment schedule, and the time interval from the date the finance charge begins to be earned to the date of the first payment is treated as if it were one month, even though that period is greater than one month and is not a "minor irregularity" under 12 CFR 226.17(c)(4), is enforcement action necessary if the resulting application of the simple interest rate generates a higher finance charge than the one disclosed?

    The policy guide will apply if:

    - The creditor's method of computing the payment schedule, as previously described, is used to compute the disclosed finance charge (i.e., the total of payments less the amount financed).

    - The final payment collected or scheduled under the contract (as generated by the application of the simple interest rate to the unpaid principal balance over the life of the loan) is greater than the one disclosed.

    - The finance charge resulting from the first two conditions is understated.

26. Is reimbursement required for demand loans with disclosures based on a one-year maturity when the loan contract calls for periodic payments that will amortize the loan over a definite time period?

    Yes. A formal amortization schedule recorded in the demand loan contract is, under 12 CFR 226.17(c)(5), equivalent to an alternative maturity date, and disclosures based on the amortization schedule should be made, as opposed to the one-year disclosures.

27. Is reimbursement required on demand loans when:

    - An alternate maturity date is disclosed and reflected in the contract, but the finance charge disclosure is based on the year?

    - There is no alternate maturity date disclosed or reflected in the

contract, but the finance charge disclosure is based on a period of time less than one year?

In the first case, since the instrument discloses an alternative maturity date in the instrument, which was disclosed, the finance charge disclosures should have been based on that alternate maturity date, as required under 12 CFR 226.17(c)(5), not on the disclosure period tp be used when the instrument has no alternate maturity date.

In the second case, the actual finance charge disclosures should have been based on a one-year period as required by 12 CFR 226.17(c)(5), not on some period less than that required when the instrument has no alternate maturity date.

After considering appropriate tolerances, reimbursement will be required in both cases if:

- The disclosed finance charge is less than the actual finance charge for the initial required disclosure period.

- The demand loan has been on the bank's books past the period for which finance charge disclosures were made.

Reimbursement will be calculated for the required disclosure period only. The amount reimbursed to the consumer is the difference between the finance charge actually paid and the finance charge disclosed (which may be increased by the applicable finance charge reimbursement tolerance).

If the demand loan has not been on the bank's books past the period for which finance charge disclosures were made (e.g., the finance charge was disclosed for a one-year period, but should have been disclosed for a five-year period, and only 10 months have elapsed), no reimbursement is required. However, if the bank takes no prospective corrective action (i.e., if it does not at least disclose in writing a refinancing of the original loan) and the loan remains on the bank's books past the period for which the original finance charge disclosures were made, reimbursement will be required as previously indicated.

Those concepts apply both to straight and variable rate demand loans whenever the disclosed finance charge is less than the actual finance charge after considering appropriate tolerances.

28. Will reimbursement be required on demand loans when the variable rate feature has not been disclosed and the rate is increased?

Yes. If the consumer has not been notified in writing of the rate change on or before the date of the change, reimbursement will be required if the bank has not made the variable rate disclosures.

Each time the rate is changed and the customer is not given written notification of the new rate, the rate-change period(s) will be treated as if no APR had been disclosed, and the policy guide will apply. The rate on the most recent notification will serve as the contract rate.

29. How will the policy guide apply to residential mortgage transactions that have been assumed by a third party?

Reimbursement will be made only to the original borrower and only to the extent of overcharges that occurred before the assumption if:

- A reimbursable violation is found on the original borrower's disclosure statement.
- The original borrower is released from liability on the loan. The original transaction will be considered terminated for the original borrower on the date of the assumption and the rules for application of the policy guide to terminated loans will apply.

Reimbursement will be made only to the original borrower and for the period before the assumption occurred if:

- A reimbursable violation is found on the original borrower's disclosure statement.
- The original borrower is not released from liability on the loan. However, in the event the subsequent borrower defaults and the original borrower must again assume payments on the loan, such payments will be based on the payment amount that would have been calculated under the lump sum and payment reduction method at the time of reimbursement had no assumption occurred.

If a required disclosure to a subsequent borrower contains reimbursable violations, that borrower shall be reimbursed for the period after the assumption occurred, based on the new disclosure.

30. If vendor's single interest (VSI) insurance is written in connection with a credit transaction, the insurance premiums are not included in the finance charge, and the creditor does not obtain a waiver of the right of subrogation from the insurer, is the resulting finance charge understatement subject to reimbursement under the policy guide?

Yes. However, if the insurer has not exercised such rights of subrogation and agrees to prospectively waive that right for outstanding loans, no enforcement action should be taken on those loans.

31. If the finance charge is understated by more than the policy guide tolerance provided in the definition of understated finance charge, will reimbursement be required even though the understated finance charge is within the finance charge tolerance available under footnote 41 to 12 CFR 226.18(d)?

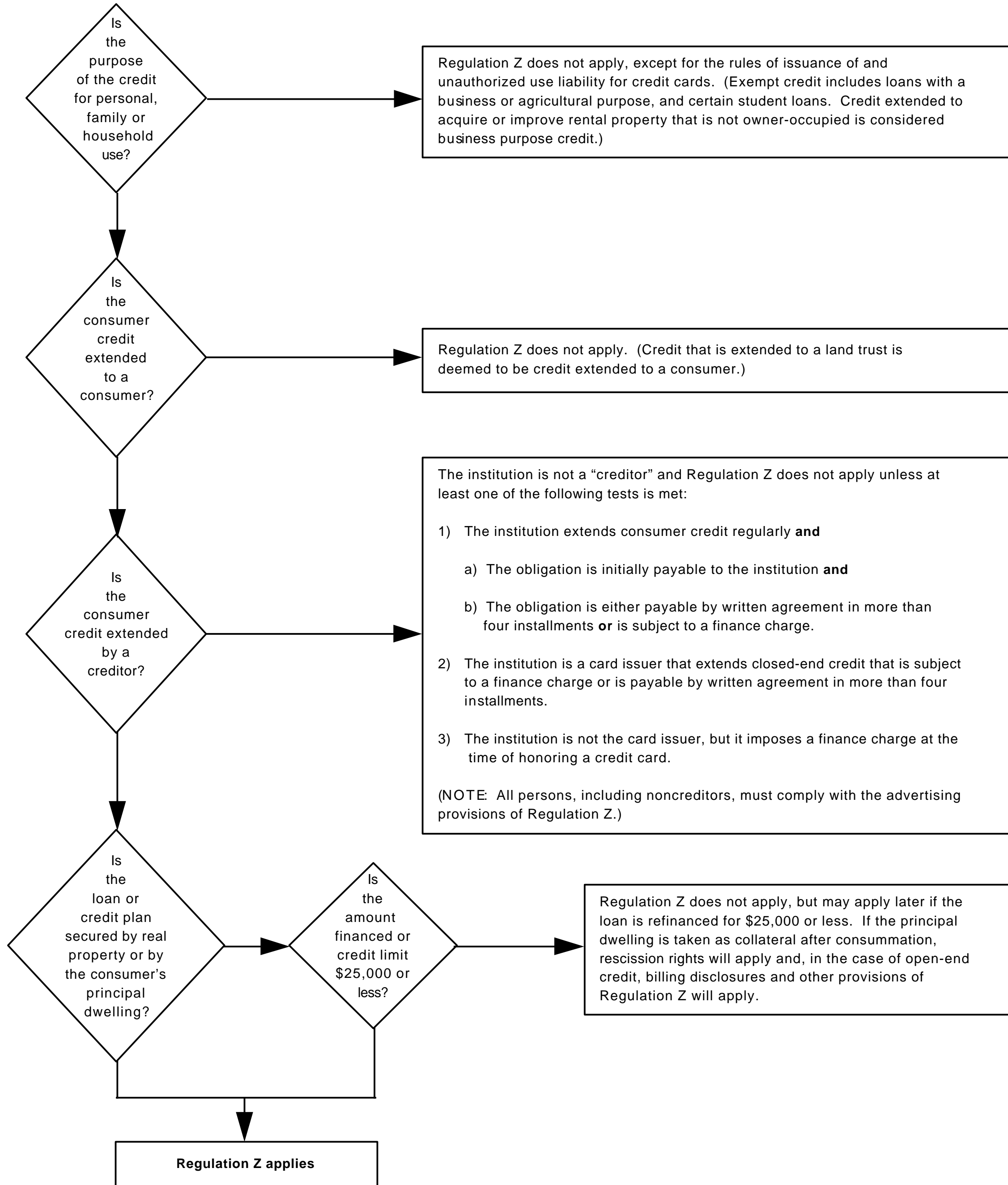
    No. Finance charge understatements that are within footnote 41 tolerances are not violations. Adjustments will be necessary, however, if the finance charge is understated by more than both the policy guide and footnote 41 tolerances. In those cases, actual adjustments may not take into account the disclosure tolerances of footnote 41.

32. How will the policy guide apply when loans subject to reimbursement are acquired through a merger or consolidation, or in exchange for the assumption of deposit liabilities? (An acquisition of the assets of a failed institution from a federal deposit insurer is excepted.)

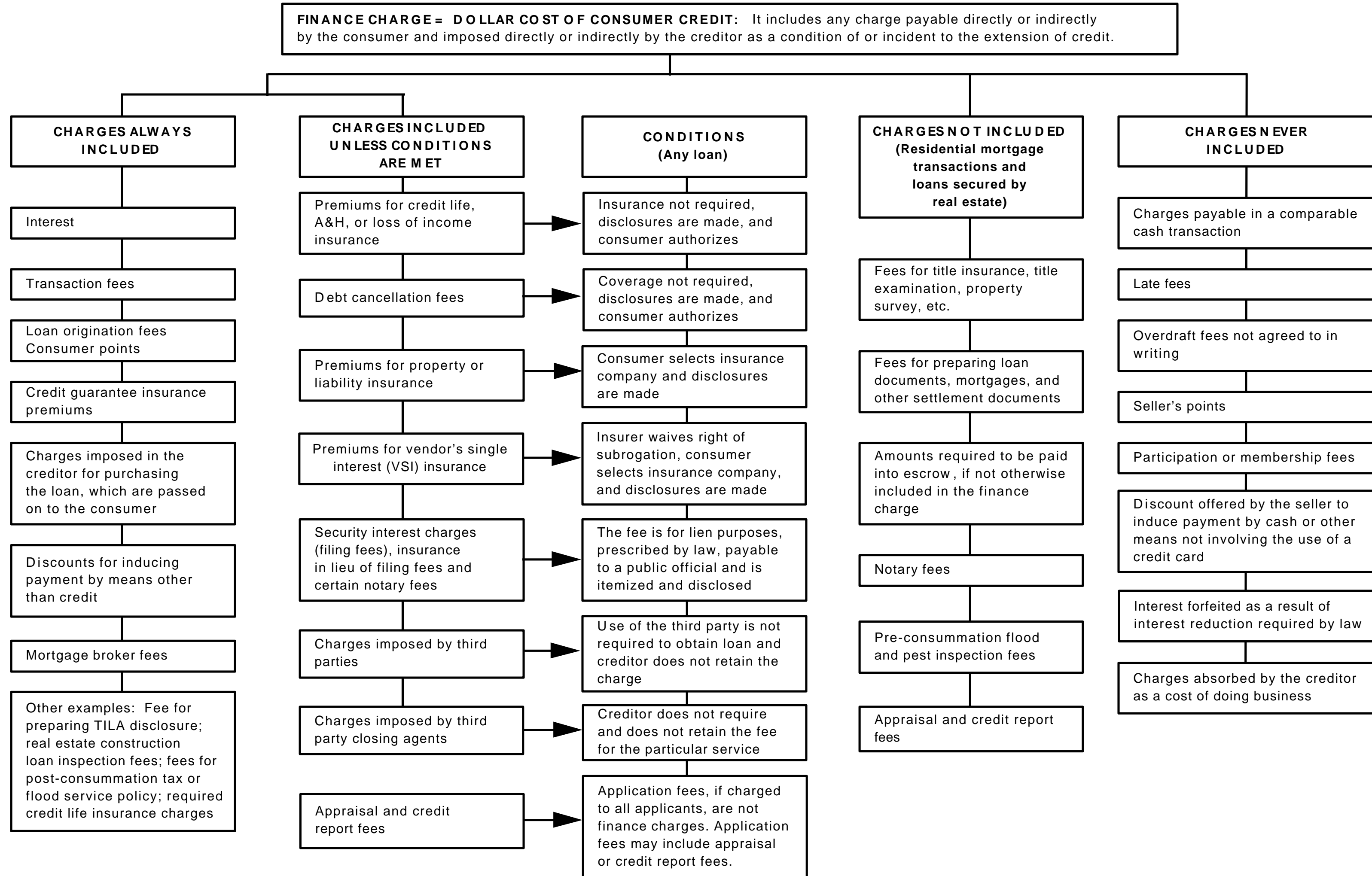
    In the case of a merger or consolidation, the receiving institution or the consolidated institution is responsible for all of the liabilities of the merged or consolidating institutions, and the policy guide will apply.

    In the case of loans acquired in exchange for the assumption of deposit liabilities, which does not involve a failed institution, the policy guide will apply to the original creditor.

Coverage Considerations under Regulation Z



Finance Charge Chart



Instructions for the Finance Charge Chart

The finance charge initially includes any charge that is, or will be, connected with a specific loan. Charges imposed by third parties are finance charges if the creditor requires use of the third party. Charges imposed on the consumer by a **settlement agent** are finance charges only if the creditor requires the particular services for which the settlement agent is charging the borrower and the charge is not otherwise excluded from the finance charge.

Immediately below the finance charge definition, the chart presents five captions applicable to determining whether a loan–related charge is a finance charge.

The first caption is **charges always included**. This category focuses on specific charges given in the regulation or commentary as examples of finance charges.

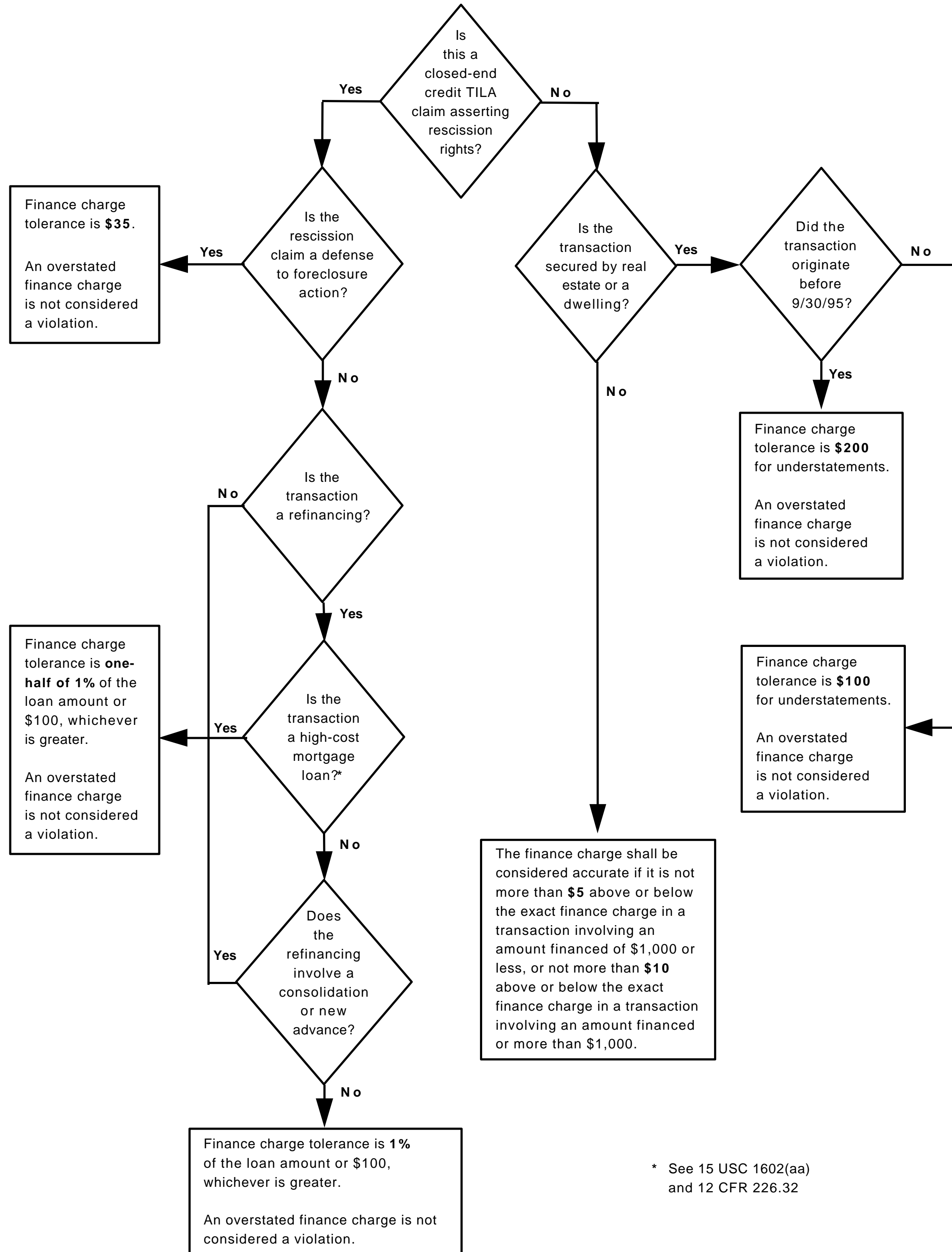
The second caption, **charges included unless conditions are met**, focuses on charges that must be included in the finance charge unless the creditor meets specific disclosure or other conditions to exclude the charges from the finance charge.

The third caption, **conditions**, focuses on the conditions that need to be met if the charges identified to the left of the conditions are permitted to be excluded from the finance charge. Although most charges under the second caption may be included in the finance charge at the creditor's option, third–party charges and application fees (listed last under the third caption) must be excluded from the finance charge if the relevant conditions are met. However, inclusion of appraisal and credit report charges as part of the application fee is optional.

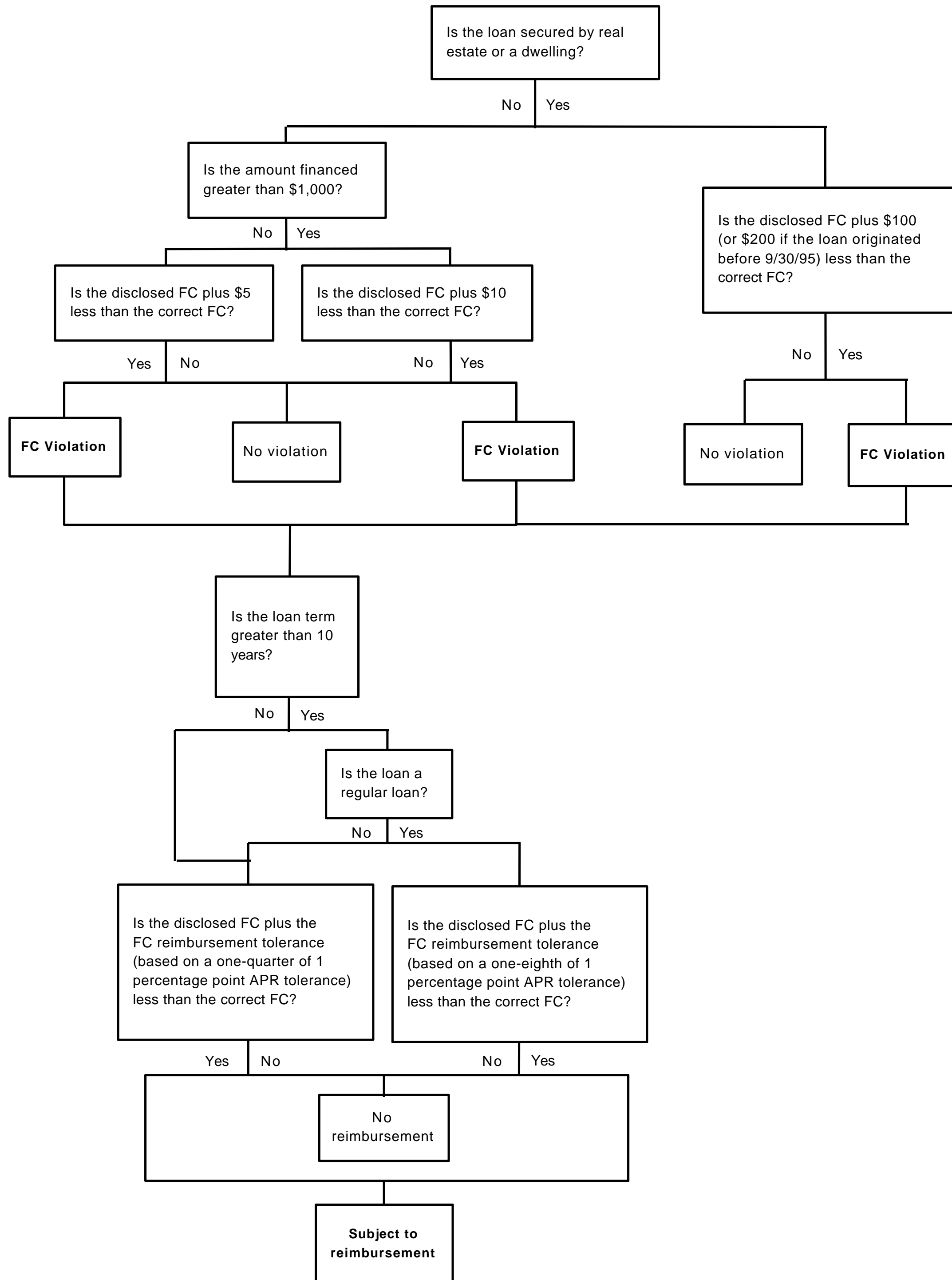
The fourth caption, **charges not included**, identifies fees or charges that are not included in the finance charge under conditions identified by the caption. If the credit transaction is secured by real property or the loan is a residential mortgage transaction, the charges identified in the column, if they are bona fide and reasonable in amount, must be excluded from the finance charge. For example, if a consumer loan is secured by a vacant lot or commercial real estate, any appraisal fees connected with the loan must not be included in the finance charge.

The fifth caption, **charges never included**, lists specific charges provided by the regulation as examples of those that automatically are not finance charges (e.g., late fees).

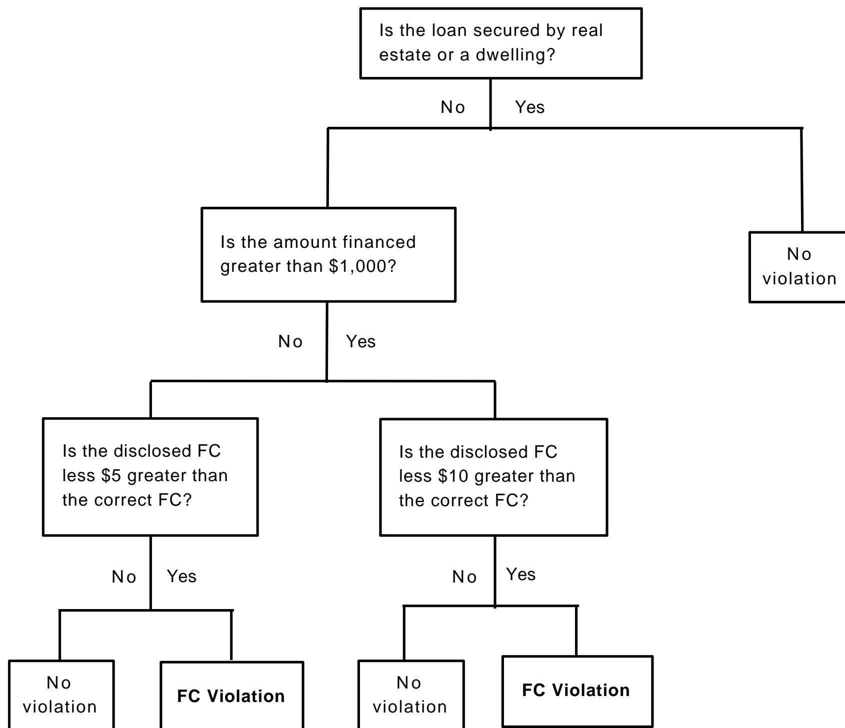
Closed-End Credit: Finance Charge Accuracy Tolerances



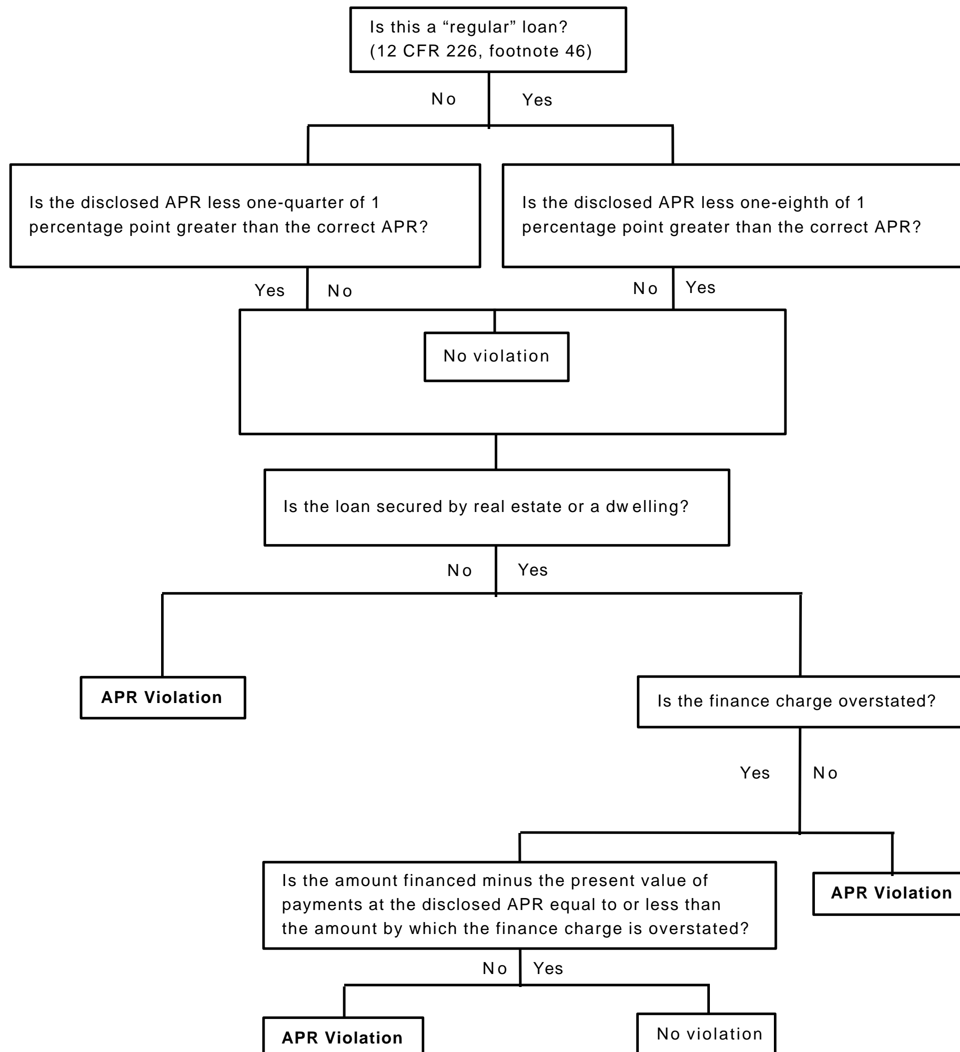
Closed-End Credit: Accuracy and Reimbursement Tolerances for **Understated** Finance Charges



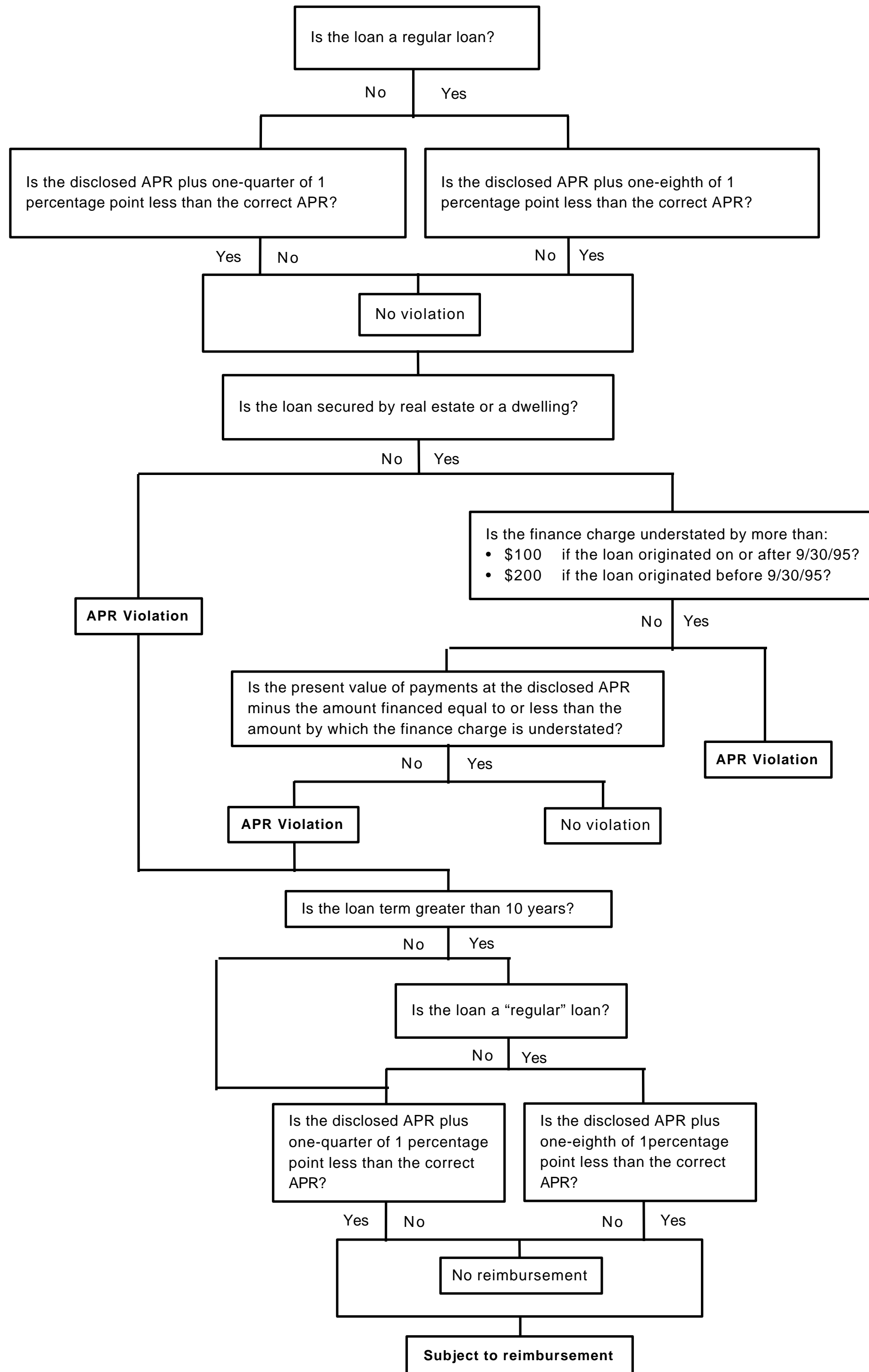
Closed-End Credit: Accuracy Tolerances for **Overstated** Finance Charges



Closed-End Credit: Accuracy Tolerances for **Overstated** APRs



Closed-End Credit: Accuracy and Reimbursement Tolerances for **Understated** APRs



Summary of Coverage Rules for ARMs

OCC ARMs

Loans to purchase or refinance a one-to-four family dwelling and secured by a lien on such a dwelling.

Includes:

- Open-end credit.
- Closed-end credit.
- Consumer-purchase loans.
- Loans to consumers.
- Loans with a business purpose.
- Loans to businesses.
- Second and vacation homes.

Excludes:

- Short-term, fixed rate, nonamortizing loans, even if the creditor is committed to renew (unless the renewal is for the full amortization period).
- Fixed rate demand loans

Regulation Z ARMs

Loans secured by the consumer's principal dwelling.

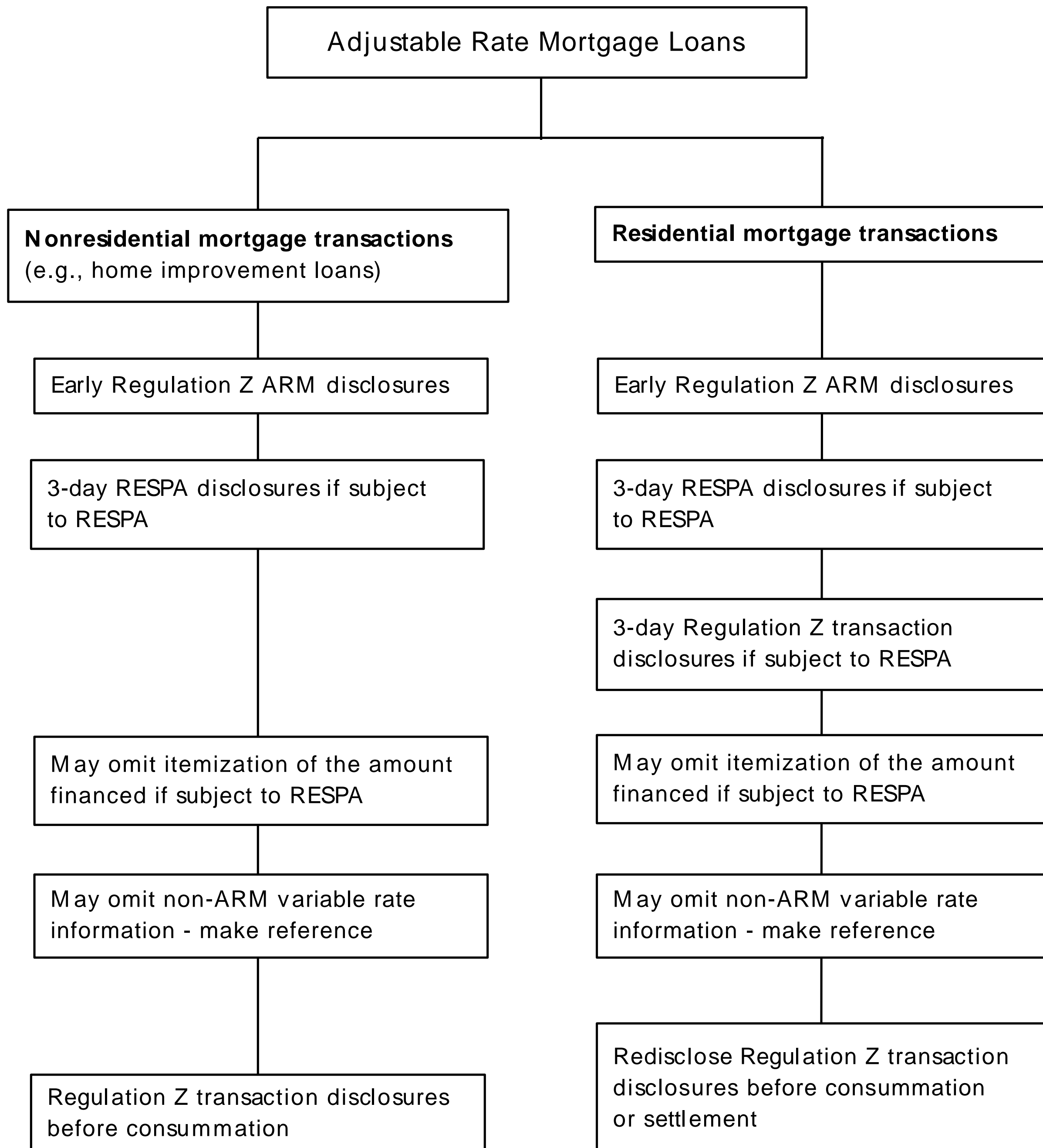
Includes:

- Loans subject to closed-end credit provisions of Regulation Z.
- Short-term, fixed rate loans, if creditor is committed to renew.
- Loans with maturity greater than one year.

Excludes:

- Business purpose loans.
- Open-end credit (separate open-end HELC provisions apply).
- Any loans not subject to Regulation Z.
- Loans with maturity of one year or less (unless creditor is committed to renew and total period surpasses one year).
- Second home loans, vacation home loans, short-term bridge loans, short-term construction loans.

Timing of Truth in Lending Disclosures for ARM Loans



Laws

15 USC 1601 *et seq.*, Truth in Lending Act (TILA)
15 USC 1666, Fair Credit Billing Act

Regulations

12 CFR 226, truth-in-lending regulation
12 CFR 34, subpart B, adjustable rate mortgages regulation

OCC Issuances

OCC Bulletin 96–1, TILA amendments of 1995
Examining Circular 263, SMS documentation policy

Software

APR program (separate diskette or loaded on hard drive)