



November 13, 2009

Mr. Robert XXXXX
XXX North XXXXX Avenue
XXXXX, CT XXXXX

RE: Reverse Mortgage Audit Review
FHA Case # XXX-XXXXXXXX
Lender Name: XXXXX, Inc.

Dear Mr. XXXXX,

On or about November 1st, 2009 you contacted Expert Witness Services (EWS) to request assistance in evaluating your current circumstances regarding the FHA Reverse Mortgage on the residence you will XXXXX from your mother's estate. During several subsequent teleconferences you provided EWS as much information as you could recall regarding the process by which your mother obtained her reverse mortgage. A good place to start this review is to restate our understanding of your recall.

1. The property is a three family residence. Your mother occupied one unit as her principal residence, a requirement for obtaining an FHA reverse mortgage. You occupied the second unit, in the same building, as your principal residence. The third unit is occupied by a tenant.

2. You were at all times active in your mother's affairs. You assisted her daily in collecting and responding to her mail. She came to you for advice when she had questions regarding her financial matters.
3. You believed your mother to be of sound mind and properly counseled by a HUD approved counseling agency per HUD's requirements.
4. Your mother responded to a "XXXXX" advertisement and received some rather sketchy documents in the mail, none of which impressed you as being an actual application package.
5. You do not recall her ever receiving any subsequent signed copies of her initial "application", if there was one at all; and you do not recall her ever receiving timely disclosures within three days of her submitting whatever it was that she submitted. As stated above, you are competent to make this statement because one of your duties in caring for your mother was to pick up her daily mail and assist her in evaluating its contents.
6. After an aborted attempt at closing your mother's reverse mortgage without your having received adequate disclosures to be able to properly understand the event, you received a letter from your Mortgage Broker which responded to your concerns about reverse mortgage payoff procedures and the timing of same.
7. A second closing then took place at which your mother received an unsigned closing package only. The closing was conducted by a "notary", not a title representative. Therefore the information given at the closing was sketchy at best.
8. In February 2009 your mother passed away.
9. You properly advised XXXXX of her demise, and a series of letters ensued where you were given options to retire the debt. None matched the representations given to you by the mortgage broker.
10. When agreement could not be reached between the parties as to an effective way to settle the debt, XXXXX began foreclosure proceedings.
11. Your attorney has been in contact with the Lender, but their responses to him have been unsatisfactory.
12. You advised us today that your attorney must file an answer to the foreclosure complaint November 18th, so we expedited the review.

Attached to this report are copies of our data evaluation. However, it would be most efficient for you to concentrate on the issues we have raised infra - using the attached as reference only.

ISSUE I

It is a general requirement of the HECM program that the client be provided at or very near to the time of the actual HECM application, a full copy of all signed documents, full financial disclosure of the program selected and other choices that were considered, and certain other consumer education publications for the senior's review far in advance of any closing.

The purpose of this practice is to avoid closings where seniors could find themselves pressured into closing without full understanding of the requirements and operation of the HECM program, and what the responsibilities of the parties encompass.

From what EWS can glean from conversations with Mr. XXXXX and reviewing the documents that have been provided, XXXXX may have failed to meet its duty required by HUD to provide full up front information to his mother and verify her full understanding of the HECM.

See HUD Handbook Home Equity Conversion Mortgages (4235.1) COUNSELING REFERRAL PROCEDURES.

Following is verbatim guidance from the Handbook. It is provided to show HUD's intent that up front disclosures take place and that counseling must be complete and understood before a lender takes any financial steps forward with the transaction.

“The procedures below should be followed to ensure that the borrower receives the required counseling at the time he or she applies for a HECM.

- A. If the lender receives a request from a borrower to apply for a HECM, the lender should refer the borrower to a housing counseling agency for counseling by providing the borrower with a list of counseling agencies in the area.
- B. At the time that the lender refers the borrower to a counseling agency, it may provide the borrower with copies of the mortgage, note and Loan Agreement.

C. The lender may complete the borrower's application before referral, however, the lender cannot charge the borrower for this service if the borrower does not choose to attend a counseling session or apply for a HECM after counseling. The lender cannot begin the process of ordering a property appraisal or any other action that would result in a charge to the potential borrower until the borrower has received counseling, and the lender has received the counseling certificate from the borrower.”

Subsequent Mortgagee Letter guidance made these up-front disclosures a requirement; not an option. Most major reverse mortgage lenders have provided these full disclosure packages up-front since at least 2005. As an example, EWS provides a link to our website where you may review a hypothetical complete application package captioned “Henry Homeowner”. It is representative of what a “full disclosure” application should look like to the consumer. The document may be retrieved at <http://www.expert-witness-services.com/Resources.html>

The Real Estate Settlement Procedures Act (RESPA) requires lenders to give a "good faith estimate" of all closing costs they are likely to pay. The concept is to protect a borrower from undisclosed fees or “surprises” at closing.

RESPA also requires that borrowers receive certain disclosures at specific times. Some disclosures explain the costs associated with the settlement, some outline lender servicing and escrow account practices and some describe affiliated business relationships between settlement service providers and others.

Here, Mr. XXXX has no recollection of any significant up-front application papers, blank copies of notes or mortgage for legal review, or consumer education booklets as required by HUD via mortgagee letter, or RESPA. This is significant, especially as related to RESPA. Your attorney should investigate as violations of RESPA could create significant lender liability.

In addition, the counseling certificate provided to EWS does not evidence the senior’s signature. The signature is required to show the lender that the senior agrees that counseling has been completed and was understood. In the absence of this signature, EWS cannot determine if proper chronology ensued in the completion of the appraisal and the subsequent processing of this HECM.

Most lenders would NOT proceed to process a HECM without a signed (by the client, not only the counselor) counseling certificate in their possession. This is an audit point during HUD Monitoring reviews.

ISSUE II

See Mortgage Letter 2003-22 – “Requirement for Notification of Death “

Following is verbatim guidance from ML 03-22. It is provided to show the disparity existing between the regulations, XXXXX’s written representations to Mr. XXXXX, and XXXXX’s subsequent rush to foreclosure.

“When a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor, the HECM mortgage balance becomes due and payable in full. The mortgagee is required to notify the Department (see 24 CFR 206.27 (c)(1)). This Notice must occur as soon as possible following the death, but no later than 60 days from the date of the mortgagor’s death.

This notice must be in writing, must provide the FHA case number, the mortgagor’s name, the property address and the date of death, which may be delivered via facsimile or letter. The Notice must be delivered to the HECM servicing contractor.

The Department expects mortgagees to exercise prudent servicing and reasonable diligence to ensure that occupancy is verified on an annual basis. HUD Handbook 4330.1, Rev-5, Section 13-22, pages 13-19 “**Mortgagor’s Occupancy and Maintenance of the Property**” states that the mortgagee must provide a written certification for the mortgagor’s signature, to the mortgagor annually. Although written certification may be useful in determining the mortgagor’s occupancy status, other supplemental measures may be needed to effectively determine date of death to meet the six (6) month requirement for first legal action. Mortgagees may consider subscribing to one of several commercial resources that offer a monthly match of loan files against a Social Security database of death records.

Effective immediately, if a property is under an executed contract of sale and the closing will occur within 30 days from the date the mortgagee should have ordered a new appraisal (per §206.127(a)(2), fifteen days prior to the expiration of the six months from the date the mortgagee acquired title), mortgagees may request an extension of time to sell the property. Extension requests should be submitted to HUD's HECM Servicing Contractor using form HUD-50012, "Mortgagee's Request for Extension of Time." This form must be supported by the most recent occupancy certification and a summary of the mortgagee's efforts to verify occupancy."

There is no reference in this ML to what should take place if the property is to be retained by an heir or other third party. The mortgage and note that govern a HECM's "demand" features call for payment "immediately". So, ambiguity exists where the heir's intent is to refinance the property and keep it.

Industry practice has been to allow a period of up to 12 months for the property to be refinanced into a new owner's name. The typical lender follows this timetable.

1. Within 90 days of demise, heirs advise Servicer (HUD) of the qualifying event.
2. Within the next 90 days, but no longer than 180 days, heirs advise Servicer of plan to sell or refinance the property to retire the HECM balance due.
3. Within the next 180 days, but no longer than one year, the heirs must conclude the sale or refinance.

Typically, if the process takes longer than 12 months, the Servicer may move to foreclose. In actual practice, unless the heirs demonstrate a lack of good faith Servicers rarely move to foreclose until a full year has passed. HUD is not aggressive about foreclosing on HECM properties. It is not in anyone's best interest to foreclose, especially where the HECM property is a multiple unit residence and innocent persons would be displaced by a foreclosure.

Here, XXXXX's agent sent a letter to Mr. XXXXX that validates EWS rendition of Industry Practice, but was then subsequently ignored by XXXXX. Should XXXXX have been bound by the promise made to Mr. XXXXX regarding the procedure he should follow on the

event of his mother's demise? Likely so. This is a matter for his attorney to consider. XXXXX may be in breach of their agent's representations.

XXXXX's conduct seems to be more aggressive than what HUD intended when it released ML 03-22. To retain a collector when Mr. XXXXX has evidenced the good faith necessary to resolve the situation without foreclosure is unreasonable. EWS is unaware of any case where a lender has pursued foreclosure this quickly.

ISSUE III

It is irregular that certain closing documents in this file are dated X/XX/XX and then others are dated X/XX/XX. The purpose of a real estate closing goes beyond obtaining signatures. Real estate closings are the time for final explanation of terms and obligations. Especially when seniors are involved, memory issues are real and it is quite problematic if the disclosures that constitute a "closing" are given in stages requiring senior recall.

One of the primary intentions behind RESPA is to make the closing process clear and easy to understand. EWS believes the practice of mixing documents from two attempts at closing a loan (such as we have here) is an irregular business practice and may violate RESPA.

ISSUE IV

HUD has as a requirement that the Loan Officer be clearly identified throughout the entire transaction. The intent of this requirement is to create accountability in the event that the application process is somehow flawed, and investigation requires someone to be accountable. In the absence of an identifiable loan officer, the liability will flow directly to the Lender.

Here we begin a transaction with a loan officer named XXXXX. See XXXXX Letters for reference. It appears to EWS that XXXXX worked for a company called "XXXXX" that likely obtained Ms. XXXXX's name by purchasing it from XXXXX as a "lead".

As the transaction moves forward in time, the name XXXXX appears as loan officer. XXXXX is known to EWS. He is not a loan officer, but rather a corporate officer of XXXXX. He is generally not known to be involved in the application process. For his name to appear on these documents would indicate some third party simply inserted him. This may be a misrepresentation and is a serious matter to HUD. If in fact XXXXX was actually involved in this transaction, then he would share the responsibility for the apparent lack of complete up front disclosure and the aborted, confusing closing process.

ISSUE V

Reverse Mortgage Closing Costs are complex, unusual, and tightly regulated by FHA and HUD. The closing statement provided to EWS appears to be reasonable. However, there is a RESPA issue that should be investigated by your counsel.

There is a deviation of \$X, XXX from the (only) up front disclosure provided to EWS from Mr. XXXXX. The costs were lower up front, and higher at closing. No matter if they increased or decreased, this swing in dollar amount is sufficient to have triggered a requirement for re-disclosure. EWS has not been shown any re-disclosure. If none exist, then this is likely a violation of RESPA.

ISSUE VI

Please note this transaction was closed via a notary. The notary apparently charged \$XXX for his services. This notary appears to have been a “signing service” only, not a true closing agent. Notaries generally charge in the area of \$150 to \$200 per closing. If a second closing is required because of some lender deficiency (as in this case, lack of enough disclosure to make Mr. XXXXX comfortable with his mother’s decision), the lender generally absorbs the charge.

HUD would likely find this notary fee to be too high and order the lender to make a partial refund.

ISSUE VII

Please recall we have determined there were two closings scheduled for this transaction. The first closing was apparently set for X/XX/XX but Mr. XXXXX was concerned that his mother did not have a full understanding of documents she was just seeing for the first time. The second closing occurred X/XX/XX, as evidenced by partial disclosures bearing that date.

This multiple closing scenario raises a question regarding lender negligence for several reasons. Disclosures from aborted closings should not usually be used for the final disclosure package. This can create problems with the required timing of the disclosures, as certain of them must be given on the closing date or within three days of it. Obviously, there is a significant time gap between the first scheduled date and the second.

The mere fact that two closings actually took place supports Mr. XXXXX's recall that there were no substantial initial disclosures. But for the lack of disclosure, there would have been no confusion. The lack of disclosure was a substantial factor in creating the confusion.

This mixing of documents likely violates RESPA. The inference that can be drawn from the fact that the first closing aborted supports possible grounds for negligence.

HOEPA; FCRA; TIL

There do not appear to be violations of HOEPA or the FCRA present. However, it is likely there may be violations of Regulation Z (TIL). Since Mr. XXXXX may not have possession of all the relevant documents, EWS cannot form further opinion.

I am available for further consultation with Mr. XXXXX or his attorney, on adequate notice, to answer remaining questions regarding this reverse mortgage. EWS sees as the strongest argument here, non-compliance with RESPA for multiple reasons as articulated in this report.

Sincerely,

Nelson A. Locke, CRML, RMS
Expert Witness Services, LLC

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1 Does the escrow data properly match the HUD-1/1st Payment?
2 Yes
3 -----
4 Was title run within the 60 days of closing?
5 Yes
6 -----
7 Does the Title insurance amount cover the loan amount?
8 Yes
9 -----
10 Is The GFE in file?
11 Yes
12 -----
13 Is address correct?
14 Yes
15 -----
16 Does sales price match the HUD?
17 Yes
18 -----
19 Is HUD-1 in file?
20 Yes
21 -----
22 Is 1003 Application in file?
23 Yes
24 -----
25 Is the property address the same exact address of the subject property?
26 Yes
27 -----
28 Does the data match the HUD-1, Note, H/O Policy & Tax Information?
29 Yes
30 -----
31 Is there a statement which shows the consumer billing rights in detail?
32 Yes
33 -----
34 If creditor has or will acquire a security interest in the property purchased
35 or other property identified by item or type been disclosed? And/or stated?
36 Yes
37 -----
38 Is there a statement of the amount of any other charges?
39 Yes
40 -----
41 Is the method to determine any finance charge(s) provided and explained?
42 Yes
43 -----
44 Is the specific method to determine the balance provided and explained?
45 Yes
46 -----
47 Are finance charges clearly visible?
48 Yes
49 -----
50 Is there a statement of when the finance charge will begin to accrue and if a
51 grace period exists?
52 Yes
53 -----
54 Does the variable rate disclosure provide an explanation?
55 of the interest rate/payment determination and margin?
56 Yes
57 Does the variable rate disclosure provide a statement that consumer

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58 should ask for the current margin and interest rate?
59 Yes
60 -----
61 Does the variable rate disclosure provide
62 the frequency of interest rate and payment changes?
63 Yes
64 -----
65 Does the variable rate disclosure provide the rules relating to changes?
66 Yes
67 -----
68 Does the variable rate disclosure provide
69 an historical example and/or the maximum interest
70 rate and payment?
71 Yes
72 -----
73 Does the variable rate disclosure show
74 that the loan program contains a demand feature?
75 Yes
76 -----
77 Does the variable rate disclosure provide Information on, and timing of
78 adjustment notices?
79 Yes
80 -----
81 Does the variable rate disclosure provide The index/formula
82 with source of information disclosed?
83 Yes
84 -----
85 Does the variable rate disclosure provide a statement that
86 interest rate, payment or the term can change?
87 Yes
88 -----
89 Does the note contains a variable rate feature disclosure?
90 Yes
91 -----
92 Is the maximum interest rate in the contract for variable rate mortgage
93 disclosed?
94 Yes
95 -----
96 The fact that the transaction contains a variable-rate feature?
97 Yes
98 -----
99 Is a disclosure provided which shows transaction contains a variable rate
100 feature?
101 Yes
102 -----
103 Is the payment schedule (amount, timing, and number of payments) provided and
104 accurate?
105 Yes
106 -----
107 Is the total of payments provided and accurate?
108 Yes
109 -----
110 If the obligation has a demand feature, is that fact disclosed?
111 Yes
112 -----
113 The cost of insurance for the initial term accurately disclosed?
114 Yes

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115 -----
116 Are the deposits required for credit transactions disclosed accurately?
117 Yes
118 -----
119 Circumstances that permit rate increase?
120 Yes
121 -----
122 Is the APR disclosed and accurate?
123 Yes
124 -----
125 Is the finance charge disclosed and accurate?
126 Yes
127 -----
128 Is a separate itemization provided of the amount financed?
129 Yes
130 -----
131 Is the amount financed clearly disclosed and accurate?
132 Yes
133 -----
134 Are waivers of the right to rescind appropriate?
135 Yes
136 -----
137 Does the rescission state how to exercise the right to rescind?
138 Yes
139 -----
140 Does the rescission state the effects of rescission?
141 Yes
142 -----
143 Does the rescission state the date rescission period expires?
144 Yes
145 -----
146 Was funding delayed (except in escrow) until rescission period expired?
147 Yes
148 -----
149 Does the rescission notice state the consumer's right to rescind?
150 Yes
151 -----
152 Does the rescissions notice disclose the retention or acquisition of a security
153 interest in the consumer's principal dwelling?
154 Yes
155 -----
156 Does the rescission notice identify the specific transaction?
157 Yes
158 -----
159 Was appropriate number of copies given to each person entitled to rescind?
160 Yes
161 -----
162 Does the bank/lender disclosure the Variable rate?
163 Yes
164 -----
165 Does the bank Sell or assign a mortgage only when furnishing the required
166 notice to assignee?
167 Yes
168 -----
169 Does the bank/lender disclose APR?
170 Yes
171 -----

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172 Does the bank/lender disclose the amount borrowed?
173 Yes
174 -----
175 Are the disclosures similar to the Appendix K model form, and include the total
176 annual loan cost rates?
177 Yes
178 -----
179 Are the disclosures similar to the Appendix K model form and the Explanation of
180 the table for annual cost rates?
181 Yes
182 -----
183 Are the disclosures similar to the Appendix K model form, and include a Notice?
184 Yes
185 -----
186 Is the First transaction under an open-end credit plan?
187 Yes
188 -----
189 Are the disclosures, including electronic disclosures, clearly stated, in
190 writing and in a form the consumer may retain for future reference?
191 Yes
192 -----
193 TIL signed & dated?
194 POSSIBLE VIOLATION
195 -----
196 Is a complete FACTA Disclosure in the file?
197 POSSIBLE VIOLATION
198 -----
199 ARM disclosure in file? Signed & dated?
200 POSSIBLE VIOLATION
201 -----
202 GFE signed & dated?
203 POSSIBLE VIOLATION
204 -----
205 Is the contract signed/dated/initialed by all parties? Is the closing date on
206 contract correct?
207 POSSIBLE VIOLATION
208 -----
209 HUD-1 Broker / are 3rd party fees compared to GFE reasonable?
210 POSSIBLE VIOLATION
211 -----
212 Was the application fully complete?
213 POSSIBLE VIOLATION
214 -----
215 If it is not, was there a final inspection?
216 POSSIBLE VIOLATION
217 -----
218 Is the report complete?
219 POSSIBLE VIOLATION
220 -----
221 If they are not did the appraiser explain why he/she used older comps?
222 POSSIBLE VIOLATION
223 -----
224 Are the comps used less than 12 months old?
225 POSSIBLE VIOLATION
226 -----
227 Was the appraisal ordered by the lender?
228 POSSIBLE VIOLATION

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229 -----
230 Are the comps less than 1 mile from subject? If they are not, are they
231 explained by appraiser?
232 POSSIBLE VIOLATION
233 -----
234 Predominant tenant occupancy?
235 POSSIBLE VIOLATION
236 -----
237 Declining property value(s)?
238 POSSIBLE VIOLATION
239 -----
240 Slow growth?
241 POSSIBLE VIOLATION
242 -----
243 Fair or poor rating(s)?
244 POSSIBLE VIOLATION
245 -----
246 Is the appraiser's certificate valid (not expired) Are there explanations
247 provided for: Over 6 months market time?
248 POSSIBLE VIOLATION
249 -----
250 Is the appraisal complete including maps, sketches & photos?
251 POSSIBLE VIOLATION
252 -----

253 Does the variable rate disclosure provide
254 the fact that interest rate is discounted, if applicable, and
255 a statement that the consumer should ask about the amount
256 of discount?
257 [226.19(b)(2)(v)]
258 (b) Certain variable-rate transactions. 45a If the annual percentage rate may
259 increase after consummation in a transaction secured by the consumer's
260 principal dwelling with a term greater than one year, the following disclosures
261 must be provided at the time an application form is provided or before the
262 consumer pays a nonrefundable fee, whichever is earlier: 45b
263 (2) A loan program disclosure for each variable-rate program in which
264 the consumer expresses an interest. The following disclosures, as applicable,
265 shall be provided:
266 (v) The fact that the interest rate will be discounted, and a
267 statement that the consumer should ask about the amount of the interest rate
268 discount.
269 -----

270 Does the variable rate disclosure provide
271 an explanation regarding how the loan payment can
272 be calculated based on examples?
273 [226.19(b)(2)(ix)]
274 (b) Certain variable-rate transactions. 45a If the annual percentage rate may
275 increase after consummation in a transaction secured by the consumer's
276 principal dwelling with a term greater than one year, the following disclosures
277 must be provided at the time an application form is provided or before the
278 consumer pays a nonrefundable fee, whichever is earlier: 45b
279 (2) A loan program disclosure for each variable-rate program in which the
280 consumer expresses an interest. The following disclosures, as applicable, shall
281 be provided:
282 (ix) An explanation of how the consumer may calculate the
283 payments for the loan amount to be borrowed based on either:
284 (A) The most recent payment shown in the historical example in paragraph
285 (b)(2)(viii)(A) of this section;

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286 (A) A historical example, based on a \$10,000 loan amount, illustrating how
287 payments and the loan balance would have been affected by interest rate changes
288 implemented according to the terms of the loan program disclosure. The example
289 shall reflect the most recent 15 years of index values. The example shall
290 reflect all significant loan program terms, such as negative amortization,
291 interest rate carryover, interest rate discounts, and interest rate and payment
292 limitations, that would have been affected by the index movement during the
293 period.

294 or

295 (B) The initial interest rate used to calculate the maximum interest rate and
296 payment in paragraph (b)(2)(viii)(B) of this section.

297 (B) The maximum interest rate and payment for a \$10,000 loan originated at the
298 initial interest rate (index value plus margin, adjusted by the amount of any
299 discount or premium) in effect as of an identified month and year for the loan
300 program disclosure assuming the maximum periodic increases in rates and
301 payments under the program; and the initial interest rate and payment for that
302 loan and a statement that the periodic payment may increase or decrease
303 substantially depending on changes in the rate.

304 -----
305 Does the variable rate disclosure provide a statement that disclosures for
306 other variable rate loan programs are available?

307 [226.19(b)(2)(xii)]

308 (b) Certain variable-rate transactions. 45a If the annual percentage rate
309 may increase after consummation in a transaction secured by the consumer`s
310 principal dwelling with a term greater than one year, the following disclosures
311 must be provided at the time an application form is provided or before the
312 consumer pays a nonrefundable fee, whichever is earlier: 45b

313 (2) A loan program disclosure for each variable-rate program in which
314 the consumer expresses an interest. The following disclosures, as applicable,
315 shall be provided:

316 (xii) A statement that disclosure forms are available for the creditor`s
317 other variable-rate loan programs

318 -----
319 Does the variable rate disclosure provide booklet entitled "Consumer
320 Handbook on Arms, or a suitable
321 substitute?

322 226.19(b)(1)]

323 (b) Certain variable-rate transactions. 45a If the annual percentage rate may
324 increase after consummation in a transaction secured by the consumer`s
325 principal dwelling with a term greater than one year, the following disclosures
326 must be provided at the time an application form is provided or before the
327 consumer pays a nonrefundable fee, whichever is earlier: 45b

328 (1) The booklet titled Consumer Handbook on Adjustable Rate Mortgages
329 published by the Board and the Federal Home Loan Bank Board, or a suitable
330 substitute

331 -----
332 Were the disclosures provided at the time of application or before the consumer
333 paid any non-refundable fee, or if the application was taken from a mortgage
334 broker

335 or over the telephone. Within 3 business days of taking application or the
336 paying of non-refundable fee were the disclosures mailed out following a
337 receipt of the application?

338 [226.19(b) & footnote 45b]

339 (b) Certain variable-rate transactions. 45a If the annual percentage rate may
340 increase after consummation in a transaction secured by the consumer`s
341 principal dwelling with a term greater than one year, the following disclosures

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342 must be provided at the time an application form is provided or before the
343 consumer pays a nonrefundable fee, whichever is earlier: 45b

344 -----
345 Is there a statement which includes that a variable rate disclosure was
346 provided earlier?

347 [226.18(f)(2)(ii)]

348 (2) If the annual percentage rate may increase after consummation in a
349 transaction secured by the consumer's principal dwelling with a term greater
350 than one year, the following disclosures.

351 (ii) A statement that variable-rate disclosures have been provided earlier.

352 -----
353 Effects of the increase provided?

354 [226.18(f)(1)(iii)]

355 (f) Variable rate. (1) If the annual percentage rate may increase after
356 consummation in a transaction not secured by the consumer's principal dwelling
357 or in a transaction secured by the consumer's principal dwelling with a term of
358 one year or less, the following disclosures: 43

359 (i) The circumstances under which the rate may increase.

360 (ii) Any limitations on the increase

361 (iii) The effect of an increase.

362 -----
363 Example of new payment terms provided?

364 [226.18(f)(1)(iv)]

365 (f) Variable rate. (1) If the annual percentage rate may increase after
366 consummation in a transaction not secured by the consumer's principal dwelling
367 or in a transaction secured by the consumer's principal dwelling with a term of
368 one year or less, the following disclosures: 43

369 (i) The circumstances under which the rate may increase.

370 (ii) Any limitations on the increase

371 (iii) The effect of an increase.

372 (iv) An example of the payment terms that would result from an increase.

373 -----
374 Are disclosures based on an assumption of one year?

375 226.17(c)(5)

376 (5) If an obligation is payable on demand, the creditor shall make the
377 disclosures based on an assumed maturity of 1 year. If an alternate maturity
378 date is stated in the legal obligation between the parties, the disclosures
379 shall be based on that date.

380 -----
381 Are disclosures provided before consummation?

382 [226.17(b)]

383 (b) Time of disclosures. The creditor shall make disclosures before
384 consummation of the transaction. In certain mortgage transactions, special
385 timing requirements are set forth in § 226.19(a).
386 In certain variable-rate transactions, special timing requirements for
387 variable-rate disclosures are set forth in § 226.19(b) and § 226.20(c). In
388 certain transactions involving mail or telephone orders or a series of sales,
389 the timing of the disclosures may be delayed in accordance with paragraphs (g)
390 and (h) of this section.

391 (c) Basis of disclosures and use of estimates. (1) The disclosures shall
392 reflect the terms of the legal obligation between the parties.

393 As 226.19 Certain residential mortgage and variable-rate transactions.

394 (a) Mortgage transactions subject to RESPA--(1)(i) Time of disclosures. In
395 a mortgage transaction subject to the Real Estate Settlement Procedures Act (12
396 U.S.C. 2601 et seq.) that is secured by the consumer's principal dwelling,
397 other than a home equity line of credit subject to § 226.5b, the creditor shall
398 make good faith estimates of the disclosures required by § 226.18 before

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399 consummation, or shall deliver or place them in the mail not later than three
400 business days after the creditor receives the consumer's written application,
401 whichever is earlier.

402 -----
403 Are Current and prior interest rates provided?

404 [226.20(c)(1)]

405 (c) Variable-rate adjustments. 45c An adjustment to the interest rate with or
406 without a corresponding adjustment to the payment in a variable-rate
407 transaction subject to § 226.19(b) is an event requiring new disclosures to the
408 consumer. At least once each year during which an interest rate adjustment is
409 implemented without an accompanying payment change, and at least 25, but no
410 more than 120, calendar days before payment at a new level is due, the
411 following disclosures, as applicable, must be delivered or placed in the mail:

412 (1) The current and prior interest rates.

413 -----
414 Are Index values on which interest rates are based provided?

415 [226.20(c)(2)]

416 (c) Variable-rate adjustments. 45c An adjustment to the interest rate with or
417 without a corresponding adjustment to the payment in a variable-rate
418 transaction subject to § 226.19(b) is an event requiring new disclosures to the
419 consumer. At least once each year during which an interest rate adjustment is
420 implemented without an accompanying payment change, and at least 25, but no
421 more than 120, calendar days before payment at a new level is due, the
422 following disclosures, as applicable, must be delivered or placed in the mail:

423 (2) The index values upon which the current and prior interest rates are
424 based.

425 -----
426 Are the Extent to which the creditor has foregone an interest rate increase
427 provided?

428 [226.20(c)(3)]

429 (c) Variable-rate adjustments. 45c An adjustment to the interest rate with or
430 without a corresponding adjustment to the payment in a variable-rate
431 transaction subject to § 226.19(b) is an event requiring new disclosures to the
432 consumer. At least once each year during which an interest rate adjustment is
433 implemented without an accompanying payment change, and at least 25, but no
434 more than 120, calendar days before payment at a new level is due, the
435 following disclosures, as applicable, must be delivered or placed in the mail:

436 (3) The extent to which the creditor has foregone any increase in the interest
437 rate.

438 -----
439 Are the Contractual effects of the adjustment, including the new payment amount
440 and a statement of the loan balance provided?

441 [226.20(c)(4)]

442 (c) Variable-rate adjustments. 45c An adjustment to the interest rate with or
443 without a corresponding adjustment to the payment in a variable-rate
444 transaction subject to § 226.19(b) is an event requiring new disclosures to the
445 consumer. At least once each year during which an interest rate adjustment is
446 implemented without an accompanying payment change, and at least 25, but no
447 more than 120, calendar days before payment at a new level is due, the
448 following disclosures, as applicable, must be delivered or placed in the mail:

449 (4) The contractual effects of the adjustment, including the payment due
450 after the adjustment is made, and a statement of the loan balance.

451 -----
452 Are Payments required to avoid negative amortization?

453 [226.20(c)(5)]

454 (c) Variable-rate adjustments. 45c An adjustment to the interest rate with or
455 without a corresponding adjustment to the payment in a variable-rate

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456 transaction subject to § 226.19(b) is an event requiring new disclosures to the
457 consumer. At least once each year during which an interest rate adjustment is
458 implemented without an accompanying payment change, and at least 25, but no
459 more than 120, calendar days before payment at a new level is due, the
460 following disclosures, as applicable, must be delivered or placed in the mail:

461 (5) The payment, if different from that referred to in paragraph (c)(4) of
462 this section, that would be required to fully amortize the loan at the new
463 interest rate over the remainder of the loan term.
464 -----

465 Were the subsequent disclosures mailed in accordance with timing requirements?
466 [226.20(c)]

467 (c) Variable-rate adjustments. 45c An adjustment to the interest rate with or
468 without a corresponding adjustment to the payment in a variable-rate
469 transaction subject to § 226.19(b) is an event requiring new disclosures to the
470 consumer. At least once each year during which an interest rate adjustment is
471 implemented without an accompanying payment change, and at least 25, but no
472 more than 120, calendar days before payment at a new level is due, the
473 following disclosures, as applicable, must be delivered or placed in the mail:

474 (1) The current and prior interest rates.

475 (2) The index values upon which the current and prior interest rates are
476 based.

477 (3) The extent to which the creditor has foregone any increase in the
478 interest rate.

479 (4) The contractual effects of the adjustment, including the payment due
480 after the adjustment is made, and a statement of the loan balance.

481 (5) The payment, if different from that referred to in paragraph (c)(4) of
482 this section, that would be required to fully amortize the loan at the new
483 interest rate over the remainder of the loan term.
484 -----

485 Does the disclosure contain an independent index if the transaction is an ARM?
486 [12 CFR 34.22]

487 If a national bank makes an ARM loan to which 12 CFR 226.19(b) applies (i.e.,
488 the annual percentage rate of a loan may increase after consummation, the term
489 exceeds one year, and the consumer's principal dwelling secures the
490 indebtedness), the loan documents must specify an index to which changes in the
491 interest rate will be linked. This index must be readily available to, and
492 verifiable by, the borrower and beyond the control of the bank. A national bank
493 may use as an index any measure of rates of interest that meets these
494 requirements. The index may be either single values of the chosen measure or a
495 moving average of the chosen measure calculated over a specified period. A
496 national bank also may increase the interest rate in accordance with applicable
497 loan documents specifying the amount of the increase and the times at which, or
498 circumstances under which, it may be made. A national bank may decrease the
499 interest rate at any time.
500 -----

501
502 12 CFR 34.20

503 Adjustable-rate mortgage (ARM) loan means an extension of credit made to
504 finance or refinance the purchase of, and secured by a lien on, a one-to-four
505 family dwelling, including a condominium unit, cooperative housing unit, or
506 residential manufactured home, where the lender, pursuant to an agreement with
507 the borrower, may adjust the rate of interest from time to time. An ARM loan
508 does not include fixed-rate extensions of credit that are payable at the end of
509 a term that, when added to any terms for which the bank has promised to renew
510 the loan, is shorter than the term of the amortization schedule.

511 (b) Certain variable-rate transactions. 45a If the annual percentage rate
512 may increase after consummation in a transaction secured by the consumer's

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513 principal dwelling with a term greater than one year, the following disclosures
514 must be provided at the time an application form is provided or before the
515 consumer pays a nonrefundable fee, whichever is earlier: 45b

516 -----
517 Was this book provided to consumer, Consumer Handbook on ARMs?

518 [226.19(b)(1)]

519 (b) Certain variable-rate transactions. 45a If the annual percentage rate may
520 increase after consummation in a transaction secured by the consumer`s
521 principal dwelling with a term greater than one year, the following disclosures
522 must be provided at the time an application form is provided or before the
523 consumer pays a nonrefundable fee, whichever is earlier: 45b

524 (1) The booklet titled Consumer Handbook on Adjustable Rate Mortgages
525 published by the Board and the Federal Home Loan Bank Board, or a suitable
526 substitute.

527 -----
528 Is GFE dated no later than three business days after date of written
529 application? Respa Specific question.

530 [226.19(a)(1)]

531 (a) Mortgage transactions subject to RESPA--(1)(i) Time of disclosures. In
532 a mortgage transaction subject to the Real Estate Settlement Procedures Act (12
533 U.S.C. 2601 et seq.) that is secured by the consumer`s principal dwelling,
534 other than a home equity line of credit subject to § 226.5b, the creditor shall
535 make good faith estimates of the disclosures required by § 226.18 before
536 consummation, or shall deliver or place them in the mail not later than three
537 business days after the creditor receives the consumer`s written application,
538 whichever is earlier.

539 -----
540 Does Lender Only make loans to consumers with the ability to repay based on the
541 consumer`s income, obligations, and employment?

542 [226.34(a)(4)]

543 (a) Prohibited acts or practices for loans subject to § 226.32. A creditor
544 extending mortgage credit subject to § 226.32 shall not--

545 (1) Home improvement contracts. Pay a contractor under a home improvement
546 contract from the proceeds of a mortgage covered by § 226.32, other than:

547 (i) By an instrument payable to the consumer or jointly to the consumer
548 and the contractor; or

549 (ii) At the election of the consumer, through a third-party escrow agent in
550 accordance with terms established in a written agreement signed by the
551 consumer, the creditor, and the contractor prior to the disbursement.

552 (4) Repayment ability. Extend credit subject to § 226.32 to a consumer based
553 on the value of the consumer`s collateral without regard to the consumer`s
554 repayment ability as of consummation, including the consumer`s current and
555 reasonably expected income, employment, assets other than the collateral,
556 current obligations, and mortgage-related obligations.

557 -----
558 Are waivers of the waiting period appropriate, do they reflect the signature of
559 all the consumers entitled to
560 the waiting period?

561 [226.31(c)(1)(iii)]

562 (c) Timing of disclosure--(1) Disclosures for certain closed-end home
563 mortgages. The creditor shall furnish the disclosures required by § 226.32 at
564 least three business days prior to consummation of a mortgage transaction
565 covered by § 226.32.

566 (i) Change in terms. After complying with paragraph (c)(1) of this
567 section and prior to consummation, if the creditor changes any term that makes
568 the disclosures inaccurate, new disclosures shall be provided in accordance
569 with the requirements of this subpart.

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570 (ii) Telephone disclosures. A creditor may provide new disclosures by
571 telephone if the consumer initiates the change and if, at consummation:

572 (A) The creditor provides new written disclosures; and
573 {{8-29-08 p.6670.04-E}}

574 (B) The consumer and creditor sign a statement that the new
575 disclosures were provided by telephone at least three days prior to
576 consummation.

577 (iii) Consumer`s waiver of waiting period before consummation. The
578 consumer may, after receiving the disclosures required by paragraph (c)(1) of
579 this section, modify or waive the three-day waiting period between delivery of
580 those disclosures and consummation if the consumer determines that the
581 extension of credit is needed to meet a bona fide personal financial emergency.
582 To modify or waive the right, the consumer shall give the creditor a dated
583 written statement that describes the emergency, specifically modifies or waives
584 the waiting period, and bears the signature of all the consumers entitled to
585 the waiting period. Printed forms for this purpose are prohibited, except when
586 creditors are permitted to use printed forms pursuant to § 226.23(e)(2).

587 -----
588 Is this term absent from the specific mortgage transaction. Negative
589 amortization?

590 [226.32(d)(2)]

591 (d) Limitations. A mortgage transaction subject to this section shall not
592 include the following terms:

593 (2) Negative amortization. A payment schedule with regular periodic payments
594 that cause the principal balance to increase.

595 -----
596 Is this term absent from the specific mortgage transaction. Balloon payment (if
597 term is less than 5 years) other than bridge loans of less than one year?

598 [226.32(d)(1)]

599 (d) Limitations. A mortgage transaction subject to this section shall not
600 include the following terms:

601 (1)(i) Balloon payment. For a loan with a term of less than five years, a
602 payment schedule with regular periodic payments that when aggregated do not
603 fully amortize the outstanding principal balance.

604 -----
605
606 Is this term absent from the specific mortgage transaction. Due-on-demand
607 clause?

608 [226.32(d)(8)]

609 (d) Limitations. A mortgage transaction subject to this section shall not
610 include the following terms:

611 (8) Due-on-demand clause. A demand feature that permits the creditor to
612 terminate the loan in advance of the original maturity date and to demand
613 repayment of the entire outstanding balance, except in the following
614 circumstances:

615 (i) There is fraud or material misrepresentation by the consumer in
616 connection with the loan;

617 (ii) The consumer fails to meet the repayment terms of the agreement for
618 any outstanding balance; or

619 (iii) There is any action or inaction by the consumer that adversely
620 affects the creditor`s security for the loan, or any right of the creditor in
621 such security.

622 -----
623 Is this term absent from the specific mortgage transaction. Prepayment
624 penalties?

625 [226.32(d)(6)]

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626 (d) Limitations. A mortgage transaction subject to this section shall not
627 include the following terms:

628 (6) Prepayment penalties. Except as allowed under paragraph (d)(7) of this
629 section, a penalty for paying all or part of the principal before the date on
630 which the principal is due. A prepayment penalty includes computing a refund of
631 unearned interest by a method that is less favorable to the consumer than the
632 actuarial method, as defined by section 933(d) of the Housing and Community
633 Development Act of 1992, 15 U.S.C. 1615(d).

634 (7) Prepayment penalty exception. A mortgage transaction subject to this
635 section may provide for a prepayment penalty (including a refund calculated
636 according to the rule of 78s) otherwise permitted by law if, under the terms of
637 the loan:

638 (i) The penalty will not apply after the two-year period following
639 consummation;

640 (ii) The penalty will not apply if the source of the prepayment funds is
641 a refinancing by the creditor or an affiliate of the creditor;

642 (iii) At consummation, the consumer`s total monthly debt payments
643 (including amounts owed under the mortgage) do not exceed 50 percent of the
644 consumer`s monthly gross income, as verified in accordance with §
645 226.34(a)(4)(ii); and

646 (iv) The amount of the periodic payment of principal or interest or both
647 may not change during the four-year period following consummation.

648 -----
649 Does the bank/lender pay a contractor under a home improvement contract from
650 mortgage proceeds?

651 226.34(a) (1)

652 (a) Prohibited acts or practices for loans subject to § 226.32. A creditor
653 extending mortgage credit subject to § 226.32 shall not--

654 (1) Home improvement contracts. Pay a contractor under a home improvement
655 contract from the proceeds of a mortgage covered by § 226.32, other than:

656 (i) By an instrument payable to the consumer or jointly to the consumer
657 and the contractor; or

658 (ii) At the election of the consumer, through a third-party escrow agent
659 in accordance with terms established in a written agreement signed by the
660 consumer, the creditor, and the contractor prior to the disbursement.

661 -----
662 Is this term absent from the specific mortgage transaction. Refund calculation
663 by method less favorable than the actuarial method for rebates of interest
664 arising from loan acceleration due to default?

665 [226.32(d)(5)]

666 (d) Limitations. A mortgage transaction subject to this section shall not
667 include the following terms:

668 (5) Rebates. A refund calculated by a method less favorable than the
669 actuarial method (as defined by section 933(d) of the Housing and Community
670 Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising
671 from a loan acceleration due to default.

672 -----
673 Is this term absent from the specific mortgage transaction. Increased
674 interest rate after default?

675 [226.32(d)(4)]

676 (d) Limitations. A mortgage transaction subject to this section shall not
677 include the following terms:

678 (4) Increased interest rate. An increase in the interest rate after default.

679 -----
680 Is this term absent from the specific mortgage transaction. Advance payments of
681 more than two periodic payments?
682

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683 [226.32(d)(3)]
684 (d) Limitations. A mortgage transaction subject to this section shall not
685 include the following terms:

686 (3) Advance payments. A payment schedule that consolidates more than two
687 periodic payments and pays them in advance from the proceeds.

688 -----
689 Does the bank/lender disclose all notices?

690 [226.32(c)(1)]

691 (c) Disclosures. In addition to other disclosures required by this part, in a
692 mortgage subject to this section, the creditor shall disclose the following in
693 conspicuous type size:

694 (1) Notices. The following statement: "You are not required to complete this
695 agreement merely because you have received these disclosures or have signed a
696 loan application. If you obtain this loan, the lender will have a mortgage on
697 your home. You could lose your home, and any money you have put into it, if you
698 do no meet your obligations under the loan."

699 -----
700 Are new disclosures provided when terms change prior to consummation?

701 [226.31 (c)(1)(i)]

702 (c) Timing of disclosure--(1) Disclosures for certain closed-end home
703 mortgages. The creditor shall furnish the disclosures required by § 226.32 at
704 least three business days prior to consummation of a mortgage transaction
705 covered by § 226.32.

706 (i) Change in terms. After complying with paragraph (c)(1) of this section and
707 prior to consummation, if the creditor changes any term that makes the
708 disclosures inaccurate, new disclosures shall be provided in accordance with
709 the requirements of this subpart.

710 -----
711 Are disclosures provided at least 3 business days prior to consummation?

712 [226.31 (c)(1)]

713 (c) Timing of disclosure--(1) Disclosures for certain closed-end home
714 mortgages. The creditor shall furnish the disclosures required by § 226.32 at
715 least three business days prior to consummation of a mortgage transaction
716 covered by § 226.32.

717 (i) Change in terms. After complying with paragraph (c)(1) of this
718 section and prior to consummation, if the creditor changes any term that makes
719 the disclosures inaccurate, new disclosures shall be provided in accordance
720 with the requirements of this subpart.

721 (ii) Telephone disclosures. A creditor may provide new disclosures by
722 telephone if the consumer initiates the change and if, at consummation:
723 § 226.32 Requirements for certain closed-end home mortgages.

724 (a) Coverage. (1) Except as provided in paragraph (a)(2) of this
725 section, the requirements of this section apply to a consumer credit
726 transaction that is secured by the consumer's principal dwelling, and in which
727 either:

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729 (i) The annual percentage rate at consummation will exceed by more than
730 8 percentage points for first-lien loans, or by more than 10 percentage points
731 for subordinate-lien loans, the yield on Treasury securities having comparable
732 periods of maturity to the loan maturity as of the fifteenth day of the month
733 immediately preceding the month in which the application for the extension of
734 credit is received by the creditor; or

735 (ii) The total points and fees payable by the consumer at or before loan
736 closing will exceed the greater of 8 percent of the total loan amount, or \$400;
737 the \$400 figure shall be adjusted annually on January 1 by the annual
738 percentage change in the Consumer Price Index that was reported on the
739 preceding June 1.

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- 740 (2) This section does not apply to the following:
- 741 (i) A residential mortgage transaction.
- 742 (ii) A reverse mortgage transaction subject to § 226.33.
- 743 (iii) An open-end credit plan subject to subpart B of this part.
- 744 (b) Definitions. For purposes of this subpart, the following definitions
- 745 apply:
- 746 (1) For purposes of paragraph (a)(1)(ii) of this section, points and fees
- 747 mean:
- 748 (i) All items required to be disclosed under § 226.4(a) and 226.4(b),
- 749 except interest or the time-price differential;
- 750 (ii) All compensation paid to mortgage brokers; and
- 751 (iii) All items listed in § 226.4(c)(7) (other than amounts held for
- 752 future payment of taxes) unless the charge is reasonable, the creditor receives
- 753 no direct or indirect compensation in connection with the charge, and the
- 754 charge is not paid to an affiliate of the creditor; and
- 755 (iv) Premiums or other charges for credit life, accident, health, or
- 756 loss-of-income insurance, or debt-cancellation coverage (whether or not the
- 757 debt-cancellation coverage is insurance under applicable law) that provides for
- 758 cancellation of all or part of the consumer's liability in the event of the
- 759 loss of life, health, or income or in the case of accident, written in
- 760 connection with the credit transaction.
- 761 (2) Affiliate means any company that controls, is controlled by, or is under
- 762 common control with another company, as set forth in the Bank Holding Company
- 763 Act of 1956 (12 U.S.C. 1841 et seq.)
- 764 (c) Disclosures. In addition to other disclosures required by this part,
- 765 in a mortgage subject to this section, the creditor shall disclose the
- 766 following in conspicuous type size:
- 767 (1) Notices. The following statement: "You are not required to complete this
- 768 agreement merely because you have received these disclosures or have signed a
- 769 loan application. If you obtain this loan, the lender will have a mortgage on
- 770 your home. You could lose your home, and any money you have put into it, if you
- 771 do not meet your obligations under the loan."
- 772 (2) Annual percentage rate. The annual percentage rate.
- 773 (3) Regular payment; balloon payment. The amount of the regular monthly (or
- 774 other periodic) payment and the amount of any balloon payment. The regular
- 775 payment disclosed under this paragraph shall be treated as accurate if it is
- 776 based on an amount borrowed that is deemed accurate and is disclosed under
- 777 paragraph (c)(5) of this section.
- 778 (4) Variable-rate. For variable-rate transactions, a statement that the
- 779 interest rate and monthly payment may increase, and the amount of the single
- 780 maximum monthly payment, based on the maximum interest rate required to be
- 781 disclosed under § 226.30.
- 782 (5) Amount borrowed. For a mortgage refinancing, the total amount the consumer
- 783 will borrow, as reflected by the face amount of the note; and where the amount
- 784 borrowed includes premiums or other charges for optional credit insurance or
- 785 debt-cancellation coverage, that fact shall be stated, grouped together with
- 786 the disclosure of the amount borrowed. The disclosure of the amount borrowed
- 787 shall be treated as accurate if it is not more than \$100 above or below the
- 788 amount required to be disclosed.
- 789 (d) Limitations. A mortgage transaction subject to this section shall
- 790 not include the following terms:
- 791 (1)(i) Balloon payment. For a loan with a term of less than five years, a
- 792 payment schedule with regular periodic payments that when aggregated do not
- 793 fully amortize the outstanding principal balance.
- 794 (ii) Exception. The limitations in paragraph (d)(1)(i) of this section
- 795 do not apply to loans with maturities of less than one year, if the purpose of
- 796 the loan is a "bridge" loan

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797 {{8-29-08 p.6670.04-G}}connected with the acquisition or construction of a
798 dwelling intended to become the consumer`s principal dwelling.
799 (2) Negative amortization. A payment schedule with regular periodic payments
800 that cause the principal balance to increase.
801 (3) Advance payments. A payment schedule that consolidates more than two
802 periodic payments and pays them in advance from the proceeds.
803 (4) Increased interest rate. An increase in the interest rate after default.
804 (5) Rebates. A refund calculated by a method less favorable than the actuarial
805 method (as defined by section 933(d) of the Housing and Community Development
806 Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan
807 acceleration due to default.
808 (6) Prepayment penalties. Except as allowed under paragraph (d)(7) of this
809 section, a penalty for paying all or part of the principal before the date on
810 which the principal is due. A prepayment penalty includes computing a refund of
811 unearned interest by a method that is less favorable to the consumer than the
812 actuarial method, as defined by section 933(d) of the Housing and Community
813 Development Act of 1992, 15 U.S.C. 1615(d).
814 (7) Prepayment penalty exception. A mortgage transaction subject to this
815 section may provide for a prepayment penalty (including a refund calculated
816 according to the rule of 78s) otherwise permitted by law if, under the terms of
817 the loan:
818 (i) The penalty will not apply after the two-year period following
819 consummation;
820 (ii) The penalty will not apply if the source of the prepayment funds is
821 a refinancing by the creditor or an affiliate of the creditor;
822 (iii) At consummation, the consumer`s total monthly debt payments
823 (including amounts owed under the mortgage) do not exceed 50 percent of the
824 consumer`s monthly gross income, as verified in accordance with §
825 226.34(a)(4)(ii); and
826 (iv) The amount of the periodic payment of principal or interest or both
827 may not change during the four-year period following consummation.
828 (8) Due-on-demand clause. A demand feature that permits the creditor to
829 terminate the loan in advance of the original maturity date and to demand
830 repayment of the entire outstanding balance, except in the following
831 circumstances:
832 (i) There is fraud or material misrepresentation by the consumer in
833 connection with the loan;
834 (ii) The consumer fails to meet the repayment terms of the agreement for
835 any outstanding balance; or
836 (iii) There is any action or inaction by the consumer that adversely
837 affects the creditor`s security for the loan, or any right of the creditor in
838 such security.
839 [Codified to 12 C.F.R. § 226.32]
840 [Section 226.32 added at 60 Fed. Reg. 15472, March 24, 1995, effective March
841 22, 1995, but compliance is optional until October 1, 1995; as amended at 66
842 Fed. Reg. 65617, December 20, 2001, effective December 20, 2001, but compliance
843 mandatory as of October 1, 2002; 73 Fed. Reg. 44603, July 30, 2008, effective
844 October 1, 2009]
845 -----
846 Are disclosures clear, in writing and in a form the consumer may retain for
847 future reference?
848 [226.31 (b)(1)]
849 (b) Form of disclosures. The creditor shall make the disclosures required by
850 this subpart clearly and conspicuously in writing, in a form that the consumer
851 may keep. The disclosures required by this subpart may be provided to the
852 consumer in electronic form, subject to compliance with the consumer consent

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853 and other applicable provisions of the Electronic Signatures in Global and
854 National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 et seq.).
855 -----