

Comptroller of the Currency, Treasury

§ 37.3

37.7 Affirmative election to purchase and acknowledgment of receipt of disclosures required.

37.8 Safety and soundness requirement.

APPENDIX A TO PART 37—SHORT FORM DISCLOSURES

APPENDIX B TO PART 37—LONG FORM DISCLOSURES

AUTHORITY: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 1818.

SOURCE: 67 FR 58976, Sept. 19, 2002, unless otherwise noted.

§ 37.1 Authority, purpose, and scope.

(a) *Authority.* A national bank is authorized to enter into debt cancellation contracts and debt suspension agreements and charge a fee therefor, in connection with extensions of credit that it makes, pursuant to 12 U.S.C. 24(Seventh).

(b) *Purpose.* This part sets forth the standards that apply to debt cancellation contracts and debt suspension agreements entered into by national banks. The purpose of these standards is to ensure that national banks offer and implement such contracts and agreements consistent with safe and sound banking practices, and subject to appropriate consumer protections.

(c) *Scope.* This part applies to debt cancellation contracts and debt suspension agreements entered into by national banks in connection with extensions of credit they make. National banks' debt cancellation contracts and debt suspension agreements are governed by this part and applicable Federal law and regulations, and not by part 14 of this chapter or by State law.

§ 37.2 Definitions.

For purposes of this part:

(a) *Actuarial method* means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(b) *Bank* means a national bank and a Federal branch or Federal agency of a foreign bank as those terms are defined in part 28 of this chapter.

(c) *Closed-end credit* means consumer credit other than open-end credit as defined in this section.

(d) *Contract* means a debt] cancellation contract or a debt suspension agreement.

(e) *Customer* means an individual who obtains an extension of credit from a bank primarily for personal, family or household purposes.

(f) *Debt cancellation contract* means a loan term or contractual arrangement modifying loan terms under which a bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents.

(g) *Debt suspension agreement* means a loan term or contractual arrangement modifying loan terms under which a bank agrees to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents. The term *debt suspension agreement* does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the bank's unilateral decision to allow a deferral of repayment.

(h) *Open-end credit* means consumer credit extended by a bank under a plan in which:

(1) The bank reasonably contemplates repeated transactions;

(2) The bank may impose a finance charge from time to time on an outstanding unpaid balance; and

(3) The amount of credit that may be extended to the customer during the term of the plan (up to any limit set by the bank) is generally made available to the extent that any outstanding balance is repaid.

(i) *Residential mortgage loan* means a loan secured by 1-4 family, residential real property.

§ 37.3 Prohibited practices.

(a) *Anti-tying.* A national bank may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation contract or

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debt suspension agreement with the bank.

(b) *Misrepresentations generally.* A national bank may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this part.

(c) *Prohibited contract terms.* A national bank may not offer debt cancellation contracts or debt suspension agreements that contain terms:

(1) Giving the bank the right unilaterally to modify the contract unless:

(i) The modification is favorable to the customer and is made without additional charge to the customer; or

(ii) The customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect; or

(2) Requiring a lump sum, single payment for the contract payable at the outset of the contract, where the debt subject to the contract is a residential mortgage loan.

§ 37.4 Refunds of fees in the event of termination or prepayment of the covered loan.

(a) *Refunds.* If a debt cancellation contract or debt suspension agreement is terminated (including, for example, when the customer prepays the covered loan), the bank shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. A bank may offer a customer a contract that does not provide for a refund only if the bank also offers that customer a *bona fide* option to purchase a comparable contract that provides for a refund.

(b) *Method of calculating refund.* The bank shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

§ 37.5 Method of payment of fees.

Except as provided in § 37.3(c)(2), a bank may offer a customer the option of paying the fee for a contract in a single payment, provided the bank also offers the customer a *bona fide* option of paying the fee for that contract in monthly or other periodic payments. If

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the bank offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the bank must also disclose to the customer, in accordance with § 37.6, whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

§ 37.6 Disclosures.

(a) *Content of short form of disclosures.* The short form of disclosures required by this part must include the information described in appendix A to this part that is appropriate to the product offered. Short form disclosures made in a form that is substantially similar to the disclosures in appendix A to this part will satisfy the short form disclosure requirements of this section.

(b) *Content of long form of disclosures.* The long form of disclosures required by this part must include the information described in appendix B to this part that is appropriate to the product offered. Long form disclosures made in a form that is substantially similar to the disclosures in appendix B to this part will satisfy the long form disclosure requirements of this section.

(c) *Disclosure requirements; timing and method of disclosures—*(1) *Short form disclosures.* The bank shall make the short form disclosures orally at the time the bank first solicits the purchase of a contract.

(2) *Long form disclosures.* The bank shall make the long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, then the bank shall provide the long form disclosures in writing at that time.

(3) *Special rule for transactions by telephone.* If the contract is solicited by telephone, the bank shall provide the short form disclosures orally and shall mail the long form disclosures, and, if appropriate, a copy of the contract to the customer within 3 business days, beginning on the first business day after the telephone solicitation.

(4) *Special rule for solicitations using written mail inserts or “take one” applications.* If the contract is solicited through written materials such as mail inserts or “take one” applications, the bank may provide only the short form