

FEDERAL RESERVE SYSTEM

12 CFR Part 226

Regulation Z; Docket No. R-1340

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: On July 30, 2008, the Board published a final rule amending Regulation Z, which implements the Truth in Lending Act (TILA) and the Home Ownership and Equity Protection Act (HOEPA). The July 2008 final rule requires creditors to give consumers transaction-specific cost disclosures shortly after application for closed-end loans secured by a consumer's principal dwelling. The disclosures must be provided before the consumer pays any fee, other than a fee for obtaining the consumer's credit history. Also on July 30, 2008, the Congress enacted the Housing and Economic Recovery Act of 2008, which included amendments to TILA, known as the Mortgage Disclosure Improvement Act of 2008 (MDIA). On October 3, 2008, the Congress amended the MDIA in connection with its enactment of the Emergency Economic Stabilization Act of 2008 (Stabilization Act). The Board is now revising Regulation Z to implement the provisions of the MDIA, as amended.

The MDIA broadens and adds to the requirements of the Board's July 2008 final rule. Among other things, the MDIA requires early, transaction-specific disclosures for mortgage loans secured by dwellings other than the consumer's principal dwelling and requires waiting periods between the time when disclosures are given and consummation of the mortgage transaction. Moreover, these requirements of the MDIA will become effective on July 30, 2009, about two months earlier than the Board's regulatory amendments adopted in the July 2008 final rule.

Consistent with the MDIA, the final rule amending Regulation Z requires creditors to make good faith estimates of the required mortgage disclosures, and deliver or place them in the mail, no later than three business days after receiving a consumer's application for a dwelling-secured closed-end loan. Consummation may occur on or after the seventh business day after the delivery or mailing of these disclosures. If the annual percentage rate provided in the good faith estimates changes beyond a specified tolerance for accuracy, creditors must provide corrected disclosures, which the consumer must receive on or before the third business day before consummation of the transaction. The final rule allows consumers to expedite consummation to meet a bona fide personal financial emergency. The MDIA, as amended by the Stabilization Act, specifies different requirements for providing early disclosures for mortgage transactions that are secured by a consumer's interest in a timeshare plan.

DATES: The amendments to §§ 226.2(a)(6), 226.17(b) and (f), and 226.19(a)(1); and amendments 13, 14, and 16, and 17 to Supplement I to part 226, published on July 30, 2008 (73 FR 44522), previously to become effective on October 1, 2009, are now effective on July 30, 2009.

Additionally, this final rule is also effective on July 30, 2009 and includes further amendments to Regulation Z.

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SUPPLEMENTARY INFORMATION:

I. Background

One of the purposes of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling.

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. 15 U.S.C. 1604(a). TILA is implemented by the Board's Regulation Z, 12 CFR part 226. An Official Staff Commentary interprets the requirements of the regulation and provides guidance to creditors in applying the rules to specific transactions. See 12 CFR part 226 (Supp. I).

TILA Section 128, 15 U.S.C. 1638, requires creditors to make specified disclosures in connection with closed-end consumer credit transactions before the credit is extended. Before amendment by the MDIA, for certain mortgage loans TILA required creditors to make good faith estimates of the disclosures ("early disclosures") within three business days after the consumer has submitted an application or before the credit is extended, whichever is earlier. In implementing TILA Section 128, Regulation Z requires creditors to give these early disclosures only for loans that finance the purchase or initial construction of a consumer's principal dwelling.

On July 30, 2008, the Board published a final rule amending Regulation Z (the July 2008 final rule) (73 FR 44522). The July 2008 final rule requires, among other things, that a creditor provide the early disclosures even when the loan is not for the purpose of financing the purchase or initial construction of the consumer's principal dwelling. Under the July 2008 final rule, the early disclosures also must be provided for

non-purchase closed-end loans secured by the consumer's principal dwelling (such as a refinance loan). The July 2008 final rule also required these disclosures to be given before the consumer pays any fee, other than a bona fide and reasonable fee for obtaining the consumer's credit history. As published, these provisions of the July 2008 final rule were scheduled to become effective on October 1, 2009 (73 FR at 55494). Consistent with the MDIA, however, this final rule sets an earlier effective date of July 30, 2009 for these fee collection restrictions, as discussed below.

On the same day that the July 2008 final rule was published, Congress amended TILA by enacting the Mortgage Disclosure Improvement Act of 2008 (MDIA).¹ The MDIA amends TILA and codifies some of the early disclosure requirements of the July 2008 final rule, but also expands upon the regulatory provisions.

Like the July 2008 final rule, the MDIA requires creditors to make the early disclosures even when the loan is not for the purpose of financing the purchase or initial construction of the consumer's principal dwelling and prohibits the collection of fees before the consumer receives the disclosures, other than a fee for obtaining a consumer's credit report. However, the MDIA applies these provisions to loans secured by a dwelling even when it is not the consumer's principal dwelling. Moreover, the MDIA imposes additional requirements not contained in the July 2008 final rule. Under the MDIA, for loans secured by a consumer's dwelling, creditors must deliver or mail the early disclosures at least seven business days before consummation. If the APR contained in the early disclosures becomes inaccurate (for example, due to a change in the loan terms), creditors must "rediscover" and provide corrected disclosures that the consumer must receive at least three business days before consummation. The disclosures also must inform consumers that they are not obligated to complete the transaction simply because disclosures were provided or because a consumer has applied for a loan. The MDIA imposes different requirements for early disclosure in closed-end mortgage transactions that are secured by a consumer's interest in a timeshare plan. These provisions of the MDIA, including the fee collection restriction, will become effective on July 30, 2009, which is about two months earlier than the effective date of the July 2008 final rule.

At this time, the Board is only conforming Regulation Z, as amended on July 30, 2008, to the MDIA provisions that become effective on July 30, 2009. The MDIA also contains additional disclosure requirements for variable-rate transactions that are not addressed in this rulemaking. Those provisions of the MDIA will not become effective until January 30, 2011, or any earlier compliance date ultimately established by the Board. This final rule does not address those disclosures. The Board anticipates issuing proposed amendments to Regulation Z to implement those provisions of the MDIA later during 2009, in connection with the Board's comprehensive review of closed-end mortgage disclosures that is currently underway.

¹ The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, enacted on July 30, 2008. The MDIA was amended by the Emergency Economic Stabilization Act of 2008, Pub. L. 110-343, enacted on October 3, 2008.

As discussed above, the MDIA contains several provisions that mirror the July 2008 final rule. These provisions are not discussed below because they are explained in detail in the supplementary information portion of the July 2008 final rule. (See 73 FR at 44590-44594; July 30, 2008). To conform to the MDIA, certain regulatory changes that the Board adopted in July 2008 will become effective on July 30, 2009 (and not on October 1, 2009 as originally provided in the July 2008 final rule). These regulatory changes are: the requirement that early disclosures be given for all dwelling-secured mortgage loans rather than only for “residential mortgage transactions” to finance the purchase or initial construction of the dwelling (in §§ 226.17(f) and 226.19(a)(1)(i) and associated commentary) and that early disclosures be given before consumers pay any fee except a fee for obtaining the consumer’s credit history (in § 226.19(a)(1)(ii) and (iii) and associated commentary). The final rule the Board is publishing today further revises Regulation Z, also effective July 30, 2009. These revisions will apply only if a consumer’s application for a covered transaction is received on or after July 30, 2009.

Minor conforming and technical amendments to Regulation Z also are made in this final rule.

II. Overview of Comments Received

On December 10, 2008, the Board published a proposed rule that would amend Regulation Z’s rules for the timing and content of disclosures for dwelling-secured mortgage loans. 73 FR 74989. The Board received fifty-one public comment letters. Several financial institutions and financial services trade associations stated that they support efforts to improve the disclosure of credit terms to consumers and recognize that the Board’s proposal is intended to conform Regulation Z to TILA, as amended by the MDIA. These commenters generally stated that the Board should make timing requirements as flexible as is possible. Several other financial institutions stated that the costs of the new waiting periods required by the MDIA outweigh any benefits and that consumers would object to delays in consummating a mortgage transaction. By contrast, consumer advocacy organizations generally supported the MDIA’s goal of providing accurate disclosure of credit to consumers terms in a timely manner. Consumer advocates further stated that the MDIA provisions allowing consumers to waive the waiting period between disclosure and consummation should be narrowly circumscribed. Comments are discussed in detail below in part III of the **Supplementary Information**.

III. The Board’s Final Rule

A. Coverage of § 226.19(a) Proposed Rule

TILA Section 128(a), 15 U.S.C. 1638(a), requires creditors to disclose certain information for closed-end consumer credit transactions, including, for example, the amount financed and the APR. TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), requires creditors to make good faith estimates of these disclosures within three business days of receiving the consumer’s application, or before consummation if that occurs earlier. Until the recent enactment of the MDIA, TILA Section 128(b)(2) applied only to a

“residential mortgage transaction” subject to the Real Estate Settlement Procedures Act (RESPA). See 15 U.S.C. 1602(w). A residential mortgage transaction is defined in TILA as a loan to finance the purchase or initial construction of a consumer’s dwelling. Regulation Z limits the definition to transactions secured by the consumer’s principal dwelling. See § 226.2(a)(24).

The MDIA extends the early disclosure requirement in TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), to additional types of loans. Under the MDIA, early disclosures are required for “any extension of credit secured by the dwelling of a consumer.” Thus, as amended, the statute requires early disclosures for home refinance loans and home equity loans. This is consistent with revisions made by the Board’s July 2008 final rule. To implement the MDIA, the Board proposed to also apply the early disclosure requirements to loans secured by dwellings other than the consumer’s principal dwelling. Accordingly, the Board proposed, under § 226.19(a)(1)(i), to require creditors to give consumers early disclosures in connection with a dwelling-secured mortgage loan (if also subject to RESPA), whether or not the loan is for the purpose of financing the purchase or initial construction of the consumer’s principal dwelling. The Board’s proposal did not apply to home equity lines of credit (HELOCs), which are subject to the rules for open-end credit in § 226.5b. The July 2008 final rule also did not apply to HELOCs.

TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), as amended by the MDIA, applies to dwelling-secured mortgage loans if they also are subject to RESPA. The U.S. Department of Housing and Urban Development’s (HUD) Regulation X implements RESPA. See 12 U.S.C. 2601 et seq.; 24 CFR 3500.1 et seq. In March 2008, HUD published a proposal to revise Regulation X. (See 73 FR 14030; Mar. 14, 2008). In November 2008, HUD published final rules amending Regulation X. (See 73 FR 68204; Nov. 17, 2008). The Board believes that Regulation Z’s timing requirements for early disclosures, as amended by this final rule, remain consistent with timing requirements for the initial good faith estimates of settlement costs required under Regulation X, as recently amended by HUD. Consistency between Regulation Z and Regulation X are discussed in detail below.

Public Comment

The Board received few comments that addressed the coverage of proposed § 226.19(a). A few financial institutions and financial services trade associations stated that the early disclosure requirements should only apply to loans secured by a consumer’s principal dwelling. A financial institution stated that consumers who own more than one dwelling usually are more sophisticated financially and will not benefit from the early disclosures. One financial services trade association supported the extension of coverage to mortgage transactions that are secured by dwellings that are not a consumer’s principal dwelling. A few commenters stated that the Board should clarify whether the MDIA’s timing requirements apply when the person obligated on the loan does not occupy the dwelling that secures the loan.

Final Rule

As proposed, the final rule applies the early disclosure requirements to loans secured by dwellings other than the consumer's principal dwelling. Under § 226.19(a)(1)(i), creditors must give consumers early disclosures in connection with a dwelling-secured mortgage loan that is subject to RESPA, whether or not the loan is for the purpose of financing the purchase or initial construction of the consumer's principal dwelling. The final rule does not revise the disclosure requirements for home equity lines of credit (HELOCs). The Board is currently reviewing the disclosure rules for real estate-secured loans, including HELOCs, and will consider the need for earlier disclosures in connection with that proposed rulemaking.

A few commenters requested guidance on whether the early disclosure rules apply to a loan secured by a dwelling that is not occupied by the person who is obligated on the loan. If the transaction is a dwelling-secured extension of consumer credit, early disclosures would be required regardless of who occupies the dwelling. However, TILA and Regulation Z do not apply to credit extensions that are primarily for business purposes. 15 U.S.C. 1603(l); 12 CFR 226.3(a)(1). Existing guidance in comment 3(a)-2 provides that creditors should determine whether a credit extension is business or consumer credit based on the factors stated in the comment. Further, comment 3(a)-3 states that credit extended to acquire, improve, or maintain rental property that is not owner-occupied (that is, in which the owner does not expect to live for more than fourteen days during the coming year) is deemed to be for business purposes. The Board believes this guidance is sufficient to determine whether a transaction is subject to TILA.

B. Timing of Delivery of Early Disclosures—§ 226.19(a)(1)(i)

Proposed Rule

Currently under Regulation Z, creditors must provide the early disclosures within three business days after receiving the consumer's written application or before consummation, whichever is earlier. The MDIA amends TILA to require creditors to deliver or mail the early disclosures at least seven business days before consummation. The Board proposed to further amend § 226.19(a)(1)(i), as published in the July 2008 final rule, to reflect this change. The Board proposed to add comment 19(a)(1)(i)-6 to clarify that consummation may occur any time on the seventh business day following delivery or mailing; the proposed comment provided examples to facilitate compliance. The proposal would have required creditors to calculate the seven-business-day waiting period using the general definition of "business day" (a calendar day on which the creditor's offices are open to the public for carrying on substantially all of its business functions).

Public Comment

Many of the comments the Board received on the requirements for early disclosures discussed the definition of “business day” that should apply for purposes of those requirements. Those comments are discussed in detail below, in part III.D of this **Supplementary Information**.

Final Rule

Consistent with the MDIA, the final rule adopts the requirement that a creditor deliver or mail the early disclosures for all dwelling-secured mortgage loans no later than three business days after the creditor receives a consumer’s application. Also as proposed, the general definition of “business day” (days on which a creditor’s offices are open to the public for carrying on substantially all of its business functions) applies for this purpose.

Under the July 2008 final rule, the early disclosures also must be provided for non-purchase closed-end loans secured by the consumer’s principal dwelling (such as a refinance loan). The July 2008 final rule also required these disclosures to be given before the consumer pays any fee, other than a bona fide and reasonable fee for obtaining the consumer’s credit history. This final rule expands these requirements to apply to mortgage transactions secured by a dwelling other than the consumer’s principal dwelling (such as a second home) and makes them effective for covered loans for which the creditor receives an application on or after July 30, 2009, consistent with the MDIA.

The requirement for a creditor to deliver or place in the mail the early disclosures no later than the seventh business day before consummation has been moved to § 226.19(a)(2) and modified, as discussed below in part III.C of the **Supplementary Information**. In addition, under the final rule, the more precise definition of “business day” will apply for purposes of calculating the seven-business-day waiting period, as discussed in detail in part III.D of the **Supplementary Information**. The Board is revising comment 19(a)(1)(i)-4 to clarify that if a consumer withdraws a loan application within three business days after a creditor receives it, the creditor need not make the early disclosures. This is consistent with comment 5b(b)-5, regarding denial or withdrawal of an application for an open-end home equity plan.

C. Waiting Periods after Early Disclosures and Corrected Disclosures—§ 226.19(a)(2)

Proposed Rule

Currently, when a creditor provides early TILA disclosures and the APR subsequently changes beyond the specified tolerance, the creditor must redisclose the APR and other changed terms no later than consummation or settlement. The MDIA amends TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), to require that in such cases

creditors make corrected disclosures so that consumers receive them not later than the third business day before consummation. The MDIA removes the reference to “settlement” for purposes of this requirement. The Board proposed to amend § 226.19(a)(2) to reflect these changes to TILA. The Board also proposed that consummation could occur any time on the third business day after the consumer receives the corrected disclosure.

In addition, under the proposed rule, if the corrected disclosures are mailed, the consumer is considered to receive the disclosures three business days after mailing. This is consistent with the presumption the Board adopted in the July 2008 final rule in § 226.19(a)(1)(ii) for determining when fees may be imposed on the consumer. The MDIA subsequently codified that presumption. In this rulemaking, the Board proposed to apply the same presumption for purposes of the rule that a consumer must receive corrected disclosures no later than the third business day before consummation. The Board also proposed to revise comment 19(a)(2)-1 to provide examples illustrating the effect of the three-business-day waiting period and when consummation may occur.

The Board proposed to revise comment 19(a)(2)-3 to clarify that the three-business-day waiting period before consummation begins when the disclosures are received by the consumer and not when they are mailed. This is consistent with the MDIA and is also consistent with the rules for certain high-cost loans and reverse mortgage transactions, which also require a creditor to make disclosures at least three business days before consummation. See § 226.31(c) and comment 31(c)-1.

Public Comment

Several financial institutions and financial services trade associations stated that the Board’s rules should specifically address the timing requirements for the early disclosures when a creditor provides electronic disclosures or uses overnight courier or other delivery methods. Also, many financial institutions and financial services trade associations stated that a three-business-day waiting period before consummation is not warranted if corrected disclosures state an APR that is lower than the APR stated in the early disclosures, because the change benefits consumers. One financial institution stated that there should be no three-business-day waiting period before consummation when corrected disclosures are provided if the consumer has three business days to rescind the loan after consummation under § 226.23(a).

A financial services trade association and a financial institution requested guidance for situations where a creditor makes corrected disclosures and thereafter the APR becomes inaccurate again. These commenters stated that, to determine whether the new APR is within the tolerance specified in § 226.22, creditors should be permitted to compare what the APR will be at consummation to the APR stated in the most recent corrected disclosures, not the initial early disclosures. One financial institution stated that the three-business-day waiting period should begin on the date the corrected disclosures are delivered or placed in the mail and not when received.

Final Rule

The Board is adopting § 226.19(a)(2) as proposed; however, the requirement to deliver or mail the early disclosures to the consumer not later than the seventh business day before consummation has been moved to § 226.19(a)(2). (In the proposal, the seven-business-day waiting period was in § 226.19(a)(1)(i).) Under the final rule, when creditors provide corrected disclosures under § 226.19(a)(2), the disclosures must state an accurate APR and all changed terms. Existing comment 19(a)(2)-2 has been redesignated as comment 19(a)(2)(ii)-2.

The final rule also applies the more precise definition of “business day” (all calendar days except Sundays and specified legal public holidays) to the seven-business-day waiting period. This is a change from the proposal, which would have applied the general definition of “business day” to this provision. This change has been made so that the same “business day” definition will be used for purposes of both the seven-business-day waiting period and the three-business-day waiting period, which will make compliance easier, as discussed in detail in part III.D of the **Supplementary Information**. The final rule also applies the more precise definition to the three-business-day waiting period, as proposed. Under the proposal, commentary on the applicable “business day” definition was contained in proposed comment 19(a)(2)-3; under the final rule, commentary on the applicable “business day” definition appears in comment 19(a)(2)-1. Further, a new comment 19(a)(2)-2 clarifies that where corrected disclosures are required consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired.

Seven-business-day waiting period for early disclosures. The final rule (like the proposal) provides that the seven-business-day waiting period begins when the creditor delivers or places the early disclosures in the mail—not when the consumer receives or is deemed to receive the early disclosures. See comment 19(a)(2)(i)-1. This is consistent with the statutory language of the MDIA. The final rule applies the more precise definition of “business day” to the seven-business-day waiting period. Proposed comment 19(a)(1)(i)-6 clarified that consummation may occur any time on the seventh business day following delivery or mailing and provided examples to facilitate compliance. That commentary has been revised to reflect the use of the more precise definition of “business day” and redesignated as new comment 19(a)(2)(i)-1.

Three-business-day waiting period for corrected disclosures. As proposed, the final rule provides that consummation may not occur until three business days after the consumer receives corrected disclosures required by § 226.19(a)(2)(ii). This is consistent with the MDIA and is also consistent with the three-business-day waiting period in § 226.31(c)(1) for high-cost mortgages described in § 226.32(a) (HOEPA loans). The final rule applies the more precise definition of “business day” (all calendar days except Sundays and specified legal public holidays) to the three-business-day waiting period, as discussed below in part III.D of the **Supplementary Information**.

Also as proposed, the final rule provides that if a creditor places corrected disclosures in the mail, the consumer is deemed to receive the corrected disclosures three business days after they are mailed. Comment 19(a)(2)(ii)-3 clarifies that if the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.19(a)(2)(ii) begins. The comment also clarifies that creditors that use e-mail or a courier other than the postal service may also follow this approach. For example, if a creditor provides disclosures through a courier service, the creditor may presume that the consumer receives the disclosures three business days after they are deposited with the courier service, for purposes of determining when the three-business-day waiting period required by § 226.19(a)(2)(ii) begins. The Board is not adopting separate rules or presumptions regarding the delivery of disclosures by overnight courier, electronic transmission, or other means. Although these methods may be faster than delivery by regular mail, the Board believes that, in light of the variety of delivery methods and options offered by service providers, it is not feasible to define with sufficient clarity what may be considered acceptable “overnight delivery” or to delineate a separate time period for presumption of receipt for each available delivery method, as previously stated in the supplementary information to the Board’s July 2008 final rule (see 73 FR at 44593; July 30, 2008).

A creditor is not required to use the presumption of receipt to determine when the waiting period required by § 226.19(a)(2)(ii) begins. Thus, if a creditor delivers corrected disclosures electronically consistent with the E-Sign Act or delivers disclosures by overnight courier, the creditor may rely on evidence of actual delivery (such as documentation that the mortgage loan disclosure was delivered by certified mail or overnight delivery or e-mail (if similar documentation is available)) to determine when the three-business-day waiting period begins.

The rules for corrected disclosures are contained in new § 226.19(a)(2)(ii). Therefore, comments 19(a)(2)-1 through 19(a)(2)-4 have been redesignated (as revised) as comments 19(a)(2)(ii)-1 through 19(a)(2)(ii)-4.

APR accuracy for corrected disclosures. New comment 19(a)(2)-4 has been added to address commenters’ request for guidance in cases where corrected disclosures have been given and the APR subsequently changes. The new comment clarifies that in such cases, the creditor should compare the APR at consummation with the APR in the most recently provided corrected disclosures (not the first set of disclosures provided) to determine whether the creditor must provide another set of corrected disclosures.

Commenters requested guidance on whether corrected disclosures are required if the APR initially disclosed under § 226.19(a)(1)(i) overstates the actual APR. Comment 19(a)(2)(ii)-1 provides that corrected disclosures are not required when the APR previously disclosed is considered accurate under the tolerances in § 226.22.

D. Definition of “Business Day”—§ 226.2(a)(6)

Proposed Rule

The MDIA provides that if the early disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed for purposes of the prohibition on collecting fees before the consumer receives the early disclosures. This is consistent with the July 2008 final rule (see 73 FR at 44600-44601; July 30, 2008). In the rulemaking to implement the MDIA, the Board proposed to adopt that same presumption for purposes of the requirement that consumers receive corrected disclosures, if necessary, not later than the third business day before consummation, as discussed above in part III.C of the **Supplementary Information**. In the July 2008 final rule, the Board also clarified how creditors should count weekends and federal legal public holidays in determining when mailed disclosures are presumed to be received and how long the restriction on fees applies under § 226.19(a)(1)(ii) (see 73 FR at 44599; July 30, 2008). In this rulemaking, the Board proposed to further clarify that creditors should count “business days” the same way for purposes of the presumption in § 226.19(a)(2) that consumers receive corrected disclosures three business days after they are mailed.

Currently, § 226.2(a)(6) contains two definitions of “business day.” Under the general definition, a “business day” is a day on which the creditor’s offices are open to the public for carrying on substantially all of its business functions. However, for some purposes a more precise definition applies; “business day” means all calendar days except Sundays and specified federal legal public holidays, for purposes of §§ 226.15(a), 226.23(a), and 226.31(c)(1) and (2). The July 2008 final rule adopted the more precise definition for use in determining when mailed disclosures are presumed to be received under § 226.19(a)(1)(ii). The Board also proposed to apply this definition for purposes of determining when disclosures are presumed to be received for purposes of the three-business-day waiting period in § 226.19(a)(2). As explained below, this approach is being adopted in this final rule.

Under the MDIA, creditors must deliver the early disclosures, or place them in the mail, no later than three business days after receiving a consumer’s application for a dwelling-secured mortgage loan; the delivery or mailing also must occur not later than the seventh business day before consummation. The Board proposed to use the general definition of “business day” for purposes of satisfying these timing requirements, both of which were contained in proposed § 226.19(a)(1)(i). This approach was consistent with RESPA’s requirement that creditors provide good faith estimates of settlement costs not later than three business days after the creditor receives the consumer’s application for a federally related mortgage loan. See 24 CFR 3500.2(b) and 3500.7. To simplify the rule, the Board proposed that the general definition of “business day” also would be used for determining when the seven-business-day waiting period expires and consummation may occur. The Board requested comment, however, on whether the more precise definition of business day should be used to facilitate compliance with the seven-business-day waiting period requirement.

Public Comment

Many commenters addressed which definition of “business day” should apply for purposes of determining when the seven-business-day waiting period expires and consummation may occur. Most of these commenters stated that the more precise definition of “business day” under § 226.2(a)(6)—all calendar days except Sunday and specified legal public holidays—should be used for this purpose.

Several consumer advocacy organizations stated that using the more precise definition for all purposes under § 226.19(a) would allow creditors and supervisory agencies to determine easily whether timing requirements have been satisfied. A financial services trade association and a financial institution stated that the general definition creates uncertainty for a creditor if it has many offices, branches, and operation centers and only some of them are open on Saturdays.

Several commenters supported using the general definition of “business day” for purposes of the requirement that creditors deliver or mail the early disclosures within three business days after receiving the consumer’s application, to maintain consistency with the RESPA rules. However, these commenters supported using the more precise definition for all other timing requirements.

A financial services trade association supported using the more precise definition of “business day” for purposes of the seven-business-day waiting period so that the timing requirement would apply uniformly to all creditors, regardless of when their offices are open. A few commenters stated that using the general definition would disadvantage institutions whose offices are open only five days per week, including many community banks.

One financial institution and a realtors’ trade association asserted, however, that the general definition of “business day” should be used for purposes of the seven-business-day waiting period. The realtors’ trade association stated that the general definition should be used for all timing requirements to ensure consistency with RESPA, facilitate compliance, and reduce confusion for consumers. Two credit union trade associations and a financial institution stated that a single definition should be used for all timing requirements, but these commenters did not state a preference for one definition over the other.

Final Rule

As the Board proposed, the final rule requires that creditors use the general definition of “business day” to calculate the three-business-day period for providing the early disclosures. Both TILA and RESPA require creditors to provide disclosures within three business days after the creditor receives the consumer’s application. Using the general definition of “business day” (a day on which the creditor’s offices are open to the public for carrying on substantially all of its business functions) will maintain consistency between the TILA and RESPA requirements.

Under the final rule, the more precise definition of “business day” (all calendar days except Sundays and specified federal legal public holidays) is used for purposes of the requirements that creditors deliver or mail the early disclosures no later than the seventh business day before consummation and that consumers receive corrected disclosures (if applicable) no later than the third business day before consummation. The more precise definition of “business day” also is used for purposes of the rule prohibiting the collection of a fee (other than a fee for obtaining a consumer’s credit history) before the consumer receives the early disclosures, under the final rule published on July 30, 2008. This is consistent with HUD’s Regulation X (24 CFR 3500.7(a)(4) and 3500.7(b)(4)), which provides that if a creditor or broker mails good faith estimates of settlement costs, a consumer is considered to receive them three calendar days after they are mailed, not including Sundays and specified legal public holidays.

The Board believes that it is appropriate to use the more precise definition of “business day” for purposes of both the seven-business-day waiting period and the three-business-day waiting period, for several reasons. It is easier for a creditor to determine how to meet timing requirements using the more precise definition, especially a creditor with multiple offices that are not open on the same days. Using the more precise definition also will mean that the standard for determining when a waiting period ends is the same for all creditors. Moreover, whether a creditor’s offices are open or closed does not affect the time that a consumer has to receive and review disclosures.

E. Consumer’s Waiver of Waiting Period Before Consummation—§ 226.19(a)(3)

Proposed Rule

Under the MDIA, to expedite consummation of a mortgage transaction, a consumer may modify or waive the timing requirements for the early disclosures when the consumer determines that the credit extension is needed to meet a bona fide personal financial emergency. However, the consumer must receive the disclosures required by TILA Section 128(a), 15 U.S.C. 1638(a), at or before the time of the consumer’s modification or waiver.

To implement this provision, the Board proposed to permit a consumer to shorten or waive either the seven-business-day period required by § 226.19(a)(1)(i) or the three-business-day waiting period required by § 226.19(a)(2), provided the consumer has received accurate TILA disclosures reflecting the mortgage transaction’s final costs and terms. Thus, under the proposed rule, if the consumer waives the seven-business-day waiting period after receiving the early disclosures and a change occurs that makes the APR inaccurate (as determined under § 226.22), the consumer would have to receive corrected disclosures with all changed terms not later than the third business day before consummation. In such cases, the consumer could waive the three-business-day waiting period in § 226.19(a)(2) after receiving the corrected disclosures. Proposed comment 19(a)(3)-2 provided examples to facilitate compliance.

Under proposed § 226.19(a)(3), the consumer would have to give the creditor a dated written statement describing the emergency and specifically modifying or waiving the waiting period(s). The use of pre-printed forms for this purpose would be prohibited and all consumers entitled to receive the disclosures would have to sign the statement. The proposal's procedures for waiving the waiting periods were substantially similar to the existing rules for waiving the three-business-day rescission period for certain home-secured loans and the three-business-day waiting period before consummating certain high-cost mortgage loans. See §§ 226.15(e), 226.23(e), and 226.31(c)(1)(iii). The Board solicited comment on whether the proposed rule should be more or less flexible than the existing procedures.

The Board proposed comment 19(a)(3)-1 to clarify that a consumer may modify or waive the required waiting period(s) only if the consumer has a bona fide personal financial emergency that must be met before the end of the waiting period(s). This proposed comment was designed to be consistent with the commentary on waiving the rescission period and the pre-consummation waiting period required for certain high-cost mortgage loans. See comments 15(e)-1, 23(e)-1, and 31(c)(1)(iii)-1. The proposed comment explained that whether a bona fide personal financial emergency exists would be determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure during the three-business-day waiting period was provided as an example, and the Board solicited comment on whether there are other circumstances that should be expressly recognized in the final rule.

Public Comment

Consumer advocacy organizations generally stated that modification or waiver of a waiting period should be permitted only in narrow circumstances, such as an imminent foreclosure, tax, or condemnation sale. Many financial institutions and financial services trade associations stated that much flexibility is needed to accommodate consumers who want to expedite consummation. A credit union association stated that the "financial emergency" exception should be available only in unusual and unforeseeable financial circumstances, however.

Waiver of either waiting period. Consumer advocacy organizations stated that the final rule should permit consumers to waive or modify only the seven-business-day waiting period and asserted that the MDIA does not allow consumers to waive or modify the three-business-day waiting period. They asserted that a bona fide personal financial emergency seldom would arise unexpectedly after the creditor makes early disclosures and before consummation. Consumer advocates also stated that even if waiver of the three-business-day waiting period is permitted in some circumstances, it should not be permitted when the consumer already has waived the seven-business-day waiting period. They noted that consumers must receive "final disclosures" before waiving the seven-business-day waiting period and stated that the Board should interpret the MDIA to prohibit changes in APR after a creditor provides these disclosures and obtains the consumer's signed waiver. Thus, under their interpretation of the statute, corrected disclosures and a new three-business-day waiting period would be unnecessary.

Few of the financial institutions and financial services trade associations specifically discussed waiver of the three-business-day waiting period after a consumer receives corrected disclosures, but those that did address the issue supported allowing such waiver. A financial institution stated that, in cases where the creditor provides corrected disclosures, the consumer's previous waiver of the seven-business-day waiting period under § 226.19(a)(3) automatically should waive the three-business-day waiting period as well.

Waiver procedures and conditions. Consumer advocacy organizations supported the waiver procedures as proposed and stated that the waiver should be handwritten, to prevent consumers from unwittingly signing a creditor's pre-printed waiver forms. On the other hand, two financial institutions stated that waiver using pre-printed forms should be permitted. One financial institution recommended clarifying whether each consumer primarily liable on the obligation should sign the written waiver, even though under § 226.17(d) a creditor need only provide the disclosures to one of the consumers who is primarily liable on the obligation. A consumer advocacy organization urged the Board to require creditors to give early disclosures to all of the consumers who will be obligated on a mortgage transaction. By contrast, a financial services trade association stated that creditors should be allowed to accept a waiver from one consumer, even where multiple consumers will be obligated on the loan.

Most financial institutions and financial services trade associations stated that the final rule should specify that creditors do not have to investigate a consumer's determination that the credit extension is needed to meet a bona fide personal financial emergency. Two financial institutions stated that the Board should allow consumers to waive a waiting period even when a bona fide personal financial emergency does not have to be met during the waiting period. A credit union stated that the Board should allow consumers to waive a waiting period where a bona fide personal financial emergency must be satisfied within a few days after the waiting period, for example, where a consumer facing imminent foreclosure must make payments before the actual date of a foreclosure sale. Most consumer advocacy organizations opposed allowing waiver unless a bona fide personal financial emergency must be met during the waiting period.

Examples of a bona fide personal financial emergency. Proposed comment 19(a)(3)-1 states that the imminent sale of a consumer's home at foreclosure during the waiting period is an example of a bona fide personal financial emergency. This example is consistent with commentary on waiving a pre-consummation waiting period that is required for HOEPA loans under § 226.31(c)(1)(iii). Most of the financial institutions and financial services trade associations that discussed this commentary stated that the Board should provide additional guidance on when waiver is permitted and how it may be accomplished. Several of these commenters stated that without such guidance, creditors will rarely, if ever, allow a consumer to waive a waiting period. Most of these commenters stated that the final rule should provide additional examples of circumstances that are considered to be a bona fide personal financial emergency. Two

financial services trade associations stated that the Board should clarify that any examples are merely illustrative and that a bona fide personal financial emergency may exist in other circumstances. Two financial services trade associations stated that the final rule should permit a consumer to waive a waiting period to avoid a foreclosure on a dwelling occupied by tenants.

Several financial institutions and financial services trade associations stated that consumers should be able to waive a waiting period if they plan to use the loan proceeds to pay a tuition expense. On the other hand, a credit union association stated that tuition expenses should not be considered to be a bona fide personal financial emergency, especially if the payment deadline was known well in advance. Other circumstances that commenters stated should be considered as a bona fide personal financial emergency included cases where a borrower needs to: pay an emergency medical expense; consummate a transaction before an upcoming increase in a land transfer tax; make repairs after a natural disaster to prevent additional property damage; obtain a refinance loan before a payment increase on an adjustable-rate mortgage; and avoid paying a late charge on an existing obligation.

Final Rule

The Board is adopting § 226.19(a)(3) substantially as proposed, which is consistent with Regulation Z's existing provisions for waiving the three-business-day right of rescission for certain mortgage transactions. Under the final rule, if a consumer determines that an extension of credit is needed to meet a bona fide personal financial emergency, the consumer may shorten or waive the seven business-day waiting period or the three-business-day waiting period required by § 226.19(a)(2) after the consumer receives accurate TILA disclosures that reflect the final costs and terms. To shorten or waive a waiting period, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who will be primarily liable on the legal obligation. Creditors may not use pre-printed forms for this purpose.

Waiver of either waiting period. The final rule permits consumers to waive either the seven-business-day or the three-business-day waiting period and thus recognizes that a bona fide personal financial emergency could occur at any time, including after the consumer receives the initial early disclosures. For example, a consumer might receive the initial early disclosures with the expectation of closing the loan within 60 days. However, the consumer's financial circumstances might change in the interim, creating a need to consummate the loan immediately. Under the final rule, if the APR stated in the early disclosures is no longer accurate, after receiving a corrected disclosure the consumer can provide a signed statement describing the financial emergency in order to waive the three-business-day waiting period and close the loan. New comment 19(a)(3)-3 illustrates the case where a consumer does not modify or waive the seven-business-day waiting period but modifies the three-business-day waiting period, after receiving a corrected disclosure.

Consumer advocates asserted that the MDIA does not provide for waiver of the three-business-day waiting period. The Board disagrees with that interpretation of the statute. Under the MDIA, consumers may waive or modify the timing requirements (and thus the waiting periods) for the disclosures required under TILA Section 128(b)(2)(A). The Board interprets this provision in the MDIA to apply to the “good faith estimates” provided under section 128(b)(2)(A)—whether they are the creditor’s initial early disclosures or a corrected version provided subsequently. The requirement in TILA Section 128(b)(2)(D) for a creditors to provide a corrected disclosure is essentially a requirement for the creditor to provide an additional set of the early disclosures required by TILA Section 128(b)(2)(A).

Consumer advocates further asserted that even if the Board determines that the three-business-day waiting period can be waived in some circumstances, consumers should not be permitted to waive the three-business-day waiting period if they have previously waived the seven-business-day waiting period. In their view, once a consumer receives the initial early disclosures and waives the seven-business-day waiting period, the APR may not be changed, even though the transaction has not been consummated. The consumer advocates note that under the MDIA consumers can waive the seven-business-day waiting period only after they receive “final” TILA disclosures. The Board does not agree with the consumer advocates’ interpretation of the statute. The MDIA seeks to ensure that a consumer’s decision to waive the waiting period and immediately consummate the loan is informed by an accurate “final” TILA disclosure. There is no indication, however, that the Congress intended to make the rate or other terms stated in the disclosures binding on the parties. Although creditors must provide an accurate “final” disclosure before the consumer waives the seven-business-day waiting period and consummates the loan, providing such a disclosure by itself does not assure that the APR (or other loan terms) cannot change. Thus, if the APR subsequently increases by more than the specified tolerance, the consumer’s previous waiver is no longer effective and a new “final” disclosure must be given. After receiving the new “final” disclosure, a consumer may decide whether to provide another signed waiver statement.

Waiver procedures and conditions. The final rule requires that waivers be written, not pre-printed, consistent with regulatory requirements for waiver of a rescission period or of the waiting period before consummation of a HOEPA loan. The Board is revising comment 19(a)(3)-1 to clarify that each consumer who will be primarily liable on the legal obligation must sign the written statement, in order for a waiver to be effective. The MDIA states that a waiver statement “shall bear the signature of all consumers entitled to receive the disclosures required by” TILA Section 128(b), 15 U.S.C. 1638(b), and proposed comment 19(a)(3)-1 contained similar language. However, in a transaction where multiple consumers are primarily liable on the legal obligation, a creditor may provide disclosures to one of those consumers rather than to all of them. TILA Section 121(a), 15 U.S.C. 1631(a); 12 CFR 226.17(d). To avoid confusion, the Board has revised comment 19(a)(3)-1 to provide that a statement that shortens or waives a pre-consummation waiting period must be signed by each consumer who is primarily liable on the legal obligation. This is consistent with, yet more specific than, comment 23(e), which states that a waiver statement must be signed by each consumer entitled to rescind,

and comment 31(c)(iii)-1, which states that a waiver statement must be signed by each consumer entitled to the waiting period for HOEPA loans.

Some commenters requested that the Board adopt a comment stating that the existence of a consumer's waiver insulates a creditor from liability in connection with such waiver. The Board is not adopting such commentary. Comments 15(e)-1 and 23(e)-1 state that the existence of a consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission. The Board expects to consider Regulation Z's modification and waiver rules for the MDIA, rescission, and HOEPA in connection with its broader review of regulations for closed-end consumer credit.

Some commenters suggested that consumers may need to obtain the loan proceeds during the waiting period to prevent an emergency, such as foreclosure, that will not occur until after the waiting period. For example, if a foreclosure sale is scheduled to occur a few days after a waiting period ends, a consumer may need to obtain funds within the waiting period to reinstate the mortgage before the date of the scheduled foreclosure sale. However, the longer the period before an adverse event will occur, the less likely it is that consummation actually needs to occur during the waiting period to avoid the adverse event.

Example of a bona fide personal financial emergency. Comment 19(a)(3)-1 has been revised to clarify that consumers who need to obtain the funds during the waiting period may execute the waiver in such cases. The example stated in comment 19(a)(3)-1 is merely illustrative; a consumer may determine that a credit extension is necessary to meet a bona fide personal financial emergency in circumstances other than foreclosure. The Board believes that it is not necessary to state additional examples of a bona fide personal financial emergency at this time. Whether credit must be extended before a waiting period expires, in order to meet a bona fide personal financial emergency, is determined based on the facts associated with individual situations, as comment 19(a)(3)-1 states. The Board believes waivers should not be used routinely to expedite consummation for reasons of convenience. As the MDIA requires, under the final rule a waiver statement must be written by the consumer. As proposed, the final rule prohibits the use of pre-printed forms to further protect against routine modification or waiver of the waiting periods.

F. Notice—§ 226.19(a)(4)

Proposed Rule

The MDIA requires that the early disclosures contain a clear and conspicuous notice containing the following statement: “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.” The Board proposed to implement this requirement in a new § 226.19(a)(4), for the early disclosures required by § 226.19(a)(1)(i), as well as any corrected disclosures required by § 226.19(a)(2). The Board solicited comment on the

costs and benefits of the proposed rule. The Board also solicited comment on the language used in the disclosures and whether other language might be easier for consumers to understand.

Public Comment

Consumer advocacy organizations stated that the Board should not alter the statutory language without a compelling reason. These commenters noted that the statutory text for the notice is almost identical to the statutory text for the notice required for HOEPA loans. Two financial services trade associations and a financial institution stated that using the phrase “this agreement” in the required statement would mislead consumers, because the disclosures are not in fact an agreement. Several industry commenters recommended that the Board publish model forms or clarify how creditors can make the disclosure in “conspicuous type size and format.” A credit union trade association stated that the MDIA’s notice requirements would not benefit consumers but would increase financial institutions’ costs considerably.

A financial institution stated that many creditors routinely provide new disclosures under § 226.18 to the consumer on the day of consummation, even where the creditor is not required to provide corrected disclosures. The bank stated that such “final” disclosures should be permitted to contain the statement required by § 226.19(a)(4) so that creditors may use a single form.

Final Rule

The Board is adopting § 226.19(a)(4) as proposed using the text contained in the statute. The statement required by § 226.19(a)(4) must be grouped together with the other disclosures required by § 226.19(a)(1) and § 226.19(a)(2). Most creditors provide TILA disclosures at consummation, even if the early disclosures remain accurate and corrected disclosures are not required. To facilitate compliance for creditors that use the same form for the initial disclosures and final disclosures, new comment 17(a)(1)-5(xvi) clarifies that creditors may also include the notice described in § 226.19(a)(4) on the disclosures provided at consummation and may group the notice together with the disclosures required by § 226.18.

The Board believes that the reference to an “agreement” is sufficiently clear as a reference to the loan agreement that the disclosures summarize. The Board is not proposing new model disclosures at this time because the Board anticipates proposing new model disclosure forms and clauses during 2009, in connection with consumer testing and the comprehensive review of closed-end mortgage disclosures that currently is underway.

G. Timeshare Transactions—§ 226.19(a)(5)

Proposed Rule

The Board proposed a new § 226.19(a)(5) containing the early disclosure requirements for mortgage loans secured by a consumer's interest in a "timeshare plan" (timeshare transactions), as defined in the bankruptcy laws (see 11 U.S.C. § 101(53D)). Pursuant to amendments in the Stabilization Act, the disclosure timing requirements and the fee restriction added by the MDIA are not applicable to timeshare transactions, which instead are subject to the same disclosure timing requirements that applied to "residential mortgage transactions" under TILA Section 128(b)(2), 15 U.S.C. 1638(b), before the MDIA was enacted. Accordingly, for timeshare transactions, proposed § 226.19(a)(5) required that creditors make good faith estimates of the disclosures required by § 226.18 that must be delivered or placed in the mail within three business days after the creditor receives the consumer's application or before the credit is extended, whichever is earlier. The seven-business-day waiting period and three-business-day waiting period before consummation contained in § 226.19(a)(2) do not apply to timeshare transactions.

For timeshare transactions, if the APR stated in the early disclosures changes beyond the specified tolerance, under proposed § 226.19(a)(5)(iii), creditors would have to disclose all the changed terms no later than consummation or settlement of the transaction, consistent with the existing rules for residential mortgage transactions in § 226.19(a)(2). Currently, comment 19(a)(2)-3 states that "consummation" is defined in § 226.2(a), and "date of settlement" is defined in HUD's Regulation X (24 CFR 3500.2(a)). As discussed above, for transactions other than timeshare transactions, the MDIA amends TILA to remove reference to "settlement" from TILA's provisions requiring creditors to make corrected disclosures.

The Board solicited comment on the costs and benefits of basing the timing for corrected disclosures on the time of consummation or settlement for timeshare transactions but solely on the time of consummation for other mortgage loans. The Board asked whether Regulation Z's timing requirements for corrected disclosures should be made consistent for all closed-end mortgage transactions by requiring creditors to make corrected disclosures at the time of consummation for timeshare transactions. The Board also asked, in the alternative, whether Regulation Z should require creditors to make corrected disclosures three business days before consummation or settlement, whichever is later, for closed-end mortgage loans other than timeshare transactions.

Public Comment

Most consumer advocacy organizations stated that corrected disclosures for all mortgage loans other than timeshare transactions should be provided before consummation, which marks the time when the consumer's legal obligation begins. These commenters stated that allowing corrected disclosures to be given at the time of settlement would be less advantageous for consumers, because they would be obligated on the transaction before they received the corrected disclosures. They recommended that the same rules should apply to timeshare transactions as well. A community bank

trade association stated that the disclosure timing requirements for timeshare transactions should be the same as for other closed-end mortgage transactions, to facilitate compliance with Regulation Z.

Final Rule

The Board is adopting § 226.19(a)(5) as proposed. The final rule, like the proposed rule, tracks the MDIA's requirements for timeshare transactions in TILA Section 128(b)(2)(G), as amended. In particular, under § 226.19(a)(5)(iii), if the APR stated in the early disclosures becomes inaccurate, the creditor must disclose all the changed terms no later than consummation or settlement. By contrast, for loans other than timeshare transactions, the creditor must make corrected disclosures (if required) not later than the third business day before consummation, which conforms with TILA Section 128(b)(2)(D), as added by the MDIA.

For timeshare transactions, the general definition of "business day" (days the creditor's offices are open to the public for carrying on substantially all of its business functions) is used for purposes of § 226.19(a)(5)(ii), as proposed. This is consistent with the rules for providing early disclosures for other types of mortgage transactions. Also, the commentary accompanying § 226.19(a)(5) has been revised for clarity.

H. Solicitation of Comments on Timing of Disclosures for Home Equity Lines of Credit

The MDIA applies only to closed-end loans secured by a consumer's dwelling and does not affect the disclosure requirements for open-end credit plans secured by a dwelling (home equity lines of credit, or HELOCs). In connection with the Board's comprehensive review of Regulation Z, the Board's staff is currently reviewing the content and format of HELOC disclosures and subjecting them to consumer testing. To aid in this review, the Board sought comment on whether it is necessary or appropriate to change the timing of HELOC disclosures and, if so, what changes should be made. The Board is considering the comments received and anticipates issuing a proposal to improve the disclosures later in 2009.

I. Effective Date

This final rule becomes effective on July 30, 2009, consistent with the requirements of the MDIA. The provisions in TILA Section 105(d), 15 U.S.C. 1604(d), regarding the effective date of new disclosure requirements is superseded by the effective date of the MDIA.

Many financial institutions and financial services trade associations stated that the final rules implementing the MDIA should apply only to mortgage transactions for which creditors receive the consumer's application on or after July 30, 2009. The final rule adopts this approach, which is consistent with comment 1(d)(5)-1, contained in the July 2008 final rule.

The Board is adopting new comment 1(d)(3)-1 to facilitate compliance by specifying which provisions of the July 2008 final rule will become effective on July 30, 2009 as revised by this final rule. Compliance with those provisions, as revised, is mandatory for covered loans for which the creditor receives an application on or after July 30, 2009. The specific amended subsections are §§ 226.2(a)(6), 226.17(b) and (f), and 226.19(a)(1) through (a)(5). Covered loans include refinance loans and assumptions that are considered to be new transactions under § 226.20(a) or (b).

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this final rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Board that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the institutions supervised by the Federal Reserve System as: state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority under TILA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed above, on December 10, 2008, the Board published in the Federal Register a notice of proposed rulemaking to implement the MDIA (73 FR 74989). The comment period for this notice expired February 9, 2009. The Board received two comment letters from banks that specifically addressed paperwork burden. The commenters asserted that the hourly estimate of the cost of compliance should be considerably higher than the Board projected. The commenters noted that, in addition to updating their systems and internal procedure manuals, compliance would require additional staff training but did not provide specific estimates of additional burden hours that would result from the proposal. In response to those comments, the Board is increasing the burden estimate attributable to additional staff training and updates to internal procedures.

Based on this adjustment to the estimate published in the proposed rule the Board estimates that each of the 1,138 respondents supervised by the Federal Reserve System would take, on average, 40 hours (one business week) to update their systems, provide additional staff training, and update internal procedures to comply with the proposed disclosure requirements in §§ 226.17 and 226.19. This one-time revision would increase the burden for the respondents supervised by the Federal Reserve System by 45,520 hours from 688,607 hours to 734,127 hours.

The total estimated burden increase represents averages for all respondents supervised by the Federal Reserve System. The Board expects that the amount of time required to implement each of the changes for a given institution may vary based on the size and complexity of the respondent.

The other federal financial institution supervisory agencies (the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA)) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15 U.S.C. 1607(a). These agencies may, but are not required to, use the Board's burden estimation methodology. Using the Board's method, the total current estimated annual burden for the approximately 17,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Board, OCC, OTS, FDIC, and NCUA under TILA would be approximately 13,568,725 hours. The final rule will impose a one-time increase in the estimated annual burden for such institutions by 688,000 hours to 14,256,725 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices.

The Board has a continuing interest in the public's opinions of its collections of information. At any time, comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

V. Final Regulatory Flexibility Analysis

In accordance with section 4 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, the Board is publishing a final regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.² However, under Section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and states the factual basis for such certification. The Board continues to believe that this final rule will not have a significant economic impact on a substantial number of small entities. The final amendments to Regulation Z are narrowly designed to implement the revisions to TILA made by the MDIA. Creditors must comply with the MDIA's requirements when they become effective on July 30, 2009, whether or not the Board amends Regulation Z to conform the regulation to the statute. The Board's final rule is intended to facilitate compliance by eliminating inconsistencies between Regulation Z's existing requirements and the statutory requirements imposed by the MDIA starting July 30, 2009.

A. Statement of the Need for, and Objectives of, the Final Rule

Congress enacted the TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. TILA also contains procedural and substantive protections for consumers. TILA directs the Board to prescribe regulations to carry out the purposes of the statute. The Board's Regulation Z implements TILA.

Congress enacted the MDIA in 2008 as an amendment to TILA. The MDIA amends TILA's disclosure requirements for closed-end mortgage transactions that are secured by a consumer's dwelling and subject to the Real Estate Settlement Procedures Act (RESPA). In July 2008, the Board revised Regulation Z to expand the number of transactions in which creditors must give a good faith estimate of the required disclosures (early disclosures). Previously, early disclosures were required only for loans made to finance the purchase or initial construction of a consumer's principal dwelling. Under the July 2008 final rule, creditors must provide early disclosures for any mortgage loan secured by the consumer's principal dwelling, such as a home refinance loan or home equity loan. The MDIA amends TILA to require early disclosures for consumer loans

² Under standards the U.S. Small Business Administration sets (SBA), an entity is considered "small" if it has \$175 million or less in assets for banks and other depository institutions; and \$6.5 million or less in revenues for non-bank mortgage lenders, mortgage brokers, and loan servicers. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

secured by any dwelling, even if it is not the consumer's principal dwelling. As explained in parts I and III of the **Supplementary Information**, the MDIA and the Board's final rule require creditors to delay consummating a loan for seven business days after the creditor makes early disclosures, and three business days after the consumer receives any required corrected disclosures.

B. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

Parts I and III of the **Supplementary Information** contain a detailed discussion of the objectives and legal basis for this final rulemaking. In summary, the amendments to Regulation Z are designed to implement changes that the MDIA makes to TILA. The legal basis for the final rule is in Section 105(a) of TILA.

In connection with the proposed rule to implement the MDIA, the Board sought information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the rule to small institutions. The Board received several comments from small banks and trade associations that represent small banks. The commenters asserted that compliance with a final rule to implement the MDIA would increase costs and delay consummation of loans secured by a consumer's dwelling and subject to RESPA. However, these comments did not contain specific information about costs that will be incurred or changes in operating procedures that will be required to comply with the final rule. In general, the comments discussed the impact of statutory requirements rather than any impact that the Board's proposed rule itself would generate. The Board continues to believe that this final rule will not have a significant impact on a substantial number of small entities.

C. Description and Estimate of Small Entities to Which the Final Rule Will Apply

The final regulations will apply to all institutions and entities that engage in closed-end, dwelling-secured lending that is for consumer purposes and subject to RESPA. TILA and Regulation Z have broad applicability to individuals and businesses that originate even small numbers of home-secured loans. See § 226.1(c)(1). As discussed in the initial Regulatory Flexibility Analysis, through data from Reports of Condition and Income (Call Reports) of depository institutions and certain subsidiaries of banks and bank holding companies, as well as data reported under the Home Mortgage Disclosure Act (HMDA),³ the Board can estimate the approximate number of small depository institutions that would be subject to the rules. For the majority of HMDA respondents that are not depository institutions, exact asset size information is not available, although the Board has estimates based on self-reporting from approximately five percent of the non-depository respondents.

³ HMDA requires lenders to report information annually to their federal supervisory agencies for each application and loan acted on during the calendar year. See 12 U.S.C. 2801 *et seq.* The loans reported are estimated to represent about 80 percent of all home lending nationwide and therefore are likely to be broadly representative of home lending in the United States. Robert B. Avery, and Kenneth P. Brevoort, and Glenn B. Canner, The 2007 HMDA Data, 84 Federal Reserve Bulletin A107, A107 (Dec. 2008) (2007 HMDA Data), <http://www.federalreserve.gov/pubs/bulletin/2008/pdf/hmda07final.pdf>.

Based on the best information available, the Board makes the following estimate of small entities that would be affected by this final rule: According to December 2008 Call Report data, approximately 9,418 small depository institutions would be subject to the rule. Approximately 16,648 depository institutions in the United States filed Call Report data, approximately 12,034 of which had total domestic assets of \$175 million or less and thus were considered small entities for purposes of the RFA. Of the 4,230 banks, 564 thrifts, 7,111 credit unions, and 129 branches of foreign banks that filed Call Report data and were considered small entities, 4,090 banks, 529 thrifts, 4,796 credit unions, and 3 branches of foreign banks, totaling 9,418 institutions, extended mortgage credit. For purposes of this Call Report analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks. Further, 1,752 non-depository institutions (independent mortgage companies, subsidiaries of a depository institution, or affiliates of a bank holding company) filed HMDA reports in 2008 for 2007 lending activities.⁴ Based on the small volume of lending activity reported by these institutions, most are likely to be small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the final rule are described in parts I and III of the **Supplementary Information**. To comply with the revised rules, many small entities will be required to modify their procedures for making credit disclosures for dwelling-secured mortgage loans. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures.

E. Steps Taken to Minimize the Economic Impact on Small Entities

As discussed in part III of the **Supplementary Information**, TILA and RESPA both require disclosures for dwelling-secured loans that must be given within three business days of application. Under Regulation Z, the Board has interpreted TILA's timing requirement to be consistent with the timing of RESPA disclosures. Thus, where possible, the Board has made terms and definitions used in Regulation Z consistent with those terms as they are used in HUD's Regulation X. For example, Regulation Z provides that creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. As a further example, the definition of "business day" that is used under the Board's final rule for purposes of requirements for a creditor to deliver or mail good faith estimates of loan terms (also known as the "early disclosures") within three business days after the creditor receives a consumer's application is consistent with the "business day" definition used under Regulation X for purposes of requirements for creditors to provide good faith estimates of settlement charges within three business days after the creditor receives the consumer's application. Many creditors send the good faith estimates

⁴ 2007 HMDA Data at A109 and tbl. 2.

required by Regulation Z and Regulation X together; these creditors may continue to send these disclosures together, under the Board’s final rule. Moreover, under both Regulation Z and Regulation X, creditors count all calendar days except Sundays and specified legal holidays to determine when a consumer is considered to have received disclosures provided by means other than delivery in person. Using common definitions for terms that apply under both Regulation Z and Regulation X reduces the impact of the MDIA on all creditors, including small creditors.

The Board has made one change in the final rule that further reduces the impact of the MDIA’s amendments to TILA on small creditors and other creditors. The MDIA adds two pre-consummation waiting periods—one of seven business days after the creditor delivers the early disclosures, and the other of three business days after a consumer receives corrected disclosures, if any are required—to TILA’s requirements. Under the Board’s final rule, the same definition of “business day” is used for purposes of each waiting period. Further, the definition of “business day” that will apply for purposes of determining when a waiting period expires and consummation may occur is an objective definition: all calendar days except Sundays and specified legal public holidays. The Board is not adopting its proposal to apply Regulation Z’s general definition of “business day” (days on which the creditor’s offices are open to the public for carrying on substantially all of its business functions), for purposes of this requirement. Under the Board’s proposal, creditors whose offices are open seven days per week would be able to consummate mortgage transactions that are subject to the MDIA sooner than creditors whose offices are open fewer days per week. This will not be the case under the final rule. To the extent that small creditors’ offices are less likely than large creditors’ offices to be open on Saturday or Sunday, the final rule creates parity between small and large entities by applying the more precise definition of “business day” for purposes of determining when the seven-business-day waiting period expires and consummation may occur.

This regulatory flexibility analysis does not discuss alternatives to the final rule because the Board is revising Regulation Z for the narrow purpose of carrying out its statutory mandate to implement statutory amendments to TILA.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the effective date for the amendments to 12 CFR 226.2(a)(6), 226.17(b) and (f), and 226.19(a)(1), and, in Supplement I (Official Staff Interpretations) to part 226, under Section 226.1 Authority, Purpose, Coverage, Organization, Enforcement and Liability, under Section 226.2 Definitions and Rules of Construction, under Section 226.17 General Disclosure Requirements, and under Section

226.19 Certain Residential Mortgage and Variable-Rate Transactions, published on July 30, 2008 (73 FR 44600), previously October 1, 2009, is now July 30, 2009; and the Board amends Regulation Z, 12 CFR part 226 further, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, and 1637(c)(5).

Subpart A—General

2. Section 226.2 is amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(6) Business Day means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.19(a)(1)(ii), § 226.19(a)(2), and § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * * *

Subpart C—Closed-End Credit

3. Section 226.17 is amended by revising paragraph (f) to read as follows:

§ 226.17 General disclosure requirements.

* * * * *

(f) Early disclosures. If disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation (subject to the provisions of § 226.19(a)(2) and § 226.19(a)(5)(iii)):³⁹

(1) Any changed term unless the term was based on an estimate in accordance with § 226.17(c)(2) and was labelled an estimate;

(2) All changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction, or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 226.22(a).

³⁹ [Reserved.]

4. Section 226.19 is amended by revising paragraph (a)(1)(i), republishing paragraphs (a)(1)(ii) and (a)(1)(iii), revising paragraph (a)(2), and adding new paragraphs (a)(3), (a)(4), and (a)(5), to read as follows:

§ 226.19 Certain mortgage and variable-rate transactions.

(a) Mortgage transactions subject to RESPA—(1)(i) Time of disclosures. In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by the consumer's dwelling, other than a home equity line of credit subject to § 226.5b or mortgage transaction subject to paragraph (a)(5) of this section, the creditor shall make good faith estimates of the disclosures required by § 226.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

(i) Imposition of fees. Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(ii) Exception to fee restriction. A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is bona fide and reasonable in amount.

(2) Waiting periods for early disclosures and corrected disclosures. (i) The creditor shall deliver or place in the mail the good faith estimates required by paragraph (a)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

(ii) If the annual percentage rate disclosed under paragraph (a)(1)(i) of this section becomes inaccurate, as defined in § 226.22, the creditor shall provide corrected disclosures with all changed terms. The consumer must receive the corrected disclosures no later than three business days before consummation. If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.

(3) Consumer's waiver of waiting period before consummation. If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the seven-business-day waiting period or the three-business-day waiting period required by paragraph (a)(2) of this section, after receiving the disclosures required by § 226.18. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

(4) Notice. Disclosures made pursuant to paragraph (a)(1) or paragraph (a)(2) of this section shall contain the following statement: “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.” The disclosure required by this paragraph shall be grouped together with the disclosures required by paragraphs (a)(1) or (a)(2) of this section.

(5) Timeshare plans. In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) that is secured by a consumer’s interest in a timeshare plan described in 11 U.S.C. 101(53D)):

- (i) The requirements of paragraphs (a)(1) through (a)(4) of this section do not apply;
- (ii) The creditor shall make good faith estimates of the disclosures required by § 226.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer’s written application, whichever is earlier; and
- (iii) If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed under paragraph (a)(5)(ii) of this section by more than 1/8 of 1 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 226.22, the creditor shall disclose all the changed terms no later than consummation or settlement.

* * * * *

Supplement I to Part 226—Official Staff Interpretations

5. In Supplement I to Part 226, under Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability, heading 1(c) Coverage and paragraph 1(c)-1 are republished, heading 1(d) Organization is republished, new heading Paragraph 1(d)(1) is added and new paragraph 1(d)(1)-1 is added and reserved, new heading Paragraph 1(d)(2) is added and new paragraph 1(d)(2)-1 is added and reserved, new heading Paragraph 1(d)(3) and new paragraph 1(d)(3)-1 are added, new heading Paragraph 1(d)(4) is added and new paragraph 1(d)(4)-1 is added and reserved, under Paragraph 1(d)(5), paragraph 1(d)(5)-1 is revised, and new heading Paragraph 1(d)(6) is added and new paragraph 1(d)(6)-1 is added and reserved, to read as follows:

Subpart A—General

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

1(c) Coverage.

1. Foreign applicability. Regulation Z applies to all persons (including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state as defined in § 226.2. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation. This will be the case whether or not a particular advance or purchase on the account takes place in the United States and whether or not the extender of credit is chartered or based in the United States or a foreign country. Thus, a U.S.

resident's use in Europe of a credit card issued by a bank in the consumer's home town is covered by the regulation. The regulation does not apply to a foreign branch of a U.S. bank when the foreign branch extends credit to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

1(d) Organization.

Paragraph 1(d)(1)

1. [Reserved.]

Paragraph 1(d)(2)

1. [Reserved.]

Paragraph 1(d)(3)

1. Effective date. The Board's amendments to Regulation Z published on **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]** apply to covered loans (including refinance loans and assumptions considered new transactions under § 226.20) for which the creditor receives an application on or after July 30, 2009.

Paragraph 1(d)(4)

1. [Reserved.]

Paragraph 1(d)(5)

1. Effective dates. The Board's revisions published on July 30, 2008 (the "final rules") apply to covered loans (including refinance loans and assumptions considered new transactions under § 226.20) for which the creditor receives an application on or after October 1, 2009, except for the final rules on advertising, escrows, and loan servicing. But see comment 1(d)(3)-1. The final rules on escrow in § 226.35(b)(3) are effective for covered loans (including refinancings and assumptions in § 226.20) for which the creditor receives an application on or after April 1, 2010; but for such loans secured by manufactured housing on or after October 1, 2010. The final rules applicable to servicers in § 226.36(c) apply to all covered loans serviced on or after October 1, 2009. The final rules on advertising apply to advertisements occurring on or after October 1, 2009. For example, a radio ad occurs on the date it is first broadcast; a solicitation occurs on the date it is mailed to the consumer. The following examples illustrate the application of the effective dates for the final rules.

i. General. A refinancing or assumption as defined in § 226.20(a) or (b) is a new transaction and is covered by a provision of the final rules if the creditor receives an application for the transaction on or after that provision's effective date. For example, if a creditor receives an application for a refinance loan covered by § 226.35(a) on or after October 1, 2009, and the refinance loan is consummated on October 15, 2009, the

provision restricting prepayment penalties in § 226.35(b)(2) applies. However, if the transaction were a modification of an existing obligation's terms that does not constitute a refinance loan under § 226.20(a), the final rules, including for example the restriction on prepayment penalties, would not apply.

ii. Escrows. Assume a consumer applies for a refinance loan to be secured by a dwelling (that is not a manufactured home) on March 15, 2010, and the loan is consummated on April 2, 2010. The escrow rule in § 226.35(b)(3) does not apply.

iii. Servicing. Assume that a consumer applies for a new loan on August 1, 2009. The loan is consummated on September 1, 2009. The servicing rules in § 226.36(c) apply to the servicing of that loan as of October 1, 2009.

Paragraph 1(d)(6)

1. [Reserved.]

6. In Supplement I to Part 226, under Section 226.2—Definitions and Rules of Construction, 2(a) Definitions, 2(a)(6) Business day, paragraph 2(a)(6)–2 is revised to read as follows:

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(6) Business day.

* * * * *

2. Rule for rescission and disclosures for certain mortgage transactions. A more precise rule for what is a business day (all calendar days except Sundays and the federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission or the receipt of disclosures for certain dwelling-secured mortgage transactions under §§ 226.19(a)(1)(ii), 226.19(a)(2), or 226.31(c) is involved. Four federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

* * * * *

Subpart C—Closed-End Credit

7. In Supplement I to Part 226, under Section 226.17—General Disclosure Requirements, 17(a)(1) Form of Disclosures, new paragraph 17(a)(1)-5(xvi) is added, to read as follows:

Section 226.17—General Disclosure Requirements

17(a) Form of disclosures.

Paragraph 17(a)(1)

* * * *

5. * * *

xvi. The notice set forth in § 226.19(a)(4), in a closed-end transaction not subject to § 226.19(a)(1)(i). In a mortgage transaction subject to § 226.19(a)(1)(i), the creditor must disclose the notice contained in § 226.19(a)(4) grouped together with the disclosures made under § 226.18. See comment 19(a)(4)-1.

* * * *

8. In Supplement I to Part 226, under Section 226.19—Certain Mortgage and Variable-Rate Transactions, 19(a)(1)(i) Time of disclosure, paragraphs 19(a)(1)(i)-1 through 19(a)(1)(i)-5 are revised, heading 19(a)(1)(ii) Imposition of fees and paragraphs 19(a)(1)(ii)-1 through 19(a)(1)(ii)-3 are republished, heading 19(a)(1)(iii) Exception to fee restriction and paragraph 19(a)(1)(iii)-1 are republished, heading Paragraph 19(a)(2) Redisdisclosure required is redesignated as heading 19(a)(2)(ii) Three-business-day waiting period and paragraphs 19(a)(2)-1 through 19(a)(2)-4 are redesignated as paragraphs 19(a)(2)(ii)-1 through 19(a)(2)(ii)-4 and revised, new heading 19(a)(2) Waiting period(s) and new paragraphs 19(a)(2)-1 and 19(a)(2)-2 are added, new heading 19(a)(2)(i) Seven-business-day waiting period and new paragraph 19(a)(2)(i)-1 are added, new heading 19(a)(3) Consumer’s waiver of waiting period before consummation and new paragraphs 19(a)(3)-1 through 19(a)(3)-3 are added, new heading 19(a)(4) Notice and new paragraph 19(a)(4)-1 are added, new heading 19(a)(5)(ii) Time of disclosures for timeshare plans and new paragraphs 19(a)(5)(ii)-1 through 19(a)(5)(ii)-5 are added, and new heading 19(a)(5)(iii) Redisdisclosure for timeshare plans and new paragraphs 19(a)(5)(iii)-1 and 19(a)(5)(iii)-2 are added, to read as follows:

Section 226.19—Certain Mortgage and Variable-Rate Transactions

19(a)(1)(i) Time of disclosure.

1. Coverage. This section requires early disclosure of credit terms in mortgage transactions that are secured by a consumer’s dwelling (other than home equity lines of credit subject to § 226.5b or mortgage transactions secured by an interest in a timeshare plan) that are also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X, administered by the Department of Housing and Urban Development (HUD). To be covered by § 226.19, a transaction must be a federally related mortgage loan under RESPA. “Federally related mortgage loan” is defined under RESPA (12 U.S.C. 2602) and Regulation X (24 CFR 3500.2), and is subject to any interpretations by HUD.

2. Timing and use of estimates. The disclosures required by § 226.19(a)(1)(i) must be delivered or mailed not later than three business days after the creditor receives the consumer’s written application. The general definition of “business day” in § 226.2(a)(6)—a day on which the creditor’s offices are open to the public for substantially all of its business functions—is used for purposes of § 226.19(a)(1)(i). See

comment 2(a)(6)-1. This general definition is consistent with the definition of “business day” in HUD’s Regulation X—a day on which the creditor’s offices are open to the public for carrying on substantially all of its business functions. See 24 CFR 3500.2. Accordingly, the three-business-day period in § 226.19(a)(1)(i) for making early disclosures coincides with the time period within which creditors subject to RESPA must provide good faith estimates of settlement costs. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as “all numerical disclosures except the late-payment disclosure are estimates”) instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (See the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1).

3. Written application. Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a “written application” has been received. In general, Regulation X defines “application” to mean the submission of a borrower’s financial information in anticipation of a credit decision relating to a federally related mortgage loan. See 24 CFR 3500.2(b). An application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. (See comment 19(b)-3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

4. Denied or withdrawn applications. The creditor may determine within the three-business-day period that the application will not or cannot be approved on the terms requested, as, for example, when a consumer applies for a type or amount of credit that the creditor does not offer, or the consumer's application cannot be approved for some other reason. In that case, or if the consumer withdraws the application within the three-business-day period, the creditor need not make the disclosures under this section. If the creditor fails to provide early disclosures and the transaction is later consummated on the original terms, the creditor will be in violation of this provision. If, however, the consumer amends the application because of the creditor's unwillingness to approve it on its original terms, no violation occurs for not providing disclosures based on the original terms. But the amended application is a new application subject to § 226.19(a)(1)(i).

5. Itemization of amount financed. In many mortgage transactions, the itemization of the amount financed required by § 226.18(c) will contain items, such as origination fees or points, that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Creditors furnishing the RESPA good faith estimates need not give consumers any itemization of the amount financed.

19(a)(1)(ii) Imposition of fees.

1. Timing of fees. The consumer must receive the disclosures required by this section before paying or incurring any fee imposed by a creditor or other person in connection with the consumer's application for a mortgage transaction that is subject to § 226.19(a)(1)(i), except as provided in § 226.19(a)(1)(iii). If the creditor delivers the disclosures to the consumer in person, a fee may be imposed any time after delivery. If the creditor places the disclosures in the mail, the creditor may impose a fee after the consumer receives the disclosures or, in all cases, after midnight on the third business day following mailing of the disclosures. For purposes of § 226.19(a)(1)(ii), the term "business day" means all calendar days except Sundays and legal public holidays referred to in § 226.2(a)(6). See comment 2(a)(6)-2. For example, assuming that there are no intervening legal public holidays, a creditor that receives the consumer's written application on Monday and mails the early mortgage loan disclosure on Tuesday may impose a fee on the consumer after midnight on Friday.

2. Fees restricted. A creditor or other person may not impose any fee, such as for an appraisal, underwriting, or broker services, until the consumer has received the disclosures required by § 226.19(a)(1)(i). The only exception to the fee restriction allows the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit history, such as for a credit report(s).

3. Collection of fees. A creditor complies with § 226.19(a)(1)(ii) if—

- i. The creditor receives a consumer's written application directly from the consumer and does not collect any fee, other than a fee for obtaining a consumer's credit history, until the consumer receives the early mortgage loan disclosure.
- ii. A third party submits a consumer's written application to a creditor and both the creditor and third party do not collect any fee, other than a fee for obtaining a consumer's credit history, until the consumer receives the early mortgage loan disclosure from the creditor.
- iii. A third party submits a consumer's written application to a second creditor following a prior creditor's denial of an application made by the same consumer (or following the consumer's withdrawal), and, if a fee already has been assessed, the new creditor or third party does not collect or impose any additional fee until the consumer receives an early mortgage loan disclosure from the new creditor.

19(a)(1)(iii) Exception to fee restriction.

1. Requirements. A creditor or other person may impose a fee before the consumer receives the required disclosures if it is for obtaining the consumer's credit history, such as by purchasing a credit report(s) on the consumer. The fee also must be bona fide and reasonable in amount. For example, a creditor may collect a fee for obtaining a credit report(s) if it is in the creditor's ordinary course of business to obtain a credit report(s). If the criteria in § 226.19(a)(1)(iii) are met, the creditor may describe or refer to this fee, for example, as an "application fee."

19(a)(2) Waiting period(s) required.

1. Business day definition. For purposes of § 226.19(a)(2), “business day” means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). See comment 2(a)(6)-2.

2. Consummation after both waiting periods expire. Consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired. For example, assume a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, and the creditor then delivers corrected disclosures in person to the consumer on Wednesday, June 3. Although Saturday, June 6 is the third business day after the consumer received the corrected disclosures, consummation may not occur before Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

19(a)(2)(i) Seven-business-day waiting period.

1. Timing. The disclosures required by § 226.19(a)(1)(i) must be delivered or placed in the mail no later than the seventh business day before consummation. The seven-business-day waiting period begins when the creditor delivers the early disclosures or places them in the mail, not when the consumer receives or is deemed to have received the early disclosures. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

19(a)(2)(ii) Three-business-day waiting period.

1. Conditions for redisclosure. If, at the time of consummation, the annual percentage rate disclosed is accurate under § 226.22, the creditor does not have to make corrected disclosures under § 226.19(a)(2). If, on the other hand, the annual percentage rate disclosed is not accurate under § 226.22, the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them not later than the third business day before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%:

i. On Thursday, June 11, the annual percentage rate will be 7.10%. The creditor is not required to make corrected disclosures under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.15%. The creditor must make corrected disclosures so that the consumer receives them on or before Monday, June 8.

2. Content of new disclosures. If redisclosure is required, the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format

requirements of § 226.17(a). If the creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the only inaccuracies involve estimates other than the annual percentage rate, and no variable rate feature has been added. For a discussion of the requirement to redisclose when a variable-rate feature is added, see comment 17(f)-2. For a discussion of redisclosure requirements in general, see the commentary on § 226.17(f).

3. Timing. When redisclosures are necessary because the annual percentage rate has become inaccurate, they must be received by the consumer no later than the third business day before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures before consummation. See § 226.17(f).) If the creditor delivers the corrected disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.19(a)(2)(ii) begins. Creditors that use electronic mail or a courier other than the postal service may also follow this approach.

4. Basis for annual percentage rate comparison. To determine whether a creditor must make corrected disclosures under § 226.22, a creditor compares (a) what the annual percentage rate will be at consummation to (b) the annual percentage rate stated in the most recent disclosures the creditor made to the consumer. For example, assume consummation for a regular mortgage transaction is scheduled for Thursday, June 11, the early disclosures provided in May stated an annual percentage rate of 7.00%, and corrected disclosures received by the consumer on Friday, June 5 stated an annual percentage rate of 7.15%:

i. On Thursday, June 11, the annual percentage rate will be 7.25%, which exceeds the most recently disclosed annual percentage rate by less than the applicable tolerance. The creditor is not required to make additional corrected disclosures or wait an additional three business days under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.30%, which exceeds the most recently disclosed annual percentage rate by more than the applicable tolerance. The creditor must make corrected disclosures such that the consumer receives them on or before Monday, June 8.

19(a)(3) Consumer's waiver of waiting period before consummation.

1. Modification or waiver. A consumer may modify or waive the right to a waiting period required by § 226.19(a)(2) only after the creditor makes the disclosures required by § 226.18. The consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period.

Whether these conditions are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

2. Examples of waivers within the seven-business-day waiting period. Assume the early disclosures are delivered to the consumer in person on Monday, June 1, and at that time the consumer executes a waiver of the seven-business-day waiting period (which would end on Tuesday, June 9) so that the loan can be consummated on Friday, June 5:

i. If the annual percentage rate on the early disclosures is inaccurate under § 226.22, the creditor must provide a corrected disclosure to the consumer before consummation, which triggers the three-business-day waiting period in § 226.19(a)(2)(ii). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 5.

ii. If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger an additional waiting period, and the transaction may be consummated on June 5 without the consumer giving the creditor an additional modification or waiver.

3. Examples of waivers made after the seven-business-day waiting period. Assume the early disclosures are delivered to the consumer in person on Monday, June 1 and consummation is scheduled for Friday, June 19. On Wednesday, June 17, a change to the annual percentage rate occurs:

i. If the annual percentage rate on the early disclosures is inaccurate under § 226.22, the creditor must provide a corrected disclosure to the consumer before consummation, which triggers the three-business-day waiting period in § 226.19(a)(2). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 19.

ii. If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger an additional waiting period, and the transaction may be consummated on Friday, June 19 without the consumer giving the creditor an additional modification or waiver.

19(a)(4) Notice.

1. Inclusion in other disclosures. The notice required by § 226.19(a)(4) must be grouped together with the disclosures required by § 226.19(a)(1)(i) or § 226.19(a)(2). See comment 17(a)(1)-2 for a discussion of the rules for segregating disclosures. In other

cases, the notice set forth in § 226.19(a)(4) may be disclosed together with or separately from the disclosures required under § 226.18. See comment 17(a)(1)-5(xvi).

19(a)(5)(ii) Time of disclosures for timeshare plans.

1. Timing. A mortgage transaction secured by a consumer’s interest in a “timeshare plan,” as defined in 11 U.S.C. 101(53D), that is also a federally related mortgage loan under RESPA is subject to the requirements of § 226.19(a)(5) instead of the requirements of § 226.19(a)(1) through § 226.19(a)(4). See comment 19(a)(1)(i)-1. Early disclosures for transactions subject to § 226.19(a)(5) must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The general definition of “business day” in § 226.2(a)(6)—a day on which the creditor’s offices are open to the public for substantially all of its business functions—applies for purposes of § 226.19(a)(5)(ii). See comment 2(a)(6)-1. These timing requirements are different from the timing requirements under § 226.19(a)(1)(i). Timeshare transactions covered by § 226.19(a)(5) may be consummated any time after the disclosures required by § 226.19(a)(5)(ii) are provided.

2. Use of estimates. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as “all numerical disclosures except the late-payment disclosure are estimates”) instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (See the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1).

3. Written application. For timeshare transactions, creditors may rely on comment 19(a)(1)(i)-3 in determining whether a “written application” has been received.

4. Denied or withdrawn applications. For timeshare transactions, creditors may rely on comment 19(a)(1)(i)-4 in determining that disclosures are not required by § 226.19(a)(5)(ii) because the consumer’s application will not or cannot be approved on the terms requested or the consumer has withdrawn the application.

5. Itemization of amount financed. For timeshare transactions, creditors may rely on comment 19(a)(1)(i)-5 in determining whether providing the good faith estimates of settlement costs required by RESPA satisfies the requirement of § 226.18(c) to provide an itemization of the amount financed.

19(a)(5)(iii) Redisclosure for timeshare plans.

1. Consummation or settlement. For extensions of credit secured by a consumer’s timeshare plan, when corrected disclosures are required, they must be given no later than

“consummation or settlement.” “Consummation” is defined in § 226.2(a). “Settlement” is defined in Regulation X (24 CFR 3500.2(b)) and is subject to any interpretations issued by HUD. In some cases, a creditor may delay redisclosure until settlement, which may be at a time later than consummation. If a creditor chooses to redisclose at settlement, disclosures may be based on the terms in effect at settlement, rather than at consummation. For example, in a variable-rate transaction, a creditor may choose to base disclosures on the terms in effect at settlement, despite the general rule in comment 17(c)(1)-8 that variable-rate disclosures should be based on the terms in effect at consummation.

2. Content of new disclosures. Creditors may rely on comment 19(a)(2)(ii)-2 in determining the content of corrected disclosures required under § 226.19(a)(5)(iii).

Subpart E—Special Rules for Certain Home Mortgage Transactions

9. In Supplement I to Part 226, under Section 226.31—General Rules, heading Paragraph 31(c)(2) Disclosures for reverse mortgages and paragraph 31(c)(2)-1 are revised, to read as follows:

Section 226.31—General Rules

* * * * *

31(c)(2) Disclosures for reverse mortgages.

1. Business days. For purposes of providing reverse mortgage disclosures, “business day” has the same meaning as in comment 31(c)(1)-1—all calendar days except Sundays and the federal legal holidays listed in 5 U.S.C. 6103(a). This means if disclosures are provided on a Friday, consummation could occur any time on Tuesday, the third business day following receipt of the disclosures.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 7, 2009.

Jennifer J. Johnson (signed)

Jennifer J. Johnson

Secretary of the Board.