

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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:** Proposed rule; request for public comment.

**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 proposing revisions to 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 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 proposed amendments to Regulation Z would require creditors to deliver good faith estimates of the required mortgage disclosures 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. The delivery or mailing of these disclosures would have to occur at least seven business days before consummation. If the annual percentage rate provided in the good faith estimates changes beyond a stated tolerance, creditors must provide corrected disclosures, which the consumer must receive at least three business days before consummation of the transaction. The proposal would allow 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 secured by a consumer's interest in a timeshare plan.

**DATES:** Comments must be received on or before January 23, 2009.

**ADDRESSES:** You may submit comments on the proposed amendments to regulation Z, identified by Docket No. R-1340, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-

500 of the Board's Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Jamie Z. Goodson or Nikita M. Pastor, Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

#### 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. 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 enactment of the MDIA, in connection with certain mortgage loans, creditors were required to make good faith estimates of such disclosures ("early disclosures") before the credit is extended or within three business days after the consumer has submitted an application, whichever is earlier. 15 U.S.C. 1638(b)(2). 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 these early disclosures even when the loan is not for the purpose of financing the purchase or initial construction of the 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 reviewing credit history. As published, these provisions of the July 2008 final rule are scheduled to become effective on October 1, 2009 (73 FR at 55494).

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).<sup>1</sup> 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 history. 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 the consumer has applied for the 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.<sup>2</sup> These provisions of the MDIA 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 proposing only to conform 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 proposed 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 proposal does not address those disclosures. The Board anticipates issuing proposed amendments to Regulation Z to implement those provisions of the MDIA during 2009, in connection with the Board's comprehensive review of closed-end mortgage disclosures that is currently underway.

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 44522; July 30, 2008). Final rules adopting this proposal would become effective July 30, 2009, pursuant to MDIA. In addition, to conform with the MDIA, certain regulatory changes that the Board adopted in July 2008 will also 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 dwelling-secured mortgage transactions rather than only for "residential mortgage transactions" to finance the purchase of 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).

Minor conforming and technical amendments to Regulation Z are also being proposed.

## II. Section-by-Section Analysis of Proposed Regulatory Provisions

### A. Coverage of § 226.19

TILA Section 128(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) 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) 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. This proposal would, however, amend Regulation Z to also apply the early disclosure requirements to loans secured by dwellings other than the consumer's principal dwelling. Accordingly, proposed § 226.19(a)(1)(i) would require creditors to give consumers early disclosures in connection with dwelling-secured credit (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. As is currently the case, § 226.19(a)(1)(i) as proposed to be revised would 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. As discussed in detail in part II.G of the **SUPPLEMENTARY INFORMATION**, however, the Board is requesting comment on the timing of HELOC disclosures, in connection with the review of content and format requirements for HELOC disclosures by Board staff that currently is under way.

TILA Section 128(b)(2) (as amended by the MDIA) applies to dwelling-secured mortgage transactions 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

<sup>1</sup> 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.

<sup>2</sup> The MDIA also increases the dollar amounts of civil liability for TILA violations.

amend 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 these proposed amendments to Regulation Z's timing requirements for early disclosures remain consistent with timing requirements for good faith estimates of settlement costs under Regulation X, as amended. Consistency between Regulation Z and Regulation X are discussed below in part IV of the Supplementary Information. The Board requests comment about ways to further conform Regulation Z's disclosure timing requirements for dwelling-secured credit to the disclosure timing requirements in HUD's Regulation X, as amended.

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

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 no later than three business days after receiving the consumer's application and at least seven business days before consummation. The Board is proposing to further amend § 226.19(a)(1)(i), as published in the July 2008 final rule, to reflect this change. Proposed comment 19(a)(1)(i)-6 would be added to clarify that consummation could occur any time on the seventh business day following delivery or mailing; the proposed comment provides examples to facilitate compliance.

The MDIA provides that consumers must receive the early disclosures before paying any fee in connection with the mortgage application (other than for obtaining the consumer's credit history) and further provides that if the disclosures are mailed, the consumer is considered to have received them three business days after they are mailed. This provision of the MDIA merely codifies § 226.19(a)(1)(ii) and (iii) of Regulation Z, as adopted in the Board's July 2008 final rule. Accordingly, no further revisions to § 226.19(a)(1)(ii) or (iii) are being proposed at this time.

Revisions would also be made to comment 19(a)(1)(i)-3 to conform a reference to HUD's Regulation X to the current language in that regulation.

#### *C. Redislosure Requirements—§ 226.19(a)(2)*

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) to require that creditors make corrected disclosures that consumers must receive at least three business days before consummation in such circumstances. The MDIA removes the reference to "settlement" for purposes of this requirement. (For mortgage transactions secured by a consumer's interest in a timeshare plan, however, the MDIA requires creditors to disclose changed terms at the time of consummation or settlement, as discussed below.) The Board is proposing to amend § 226.19(a)(2) to reflect this change. Under the proposal, consummation can occur anytime on the third business day after the consumer receives the corrected disclosure.

The MDIA also provides that 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), which applies when the early disclosures are mailed; those disclosures must be received by the consumer before fees are collected (other than a credit report fee). The Board is proposing 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.

Comment 19(a)(2)-3 would be revised 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 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.

#### *D. Definition of "Business Day"—§ 226.2(a)(6)*

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. This presumption is important to two provisions in the MDIA: (1) The prohibition on collecting fees before the consumer receives the early disclosures; and (2) the requirement, if the APR in the early disclosures becomes inaccurate, that creditors make corrected disclosures, which consumers must receive at least

three business days before consummation.

In the July 2008 final rule, the Board revised the definition of "business day" to clarify 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 44599. The Board is proposing to further revise the definition of "business day" to clarify that creditors should count "business days" the same way for purposes of the presumption in proposed § 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(e), 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), and this definition would also apply for purposes of proposed § 226.19(a)(2).

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 dwelling-secured credit; the delivery or mailing also must occur at least seven business days before consummation. Under the Board's proposal, the general definition of business day would be used for purposes of satisfying these timing requirements, which are contained in proposed § 226.19(a)(1)(i). This would ensure consistency 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. In order to simplify the rule, the general definition of business day would also be used for determining when the 7-day waiting period has expired and consummation may occur. The Board requests 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.

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

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 § 226.18 at or before the time of the consumer's modification or waiver.

To implement this provision, proposed § 226.19(a)(3) would permit the consumer to shorten or waive 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). As required by the MDIA, a consumer may shorten or waive the pre-consummation waiting period only if the consumer has received accurate TILA disclosures reflecting the final costs and terms. Accordingly, if the consumer waives the seven-business-day waiting period based on the early disclosures, and a change occurs that makes the APR inaccurate (as determined under § 226.22), the consumer must receive corrected disclosures before consummation. In that circumstance, the three-business-day waiting period in § 226.19(a)(2) would apply unless the consumer provides a waiver after receiving the corrected disclosures. Proposed comment 19(a)(3)–2 provides examples that illustrate whether a consumer who receives corrected disclosures does or does not need to provide a new modification or waiver statement.

Under proposed § 226.19(a)(3), the consumer must give the creditor a dated written statement describing the emergency and specifically modifying or waiving the waiting period(s). All consumers entitled to receive the disclosures would have to sign the statement. Proposed § 226.19(a)(3) would prohibit the use of printed forms. The proposed provisions concerning the modification or waiver of the waiting periods are substantially similar to the provisions for waiving the right to rescind and waiving 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 solicits comment on the proposed modification or waiver procedures, especially whether such procedures should be more or less flexible than existing procedures for modifying or waiving the rescission right or the waiting period before high-cost

consummating mortgage transactions covered by § 226.32(a). In particular, the Board asks commenters to discuss any specific procedural or other adjustments the Board should make to implement the MDIA provisions that permit such modification or waiver.

Proposed comment 19(a)(3)–1 clarifies 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 comment is consistent with commentary on waiving the rescission period and the pre-consummation waiting period required for certain high-cost mortgage transactions. See comments 15(e)–1, 23(e)–1, and 31(c)(1)(iii)–1. The proposed comment explains that whether a *bona fide* personal financial emergency exists would be determined by the facts surrounding individual circumstances. The imminent sale of the consumer's home at foreclosure during the three-business-day waiting period is provided as an example. This example is the same as the example in existing staff commentary on modifying or waiving the waiting period required with certain high-cost mortgage loans. See comment 31(c)(1)(iii)–1.

The Board solicits comment on whether under proposed § 226.19(a)(3) modification or waiver should be permitted only if the consumer's *bona fide* personal financial emergency must be met before the end of the required waiting period. The Board also requests comment on whether there are circumstances, other than pending foreclosure, where the consumer may want to consummate the transaction before the end of: (1) The seven-business-day waiting period after early disclosures are made; (2) the three-business-day waiting period, if the creditor is required to make corrected disclosures; or (3) either period.

*F. Notice—§ 226.19(a)(4)*

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." Under proposed § 226.19(a)(4), creditors would have to include that statement in the early disclosures, as well as in any corrected disclosures required by § 226.19(a)(2). The Board expects that requiring the notice in corrected disclosures would impose minimal, if any, burden on creditors. The Board requests comment on proposed § 226.19(a)(4), including

any benefits to consumers or burdens to creditors that may result from the proposed requirement. The Board also solicits comment on whether the statement should be provided in substantially similar form using terms that are easier for consumers to understand.

*G. Timeshare Plans—§ 226.19(a)(5)*

Proposed § 226.19(a)(5) sets forth the requirements for extensions of credit 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 made to the MDIA in the Stabilization Act, the disclosure requirements and the fee restriction added by the MDIA are not applicable to these transactions, which instead are subject to the same early disclosure requirements that applied to "residential mortgage transactions" under TILA Section 128(b)(2) before the MDIA was enacted. Accordingly, for timeshare transactions creditors must make good faith estimates of the disclosures required by § 226.18 before credit is extended, or must deliver or place the early disclosures in the mail within three business days (days the creditor's offices are open to the public for substantially all business functions) after the creditor receives the consumer's application, whichever is earlier. The seven-business-day waiting period and three-business-day waiting period before consummation, contained in proposed §§ 226.19(a)(1)(i) and 226.19(a)(2) respectively, do not apply to timeshare transactions.

If the APR stated in the early disclosures changes beyond the specified tolerance, proposed § 226.19(a)(5)(iii) requires creditors to disclose all the changed terms no later than consummation or settlement of the transaction. This is consistent with the existing rules for residential mortgage transactions in § 226.19(a)(2). The discussion in proposed comment 19(a)(5)(iii)–1 of disclosing changed terms no later than "consummation" or "settlement" for timeshare transactions is based on current comments 19(a)(2)–3 and 19(a)(2)–4. Currently, comment 19(a)(2)–3 states that "consummation" is defined in § 226.2(a), whereas "date of settlement" is defined in HUD's Regulation X (24 CFR 3500.2(a)). Comment 19(a)(2)–4 currently explains that when a creditor delays redisclosure until settlement, which may be at a time later than consummation, disclosures may be based on the terms in effect at settlement, rather than the terms in effect at settlement. 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. Under the MDIA, consumers must receive any corrected disclosures at least three business days before consummation.

The Board solicits comment on the costs and benefits of basing the timing requirements for corrected disclosures solely on the time of consummation, for purposes of non-timeshare transactions, but on the time of consummation or settlement, for purposes of timeshare transactions. If Regulation Z's timing requirements for corrected disclosures should be consistent for timeshare transactions and non-timeshare transactions, should Regulation Z require creditors to make corrected disclosures at the time of consummation (rather than the time of consummation or settlement), for purposes of timeshare transactions? Or should Regulation Z require creditors to make corrected disclosures three business days before the later of consummation or settlement, for purposes of covered transactions other than timeshare transactions?

#### *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 mortgage transactions, the Board's staff is currently reviewing the content and format of HELOC disclosures and subjecting them to consumer testing. A proposal to improve the disclosures is anticipated next year. To aid in this review, the Board seeks comment on whether it is necessary or appropriate to change the timing of HELOC disclosures and, if so, what changes should be made.

Under current rules, consumers typically receive non-transaction specific disclosures describing the creditor's HELOC plan at the time they receive an application. See 12 CFR 226.5b. Creditors must provide more detailed disclosures at account opening, before the first transaction. See 12 CFR 226.6. The Board seeks comment on whether transaction-specific disclosures (such as the APR, an itemization of fees, and potential payment amounts) should be required after application but significantly earlier than account opening, at least in some circumstances. For example, many consumers take a

major draw on the account as soon as they open it. These consumers may use the funds to finance a home purchase (usually, but not necessarily, with a simultaneous closed-end loan) or an immediate expense (such as a college tuition bill). Would a requirement to disclose final HELOC terms, including the APR and fees, three days before account opening substantially benefit consumers who plan to draw immediately? Comment is also solicited on the potential costs and whether they would outweigh potential benefits.

### **III. 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 proposed 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 proposed rule is found in 12 CFR part 226. The Federal Reserve 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 Federal Reserve 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 open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. 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 Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions 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. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 578,847 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation.

The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 9,104 hours, from 578,847 to 587,951 hours.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. Furthermore, the burden estimate for this rulemaking does not include the burden addressing changes to format, timing, and content requirements for the credit disclosures governed by Regulation Z as announced in a separate proposed rulemaking (Docket No. R-1286).

The Federal Reserve estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 8 hours (one business day) to update their systems to comply with the proposed disclosure requirements in §§ 226.17 and 226.19. This one-time revision would increase the burden by 9,104 hours.

The other federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total current estimated annual burden for all financial institutions subject to Regulation Z, including Federal Reserve-supervised institutions, would be approximately 11,671,017 hours. The proposed rule would increase the estimated annual burden for all institutions subject to Regulation Z by 137,600 hours to 11,808,617 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, of which there are approximately 17,200, are potentially affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

#### IV. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.<sup>3</sup> However, under Section

<sup>3</sup> 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

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, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments to Regulation Z are narrowly designed to implement the revisions to the Truth in Lending Act (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 as proposed. The Board's proposal 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 final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the areas discussed below.

##### A. Reasons for the Proposed 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 Mortgage Disclosure Improvement Act of 2008 (MDIA) in 2008 as an amendment to TILA. The MDIA amends TILA's special 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

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](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf).

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 transaction 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 secured by any dwelling, even if it is not the consumer's principal dwelling. As explained in parts I and II of the **SUPPLEMENTARY INFORMATION**, the proposal would 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. Statement of Objectives and Legal Basis

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

##### C. Description of Small Entities to Which the Proposed Rule Would Apply

The proposed regulations would apply to all institutions and entities that engage in closed-end dwelling-secured lending for consumer purposes that is 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). The Board is not aware of a reliable source for the total number or asset sizes of small entities likely to be affected by the proposal. However, through data from Reports of Condition and Income ("Call Reports") of depository institutions and certain subsidiaries of banks and bank companies, as well as data reported under the Home Mortgage Disclosure Act (HMDA),<sup>4</sup> the Board can estimate

<sup>4</sup> 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 (forthcoming 2008) (2007 HMDA Data) at 2, <http://www.federalreserve.gov/pubs/bulletin/2008/pdf/hmda07draft.pdf>.

the approximate number of small depository institutions that would be subject to the proposed rules. For the majority of HMDA respondents that are not depository institutions, exact asset size information is not available, although the Board has somewhat reliable estimates based on self-reporting from approximately five percent of the non-depository respondents.

Based on the best information available, the Board makes the following estimate of small entities that would be affected by this proposed rule:

According to June 2008 Call Report data, approximately 9,670 small depository institutions would be subject to the proposed rule. Approximately 16,966 depository institutions in the United States filed Call Report data, approximately 12,392 of which had total domestic assets of \$175 million or less and thus were considered small entities for purposes of the RFA. Of 4,387 banks, 588 thrifts and 7,278 credit unions that filed Call Report data and were considered small entities, 4,236 banks, 553 thrifts, and 4,881 credit unions, totaling 9,670 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, HMDA data reported in 2008 (for 2007 lending activities) indicate that 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.<sup>5</sup> Based on the small volume of lending activity reported by these institutions, most are likely to be small entities. In connection with its proposed amendments to Regulation Z to implement the MDIA, the Board invites comment and information on the number and type of small entities that originate loans secured by a consumer's dwelling and subject to RESPA.

#### *D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The compliance requirements of the proposed rules are described in parts I and II of the **SUPPLEMENTARY INFORMATION**. The effect of the proposed revisions to Regulation Z on small entities is unknown. To comply with the revised rules, many small entities would be required to modify their procedures for making credit disclosures for dwelling-secured mortgage transactions. 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. The Board believes that these costs will not have a significant economic effect on small entities. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

#### *E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules*

The Board has not identified any federal rules that conflict with the proposed revisions to Regulation Z. As discussed in part II of the **SUPPLEMENTARY INFORMATION**, TILA and the Board's proposed revisions to Regulation Z overlap with RESPA and HUD's Regulation X, which implements RESPA. TILA's purpose is to inform consumers about loan terms, and RESPA's is to inform consumers about settlement costs. These laws overlap with one another because settlement costs may include loan origination fees, and consumers may finance their settlement costs. Moreover, the Board's proposed revisions overlap with Regulation X, as revised by HUD in November 2008, in at least three ways. First, the proposed revisions apply to an extension of credit that is both secured by a consumer's dwelling and subject to RESPA. Second, the proposed revisions continue to cross-reference the definition of "application" under Regulation X. Third, the time period following application, within which creditors would have to make early disclosures under the Board's proposed rule, is the same as the time period within which creditors must make good faith estimates of settlement costs under RESPA—within three business days following application. Moreover, the proposed early disclosure requirements use a definition of "business day" that is consistent with the "business day" definition under Regulation X.

The MDIA amends TILA to base timing requirements for corrected disclosures on the date of "consummation"—rather than on the later of "consummation" and "settlement"—for purposes of timing rules for most, but not all, mortgage transactions secured by a consumer's dwelling. Therefore, for most dwelling-secured mortgage transactions, the Board's proposed revisions to Regulation Z would remove references to "settlement," a term defined in Regulation X. These revisions to

Regulation Z and associated commentary thus would reduce overlap with Regulation X. However, the MDIA's timing requirements for corrected disclosures for transactions secured by a consumer's interest in a timeshare plan refer both to "consummation" and "settlement." The Board is requesting comment the costs and benefits of basing the timing requirements for corrected disclosures solely on the time of consummation, for purposes of non-timeshare transactions, but on the time of consummation or settlement, for purposes of timeshare transactions.

#### *F. Identification of Duplicative, Overlapping, or Conflicting State Laws*

Certain sections of the proposed rules may result in inconsistency with certain state laws. The closed-end credit disclosure requirements in TILA that the proposed rules would implement do not annul, alter, or affect the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent those laws are inconsistent with TILA, and then only to the extent of the inconsistency. See 15 U.S.C. 1610(a); 12 CFR 226.28(a)(1). Interested parties may request that the Board determine whether any such inconsistency exists, in accordance with procedures prescribed in the Board's regulations. The Board seeks comment regarding any state or local statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

#### *G. Discussion of Significant Alternatives*

The Board does not believe that reasonable alternatives to the proposed rule as a whole exist for implementing the MDIA's disclosure requirements for closed-end mortgage transactions secured by a consumer's dwelling and subject to RESPA. The Board is proposing regulations for the narrow purpose of carrying out its statutory mandate to implement the Truth in Lending Act, as amended by the MDIA. The Board nevertheless welcomes comments on any significant alternatives, consistent with the MDIA's requirements, that would minimize the impact of the proposed rule on small entities.

#### **List of Subjects in 12 CFR Part 226**

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

#### **Text of Proposed Revisions**

Certain conventions have been used to highlight the proposed revisions.

<sup>5</sup> 2007 HMDA Data at 5–6 and tbl. 2.



New language, compared to the Regulation Z amendments the Board adopted in the July 2008 final rule (73 FR 44522; July 30, 2008), is shown inside bold arrows, and language that would be deleted is set off with bold brackets.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, 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, 1637(c)(5), and 1639(l).

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 [(except that, for certain mortgage transactions, § 226.19 permits redisclosure no later than consummation or settlement, whichever is later).] (subject to the provisions of

§ 226.19(a)(2) and § 226.19(a)(5)(iii): ◀<sup>39</sup>

\* \* \* \* \*

4. Section 226.19 is amended by revising paragraphs (a)(1)(i) and (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 [principal] 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 [before consummation, or shall deliver] ▶. The creditor shall deliver [these good faith estimates ◀ 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 at least seven business days before consummation of the transaction. ◀

\* \* \* \* \*

(2) Redisclosure required. [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, the creditor shall disclose all the changed terms no later than consummation or settlement.] ▶ If the annual percentage rate disclosed in the good faith estimates required by paragraph (a)(1) of this section becomes inaccurate under § 226.22, the creditor shall make corrected disclosures to the consumer under § 226.18 with an accurate annual percentage rate, as determined under § 226.22, and all changed terms. The consumer must receive the corrected disclosures no later than three business days before consummation. If the disclosures required under this paragraph are mailed to the consumer, the consumer is deemed to have received the disclosures three business days after they are mailed.

(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 required by paragraph (a)(1)(i) of this

section 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 entitled to receive the disclosures. 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."

(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 paragraph (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. ◀

\* \* \* \* \*

5. 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:

Supplement I to Part 226—Official Staff Interpretations

\* \* \* \* \*

Subpart A—General

\* \* \* \* \*

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

\* \* \* \* \*

2(a)(6) Business day.

\* \* \* \* \*

2. [Rescission rule] ▶ Rule for rescission and disclosures for certain mortgage

<sup>39</sup> [Reserved.]



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 mortgages subject to § 226.32 are 226.31(c) is involved. (See also comment 31(c)(1)–1.) 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). The observed holiday (in the example, July 3) is a business day for purposes of rescission or the delivery of disclosures for certain high-cost mortgages covered by § 226.32.

\* \* \* \* \*

### Subpart C—Closed-End Credit

6. 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 and new paragraph 19(a)(1)(i)–6 is added, heading Paragraph 19(a)(2) *Rediscovery required* and paragraphs 19(a)(2)–1 through 19(a)(2)–3 are revised and paragraph 19(a)(2)–4 is removed, new heading 19(a)(3) *Consumer's waiver of waiting period before consummation* and new paragraphs 19(a)(3)–1 and 19(a)(3)–2 are added, new heading 19(a)(5)(ii) *Time of disclosures for timeshare plans* and new paragraph 19(a)(5)(ii)–1 are added, and new heading 19(a)(5)(iii) *Rediscovery for timeshare plans* and new paragraph 19(a)(5)(iii)–1 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 principal dwelling (other than home equity lines of credit subject to § 226.5b or mortgage transactions secured by an interest in a timeshare plan) and 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. [RESPA coverage includes such transactions as loans to purchase dwellings, refinancings of loans secured by dwellings, and subordinate-lien

home-equity loans, among others. Although RESPA coverage relates to any dwelling, § 226.19(a) applies to such transactions if they are secured by a consumer's principal dwelling. Also, home equity lines of credit subject to § 226.5b are not covered by § 226.19(a). For guidance on the applicability of the Board's revisions to § 226.19(a) published on July 30, 2008, see comment 1(d)(5)–1.]

2. *Timing and use of estimates.* [Truth in Lending disclosures must be given] The disclosures required by § 226.19(a)(1)(i) must be delivered or mailed (a) before consummation or (b) within not later than three business days after the creditor receives the consumer's written application, whichever is earlier, and at least seven business days before consummation. 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 6500.2. 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 [requires disclosures "to every person from whom the Lender receives or for whom it prepares a written application on an application form or forms normally used by the Lender for a Federally Related Mortgage Loan" (See 24 CFR 3500.6(a)).] 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. *Exceptions.* 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, 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, either with the disclosures provided within three business days after application or with the disclosures required by § 226.19(a)(2) and given [at] three business days before consummation [or settlement].

6. *Consummation.* The following examples illustrate when consummation may occur under § 226.19(a)(1)(i) in different circumstances:

i. A creditor that is open for business only Monday through Friday 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 Wednesday, June 10, the seventh business day following delivery or mailing of the early disclosures.

ii. A creditor that is open for business seven days per week 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 Monday, June 8, the seventh business day following delivery or mailing of the early disclosures.

\* \* \* \* \*

#### [Paragraph] 19(a)(2) *Rediscovery required.*

1. *Conditions for rediscovery.* [Creditors must make new disclosures if the annual percentage rate at consummation differs from the estimate originally disclosed by more than 1/8 of 1 percentage point in regular transactions or 1/4 of 1 percentage point in irregular transactions, as defined in footnote 46 of § 226.22(a)(3). The creditor must also disclose if a variable rate feature is added to the credit terms after the original disclosures have been made. The creditor has the option of redisclosing information under other circumstances, if it wishes to do

so. If, at the time of consummation, the APR disclosed as required by § 226.19(a)(1)(i) is accurate under § 226.22, the creditor has complied with § 226.19(a)(2). If, on the other hand, the APR disclosed as required by § 226.19(a)(1)(i) is not accurate under § 226.22, the creditor must make corrected disclosures of all changed terms (including the APR) so that the consumer receives them at least three business days before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an APR of 7.00%:

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

ii. On Thursday, June 11, the APR will be 7.15%. The creditor must make corrected disclosures to the consumer 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 [that vary from those originally disclosed]. 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.

3. *Timing.* Redisclosures, when necessary because the annual percentage rate has become inaccurate, must be [given] received by the consumer no later than [“consummation or settlement.” “Consummation” is defined in § 226.2(a). “Date of settlement” is defined in Regulation X (24 CFR 3500.2(a)) and is subject to any interpretations issued under RESPA and Regulation X.] three business days before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures before consummation. See § 226.17(f).) 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. 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 places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. For example, if the creditor places the disclosures in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8 and consummation may occur any time on or after Thursday, June 11.

4. *Basis of disclosures.* 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 the commentary to § 18(f) that variable-rate disclosures should be based on the terms in effect at consummation.

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

1. *Modification or waiver.* A consumer may modify or waive the right to the waiting period required by § 226.19(a)(1)(i) or § 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 a *bona fide* personal financial emergency must be met before the end of the waiting period is determined by the facts surrounding individual situations. The imminent sale of the consumer’s home at foreclosure during the waiting period is one example of a *bona fide* personal financial emergency. Each consumer entitled to receive the required disclosures must sign the written statement for the waiver to be effective.

2. *Examples.* 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 APR 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 June 5.

ii. If a change occurs that does not render the APR 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 obtaining an additional modification or waiver from the consumer.

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

1. *Timing and use of estimates.* 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 functions—applies for purposes of § 226.19(a)(5)(ii). See comment 2(a)(6)–1. These timing requirements are different than the timing requirements under § 226.19(a)(1)(i). Although timeshare transactions covered by § 226.19(a)(5) are not subject to the seven-business-day waiting period in § 226.19(a)(1)(i), in all other respects, the early disclosure requirements under § 226.19(a)(5)(ii) apply in the same manner as the requirements under § 226.19(a)(1)(i). For example, the commentary to § 226.19(a)(1)(i) concerning the permissible use of estimates and the definition of “written application” under § 226.19(a)(1)(i) also apply to § 226.19(a)(5)(ii). See comments 19(a)(1)(i)–2 and 19(a)(1)(i)–3.

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 under RESPA and Regulation X. 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 the commentary to section 18(f) that variable-rate disclosures should be based on the terms in effect at consummation. Although the three-business-day waiting period in § 226.19(a)(2) does not apply to timeshare transactions, in all other respects the requirements for corrected disclosures under § 226.19(a)(5)(iii) apply in the same manner as the requirements under § 226.19(a)(2). For example, to make corrected disclosures, the creditor may provide a complete set of new disclosures or may redisclose only those terms that vary from those originally disclosed. See comment 19(a)(2)–2.

#### Supplement I to Part 226 [Amended]

7. 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:

#### Subpart E—Special Rules for Certain Home Mortgage Transactions

\* \* \* \* \*

#### Section 226.31—General Rules

\* \* \* \* \*

[Paragraph] 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)—[2]►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, December 4, 2008.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E8-29123 Filed 12-9-08; 8:45 am]

BILLING CODE 6210-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-23646; Directorate Identifier 2006-CE-005-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Air Tractor, Inc., Models AT-400, AT-401, AT-401B, AT-402, AT-402A, and AT-402B Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to revise Airworthiness Directive (AD) 2006-08-08, which applies to certain Air Tractor, Inc. (Air Tractor), Models AT-400, AT-401, AT-401B, AT-402, AT-402A, and AT-402B airplanes. AD 2006-08-08 currently requires you to repetitively eddy current inspect the wing lower spar cap in order to reach the safe life and, for certain Models AT-402A and AT-402B airplanes and those that incorporate or have incorporated Marburger Enterprises, Inc. (Marburger), winglets, lowers the safe life for the wing lower spar cap. Since we issued AD 2006-08-08, we have received information to update inspection intervals for the Models AT-401B, AT-402A, and AT-402B airplanes based on a revised damage tolerance analysis. Consequently, this proposed AD would not only retain the actions of AD 2006-08-08, but would reduce the number of repetitive inspections for all affected Model AT-401B airplanes and certain

Models AT-402A and AT-402B airplanes. We are proposing this AD to prevent fatigue cracks from occurring in the wing lower spar cap before the originally established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in wing separation and loss of control of the airplane.

**DATES:** We must receive comments on this proposed AD by February 9, 2009.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564-5616; facsimile: (940) 564-5612; Internet: <http://www.airtractor.com>; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801; telephone: (800) 893-1420 or (701) 774-0230; facsimile: (701) 572-2602.

#### **FOR FURTHER INFORMATION CONTACT:**

Direct all questions to:

- For airplanes that do not incorporate and never have incorporated Marburger winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone: (817) 222-5102; facsimile: (817) 222-5960; and
- For airplanes that incorporate or have incorporated Marburger Enterprises, Inc., winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California, 90712; telephone: (562) 627-5228; facsimile: (562) 627-5210.

#### **SUPPLEMENTARY INFORMATION:**

#### **Comments Invited**

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, “FAA-2006-23646; Directorate Identifier 2006-CE-005-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

#### **Discussion**

An Air Tractor Model AT-502A experienced an in-flight wing separation. As a result, the FAA issued AD 2000-14-51 as an emergency AD. That AD required the inspection of the wing lower spar cap for cracks on Air Tractor Models AT-501, AT-502, and AT-502A airplanes and modification or replacement of any cracked wing lower spar cap. Since the release of that AD, the manufacturer has evaluated the AT-400, AT-500, AT-600, and AT-800 series lower spar cap fatigue life.

AD 2006-08-08 currently requires you to repetitively eddy current inspect the wing lower spar cap for fatigue cracks in order to reach the safe life and, for certain Models AT-402A and AT-402B airplanes and those that incorporate or have incorporated Marburger winglets, lowers the safe life for the wing lower spar cap.

Since we issued AD 2006-08-08, we have received updated inspection intervals for fatigue cracks for the Models AT-401B, AT-402A, and AT-402B airplanes based on a revised damage tolerance analysis. Any occurrence of fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in wing separation and loss of control of the airplane.

The following table contains AD actions that address the wing spar safe life of the Air Tractor airplane fleet: